



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.10.2021

CORAM

THE HONOURABLE MR.JUSTICE SETHILKUMAR RAMAMOORTHY

W.P. (MD) .No.19197 of 2021

and

W.M.P. (MD) .No.15927 of 2021

WEB COPY

V.Udhayakumar,
S/o.Vengaiiah
Membership No.403,
E.E.114, Ettaiyapuram Chithamparanar Primary Handloom
Co-operative Societies Ltd.,
Ettaiyapuram Taluk,
Tuticorin District.

... Petitioner

Vs.

- 1.The Director,
Tamil Nadu Handloom and Textiles Department,
Kuralagam,
Chennai.
- 2.The Assistant Director,
Handloom and Textiles,
District Collectorate Campus,
Thirunelveli.
- 3.The Managing Director,
E.E.114, Ettaiyapuram Chithamparanar Primary Handloom
Co-operative Societies Ltd.,
District Collectorate Campus,
Thirunelveli.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, by calling for the impugned resolution passed by the third respondent vide resolution dated 03.10.2021 passed against the petitioner and the consequential impugned order of the second respondent vide Na.Ka.No.3524/2021/E dated 07.10.2021 and quash the same as illegal.

For Petitioner	:	Mr.A.Balaji for M/s.V.Angusamy
For R-1 and R-2	:	Mr.K.S.Selva Ganesan, Counsel for State.
For R-3	:	Mr.N.Dilipkumar



ORDER

The petitioner assails a resolution dated 03.10.2021 by which he was removed from membership of the third respondent co-operative society. A consequential order dated 07.10.2021 is also assailed.

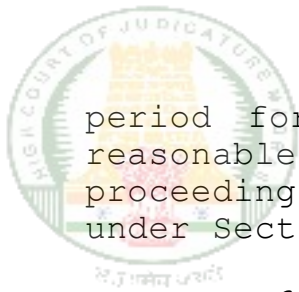
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2.The petitioner states that he was admitted to membership of the third respondent society pursuant to a resolution dated 24.08.2019. Thereafter, by a resolution dated 14.03.2020, he assumed office as an office bearer of the society. On 16.09.2021, he states that a notice was issued to him by the Managing Director calling upon him to show cause within fifteen (15) days as to why he should not be removed from membership in terms of Section 23 (1) (h) of the Tamil Nadu Co-operative Societies Act, 1983 (the Co-operative Societies Act). The petitioner asserts that the said notice was received by him only on 23.09.2021. However, even without waiting for the 15 day time limit to expire, he states that the impugned resolution was passed on 03.10.2021 to remove him from membership. The consequential order was passed on 07.10.2021. The petitioner contends that the impugned orders are unsustainable inasmuch as the petitioner was not provided a reasonable opportunity to submit an explanation to the show cause notice.

3.Mr.K.S.Selva Ganesan, learned counsel for the State, accepts notice for respondents 1 and 2 and Mr.N.Dilip Kumar, learned Standing Counsel, accepts notice for the third respondent. Mr.N.Dilip Kumar points out that the disqualifications on account of which a member would cease to continue as a member are specified under Section 23 (2) of the Co-operative Societies Act. He also points out that such power may be exercised by the Registrar in terms of Section 23 (4). He compares and contrasts Section 23 with Section 25, which deals with expulsion. He also points that the powers of the Registrar under Section 23(4) have been delegated to the Assistant Director / second respondent herein. However, by drawing reference to the rules, he states that a reasonable opportunity is required before action is taken either under Section 23 or Section 25. As regards action under Section 23, he points out that the relevant rule is Rule 35, whereas, as regards action under Section 25, the relevant rule is Rule 37.

4.The third respondent also submits that there is an alternative remedy under Section 152 of the Co-operative Societies Act and that, therefore, the Writ Petition is not maintainable.

5.In light of the above contentions, the first question to be considered is whether the Writ Petition is maintainable. The existence of an alternative remedy is not a bar to the exercise of jurisdiction under Article 226 of the Constitution. One of the recognized exceptions is when principles of natural justice are violated. The present case would squarely fall within such category because the respondents did not wait for the stipulated 15 day



period for a reply to the show cause. The requirement of a reasonable opportunity is incorporated in Rule 35, as regards proceedings under Section 23, and in Rule 37 as regards proceedings under Section 25.

6.For reasons set out above, the impugned orders are unsustainable and are hereby quashed. Consequently, the matter is remitted for reconsideration. The official respondents shall commence and conclude such process within a reasonable time. It will be open to the second respondent to initiate action either under Section 23 or Section 25 of the Tamil Nadu Co-operative Societies Act, 1983 by complying with the requirements of the Act, the rules and the by-laws of the society.

7.Accordingly, W.P.(MD).No.19197 of 2021 is disposed of without any order as to costs. Consequently, W.M.P.(MD).No.15927 of 2021 stands closed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

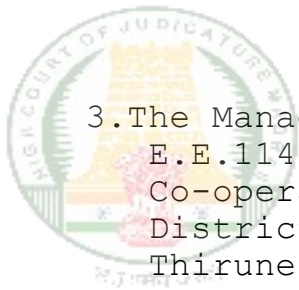
tsg/nsr

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,
Tamil Nadu Handloom and Textiles Department,
Kuralagam,
Chennai.

2.The Assistant Director,
Handloom and Textiles,
District Collectorate Campus,
Thirunelveli.



3.The Managing Director,
E.E.114, Ettaiyapuram Chithamparanar Primary Handloom
Co-operative Societies Ltd.,
District Collectorate Campus,
Thirunelveli.

+1 CC to M/s.N.DILIP KUMAR, Advocate (SR-33448[F] dated 01/11/2021)

+1 CC to M/s.V.ANGUSAMY, Advocate (SR-33255[F] dated 29/10/2021)

+1 CC to M/s.SPL.GP (SR-33387[F] dated 01/11/2021)

W.P. (MD) .No.19197 of 2021
29.10.2021

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RS/JGB (17.11.2021) 4P 7C