



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.04.2022

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

W.P.No.24847 of 2021

and

W.M.P.No.26137 of 2021

N.Ravi

..Petitioner

Vs.

1. The Registrar of Co-operative Societies,
No 170, NV Natarajan Maaligai,
Periyar EVR High Road,
Poonamallee High Road,
Kilpauk,
Chennai - 600 010.

2. Joint Registrar of Co-operative Societies,
Thiruvarur Zone,
Thiruvarur.

..Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for the records of the second respondent in the proceedings in Na.Ka.No.3980/2021/r/g and quash the order dated 03.11.2021.

For Petitioner : Mr.S.Sarathkumar

For Respondents: Mr.T.K.Saravanan
Government Advocate

O R D E R

The petitioner has come out with the present Writ Petition challenging the order of the 2nd respondent dated 03.11.2021.

2.The petitioner is the President of Thapplampuliar Primary Agricultural Co-operative Credit Society. By the impugned order dated 03.11.2021, the petitioner was suspended from the post of President. According to the petitioner, he was elected President and the 2nd respondent has no power to suspend the petitioner. Section 76-A of the Tamil Nadu Co-operative Societies Act, 1983 (hereinafter referred to as the 'Act') is inserted in Chapter



VIII of the Act, which deals with paid officers and servants of the society. The President and Vice President cannot be equated with paid officers or servants of the society. The petitioner was in service till end of May 2021 and till such time, there was no enquiry conducted. After change of Government, the petitioner is victimized and the impugned order is issued and the same is invalid and illegal.

3.The learned counsel appearing for the petitioner submitted that the respondents have simply extracted the ingredients mentioned in Section 76-A of the Act, respondents did not apply their mind and there is no prima facie evidence to show that the petitioner mismanaged or committed breach of trust. Without there being any subjective satisfaction, the impugned order has been passed in a routine manner. In support of his contention, the learned counsel appearing for the petitioner relied on paragraph Nos.24 & 25 of the order of this Court reported in 2021 (6) CTC 349, (D.Krishnamoorthy and another Vs. The Registrar of Co-operative Society(Housing) and another), wherein this Court at paragraph Nos.24 & 25 has held as follows:

“ ... 24.Whether the suspension of elected officer bearers is warranted pending an inquiry, depends upon the facts and circumstances of each case. As pointed out, supra, the requirement of [Section 76-A](#) is not merely the existence of prima facie material. The Registrar must return a finding on the basis of such material that an order of suspension was necessary in public interest or in the interests of the society. In other words, the Registrar must satisfy himself that if such suspension is not made, there is scope for the office bearers to interfere with the inquiry and/or tamper with the evidence. In the absence of the any such apprehension, there will be no requirement for suspension and the inquiry can go on.

25.[Section 76-A](#) is a drastic power which interferes with the rights of the elected members who have been voted to office, and must, therefore, be exercised very sparingly and only in the clearest cases where there is objective material to show that the continuation of office would interfere and impede a free and fair inquiry under [Section 81](#). Otherwise,



satisfied. As per Section 76-A of the Act, the Registrar has power to suspend the President or Vice President of the society for six months if President or Vice President has committed mismanagement or has committed misappropriation of amount or mismanagement of the affairs of the society. Section 76-A of the Act reads as follows:

"Tamil Nadu Co-operative Societies Act, 1983:

76. Suspension of a paid Officer or servant of society. (1) Where

(a) in the course of an audit under section 80 or an inquiry under section 81 or an inspection or investigation under section 82, or inspection of books under section 83, it is brought to the notice of the Registrar that a paid officer or servant of a registered society whether or not he is borne on a common cadre of service has committed or has been otherwise responsible for misappropriation, breach of trust or other offences in relation to any registered society and if, in the opinion of the Registrar there is a "prima facie" evidence against such paid officer or servant and the suspension of such paid officer or servant is necessary in the interest of any such society."

As per the above Section, if there is any prima facie case that President or Vice President has misappropriated or mismanaged the affairs of the society, they can be suspended in the interest of public. As per Section 76-A of the Act, not only there must be prima facie case to show that President or Vice President have committed the offence mentioned therein or mismanaged the society, etc, in addition to that, the Registrar must be satisfied with based on materials placed before him that suspension of President or Vice President is necessary in public interest or in the interest of society. In the present case, the alleged misconduct against the petitioner is that society did not grant agricultural loan to the members of society to the target fixed. In the order reported in 2021 (6) CTC 349, cited supra, this Court held that each case has to be considered based on the facts and circumstances of that case and has to decide whether suspension is valid or not. Considering the facts and circumstances of this case, this Court is of the considered view that impugned order suspending the petitioner is erroneous and is not sustainable.

8. Further, it is an apprehension that petitioner may



influence the witness and tamper with the evidence. By mere apprehension, an elected President cannot be suspended from service invoking Section 76-A of the Act, unless there is prima facie evidence and Registrar is satisfied that suspension is necessary in public interest or in the interest of the society. The reasons given in the impugned order is not in compliance with Section 76-A of the Act and therefore, the impugned order is liable to be set aside and it is hereby set aside.

9.This Court granted interim stay of impugned order of suspension on 12.01.2022 and no stay has been granted to proceed with Section 81 enquiry. In the counter affidavit filed by the respondents dated 08.02.2022, the 2nd respondent has stated that enquiry will be completed within three months. It is open to the respondents to proceed with the enquiry and complete the same.

10.With the above observations, the Writ Petition is allowed. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operative Societies,
No 170, NV Natarajan Maaligai,
Periyar EVR High Road,
Poonamallee High Road,
Kilpauk, Chennai - 600 010.

2. Joint Registrar of Co-operative Societies,
Thiruvavur Zone, Thiruvavur.

+1cc to Mr.T.Srinivasaraghavan, Advocate, S.R.No.29488

+1cc to the Government Pleader, S.R.No.30949

W.P.No.24847 of 2021

SSD(CO)
RGA(24/05/2022)