



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2021

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THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P(MD)No.13228 of 2021

and

W.M.P. (MD) .No.10218 of 2021

WEB COPY

M.S.Pandian

... Petitioner

Vs.

- 1.The Secretary to Government,
Co-operative Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.
- 2.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
Kilpak,
Chennai-600 010.
- 3.The Joint Registrar of Co-operative Societies,
Thirupparankundram,
Pasumpon Nagar, Madurai-625 003.
- 4.The Deputy Registrar of Co-operative Societies,
Madurai Circle,
Pasumpon Nagar, Madurai-625 003.
- 5.A.Jeeva,
Joint Registrar of Co-operative Societies / Managing Director,
Madurai District Central Co-operative Bank,
North Veli Street, Madurai-625 001.
- 6.The Secretary,
M.M.3258, B.B.Kulam Co-operative Stores,
Sellur,
Madurai-625 002.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned notice issued by the fourth respondent in his proceedings in Na.Ka.3753/2021 Nu.Ku. dated 23.07.2021 and quash the same and consequently direct the respondents to allow the petitioner to act as the Director of the sixth respondent and the Board of Director / Chairman of the Madurai District Central Co-operative Bank.

For Petitioner : Mr.P.H.Aravindh Pandian
Senior Counsel



for Mr.K.Mahendran

For R-1 to R-4 : Mr.Veera Kathiravan
Senior Counsel for the State
assisted by Mr.R.Baskaran
Counsel for the State

ORDER

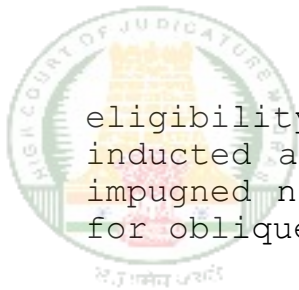
The petitioner challenges a notice issued by the Deputy Registrar of Co-operative Societies on 23.07.2021 and seeks consequential relief.

2. The petitioner was admitted as a member of the B.B.Kulam Co-operative Stores on 25.04.2018. He states that he resided at A/252, D.R.O. Colony, Madurai, which is close to B.B.Kulam. After being admitted as a member, he contested for the post of Director of the Stores and was elected to such post. He was also nominated as a representative of the B.B.Kulam Co-operative Stores by the Board and contested for the post of Director of the Madurai District Central Co-operative Bank in the year 2019.

3. The petitioner states that he filed an earlier Writ Petition in W.P.(MD).No.13037 of 2021 and such Writ Petition was disposed of by directing the Registrar of Co-operative Societies to consider his representation dated 25.05.2021 and dispose of the same within a specific period in accordance with law. The petitioner alleges that the impugned notice was triggered because the petitioner had approached the Principal Seat of this Court previously by filing the above mentioned Writ Petition.

4. Learned Senior Counsel for the petitioner initially attacked the impugned notice on two grounds. The first ground of challenge was that the Deputy Registrar is not authorized to decide questions relating to the place of residence of any person because such power is vested exclusively with the Registrar in terms of Section 7 of the Tamil Nadu Co-operative Societies Act, 1983. The second ground of challenge is on the basis that Section 23 (2) (g) of the Act of 1983 does not provide for the cessation from membership of a member because he does not continue to reside within the area of operation of the Co-operative Store. On such basis, it is contended that the impugned show cause notice is without jurisdiction.

5. In support of such submission, learned Senior Counsel refers to the principal object of the Stores as per the By-laws. He points out that such principal object is the supply at reasonable rate of all articles, necessities and domestic requirements of members for their consumption. With reference to the prescribed disqualification under the By-laws, learned Senior Counsel contends that the disqualification under By-law No.8 relates to the stage of



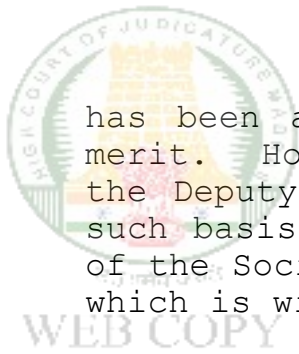
eligibility for admission and does not apply after a person has been inducted as a member. For all these reasons, he submits that the impugned notice is liable to be quashed because it has been issued for oblique reasons and without jurisdiction.

6. On the contrary, Mr.Veera Kathiravan, learned Senior Counsel for the State, assisted by Mr.R.Baskaran, learned counsel for the State, appearing on behalf of respondents 1 to 4 submits that the writ petition is liable to be rejected *in limine* for the reason that it challenges a show cause notice. By inviting the attention of the Court to the counter affidavit of the fourth respondent, he points out that the fourth respondent has stated that he is ready and willing to provide the documents requested for by the petitioner and that he would pass orders on merits after receiving any explanation from the petitioner. He also points out that the fourth respondent has stated in the affidavit that he is not a party to the earlier Writ Petition filed by the petitioner and that it cannot be stated that he has acted in a biased manner merely because the petitioner filed such earlier Writ Petition.

7. Learned Senior Counsel for the respondents also points out that the by-laws of the fifth respondent provide for eligibility only to persons residing within its area of operation. As regards the petitioner, he points out that the admitted position is that the petitioner is a resident of K.Pudur, which is not within the area of operation of the B.B.Kulam Co-operative Societies. For all these reasons, he states that the Writ Petition is liable to be rejected.

8. Upon considering the rival contentions, the first question that arising for consideration is whether the Deputy Registrar lacks jurisdiction. On this issue, the respondents have produced G.O.(2D).Nos.108 and 109 both dated 31.08.2005. The said Government Orders have been issued in exercise of powers conferred by Section 3 the Act of 1983. By virtue of these notifications, the powers conferred on the Registrar of a primary society, with the exception of powers conferred by the Sections enumerated therein, have been delegated to the Deputy Registrar of Co-operative Societies. Upon examining the notification, it is clear that the powers conferred under Sections 7 and 23 of the Act of 1983 are not enumerated under Item 3 thereof. Consequently, it appears that such powers have been delegated to the Deputy Registrar. Thus, the challenge to the jurisdiction of the Deputy Registrar to issue a show cause notice under Section 23 is rejected as untenable.

9. This leads to the next question, namely, whether the Deputy Registrar is authorized under Section 23 (2) (g) read with the By-laws of the Society to determine whether the petitioner possesses the prescribed qualifications. The contention on this issue is that there is a difference between Section 23 (1) and 23 (2). While Section 23 (1) applies at the stage of deciding on the membership, Section 23 (2) applies after a person



has been admitted to membership. This contention is not without merit. However, such contention does not oust the jurisdiction of the Deputy Registrar to examine the matter on merits and decide on such basis as to whether the petitioner would cease to be a member of the Society in question. In other words, this is a determination which is within the jurisdiction of the Deputy Registrar.

10. As pointed out by learned Senior Counsel for the respondents, the impugned communication is a show cause notice. Besides, the Deputy Registrar has stated on affidavit that he would provide all documents that were requested for by the petitioner and would decide the matter on merits. As such, the petitioner has failed to make out a case to interfere with the show cause notice.

11. Consequently, W.P.(MD).No.13228 of 2021 is disposed of by directing the fourth respondent to proceed with the inquiry pursuant to the notice dated 23.07.2021 and conclude such inquiry by a reasoned order after providing all documents that the petitioner has requested for and by providing a reasonable opportunity to the petitioner. Such reasoned order shall be passed within a period of sixty (60) days from the date of receipt of a copy of this order. There will be no order as to costs. Consequently, W.M.P.(MD).No.10218 of 2021 is closed.

Sd/-

Assistant Registrar (W)

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/ /2021

Sub Assistant Registrar(CS)

tsg

Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Secretary to Government,
Co-operative Department,
Government of Tamil Nadu,
Secretariat, Chennai-600 009.

2.The Registrar of Co-operative Societies,
N.V.Natarajan Maligai,
Kilpak,
Chennai-600 010.



3.The Joint Registrar of Co-operative Societies,
Thirupparankundram,
Pasumpon Nagar, Madurai-625 003.

4.The Deputy Registrar of Co-operative Societies,
Madurai Circle,
Pasumpon Nagar, Madurai-625 003.

+1 CC to M/s.K.MAHENDRAN, Advocate (SR-25761[F] dated 10/08/2021)

W.P (MD) No.13228 of 2021
09.08.2021

RD(23.08.2021) 5P 6C