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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 01.09.2021

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.NO.15568 OF 2021

WMP NO.16492 OF 2021

A. Kumar

...Petitioner

Vs

1. The Joint registrar of Co-operative Societies,
Tirupur Region,
Tirupur.

2. Selampalayam Primary Agricultural
Co-operative Credit Society AA -314,
Rep by its Secretary,
Selampalayam - 638672
Tirupur district.

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus or any other appropriate writ, order or direction calling for the records relating to the impugned order in Na.Ka. No. 1270/ 2021/ Pa.2 dated 09.07.2021 passed by the 1st respondent, quash the same and consequently direct the 1st respondent not to interfere with petitioners right to continue as the Elected president of the 2nd respondent society, by considering the petitioners representation dated 14.07.2021.

For Petitioner : N.Manokaran

For Respondents : Mr.A.Selvendiran for R1
Mr.V.P.R.Ilamparathi for R2



O R D E R

This writ petition has been filed challenging the impugned notice issued by the first respondent dated 09.07.2021, wherein the order of suspension passed under Section 76 (A) of the Tamil Nadu Corporative Societies Act, has been put to challenge.

2. When the writ petition was admitted, this Court passed the following order on 02.08.2021 :-

Mr.A.Selvendiran, learned Government Advocate, takes notice for 1st respondent. Mr.V.P.R.Ilamparthi, learned counsel takes notice for 2nd respondent. Post this case after four weeks. In the meantime, the respondents are directed to file their counter affidavit.

2. The subject matter of challenge in this writ petition is the impugned notice issued by the 1st respondent dated 09.07.2021, wherein an order of suspension has been passed under Section 76(A) of the Tamil Nadu Co-operative Societies Act.

3. The petitioner is the president of the elected board and he took charge in the year 2018 and his tenure is for a period of five years. One Kathirvel was appointed as the in-charge Secretary in the year 2013 and there were certain complaints against him with regard to serious irregularities that were pointed out in the audit report for the year 2015-2016. It is an admitted case that the petitioner took charge as the President only in the year 2018. Proceedings were initiated by the 1st respondent against the delinquent Secretary in the year 2019 and the Secretary approached this Court and filed WP No.22573 of 2019 challenging the proceedings. Initially, an order of status quo was granted on 08.08.2019 and ultimately, the writ petition itself was disposed of by issuing



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certain directions by an order dated 21.10.2019.

4. The impugned proceedings against the petitioner has been passed on the ground that the petitioner did not place the delinquent Secretary under suspension, when an enquiry has been ordered under Section 82 of the Tamil Nadu Co-operative Societies Act. The fact remains that the delinquent Secretary could have been placed under suspension even by the 1st respondent and there was no necessity for the 1st respondent to rely upon the petitioner to pass such an order. On the materials placed on record, this Court is prima facie satisfied that the requirements of Section 76(A) of the Tamil Nadu Co-operative Societies Act may not be attracted. Since a prima facie case has been made out, there shall be an order of stay of the proceedings of the 1st respondent, pending disposal of this writ petition.

3. Heard the learned counsel for the petitioner and Mr.A.Selvendiran, learned counsel for 1st respondent and MR.V.P.R.Iamparthi, for 2nd respondent.

4. A careful reading of the impugned order passed by the first respondent shows that the order has been passed pending an inspection / investigation under Section 82 of the Tamil Nadu Cooperative Societies Act. It is seen from the order that except for the ipse dixit of the first respondent that the petitioner may interfere with the inspection / investigation, there are absolutely no materials or reasonings as to how the first respondent came to such a conclusion.

5. In any case, the present writ petition is squarely covered by the earlier order passed by this Court in WP No. 12476 and 12894 of 2021, dated 10.8.2021. The relevant portions in the order are extracted hereunder:-

24. Whether the suspension of elected officer bearers is warranted pending an



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inquiry, depends upon the facts and circumstances of each case. As pointed out, supra, the requirement of Section 76-A is not merely the existence of prima facie material. The Registrar must return a finding on the basis of such material that an order of suspension was necessary in public interest or in the interests of the society. In other words, the Registrar must satisfy himself that if such suspension is not made, there is scope for the office bearers to interfere with the inquiry and/or tamper with the evidence. In the absence of the any such apprehension, there will be no requirement for suspension and the inquiry can go on.

25. Section 76-A is a drastic power which interferes with the rights of the elected members who have been voted to office, and must, therefore, be exercised very sparingly and only in the clearest cases where there is objective material to show that the continuation of office would interfere and impede a free and fair inquiry under Section 81. Otherwise, persons who have lost the election can always take control through a back door by getting the Registrar pass an order suspending the office bearers on the basis of external influence. Such a course is expressly forbidden in the light of the judgment of the Supreme Court in *State of M.P. v. Sanjay Nagayach* reported in (2013 7 SCC 25).

26. In the present case, things have moved very swiftly from 20.05.2021 to 1.06.2021 and by the time an inquiry officer was appointed, the impugned proceedings suspending the petitioners came to be issued on 01.06.2021. The present case only involves scrutiny of documents which are already available and taking statements from the petitioners and others. There is no scope for any serious tampering of evidence since the



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documents are already available with the respondents. There is absolutely no material on record to conclude that the suspension was warranted in public interest or in the interests of the society. There is nothing on record to show how the Registrar had apprehended that the continuation of the petitioner's in office would impede the course of a fair and impartial inquiry. In other words, the Registrar has, quite evidently, acted on surmises and conjectures.

27. As has been pointed out, supra, a mere prima facie case will not do to invoke Section 76-A. The jurisdictional requirement of Section 76-A has, thus, not been met in this case. Ex-consequenti, the exercise of power by the first respondent to pass the impugned orders dated 01.06.2021 under Section 76-A is clearly without jurisdiction.

6. It is clear from the above order that a mere prima-facie case will not do to invoke section 76 (A) of the Act, without satisfying the requirements of Section 76 (A) of the Act. This power cannot be invoked in every case where an enquiry or inspection / investigation is initiated. This power has to be exercised sparingly and cannot be invoked mechanically in every case. Such invocation of power will cause serious hardship to an elected office bearer.

7. In view of the above discussion, impugned proceedings of the first respondent dated 09.07.2021, is hereby quashed. However, it is made clear that the inspection / investigation under Section 82 of the Act, can go on and report shall be submitted by the enquiry officer within a period of eight weeks from the date of receipt a copy of this order. Needless to say that further action on the report shall proceed strictly in accordance with law.



8. In the result, the above writ petition is allowed on the aforesaid terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-IX)

// True Copy //

Sub Assistant Registrar

sha/rka

To

1. The Joint registrar of Co-operative Societies,
Tirupur Region,
Tirupur.
2. The Secretary
Selampalayam Primary Agricultural
Co-operative Credit Society AA -314,
Selampalayam - 638 672
Tirupur district.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.43823

+1cc to the Government Pleader, S.R.No.44247

W.P.No.15568 of 2021

RP(CO)
RLP(21/09/2021)