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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.11.2021

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THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P. NO. 40442 OF 2016

AND

W.M.P. NOS. 34507 AND 34508 OF 2016

Mr.S.K.Sukumar

...Petitioner

Vs.

- 1.The Managing Director, AAVIN,
Tamil Nadu Co-operative Milk Producer's
Federation Ltd.,
Aavin Illam, Madhavaram Milk Colony,
Chennai - 600 051. Tamil Nadu.
- 2.The Chairman-AAVIN,
Erode District Co-Operative Milk Producer's
Union Ltd., (EDCMDU)
Vasavai College Post, Erode - 638 316.
- 3.General manager, AAVIN
Erode District Co-operative Milk Producer's
Union Ltd., (EDCMDU)
Vasavai College Post, Erode - 638 316.
- 4.Deputy General Manager (CFP)
Mr.A.P.Kumar
Cattle Feed Plant (CFP), AAVIN
Erode District Co-operative Milk Producer's
Union Ltd., (EDCMDU)
Chennimalai Road, Erode - 638 001.
- 5.Assistant General Manager (Veterinary - Vet.)
Mr.A.P.Kumar
Cattle Feed Plant (CFP), AAVIN
Erode District Co-operative Milk Producer's
Union Ltd., (EDCMDU)
Chennimalai Road, Erode - 638 001.

...Respondents

Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 3 to 5 to send the samples of respective raw materials supplied by the petitioner to the respondents 3 to 5 to the laboratory for analysis and consequently to receive the same.



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For Petitioner : No appearance
For Respondents : Mr.C.Kathiravan (For R1)
Government Advocate
Mr.R.Bala Ramesh (For R2 to R5)

O R D E R

The writ of mandamus is filed to direct the respondent Nos. 3 to 5 to send the samples of respective raw materials supplied by the petitioner to the respondents 3 to 5 to the laboratory for analysis and consequently, to receive the same.

2. The petitioner is a proprietor of a Firm, viz., M/s.Star Agro Add, having office at No.2/893-1, Ground Floor, VIII Cross, R.M.Colony, Dindigul-624 001. The Petitioner firm has been carrying on the business in Distribution of Agricultural Inputs and Implements viz., fertilizers, pesticides, seeds, cattle feeds, cattle feeds, tools and equipments, like rotary tillers, seed drills, etc. for about 10 years. Once the goods are delivered, three samples are drawn in the presence of the supplier by the Lab Assistant of the third respondent at the Cattle Feed Plant. The fourth respondent is the authorized person to draw samples and send the same for sample testing as to their quality in the reputed labs as per their approved list of laboratory or at the analytical lab in the fourth respondent premises.

3. The grievance of the petitioner is that in respect the samples drawn, reports were not made available, as the samples were not sent to the lab for the analysis. Thus, the petitioner is constrained to move the present writ petition.

4. On account of efflux of time, the issue lost its relevance. However, the question raised is whether the issue needs to be entertained in respect of the relief sought for in the present writ petition. The first respondent is Tamil Nadu Co-operative Milk Producer's Federation Limited and the second and third respondents are Erode District Co-operative Milk Producers' Union Limited. In order to understand the administrative structure of these co-operative organization, this Court directed the Managing Director of Aavin Tamil Nadu Co-operative Milk Producer's Federation Limited, Aavin Illam, Madhavaram Milk Colony, Chennai - 600 051 to file an affidavit, who in turn filed an affidavit stating that the Tamil nadu Co-operative Milk Producer's Federation Limited is the apex body at State level in the 3 tier "Anand Pattern", wherein all the District Co-operative Milk Producers' Unions in the State are members, the District Co-operative Milk Producers' Unions are the middle level central Co-operative society, wherein the



Primary Milk Producers' Co-operative Society in the jurisdiction area are the members. The Primary Milk Producers' Co-operative Societies are the base level of the 3 tier system, wherein the milk producers are the members. The Tamil Nadu Co-operative Milk Producers' Federation Limited, District Co-operative Milk Producers' Unions and Primary Milk Producers' Co-operative Societies were registered under sub-section (1) of the section 9 of the Tamil Nadu Co-operative Societies Act, 1961 (Madras Act 53 of 1961) now the Tamil Nadu Co-operative Societies Act 1983 (Tamil Nadu Act 30 of 1983) and its Rules 1988. The Management of the Tamil Nadu Co-operative Milk Producers' Federation Limited, District Co-operative Milk Producers' Union and Primary Milk Producers' Co-operative Societies vest with the Board constituted in accordance with the provisions of the Tamil Nadu Co-operative Societies Act, 1983. Further, the ultimate authority vest in the General Body of its members.

5. The day to day expenditure, both revenue and capital expenditures of Tamil Nadu Co-operative Milk Producers' Federation Limited, District Co-operative Milk Producers' Unions and Primary Milk Producers' Co-operative Societies are met out from the revenues generated by the respective societies. Further, the budget of the respective societies placed before the General Body for approval as per section 32(2) (a) of the Tamil Nadu Co-operative Societies Act, 1983.

6. Government provides funds as a grant to Dairy Co-operatives for creation of infrastructure facilities under various State and Central sponsored schemes like, National Agricultural Development, National Bank for Agricultural and Rural Development (Rural Infrastructure Development Fund) and other welfare schemes for milk producers. Government fixes both the procurement and selling price of milk. As and when the procurement price of milk is increased without corresponding increase in the selling price, Government provide subsidy/ grant /loan/ ways & means advance /share capital to compensate the loss in revenue to settle the milk cost payment to milk producers without pendency. Therefore, funding to the Tamil Nadu Co-operative Milk Producers' Federation Limited will not be done as part of budget by the Government. Government also provides loan with interest, grants under various schemes implemented by Government of India and State Government.

7. Perusal of the affidavit reveals that these co-operative societies are registered under the provisions of the Tamil Nadu Co-operative Societies Act. It is an independent entity and not funded by the Government for the purpose of running their business activities. The funds are collected from and out of the members both at the primary level, district level unions and the State Federation. Thus, the Co-operative Milk Producers'



Societies are independent legal entity with reference to the registration made under the Tamil Nadu Co-operative Societies Act and they are not receiving any substantial fund from the Government for the purpose of running their business activities.

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8. This being the factum, these co-operative societies cannot be construed as a State within the meaning of Article 12 of the Constitution of India. Once it is not 'State' or not an instrumentality of the State, no writ needs to be entertained under Article 226 of the Constitution of India.

9. However, the question arises whether these co-operative societies /institutions are performing public duties by supplying milk and milk products to the public at large, which are to be construed as public duties. Essential services are provided by these institutions. Thus, effective control over these institutions by the authorities under the provisions of the Act is of paramount importance. In the absence of any such effective control, there is a possibility of deficiency in providing public services even under the provisions of the Statutes and Rules in force. Thus, the controlling authorities, mainly the Commissioner of Dairy Development Department functioning under the Government of Tamil Nadu is duty bound to exercise their power under the provisions of the Tamil Nadu Co-operative Societies Act and Rules in force and guidelines and notifications issued in exercise of powers by the Government under the provisions of the Act.

10. However, it is necessary to bear in mind that these co-operative institutions cannot be construed as State. Thus, an inference is to be drawn with reference to the entertainability of the writ petition.

11. This Court is of the considered opinion that no writ needs to be dismissed on the ground of maintainability. All writs are maintainable under Article 226 of the Constitution of India. A writ being a constitutional remedy available to the citizens of our great nation, no writ needs to be dismissed by merely stating that it is not maintainable. Entertainability of the writ petition is to be considered by this Court. Regarding the issue, whether the writ petition needs to be entertained, even in case the relief sought for against the private body or the organization, which is not a State within the meaning under Article 12 of the Constitution of India, the answer would be, if public duties are involved and any such organization or institution or corporate body is performing the public duties or implementing Government schemes, then writ needs to be entertained, if the rights are established and violations of public duties are brought to the notice of this Court. Thus, the facts and circumstances in each case plays a pivotal role, while



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entertaining a writ petition of this nature. However, all the writ petitions in the matter of administration of these co-operative societies need not be entertained. Factual aspects are to be considered and involvement of public duties are to be considered as relevant.

12. Further, it is not automatic that writ needs to be entertained, if it is filed against the co-operative society or institution. It is made clear that the Primary Milk Producers' Co-operative Societies, District Co-operative Milk Producers' Unions and Tamil Nadu Co-operative Milk Producers' Federation Limited are independent entities registered under the Tamil Nadu Co-operative Societies Act and each one having its own registration number and approved by laws and functioning in accordance with the said by-laws. Thus, there is no administrative link between the primary co-operative societies and district co-operative union and the State union. Each society is bound to act as per their by-laws and by following the co-operative societies Act and Rules. Violations, if any noticed, the authorities of the co-operative department / Commissioner, Department of co-operative societies are empowered to invoke the provisions of the co-operative societies Act and initiate appropriate action.

13. This being the scope and nature of the administration being run under the provisions of the Tamil Nadu Co-operative Societies Act, this Court has no hesitation in forming an opinion that the Tamil Nadu Milk Co-operative Producers' Federation Limited and respective District milk producers co-operative union, Primary level milk cooperative societies are not 'State' within the meaning of Article 12 of the Constitution of India.

14. This Court is of the view that with regard to the maintainability of the writ petition, the Court has to look into the legal principles settled by a larger bench of this Court in the case of K.Marappan Vs. The Deputy Registrar of Co-operative Societies and another reported in [2006 (4) CTC 689]. A co-operative society not funded by Government is not a State within the meaning of Article 12 of the Constitution of India. If any co-operative society is funded by the Government it can be construed as a State.

15. As far as the present writ petition is concerned, the relief sought for is to direct respondent Nos. 3 to 5 to send the samples to the respective raw materials supplied by the petitioner to the respondent Nos. 3 to 5 does not involve any public duty or implementation of Government scheme, as it is a grievance, which is to be considered by the authorities under the Tamil Nadu Co-operative societies Act.



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16. In view of the above, this writ petition deserves no merit consideration and consequently, stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

Maya

To

- 1.The Managing Director, AAVIN,
Tamil Nadu Co-operative Milk Producer's
Federation Ltd.,
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Chennai - 600 051. Tamil Nadu.
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+1cc to M/s.Bala Ramesh, Advocate, S.R.No.56929

W.P.No.40442 of 2016

VSN-II (CO)
RVM(25/11/2021)