



W.P(MD).No.15812 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 26.09.2022

ORDER PRONOUNCED ON : 28.09.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.15812 of 2013

and

M.P(MD).Nos.2 & 3 of 2013

1.P.Denis

2.G.Nesaiyan

3.Maheswari

4.Sornam

5.Chelladurai

6.K.Gnanamani

...Petitioners

Vs

1.The Registrar of Co-operative Societies

Periyar E.V.R. Salai, Kilpauk

Chennai

2.The Additional Registrar of Co-operative Societies

Marketing, Plan and Development

Office of the Registrar

Periyar E.V.R. Salai, Kilpauk

Chennai

3.The Joint Registrar of Co-operative Societies

Kanyakumari District at Nagercoil



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4.The Deputy Registrar of Co-operative Societies
Thuckalay
Kanyakumari District

5.The Secretary
Y-93, Vilunthayambalam Primary Agricultural
Co-operative Thrift Society
Vilunthayambalam Post
Kanyakumari District

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records pertaining to the order of the second respondent in Na.Ka.No.103092/2012 Sa.Pa.3 dated 21.06.2013 confirming the order of the third respondent in Na.Ka.No.13743/97 Sapa dated 29.10.2010 and quash the same.

For Petitioners : Mr.K.Jeyamohan

For R1 to R4 : Mr.R.Ragavendran
Government Advocate

For R5 : No appearance

ORDER

The writ petition has been filed challenging an order passed by the second respondent herein confirming the order passed by the third respondent under which the petitioners were permanently disqualified under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983.



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2. According to the petitioners, they were Board of Directors of Viluthayambalam Primary Agricultural Co-operative Thrift Society for the period between 1996 to 2001. On 13.12.1996, the Board has passed a resolution to appoint three persons on daily wage basis as a Writer, Saleswoman and Kerosene Salesman taking into consideration the heavy work load prevailing in the PDS shop.

3. The petitioners have further contended that the temporary appointment of the above said persons on daily wage basis was forwarded to the fourth respondent herein for necessary approval. The fourth respondent informed the Society that the appointments are contrary to the rules and regulations and advised the Board to withdraw the said resolution. When the Board of Directors were about to withdraw the said resolution, the fourth respondent had inspected and initiated proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 alleging that the appointments are in violation of G.O.Ms.No.15861/93 dated 15.07.1993. Thereafter, the Board of the Society by a resolution dated 26.03.1997 cancelled the daily wage appointments and terminated their services.



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4.The petitioners have further contended that the tenure of the Board had expired in 2001. Thereafter, on 24.09.2005, the third respondent has issued a show cause notice to all the former Board members why action should not be initiated under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. The petitioners have given a detailed reply to the effect that only taking into consideration the work load of the Society, the said persons were appointed, but later they were terminated. However, without properly appreciating the contentions raised in the explanation, the third respondent has passed an order on 29.10.2010 permanently disqualifying the petitioners from contesting in any election either in this Society or in any other Society. The petitioners herein have filed an appeal before the second respondent. The second respondent also without properly appreciating the contentions raised by the writ petitioners has confirmed the disqualification by an order dated 21.06.2013. The said orders are under challenge in the present writ petition.

5.The Contentions of the learned counsel for the petitioners.

(i). By a resolution dated 13.12.1996 one R.Kala was appointed as a Writer on daily wage basis at the rate of R.30/- per day, G.Vimala was appointed as a Saleswoman on daily wage basis of Rs.25/- per day and S.Durairaj as a Kerosene Salesman at Rs.100/- per month taking into consideration of the heavy work load prevailing in the PDS shop. In view of



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the instruction issued by the fourth respondent herein, all these persons were terminated by way of resolution dated 26.03.1997. Total monetary loss that is said to have incurred due to appointment of these three persons for the entire three months period is sum of Rs.4965/-. Hence, it is clear that the appointments which were alleged to be irregular were rectified by the Board themselves within a period of three months. However, the show cause notice under Section 36 of the Act has been issued on 23.12.2004 much after they were removed and the tenure of the petitioners had expired.

(ii). The learned counsel for the petitioners had further contended that the main allegation of the enquiry officer is that the expenditure of the staff had exceeded 2% of the total income. However, no documents were served upon the petitioners or annexed to the enquiry report indicating how the expenditure of Rs.4965/- had exceeded 2% of the total income of the Society.

(iii). The learned counsel for the petitioners relied upon Section 82(5) of the Tamil Nadu Co-operative Societies Act, 1983 and contended that after submission of the enquiry report, the Registrar can direct the Society or any officer to take such action as may be specified in the order to remedy, within such period as may be specified therein, the defects, if any, disclosed as a result of the enquiry. The report was submitted on 29.01.1997. However, no opportunity given to the Board of Director to rectify the same even though they were in office. However, the irregular appointees were removed on



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26.03.1997 itself. Hence, the initiation of the proceedings after a period of 8 years in the year 2005 has no legal basis whatsoever.

(iv). The learned counsel for the petitioners had further contended that unless the enquiry reveals gross mismanagement of the Society, an action under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983 cannot be initiated. In the present case, three persons were appointed on a daily wage basis on 13.12.1996 and they were removed on 26.03.1997 and the total salary paid to them was Rs.4965/-. No surcharge proceedings were initiated as against the Board members for recovery of the said amount within a period of limitation. However, the present proceedings have been initiated after a period of 8 years. Hence, the allegation regarding gross mismanagement of the Society has not been proved in the enquiry. Hence, the impugned order passed by the respondents 2 and 3 have to be set aside.

(v). The learned counsel for the petitioners had further submitted that the petitioners have debarred permanently from contesting any future election and for the past 20 years, they have been kept out of the election process without any legal basis whatsoever. Hence, he prayed for allowing the writ petition.



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6.The learned Government Advocate appearing for the respondents has contended as follows:

(i). According to the learned Government Advocate, the expenditure for the Society staff should not be exceeded 2% of the total income, in view of various Government orders. The appointees were not recruited through Employment Exchange. A Writer, Saleswoman and Kerosene Salesman posts have already been filled up and some other persons are working in the said posts. When there is no vacancy in the substantive post, the Board of Directors have resorted to appoint on daily wage basis which is clearly an irregular appointment.

(ii). The enquiry under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 would reveal that no Board meeting was conducted on 13.12.1996 as contended by the Board of Director. Without conducting any Board meeting or passing any resolution, these three persons have been appointed irregularly.

(iii). The learned Government Advocate had further contended that the Act does not provide for any limitation for initiating proceedings under Section 36 of the Act based upon the enquiry report under Section 82 of the said Act. Hence, the contention of the petitioners that initiation of action after a period of 8 years is barred by limitation is not legally sustainable.



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(iv).The learned Government Advocate had further submitted that the petitioners have acted clearly in violation of the statutory provision, Government order and Circular issued by the statutory authorities for making the irregular appointments. The irregular appointments have been made without any vacancy. Hence, this is a clear case of gross mismanagement of the Society attracting the provision of Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. Hence, he prayed for dismissal of the writ petition.

7.I have considered the submissions made on either side and perused the materials available on record.

8.There is no dispute that the petitioners were the Board of Directors of the fifth respondent Co-operative Society between 1996 to 2001. It is also an admitted fact that they have made appointments of three persons on daily wage basis by a resolution dated 13.12.1996 which was cancelled on 26.03.1997. The persons who were appointed on 13.12.1996 were removed on 26.03.1997. The only ground on which proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983 for permanent disqualification has been initiated is the allegation of the above said irregular appointment.



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9.The enquiry under Section 82 of the Act was completed and report was submitted on 27.01.1997. No records have been placed before this Court whether any direction was issued to rectify the defects as contemplated under the said report. No directions have been issued by the Registrar as contemplated under Section 82(5) of the Act to rectify the said defects. However, the Board of Directors on their own have passed a resolution on 26.03.1997 and removed the irregular appointees.

10.The quantum of salary said to have been fixed to the irregular appointees is Rs.30/- per day for Writer, Rs.25/- per day for Saleswoman and Rs.100/- per month for Kerosene Salesman. The petitioners have specifically contended that due to heavy work load in PDS shop, these three persons were appointed on a daily wage basis. The quantum of salary paid to the employees will clearly show that they were paid even lesser than the minimum wages. The said employees have been terminated on 26.03.1997 resulting in total monetary loss of Rs.4965/- as per Section 82 report. The respondent authorities ought to have been initiated proceedings under Section 87 of the Tamil Nadu Co-operative Societies Act for recovery of the said amount from the Board of Director within a period of 7 years. However, no such proceedings were initiated as against the Board of Director within the period of limitation. Suddenly, on 24.09.2005, the enquiry report dated



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27.01.1997 has been resurrected and show cause notice has been issued for initiating action under Section 36 of the Act. Though there is no period of limitation for initiating proceedings under Section 36 of the Act, a non-initiation of the proceedings under Section 87 coupled with delay in initiating proceedings under Section 36 of the Act will clearly establish that the present proceedings were initiated with some other ulterior motive.

11. Section 36 of the Tamil Nadu Co-operative Societies Act, 1983 empowers the authorities to initiate proceedings for permanent disqualification if a Board member has misappropriated or fraudulently retained any money or other property or being guilty of breach of trust in relation to the society or of gross or persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society. If any one of the five ingredients are available, proceedings can be initiated under Section 36 of the Act. In the present case, the proceedings have been initiated only on the ground of gross mismanagement of the affairs of the Society. The irregular appointments made by the writ petitioners (who are members of the Board) has to be assessed whether they would amount to gross mismanagement of the affairs of the Society. The quantum of daily wages paid, the emergency for the appointment of them in a PDS shop, their removal within a period of three months, and total monetary loss of Rs.4965/-



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will clearly indicate that the facts and circumstances of the case do not fall within the definition of gross mismanagement. Hence, the respondent authorities could not have invoked under Section 36 of the Tamil Nadu Co-operative Societies Act permanently disqualifying the petitioners herein from contesting in any election in future.

12.In view of the above said discussion, the orders impugned in the writ petition are set aside. The writ petition stands allowed. No costs. Consequently, connected miscellaneous petitions are closed.

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Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

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