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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.06.2022

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THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P.No.268 of 2021
and
W.M.P.Nos.341 & 343 of 2021

T.Thamilarasu

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Represented by the Additional Secretary,
Cooperation, Food and Consumer Protection Department,
Secretariat,
Fort St.Geroge, Chennai - 600 009.
- 2.The Registrar of Cooperative Societies,
No.170, E.Ve.Ra.Periyar Salai,
N.V.Natarajan Maaligai,
Kilpauk, Chennai - 600 010.
- 3.Additional Registrar/Managing Director,
Tamil Nadu Cooperative Union,
No.170, E.Ve.Ra.Periyar Salai,
N.V.Natarajan Maaligai,
Kilpauk, Chennai - 600 010.
- 4.Additional Registrar/Managing Director,
Tamil Nadu State Apex Cooperative Bank,
Chennai - 600 001.
- 5.Additional Registrar/The Managing Director,
Chennai Central Cooperative Bank,
215, Prakasam Salai,
Broadway, Chennai - 600 108. ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the records in G.O.Ms.No.5, Cooperative, Food and Consumer Protection Department, dated 20.01.2020 issued by the 1st respondent and the Letter in Na.Ka.No.70538/2017/Thikakupai dated 22.01.2020 issued



by the 2nd respondent quash the same.

For Petitioner : No appearance

For Respondents : Mr.M.Shajahan
Special Government Pleader

ORDER

No representation on behalf of the petitioner.

The petitioner has challenged this writ petition to call for the records in G.O.Ms.No.5, Cooperative, Food and Consumer Protection Department, dated 20.01.2020 issued by the 1st respondent and letter in Na.Ka.No.70538/2017/Thikakupal dated 22.01.2020 issued by the 2nd respondent.

3.Prima facie it appears that the issue is now covered against the petitioner in terms of the order dated 14.05.2022 in W.P.Nos.23369 and 25287 of 2021. The operative portion of the order reads as under:-

"38. If we look at the principle enunciated in the aforesaid cases, it would make abundantly clear that, the scope of judicial review on policy matters are very limited. Moreover, whether a particular type of training Institute is required for the state or not is necessarily a policy decision to be taken, of course on the basis of the expert views given in this regard, by the State Government. Like that, such kind of training institute should be at the State level or National level also again be the policy decision to be taken by the State Government.

39. If at all, a policy decision already been taken by the State Government to establish a State level Training Institute at Yercaud, ofcourse the successive Government has taken a further policy decision for specific reasons that, such kind of State Level Institute is not required in the State because already two such State Level Institutes are located and are well doing, moreover spending of a sum of Rs.61.80 crores, to establish one more State Level Training Institute is a wasteful expenditure, those reasons cannot be pierced by this Court by way of judicial review to give the answer that, the subsequent policy decision is not correct and the



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earlier one is correct.

40. If an established arbitrariness is available for the scrutiny before this Court, then only during the judicial process, the Court can interfere in any such decision by adopting the Wednesbury-s principle of arbitrariness.

41. Now the present State Administration has taken a decision to establish a National Level Institute at Kodaikanal, for which certain reasons have been given, ofcourse the said decision is not questioned by the petitioner in these writ petitions. Even the said decision cannot be stated to be a flawed one by this Court, unless and until the explicit arbitrariness touching the Constitutional parameters in this regard as enunciated under various decisions of the Hon-ble Apex Court are available for Judicial Review.

42. Like that, a decision is taken by the Government by way of policy decision not to have a State Level Co-operative Training Institute at Yercaud, unless it is an arbitrary exercise of power without any reason or rhyme or the very exercise itself is a colourable exercise, the Court cannot extend its judicial arm to question the veracity of such decision taken by the Government.

43. In the present case, though a decision was taken by the earlier Government to establish the State Level Institute, for which, fund has been allocated, ofcourse from various sources like Co-operative Banks etc., and some initial construction work was commenced, at that stage, the present Government has reviewed the situation in the Review Meeting of the Department concerned headed by the Chief Minister. Out of the Review, several reasons had come out or emanated, which suggest unequivocally that, such kind of State Level Institute at Yercaud is an unwanted expenditure to be incurred, as already there are two State Level Institutions functioning well. Moreover, initially the fund was allotted Rs.15 crores and odd and for a small extension of the area, i.e., the expanded construction in a small area, the fund has been enhanced to Rs.61.80



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crores, for which, according to the Government, there has been no discussion or reasons or plan at the Department level, i.e., the Co-operative Department and all of a sudden, since the fund has been enhanced from Rs.15 crores to Rs.61 crores, that would be a wasteful expenditure, according to the Government.

44. These are all the issues, which were discussed in the Review Meeting on 03.07.2021 headed by the Chief Minister and the decision which emerged from the said meeting appears to be to stop the ongoing project, i.e., construction of the State Level Institute at Yercaud. That is the reason why on 28.07.2021, the Registrar of Co-operative Societies had directed the Public Works Department to stop the work immediately.

45. Therefore, the decision taken in the Review Meeting headed by the Chief Minister on 03.07.2021, as held by this Court herein above as a policy decision, cannot be questioned before this Court, unless the reasons indicated by citing the aforesaid decisions of the Hon-ble Apex Court as well as this Court are available to the petitioner. Therefore, the decision culminated in the stop construction notice or letter, dated 28.07.2021 which is impugned in the first writ petition cannot be found fault with. Therefore, the said challenge made against the said communication, in the considered view of this Court, fails.

46. During the pendency of the first writ petition, since a question was raised, whether any policy decision was taken at the Government level and at the Department level or only at the Department level decision, pursuant to which, the stop construction notice was issued, the Government had issued the G.O.Ms.No.99, dated 09.11.2021 of the Co-operation, Food and Consumer Protection Department.

47. Infact, the said decision, to cancel the G.O.(Ms).No.146 earlier issued for sanctioning the amount of Rs.61.80 crores for the establishment of the State Level Institute at Yercaud, actually emanated from the Review Meeting dated 03.07.2021



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which has already been constured as a policy decision, therefore, that was only culminated in the impugned G.O.(Ms).No.99, dated 09.11.2021. Therefore, the aforestated reason would also equally be made applicable when the G.O.(Ms).No.99 is questioned in the second writ petition. Hence, this Court also has no hesitation to hold that, the policy decision taken by the Government to cancel the establishment of the State Level Institute, for the reasons stated therein, which infact extracted herein above, cannot be said to be unlawful or untenable or arbitrary exercise of power. Therefore the challenge made against the impugned order in the second writ petition is also unsustainable and accordingly, that challenge also fails.

48. Insofar as taking a policy decision by the elected Government is concerned, the Law is well settled. Normally judicial review would not go against such policy decision, unless there is a colourable exercise with rampant arbitrariness, which is explicitly and shockingly strike the conscience of the Court. The aforesaid decision taken to cancel the establishment of the State Level Institute at Yercaud cannot be brought under the said category as referred to above. Therefore such a policy decision cannot be questioned before this Court by way of judicial review.

49. If an elected Government has taken a policy decision, under which, a project is conceived and put into action, when a subsequent Government is elected by a democratic exercise, it is for the successive Government to review such policy decision, based on the policy under which they have given the election manifesto to the people who vote them to power and accordingly, the earlier decision taken by the erstwhile Government can very well be reviewed by the subsequent Government, ofcourse within the parameters or four corners of the Constitution.

50. However, when such a review is undertaken by the successive Government, it must borne in mind that, whether the earlier decision taken by the erstwhile Government, for which, if the money of the exchequer had been spent, whether to be allowed



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to go a waste or to be utilised for a better alternative utility of the public.

51. Only in this context, when a decision was taken by the then Government, sometime in 2011, to relocate the Integrated Assembly and Administrative Secretariat complex of the State from Omandurar Government Estate to Fort St. George, this Court in two Division Bench Judgments, cited supra, has refused to interfere in the said decision by way of judicial review.

52. Though a sum of Rs.1100 crores were spent by the Government, which was in power who had taken a decision to have the Assembly and Secretariat complex at Omandurar Estate, the subsequent Government had reviewed the decision and that review on the part of the Government was accepted by this Court in the said two decisions.

53. Here in the case in hand, though a decision was taken by the previous Government, to establish a State Level Co-operative Training Institute at Yercaud, the said decision was reviewed by the present Government and on 03.07.2021 in the Review Meeting taken place in this regard headed by the Chief Minister, where they decided to cancel the establishment of the said Institute and accordingly, that culminated in the communication, dated 28.07.2021 and ultimately in the G.O.Ms.No.99, dated 09.11.2021.

54. In this context, it was argued on behalf of the petitioner that, the amount has been sanctioned and some work has been commenced, why that should be allowed to go a waste. In this regard answer had already been given by the Government side that, the land allotted for the State Level Institute at Yercaud, i.e., 4 and odd acres would be best utilised for the development of the hilly area people and therefore, the said land would not be allowed to go a waste.

55. Since the construction work was in the initial stage and immediately the said construction work was directed to be stopped by the proceedings, dated 28.07.2021 itself, not much fund had been



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spent even out of the 15 crores initially credited in the account of the PWD. Therefore, no fund of the State Exchequer or from the Co-operative Banks etc., from whom the fund were collected, had been permitted to go a waste by stopping the said project. Therefore on that ground also, the argument advanced by the learned Senior counsel appearing for the petitioner cannot be accepted.

56. Before parting with this case, this Court wants to express certain suggestions to the democratically elected Government, to follow or to take into account these suggestions while reviewing the decision taken by the earlier Government :

If a decision taken by the earlier Government or erstwhile Government is good to the public and the society at large, the successive Government can very well continue the project, if it is yet to be completed or half way through, for which further financial support is required.

If the erstwhile or the previous Government has taken a decision for any project to be undertaken for the welfare of the people, for which heavy amount of Government exchequer has been already spent, while taking a review in respect of those decision, the successive Government must borne in mind that, such kind of huge spending from exchequer shall not be allowed to go a waste. In this regard, even an alternative proposal for the best utility of the fund already been spent may not be a full and expected usage, for which originally the project was conceived and implemented.

Merely because the earlier Government was from a different political dispensation and the present Government is of a different political dispensation, all decisions taken by the earlier Government need not be reviewed. However, certain decisions taken by the ealier or erstwhile Government, if it is not good for the welfare of the people at large or the society, those decisions can be reviewed and alternative best administrative solution can very well be given.

57. Though a legal malafide or political malafide has been alleged on behalf of the petitioner, those reasons either are not available



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in this case or cannot be taken as a ground to interfere with the policy decision taken by the Government, as the requirement of the State is to be best decided only by the democratically elected Government. Whether the State is requiring a State Level Institute or National Level Institute and such kind of Institute is to be located at A place or B place or C place is best to be decided only by the democratically elected Government and not by this Court, therefore, for this reason also, this Court do not want to interfere with the decision taken by the present Government, which is reflected in the impugned communication as well as the G.O.

58. However, this Court wants to point out that, in certain areas, all successive Governments for several decades in this State have consistently taken some policy decision which support the earlier Government-s decision irrespective of the political dispensation. Some of such kind of decisions taken, though are detrimental to the welfare of the people and interest of the society at large in the State, the successive Governments have not given up such policy, because they have eye on the revenue for the State Exchequer.

59. Illustratively this Court can point out that, in respect of prohibition policy, for the past about five decades, very many successive Governments have been continuously and steadily following the same prohibition policy, under which, the State, either through licensees or through State Agency like TASMAC made available of liquor to the people to their most convenient manner and place, knowing well that, such a prohibition policy decision is certainly injurious and detrimental to the people at large in this State and also against the growth of the State. The only reason these successive Governments have given to the people for continue to follow the same prohibition policy is that, it is a large revenue source for the Government.

60. Even these kind of policy decisions, though detrimental to the interest of the people cannot be questioned through a judicial review. Courts have laid off their hands at times when



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these policy decisions were questioned.

61. Therefore the challenge made in the present writ petitions which questioned the order of the Registrar of Co-operative Societies, dated 28.07.2021 and the G.O. of the Government through G.O.(Ms).No.99, dated 09.11.2021 are not better placed for any plausible reason in the eye of law to interfere with the said decisions taken through a policy of the Government, by way of judicial review.

62. For all these reasons and discussions herein above made, this Court is of the considered view that, both the writ petitions are liable to be rejected, accordingly, they are dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed."

4. In view of the above, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CCC)

// True Copy //

Sub Assistant Registrar

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To

1. The Additional Secretary,
State of Tamil Nadu,
Cooperation, Food and Consumer Protection Department,
Secretariat, Fort St. George, Chennai - 600 009.
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215, Prakasam Salai, Broadway, Chennai - 600 108.

+1cc to the Government Pleader SR.No.37185

W.P.No.268 of 2021
and
W.M.P.Nos.341 & 343 of 2021

RK(CO)
CB(06/07/2022)