IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.10.2021

CORAM :

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
AND
THE HONOURABLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Writ Petition No.21652 of 2021
and
WMP Nos.22831 and 22832 of 2021

D.Krishnamoorthy ...Petitioner

Vs

1. The Secretary to Government,
   Co-operation Food and Consumer
   Protection Department, Fort St.George,
   Chennai-9.

2. The Registrar of Co-operative Societies,
   No.170, NV Natarajan Maligai,
   Periyar EVR High Road, Kilpauk,
   Chennai.10. ...Respondents

Petition under Article 226 of The Constitution of India praying for issuance of a Writ of Declaration to declare that the Section 76-A of the Tamil Nadu Cooperative Societies Act, 1983 inserted by the Tamil Nadu Act 13 of 2020 as unconstitutional, invalid and illegal and therefore liable to be struck down.

For Petitioner : Mr.P.H.Arvind Pandiyan, SC for
Mr.L.P.Shanmugasundaram

For Respondents : Mr.P.Muthukumar, State GP

Order of the Court was made by T.S.SIVAGNANAM,J

We have heard Mr.P.H.Arvind Pandiyan, learned Senior Counsel appearing on behalf of Mr.L.P.Shanmugasundaram, learned counsel on record for the petitioner and Mr.P.Muthukumar, learned Government Pleader accepting notice for the respondents.

2. This writ petition has been filed by petitioner - President of the Perambur Co-operative Building Society Ltd.,

seeking for a Writ of Declaration to declare Section 76-A of the Tamil Nadu Co-operative Societies Act, 1983 inserted by Tamil Nadu Act 13 of 2020 (the Act for brevity), as unconstitutional, invalid and illegal and is liable to be struck down.

3. The petitioner was placed under suspension by order dated 01.6.2021 in exercise of the powers under Section 76-A of the Act for a period of six months pending enquiry under Section 81 of the Act. The said order of suspension was challenged by the petitioner and another who was the Vice-President by filing W.P.Nos.12476 and 12894 of 2021. The said writ petitions were allowed by a common order dated 10.8.2021 quashing the order of suspension, however, by making it clear that the enquiry under Section 81 of the Act could go on and the report should be submitted by the Enquiry Officer within a time frame.

4. The learned Senior Counsel for the petitioner would contend that the learned Judge, while allowing the said writ petitions, made certain observations with regard to the scope of Section 76-A of the Act, which he would like the Court to peruse by way of persuasive value and not as a binding precedent. It is further submitted by the learned Senior Counsel that the learned Judge held that Section 76A of the Act had the traits of cut and paste legislation and also commented upon the placement of Section 76-A in Chapter VIII of the Act, which deals with officers and paid servants of the society, when, admittedly, the President and the Vice President of the society are not officers and paid servants and this would show the sheer non application of mind of the Legislature and this may also be a ground to strike down the impugned provision as illegal.

5. It is further submitted by the learned Senior Counsel appearing on behalf of the petitioner that there is no necessity for the Legislature to insert Section 76-A of the Act when there is sufficient power for disqualification and removal of the elected office bearers in terms of Section 36 of the Act and the power is a very wide power and when such power is in existence, the necessity for enacting Section 76-A of the Act was unnecessary. It is pointed out that Section 88 of the Act gives powers to supersede the elected board of the society, which also can be exercised by the Registrar and when such inbuilt safeguard is available in the statute, the question of introducing a new provision namely Section 76-A of the Act giving power to suspend the President and the Vice President was unnecessary.

6. The learned Senior Counsel appearing on behalf of the petitioner has referred to the decision of the Hon'ble Supreme Court in the case of Ravi Yashwant Bhoir Vs. District Collector, Raigad [reported in 2012 (4) SCC 407] for the proposition that

the elected office bearer of a cooperative society has to be placed in a higher pedestal than a paid employee of a society or a temporary employee of a society. It is further submitted that the elected office bearers cannot be suspended and if at all there is any action to be initiated, an enquiry has to be conducted in terms of Section 81 of the Act, which has already commenced against the petitioner or the Registrar can invoke powers under Section 36 of the Act for disqualification or removal and invoke the power of super session of the board under Section 88 of the Act. Hence, it is submitted that the impugned legislation is liable to be struck down.

7. Per contra, the learned Government Pleader appearing for the respondents submits that Section 76A of the Act has been inserted giving the power to suspend the President and the Vice President under certain circumstances and the power is not an unguided power and the power is conferred to safeguard the interest and welfare of the society and many a time, on account of the serious acts of misconduct and misappropriation committed by the elected office bearers, the societies themselves become defunct and therefore, the power conferred under Section 76A of the Act is a valid power and it cannot be stated that it is unconstitutional or illegal.

8. We have elaborately heard the learned counsel appearing for both the parties and carefully perused the material on record.

9. The settled legal principle is that the challenge to the Constitutional validity of a law can only be on two grounds namely (i) lack of legislative competence; and (ii) violation of any of the Fundamental Rights guaranteed under Part III of The Constitution. Though it is contended that the elected office bearers cannot be suspended, but can be disqualified or removed or superseded, we find nothing wrong in the exercise of power or any legislative incompetence in enacting Section 76A of the Act.

10. Section 76A is a power conferred for suspending the President or the Vice President of a registered society under certain circumstances. Sub-Section (1) states that where it is brought to the notice of the Registrar, on a complaint or otherwise, that the President or the Vice-President of a registered society has committed or has been otherwise responsible for misappropriation or breach of trust or gross mismanagement of the affairs of the registered society or committed any offence involving criminal misconduct or moral turpitude and if, in the opinion of the Registrar, there is a prima facie evidence against the President or the Vice President and the suspension of the President or the Vice-President is necessary in the interest of such society or in the public

interest, the Registrar may, by order, place the President or the Vice President, under suspension for a period not exceeding six months, pending inquiry under Section 81 or inspection or investigation under Section 82 or investigation into the offence involving criminal misconduct or moral turpitude.

11. Sub-Section (2) states that notwithstanding anything contained in Sub-Section (1), where an action under Section 36 has been initiated against the President or the Vice President, the period of suspension may be extended by the Registrar, from time to time, for the reasons to be recorded in writing, for a further period of six months or till final order is passed under Section 36, whichever is earlier.

12. Thus, we find that the power conferred under Section 76-A of the Act is neither unguided nor unbridled. The power is exercisable when a complaint or otherwise is brought to the notice of the Registrar that the President or the Vice President committed or has been responsible for misappropriation or breach of trust, etc., and the Registrar finds prima facie evidence against the President or the Vice President and such an order of suspension is required to be made in the interest of the society or in public interest, such power can be invoked.

13. Therefore, there are sufficient checks and balances in Section 76A of the Act. Furthermore, Sub-Section (1) of Section 76A of the Act stipulates that the period of suspension can be not more than six months. Sub-Section (2) of Section 76A of the Act starts with a non obstante clause, which gives power to extend the period of suspension by a further period of six months or till final orders are passed when an action is initiated under Section 36 of the Act.

14. Hence, the Legislature, in their wisdom, introduced this provision bearing in mind the interest of the society and public interest. Assuming that an enquiry has been ordered under Section 81 or an investigation under Section 82 has commenced and the Registrar is of the prima facie view that there are material evidence against the President or the Vice President, considering the interest of the society and in public interest, the Registrar can invoke such power of suspension whereby the President or the Vice President is prevented from discharging their functions.

15. In fact, in Service Jurisprudence, the power of suspension has been granted to enable the Disciplinary Authority to proceed to conduct an enquiry into the charges with a view that the delinquent employee should not, in any manner, interdict the proceedings or make an attempt to destroy the evidence thereby making the disciplinary enquiry as futile. It

may be true that there may be a difference between a Government employee and the President or the Vice President of a cooperative society. Nevertheless, these persons are elected to the office in terms of the provisions of the Act and the Rules framed thereunder.

16. A parallel can be drawn to the provisions of the Tamil Nadu Panchayats Act where such elected office bearers are governed by the provisions of that Act and it is the Inspector of Panchayats namely the District Collector, who is entitled to exercise his power to remove the President or the Vice President or to prevent them from discharging their duties by withdrawing the cheque signing power. Therefore, when a person, who offers himself as a candidate for election to a cooperative society, has to be bound by the terms and conditions stipulated under the Act and the relevant Rules framed thereunder.

17. The submission that an elected office bearer can never be suspended is an argument, which cannot be accepted where the election to that particular post is governed by the provisions of the Act. The Legislature has sufficient competence to enact the provisions and there is no lack of legislative competency for us to interfere.

18. As pointed out earlier, the second ground is that there is a violation of the Fundamental Rights guaranteed under Part III of The Constitution of India.

19. From the submissions made as well as the contentions advanced by the petitioner, we find that there is no violation of Part III of The Constitution. Furthermore, the settled legal principle is that the presumption of Constitutionality of a Statute is so strong that unless and until the person challenging the Constitutional validity categorically establishes the legislative incompetence or violation of the Fundamental Rights, Courts always restrain themselves from striking down a statute.

20. The decision of the Hon'ble Supreme Court in the case of Ravi Yashwant Bhoir deals with a case of an elected official in local self government and the observation made by the Hon'ble Supreme Court is that the said elected office bearer has to be kept on a higher pedestal. There can be no quarrel over this proposition because it is the mandate of the majority of the members of the society in electing the President or the Vice President. Therefore, such a mandate cannot be disturbed so lightly nor such an elected person can be dealt with like a Government servant.

21. Nevertheless, when the elected person commits a breach

and there is a prima facie evidence available with the Registrar, it cannot be heard to be said that the official machinery should be a mute spectator to such an illegality. The power under Section 36 of the Act is wide enough and in fact, it is clear that the Legislature was conscious of the power under Section 36 of the Act and probably for such a reason, Sub-Section (2) has been enacted in Section 76 of the Act. That apart, the placement of the provisions in Chapter VIII of the Act can, in no manner, be a ground to strike down the provision as unconstitutional.

22. The Hon'ble Supreme Court in the case of State of Tamil Nadu and Another vs. P.Krishnamurthy [reported in 2006 (4) SCC 517], while considering a challenge to a rule, pointed out that there is a presumption in favour of constitutionality or validity of a subordinate legislation and the burden is upon who attacks it to show that it is invalid. It has been further held that a subordinate legislation can be challenged on the grounds of (a) lack of legislative competence to make the subordinate legislation; (b) violation of fundamental rights guaranteed under the Constitution of India; (c) violation of any provision of The Constitution of India; (d) failure to conform to the statute, under which, it is made or exceeding the limits of authority conferred by the enabling Act; (e) repugnancy to the laws of the land, that is, any enactment; and (f) manifest arbitrariness/unreasonableness (to an extent where the court might well say that the Legislature never intended to give authority to make such rules).

23. The said decision was noted by the Hon'ble Supreme Court in the case of Cellular Operators Association of India Vs. Telecom Regulatory Authority of India [reported in 2016 (7) SCC 703].

24. The Hon'ble Supreme Court in the case of Shayara Bano Vs. Union of India [reported in 2017 (9) SCC 1], held that a subordinate legislation can be struck down on the ground that it is arbitrary and therefore, violative of Article 14 of The Constitution and the Court and noted the decision in Cellular Operators Association of India and the other decision on the said point. In the instant case, the challenge is to the provision of Section 76A of the Act, which has not been brought under any one of the conditions.

25. To be noted, what is being challenged is the provisions of an Act and not a Rule. The President and Vice President of the society, having elected to office under the provisions of the Act, are bound by the stipulation under the statute. Considering the nature, object and the scheme of the Tamil Nadu Co-operative Societies Act, it can hardly be stated that the

power conferred on the Registrar to sustain a President or a Vice President of a society, when prima facie materials are there to establish a case of misappropriation or fraud, is a power exercisable in consistence with the provisions of the Act, as the Act provides under Section 36 to disqualify and remove and under Section 88 to supersede the elected board. Thus, if the argument of the appellant is to be accepted, then it has to be held that the Registrar can never exercise his powers to disqualify or remove an elected member, which will include a President or a Vice President nor supersede an elected board. The elected representatives of the Society are bound to function within the four corners of the statute and when prima facie material is available to the elected President or Vice President that he has misappropriated the funds of the society or committed any other moral impropriety, worked against the interest of the society and its members, the power of suspension is exercisable.

26. As pointed out, Sub-Section (2) of Section 76A of the Act grants power to suspend the President or the Vice President for a further period of six months, when an enquiry under Section 81 of the Act is pending. Therefore, Section 76A is in consonance with the object and scheme of the Cooperative Societies Act and there is nothing to show that the State lacked legislative competency to enact Section 76A nor there is anything to show that any of the fundamental rights of the petitioner or any other President or Vice President is affected nor there is any violation of the provisions of The Constitution. That apart, the petitioner has not been able to point out any manifest arbitrariness or unreasonableness in enacting such a provision. To say the least, the said provision will serve as an effective step in regulating the affairs of a cooperative society, when the elected members commit impropriety and illegality.

27. For all the above reasons, we hold that Section 76A of the Act is neither unconstitutional nor invalid nor illegal and cannot be struck down.

28. Accordingly, the above writ petition is dismissed. No costs. Consequently, the connected WMPs are also dismissed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

RS

To

1. The Secretary to Government,
   Co-operation Food and Consumer
   Protection Department,
   Fort St.George, Chennai-9.

2. The Registrar of Co-operative Societies,
   No.170, NV Natarajan Maligai,
   Periyar EVR High Road,
   Kilpauk, Chennai.10.

+1cc to the Government Pleader, S.R.No.52822

WP.No.21652 of 2021 &
WMP.Nos.22831 & 22832 of 2021

SSD(CO)
RGA(26/10/2021)