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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.01.2022

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.367 of 2022
and
W.M.P.Nos.409 and 410 of 2022

Yoganathan

...Petitioner

-Vs-

1. The Commissioner
Milk Production Management and Dairy
Development Department, Aavin Illam
Pasumpon Muthuramalinganar Salai
Nandanam, Chennai - 600 035.

2. The Deputy Commissioner
Milk Production Management and Dairy
Development Department, Aavin Illam
Pasumpon Muthuramalinganar Salai
Nandanam, Chennai -600 035.

...Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records in Na.Ka.No.17630/2021/M1 dated 29.11.2021 on the file of the 2nd respondent and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents to not to harass the petitioners and unnecessarily initiate proceedings.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.A.Selvendran
Special Government Pleader

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus to call for the records in Na.Ka.No.17630/2021/M1 dated 29.11.2021 on the file of the 2nd respondent and quash the same as illegal, incompetent and without jurisdiction and further direct the respondents not to harass the petitioners by unnecessarily initiating proceedings.



2. The petitioner is the President of the Tiruppur Milk Producers Co-operative Society. Against the Society there has already been an inquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 (hereinafter referred to as 'the Act') going on and of course in such inquiry, certain revelations have come, under which certain allegations have been made against the petitioner as if that the petitioner has violated the provisions of the Act by retaining the property and money of the Society by way of illegal retention and also allegedly misappropriated or fraudulently retained the money or property of the Society concerned. By this, there has been a breach of trust in relation to the Society or gross negligence in connection with the conduct and management of the Society or gross mismanagement of the affairs of the Society.

3. Based on these allegations, it appears prima facie to the respondents that the petitioner is responsible for such violations and therefore the respondents wanted to invoke Section 36 of the Act for disqualification and removal of the petitioner from the post of President of the Society. Before invoking Section 36(1) of the Act for disqualification and removal of the petitioner, notice under Section 36(2) has to be given for giving an opportunity of being heard to the petitioner for making his representation. Accordingly, the second respondent issued a notice under Section 36(2) of the Act on 29.11.2021, where 11 such allegations have been made against the petitioner, which according to the respondents, have come out during the course of inquiry already contemplated under Section 81 of the Act. Instead of giving reply to the said show cause notice, the petitioner has chosen to challenge the said show cause notice by filing the present writ petition with the aforesaid prayer.

4. Heard Mr.V.Raghavachari, learned counsel for the petitioner, who would submit that, if we look at the language used in Section 36 of the Act, the word "appears" is very important, under which, the person who wants to invoke Section 36 must have the prima facie satisfaction about the allegations made against the person against whom the proceedings under Section 36 is initiated. Here in the case in hand, there has been only vague allegations made against the petitioner. Therefore, based on such vague allegations, there could not be any prima facie satisfaction on the part of the respondents. Therefore, the word "appears" ie., prima facie satisfaction may not be available to the respondents, even for invoking Section 36 by giving a show cause notice under Section 36(2) of the Act, and therefore on that ground itself, the impugned show cause notice is liable to be quashed, he contended.



5. However, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents would submit that, there are at least 11 specific allegations shown in the show cause notice which is impugned herein. Therefore, it cannot be said that, it is vague allegations made against the petitioner and therefore only on such prima facie satisfaction with regard to these allegations, which are the revelations pursuant to the Section 81 inquiry, the impugned show cause notice has been issued under Section 36(2) of the Act, which is mandated accordingly.

6. Therefore, the learned Special Government Pleader would submit that, if at all the petitioner has got any valid defence against those allegations shown in the show cause notice, it is open to him to give a reply by way of defence to the show cause notice and thereafter after having considered the same, final order will be passed by the respondents invoking Section 36(1) of the Act, and therefore at this stage, the petitioner cannot invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India when it is only a show cause notice, he contended.

7. I have heard the learned counsel for the petitioner and the learned Special Government Pleader for the respondents and have perused the materials placed on record.

8. Insofar as the point raised by the petitioner that, there must be prima facie satisfaction on the part of the Registrar concerned ie., the respondents herein before invoking Section 36 of the Act, this Court feels that, after having gone through the various allegations numbering 11 made in the show cause notice, as rightly pointed out by the learned Special Government Pleader, there are some specific instances wherein it is noted that the petitioner, while he was serving as the President of the Society, has committed wrong in violation of the bye-laws or provisions of the Act as well as the Rules.

9. In respect of those allegations, if at all the petitioner is having any valid defence, he can very well make it and for that purpose only the present show cause notice under Section 36 (2) has been issued. At this stage, ie., at the show cause stage the petitioner cannot challenge the same by merely stating that the respondents, without having prima facie satisfaction has issued the show cause notice.

10. The prima facie satisfaction applies only to the person who invokes Section 36 ie., the Registrar concerned. Therefore, once he comes forward to issue the show cause notice invoking



Section 36(2) of the Act, it is presumed that the person who issued the show cause notice had issued the same only after having the prima facie satisfaction about the alleged allegations made against the person against whom such allegations are made.

11. Moreover, it is the settled proposition of law that, in respect of show cause notice, only under two circumstances viz., for want of jurisdiction and violation of statutory provisions normally the show cause notice would have to be interfered by a Court of Law. Here in the case in hand, no such grounds are available for the petitioner to have a successful challenge against the impugned show cause notice. Therefore, this Court has no hesitation to hold that the petitioner has not made out any case against the impugned show cause notice.

12. Moreover, the petitioner has got an opportunity to make his detailed defence against the show cause notice, which is impugned herein, by giving item wise defence for the 11 allegations made in the show cause notice and only after such opportunity being given to the petitioner alone, the respondent would take up the matter and decide the same finally. Therefore, the impugned show cause notice does not warrant any interference from this Court and in view of the challenge made against the impugned notice is untenable, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are also dismissed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

KST

To

1. The Commissioner
Milk Production Management and Dairy
Development Department,
Aavin Illam
Pasumpon Muthuramalinganar Salai
Nandanam,
Chennai - 600 035.



2. The Deputy Commissioner
Milk Production Management and Dairy
Development Department, Aavin Illam
Pasumpon Muthuramalinganar Salai
Nandanam, Chennai -600 035.

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+1cc to Mr.V.Raghavachari, Advocate, S.R.No.2546
+1cc to the Government Pleader, S.R.No.2698

W.P.No. 367 of 2022

PCH[co]
NSK 09/02/2022