



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.12.2021

PRONOUNCED ON : 15.12.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P. (MD)No.21348 of 2021

and

W.M.P. (MD)No.17908 of 2021

WEB COPY

K.Ulagarani

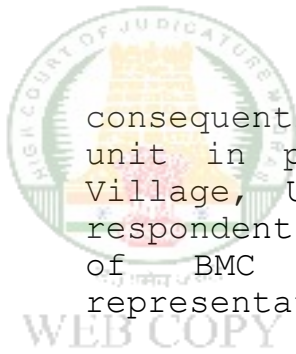
... Petitioner

vs.

- 1.The Registrar cum Commissioner of Milk,
Dairy Development and Milk Production Department,
Madhavaram Milk Colony, Madhavaram, Chennai -51.
- 2.The District Collector cum Special Officer,
A1301, Madurai District Milk Producers Cooperative Union,
Madurai-20.
- 3.The Deputy Registrar,
Dairy Development and Milk Production Department,
Madurai - 625 020.
- 4.The General Manager,
A1301, Madurai District Milk Producers Cooperative Union,
Madurai - 20.
- 5.Nagendranath,
Team Leader, Usilampatty Milk Procurement Office,
A1301, Madurai District Milk Producers Cooperative Union,
Keelapudhur,
Usilampatti, Madurai District.
- 6.Sudharsan,
Extension Officer,
A1301, Madurai District Milk Producers Cooperative Union,
Keelapudhur,
Usilampatti, Madurai District.
- 7.The President,
representing MS2398, M.Paraipatti (Woman)
Milk Producers Cooperative Society,
M.Paraipatty, Usilampatti,
Madurai District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, to forebear the respondents 1 to 6 herein from installing bulk milk cooler unit in the 7th respondent's society in Usilampatty Block, Madurai District and also



consequently, to direct the respondents to install bulk milk cooler unit in petitioner's society premises in S.F.No.23A, Karampatty Village, Usilampatty and also take necessary action against the respondent Nos.5 and 6 for abuse of power and illegal installation of BMC without sanction/order consider the petitioner's representation, dated 25.11.2021.

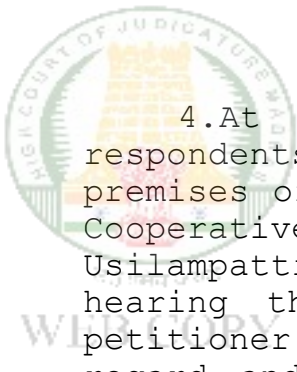
For Petitioner :Mr.A.Mithun Chakravarthi
For R1 to R5 :Mr.N.Satheesh Kumar
Additional Government Pleader
For R7 :Mr.K.R.Laxman

O R D E R

The Writ Petition has been filed in the nature of Mandamus by the President of Erumarpatti (Women) Primary Milk Producers Cooperative Society, seeking a restraint against the 1st to 6th respondents, more particularly, against the 2nd respondent/District Collector cum Special Officer, Madurai District Milk Producers Cooperative Union, Madurai and the third respondent/Dairy Development and Milk Production Department, Madurai and the fourth respondent/General Manager, Madurai District Milk Producers Cooperative Union, Madurai, from installing Bulk Milk Cooler (BMC) unit in the seventh respondent Society/M.Paraipatti (Women) Milk Producers Cooperative Society, Madurai and consequently, to direct installation of BMC unit in the premises of the petitioner Society and also to consider the representation, dated 25.11.2021 in that regard.

2.The petitioner society has about 40 members and procures 800 liters of milk per day from the members and supplies the same to the second respondent Union, namely, the Madurai District Milk Producers Cooperative Union, Madurai. It had been stated in the affidavit filed in support of this Writ Petition that the 5th and 6th respondents had approached the petitioner in January 2021 and stated that if the petitioner society is prepared to provide necessary lands and infrastructure at their own cost, then, the said respondents would come forward to install a BMC unit with capacity of 5000 liters.

3.It is stated in the affidavit that by such installation, the petitioner union would be able to draw more profit and provide income to the Society and to the members. It is claimed that therefore, the petitioner/President of the Society had purchased a land and had also intended to construct a building to house the BMC unit. It is stated that for this purpose, a sum of Rs.15,00,000/-, had been raised with the contribution from the members. Land had also purchased in the individual name of the petitioner on 25.08.2021. It is stated that earthwork was also started.



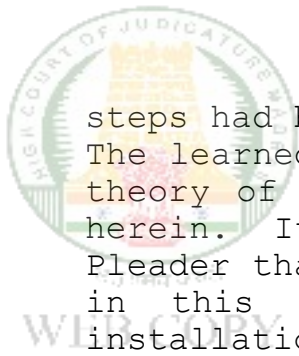
4.At that juncture, they came to know that the 5th and 6th respondents had taken a decision to install the BMC unit in the premises of the 7th respondent, which is also another Milk Producers Cooperative Society run by and for the benefit of women and also in Usilampatti. Claiming that this decision was arbitrary and without hearing the petitioner, the Writ Petition has been filed. The petitioner had also given a representation, dated 25.11.2021 in this regard and it was urged that such representation should also be heard.

5.Notice had been directed to the respondents and though counter has not been filed, documents have been filed by the Additional Government Pleader on behalf of the fourth respondent and by the learned Counsel, who appearing on behalf of the 7th respondent.

6.Heard arguments advanced by Mr.A.Mithun Chakravarthy, learned Counsel for the petitioner, Mr.N.Satheesh Kumar, learned Additional Government Pleader for the first to fifth respondents and Mr.K.R.Laxman, learned Counsel for the seventh respondent.

7.During the course of arguments, Mr.Mithun Chakravarthy, learned Counsel for the petitioner had drawn the attention of this Court to the facts stated in the Writ Petition and pointed out that the Writ Petitioner in her name, had spent substantial amount towards purchase of land and had also obtained contributions from the members for necessary construction for installation and erection of BMC Unit. The learned Counsel also pointed the invoices, which had been given by the 5th and 6th respondents, in which, it had been very categorically mentioned that BMC unit was to be delivered only to the petitioner Society and therefore, stated that the petitioner Society had a legitimate expectation that BMC unit would be installed only in the premises of the petitioner Society. However, it was, according to the learned Counsel for the petitioner, unlawfully diverted to the premises of the seventh respondent and it was under those circumstances, the Writ Petition has been filed. The learned Counsel, therefore, urged that the Writ Petition should be allowed and direction may be given to instal the BMC unit at the premises of the petitioner Society.

8.Mr.N.Satheesh Kumar, learned Additional Government Pleader pointed out that the invoices relied on by the learned Counsel for the petitioner was the result of a mistake in which unfortunately, the address of the petitioner unit was given while placing orders for BMC unit, whereas, it was originally meant only for the seventh respondent Society. The learned Additional Government Pleader further stated that the petitioner Society had also not passed any resolution seeking installation of BMC unit and granting permission for such installation of BMC unit in their premises. The members had not taken any steps regarding the same. The petitioner had



steps had been taken by the petitioner to actually install BMC unit. The learned Additional Government Pleader therefore, stated that the theory of legitimate expectation cannot be urged by the petitioner herein. It was further pointed by the learned Additional Government Pleader that the seventh respondent had actually passed a resolution in this regard and had also made preparative works towards installation of BMC unit.

9.Mr.K.R.Laxman, learned Counsel for the seventh respondent pointed out that the seventh respondent had actually passed a resolution even prior to the installation of BMC unit agreeing for such installation and more importantly, had also spent substantial amounts towards construction of all the facilities for the purpose of installation of the BMC unit. It required not only the construction of necessary rooms for erection of BMC unit, but also obtaining electricity service connection and providing all other additional infrastructure facilities towards the erection and installation of BMC unit. The learned Counsel also stated that the petitioner has only relied upon the invoice in which the name of the petitioner was wrongly mentioned. The learned Counsel also stated that the balance of convenience was in favour of the seventh respondent in view of the expenditure incurred.

10.I have given careful consideration to the arguments advanced and also examined the documents available on record.

11.The petitioner claims that there was a reasonable or legitimate expectation holding out that a BMC unit would be installed in their premises. The petitioner society is already involved as a milk producer society and the members contribute about 800 liters of milk per day. It was therefore stated that if a BMC unit is installed or erected, it would only be beneficial to the members. The deponent of the affidavit, K.Ulagarani, who is the President of the petitioner Society, had stated that land had also been purchased for this purpose. However, a copy of the document, which had been filed along with the Writ Petition shows that, though it is claimed that a sale deed was executed in favour of the petitioner, the nomenclature shows it is only a settlement deed of a land settled by her brother in her favour out of love and affection. This was on 25.08.2021.

12.Prior to that, there is no document produced to show that the petitioner Society had actually passed a resolution seeking installation of BMC unit for the benefit of the members of the petitioner Society. That is necessary, since a collective decision will have to be taken, which is the spirit behind any cooperative Society. All the members necessarily will have to contribute and all the members will necessarily expect a share in the income or profit gained. It is not an individual gain by the President or by any one of the office bearers. The land was however settled only in the name of the petitioner herein.



13.The petitioner places much reliance on the invoices towards the purchase of BMC unit. These are facts, which will have to be tested and particularly weighed in the light of the arguments putforth by the respondents that the name of the petitioner society was wrongly given in the invoice. These facts will have to be examined in conjecture with the facts pleaded on behalf of the respondents that the seventh respondent had actually passed a resolution in this regard and had also invested money for actual construction of necessary infrastructure for installing BMC unit, which naturally means that the seventh respondent had expended substantial amounts for the very same purpose of erection of BMC unit.

14.When these two rival contentions are raised in a Writ Court, it would not be possible for this Court to decide that the claims of petitioner weigh more than that of the seventh respondent or vice versa. Such a decision can be taken only by evidence being adduced by the parties. The petitioner can plead legitimate expectation, can plead investment owing to such legitimate expectation and plead loss suffered owing to denial of such legitimate expectation. These are all facts, which can be determined only during the course of trial and evidence being let in on each one of these aspects. Similarly, the seventh respondent can also plead the resolution passed, the expenditure incurred towards putting up the construction and the actual works done towards installation.

15.With respect to the invoices presented by the petitioner, even though the address of the petitioner is found in the invoice, the explanation given is that the name was wrongly given. This is again a fact, which can be determined only during the course of trial. A Writ Court can never give a just finding on all these issues. But again, the ultimate relief for the petitioner would only be to lay a claim based on legitimate expectation. Opportunity must also be granted to the seventh respondent to disprove this particular claim of the petitioner. Naturally, the entire issue revolves oral and documentary evidence, which will have to be analysed during the course of trial. The documents presented in a Writ Court in the form of typed set of papers will have to take the form of evidence and that metamorphosis can take place only when the documents pass the tests of admissibility, relevancy, proof and genuinity. Surrounding circumstances regarding the documents will also require oral evidence to be adduced and tested in manner known to law.

16.I must also point out that legitimate expectation has not been defined in any law. It is only a doctrine examined by the Courts, when an administration action is questioned or challenged.



17.In **Halsbury's Laws of England, Vol.I (1) 4th Edition para 81 at page 151-152**, it had been held that "A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an implied representation or from consistent past practice."

18.In **Uttar Pradesh Awas Evam Vikas Parishad vs Gyan Devi**, reported in **(1995) 2 SCC 326**, the Honourable Supreme Court had held as follows:

"No order can be passed without hearing a person if it entails civil consequences. Where even though a person has no enforceable right yet he is affected or likely to be affected by the order passed by a public authority, the doctrine of legitimate expectation come into play and the person may have a legitimate expectation of being treated in a certain way by an administrative authority."

19.I must hold that if the petitioner lays a claim based on the doctrine of legitimate expectation, then he must first satisfy that there was a holding out of a promises and therefore, has *locus standi* to make such a claim. This can be established only through evidence. He has to first satisfy that a legitimate expectation was held out and expenses were incurred in making the expectation into reality. As repeatedly pointed out, all these aspects surround evidence to be adduced, tested and evaluated. Naturally, this process can be done only before a competent Civil Court.

20.In view of the above reasons, the Writ Petition stands dismissed. However, the petitioner, if one of the opinion they have a reasonable cause, may, if so advised, institute a civil suit. No order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

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Sub Assistant Registrar(CS)

cmr



To

- 1.The Registrar cum Commissioner of Milk,
Dairy Development and Milk Production Department,
Madhavaram Milk Colony, Madhavaram, Chennai -51.
- 2.The District Collector cum Special Officer,
A1301, Madurai District Milk Producers Cooperative Union,
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Madurai - 20.
- 5.The Team Leader, Usilampatty Milk Procurement Office,
A1301, Madurai District Milk Producers Cooperative Union,
Keelapudhur,
Usilampatti, Madurai District.

+1 CC to M/s.K.R.LAXMAN, Advocate (SR-39112[F] dated 16/12/2021)

+1 CC to M/s.SPL GP (SR-39040[F] dated 16/12/2021)

Order made in
W.P. (MD) No.21348 of 2021
15.12.2021

NSN (CO)
GC (30.12.2021) 7P 8C