IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 08.09.2021

PRONOUNCING ORDERS ON: 13.09.2021

CORAM

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

W.P.No.7093 of 2021
and
WMP No.7615 of 2021

Mohanlal Bhanulal
Rep. by its Proprietor
Mr.Hari Krishna Patwari, M/41
C - 202 Raylon Arcade
Ram Krishna Mandir Marg
Near Pidilite
Kondiviita Village
Andheri (East)
Mumbai 400059. ...Petitioner

.Vs.

1. The Pondicherry Cooperative
   Spinning Mills Ltd. No.P.396
   Rep.by its Managing Director
   Thiruvandarkoil Post
   Thirubuvanai
   Puducherry 605102.

2. The Registrar of Co-operative Societies,
   V.V.P. Nagar,
   Thattanchavady
   Puducherry 605009.

3. S.Shakthyvel
   Managing Director
   The Pondicherry Co- operative Spinning Mills
   Thiruvandarkoil Post, Thirubuvanai
   Puducherry 605102. ..Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Mandamus, Directing the 1st Respondent to forthwith release the petitioners properties of finished goods worth about 80,000 Kgs valued about Rs.64 Lakhs and compensation for having illegally detained goods.

For Petitioner : Mr.Ayyadurai
for Mr.T.K.Saravanan
Mr.Viruthagiri

For Respondents : Mr.Prakash Adiapadam
for R 1 & R 3

Mrs.V.Usha
Additional Government Pleader
for R 2

O R D E R

This Writ Petition has been filed for the issue of a writ of mandamus directing the first respondent to release the finished goods of the petitioner within the time frame fixed by this court.

2.The case of the petitioner is that the first respondent Society is running a mill and producing yarn. According to the petitioner, the Government of Puducherry is holding nearly 99% of the share capital in the 1st respondent Mill.

3.During the year 2018, the petitioner entered into an agreement with the 1st respondent Mill for the supply of raw materials which will be utilised for producing yarn. The grievance of the petitioner is that the 1st respondent had failed to file GST returns on time which resulted in notices being issued by the Commercial Tax Officer, Puducherry. The 1st respondent instead of regularising the filing of the returns and paying the GST, was attempting to put the burden on the petitioner and was refusing to release the goods worth about Rs. 64 lakhs by asking the petitioner to settle the GST dues. The petitioner made a representation in this regard to the 1st respondent on 20.02.2021, requesting for the release of the goods. However, the 1st respondent on the receipt of the same, directed the petitioner to settle the GST penal amount arrears pertaining to the year 2018-2019. Aggrieved by the same, the present Writ Petition has been filed before this court seeking for appropriate directions.

4.The 1st respondent has filed a detailed counter. According to the 1st respondent, the petitioner started the business from January 2019, but however the GST amount was remitted only during the month of December 2019. This resulted in the concerned department initiating action for payment of interest, penalty etc. This amount is liable to be paid only by the petitioner and since it was not paid, the goods were not released. According to the 1st respondent, they have a lien over the goods. The liability of the petitioner towards payment of

GST has been explained in detail at paragraph 23 of the Counter Affidavit.

5.The 1st respondent has also taken a stand that they are running under a heavy loss with the livelihood of nearly 456 employees at stake and therefore, the liability of the petitioner cannot be accepted by them. At paragraph 30 of the counter affidavit, it is stated that apart from the amount payable towards GST, the petitioner is also liable to pay a sum of Rs.84,80,255/- towards charges for yarn conversion. In short, the first respondent has raised various factual issues and contested the claim made by the petitioner.

6.Heard Mr.Ayyadurai, learned counsel for the petitioner, Mr.Prakash Adiapadam, learned counsel for the respondents 1 and 3 and Mrs.Usha, learned Additional Government Pleader appearing for the 2nd respondent.

7.There are two issues that requires the consideration of this court and they are ;

A. Whether the present Writ Petition is maintainable against the 1st Respondent Co-Operative society and;

B. If it is held to be maintainable, whether the relief sought for by the petitioner can be granted by this court?

8.In so far as the first issue is concerned, the law was clearly laid down by a five member Bench in K. Marappan v. The Deputy Registrar of Co-Operative Societies, Namakkal Circle, Namakkal reported in 2006 (4) CTC 689. The propositions laid down by the Bench is captured at paragraph 21 of the judgment and the same is extracted hereunder:

> 21. From the above discussion, the following propositions emerge:-
>
> (i) If a particular co-operative society can be characterised as a Statewithin the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be an authority within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.
>
> (ii) Applying the tests in Ajay Hasia it is held that the respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.
>
> (iii) Even if a society cannot be characterised as a State within the meaning of Article 12 of the

Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a person or an authoritywithin the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably saidthat such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a State would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a State a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a State, the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society, 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before.

9.In the present case, it is seen from records that the 1st respondent Mill is a co-operative society registered under Pondicherry Co-operative Societies Act, 1972. It is seen that the Government of Puducherry is holding almost 99% of the share capital in the 1st respondent Mill. That apart, even as per the by-laws of the 1st respondent Society, the Managing Director of the Society is appointed by the Government and he is the Chief Executive of the Mill and he shall also be the ex-officio treasurer and shall have custody of all the properties of the Mill. It is therefore clear that the 1st respondent will squarely fall within the meaning of a “state” under Article 12 of the Constitution of India and therefore, a Writ Petition is maintainable against the 1st respondent. The first issue is answered accordingly.

10.In so far as the second issue is concerned, the petitioner and the 1st respondent are governed by an agreement. The petitioner claims that he has paid the GST along with the bills raised by the 1st respondent. Whereas, the first respondent has taken a stand to the effect that there was an enormous delay in paying the GST which ultimately resulted in the imposition of the penalty, interest, late fee etc., by the department and this is liable to be settled only by the petitioner. Since the petitioner did not settle the amount, the 1st respondent has proceeded to retain the goods belonging to the petitioner. The manner in which the delay was caused resulting in issuance of notice by the department, is explained in detail at paragraph 23 of the counter affidavit.

11.When the parties are governed by a contract, this court normally does not exercise its jurisdiction under Article 226 of the Constitution of India unless the amount involved is undisputed or where it involves some public interest. When there are serious disputed question of facts which requires evidence to arrive at a conclusion, it will be safer to revert the parties to a competent court. Just because the 1st respondent falls within the expression “state” under Article 12 of the Constitution of India, that by itself is not a ground to entertain a Writ Petition where it involves only a private agreement between the petitioner and the 1st respondent.

12.In the present case, it would require taking evidence to determine if the liability is to be mulcted against the petitioner for the delay caused in paying the GST or whether it is the 1st respondent who will be liable for the same and is attempting to shift the burden on the petitioner. That apart, the first respondent is also claiming towards charges for yarn conversion. Only if an answer is found to the above issue, thereafter it can be determined as to whether the 1st respondent is justified in retaining the goods for the alleged liability on the part of the petitioner.

13.In view of the above discussion, this court is not inclined to entertain this Writ Petition and grant the claim made by the petitioner. It is left open to the petitioner to approach the appropriate civil court and work out his remedy against the 1st respondent Society in accordance with law. Except giving this liberty, no further orders can be passed in this Writ petition.

14.In the result, this Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

KP

To

1. The Pondicherry Cooperative
Spinning Mills Ltd. No.P.396 Rep.by its
Managing Director Thiruvandarkoil Post
Thirubuvanai Puducherry 605102.

2. The Registrar of Co-operative Societies,
V.V.P. Nagar, Thattanchavady
Puducherry 605009.

+1cc to the Government Pleader, S.R.No.46585/21
+1cc to Mr.Prakash Adiapadam, Advocate, S.R.No.46033/21
+1cc to Mr.T.K.Saravanan, Advocate, S.R.No.46009/21

W.P.No.7093 of 2021

RLD(CO)
RGA(27/09/2021)