



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.12.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.13735 of 2021

and

W.M.P(MD)No.10662 of 2021

Subrith A.M.Subramanian,
President,
0.2236, Tirunelveli District Agro Engineering
and Service Society Limited. ... Petitioner

Vs.

- 1.The Director of Agriculture/Registrar,
Agro Engineering Services,
Office of Director of Agriculture,
Chepauk, Chennai-5.
- 2.The Deputy Registrar,
Agro Engineering Co-operative Services,
Chepauk, Chennai-5.
- 3.The Joint Director of Agriculture,
Joint Director of Agriculture Office,
Palayamkottai,
Tirunelveli District.
- 4.The Assistant Director of Agriculture,
Assistant Director of Agriculture Office,
Palayamkottai,
Tirunelveli District.
- 5.The Co-operative Sub Registrar,
(Liquidation)/AES4 Madurai,
Office of the Joint Director Agriculture,
Madurai. ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records pertaining to the impugned order in Rc.No.30771/2021/AES2(1) dated 30.06.2021 passed by the second respondent and quash the same.

For Petitioner : Mr.V.M.Jegadeeshapandian
For Respondents : Mr.D.Ghandiraj,
Special Government Pleader.



ORDER

The matter had been heard on an earlier occasion on 13.12.2021, when the Court had the benefit of hearing arguments advanced by Mr.Aayiram K.Selvakumar. Heard Mr.V.M.Jegadeeshapandian who appears on behalf of the petitioner today and Mr.D.Ghandiraj, learned Special Government Pleader who appears on behalf of the respondents.

2. The Writ Petition has been filed in the nature of Certiorari, questioning an order, dated 30.06.2021, of the second respondent / the Deputy Registrar, Agro Engineering Co-operative Services, Chennai in Rc.No.30771/2021/AES2(1) and seeking to interfere with the same.

3. In the affidavit filed in support of the Writ Petition, it had been stated that the petitioner Society had been established in the year 1971 and had commenced functioning from 04.01.1972. There were originally 900 members. The object of the Society was to serve the members who are agriculturists for their development and upliftment. The Society also provides agricultural equipments by way of granting subsidies. They also step in and help the members during failure of monsoon and drought period. They also bore wells, do civil works, wooden works and other works in Government Departments, local bodies, Hindu Religious and Charitable Endowments Department and also enter into contracts for such work.

4. It is stated that at present, there are 3370 members who are all agriculturists. It had been stated that the Society used to get work orders from the Government Departments. But, however, during the pandemic period, they could not get work orders from the Government Departments. In these circumstances, the second respondent had issued a Show Cause Notice under Section 137(2) of the Tamil Nadu Co-operative Societies Act, 1983 on 26.11.2019. Thereafter, the impugned order dated 30.06.2021 had been passed by the second respondent and by the said order, winding up of the petitioner Society had been directed. It had been stated that such winding up had been directed under Section 137(2) of the Tamil Nadu Co-operative Societies Act, 1983.

5. Even on the last hearing date, I had occasion to examine the provisions under Section 137(2) of the said Act. The said provision, can be invoked in a situation where, winding up is directed either by the Registrar of his own motion or after giving an opportunity under two circumstances.

(i) Where the number of members have been reduced to less than 5 if the members had been 25 originally and

(ii) Where the Society had not commenced to work within the prescribed period or had ceased to work.



6. It had been stated in the explanation that the expression "ceased to work" means cessation of all primary activities by the Society for at least two consecutive years.

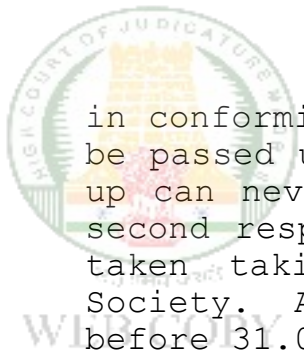
7. It is stated in the affidavit that it is only during the pandemic period owing to the fact that Government orders have not been given, the Society had run into a loss. If a society had run into a loss, the Government has every right to step in and pass necessary orders either to wind up the Society or the Government may also take a decision to infuse further efforts for the functioning of the Society. This is a decision which will have to be taken by the respondents.

8. But however, if a decision is taken under Section 137(2) of the Co-operative Societies Act, then there must be a *prima facie* expression about the drastic reduction in the number of members and that the Society had not functioned at all for the past two years. With respect to the number of members being reduced, again specific details must be given as to the number of members who were existing and who had left and thereby, come to a conclusion as to the reduction in the number of members. If it is with respect to cessation of work, then again details will have to be given as to the work done two years prior and thereafter, a *prima facie* conclusion must be arrived that the Society had ceased to work.

9. In the instant case, the impugned order proceeds on the basis that there is no viability for the Society to function. The details about the number of members and the reduction in the number of members and the details about the cessation of work for two continuous years have not been given in the impugned order. I would therefore remand the matter back to the second respondent.

10. A direction is given to the second respondent to give one more opportunity to the petitioner to be heard, examine the records of the petitioner, examine the membership list of the petitioner Society, examine whether there has been drastic reduction in the number of members and also examine whether the Society had not done any work for two consecutive years.

11. I had listed the objects of the Society which also include helping the agriculturists in their day to day activities in some manner or the other. If the Society had done some work during the pandemic period or a year prior in discharge of their objects, then Section 137(2) of the said Act may not directly apply. However, the right of the respondents to interfere owing to viability is a different issue. But that will not come under Section 137(2) of the said Act. Therefore, the impugned order is set aside giving an opportunity to both the petitioner and the respondents to re-examine their respective contentions, place further documents and the second respondent is under an obligation to pass a reconsidered order on the basis of materials submitted and



in conformity under Section 137(2) of the said Act. If no order can be passed under Section 137(2) of the Act, then an order of winding up can never be passed. It is entirely within the purview of the second respondent. I am confident that a prudent decision will be taken taking into consideration the objects of the petitioner Society. At any rate, the entire exercise should be completed on or before 31.03.2022. The petitioner Society should participate in the further inquiry to be conducted as directed by the second respondent. There should be no complaint of non-participation by the second respondent.

12. With the above observations, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2022

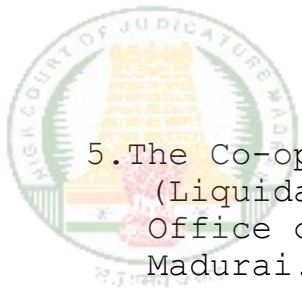
Sub Assistant Registrar(CS)

Lm

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 Director of Agriculture/Registrar,
Agro Engineering Services,
Office of Director of Agriculture,
Chepauk, Chennai-5.
- 2.The Deputy Registrar,
Agro Engineering Co-operative Services,
Chepauk, Chennai-5.
- 3.The Joint Director of Agriculture,
Joint Director of Agriculture Office,
Palayamkottai,
Tirunelveli District.
- 4.The Assistant Director of Agriculture,
Assistant Director of Agriculture Office,
Palayamkottai,
Tirunelveli District.



5.The Co-operative Sub Registrar,
(Liquidation)/AES4 Madurai,
Office of the Joint Director Agriculture,
Madurai.

WEB COPY

W.P (MD) No.13735 of 2021
22.12.2021

NA (CO)
KB (07.01.2022) 5P 6C