



W.P(MD)No.3776 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 21.12.2022

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3776 of 2019

and

W.M.P(MD)No.2967 of 2019

- 1.Nesaraj
- 2.M.Sundaraj
- 3.S.Padmabhai
- 4.C.Krishnakumari
- 5.A.Sheelavathi
- 6.L.Babu
- 7.M.Krishnadhas
- 8.G.Rajamoni
- 9.K.S.Ajikumar
- 10.C.Devarajan

... Petitioners

Vs

- 1.The Joint Registrar of Co-operative Societies,
Kanyakumari Region,
Collectorate New Building, 2nd Floor, Nagercoil,
Kanyakumari District – 529 001.
- 2.The Deputy Registrar of Co-operative Societies,
Thuckalai Circle, Palace Road, Thuckalai,
Kanyakumari District – 629 175.
- 3.Y-70, Sarpalazhnnchi Athancode Primary Agricultural
Co-operative Credit Society Ltd.,
Kuzhivilai, Methukummal – Post,
Kanyakumari District – 629 172.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for records relating to the impugned notice issued by the first respondent in Na.Ka.5879/2018/Sa Pa dated 27.11.2018 (received on 10.12.2018) and quash the same as illegal.

For Petitioners : Mr.M.E.Ilango

For Respondents : Mr.A.Baskaran
Additional Government Pleader

ORDER

Heard the learned counsel on either side.

2. The petitioners are members of the Board governing the third respondent Society. They have been issued with the impugned notice under Section 36 of the Tamil Nadu Co-operative Societies Act, 1983. The petitioners question the validity of the notice on the ground set out in the affidavit filed in support of the writ petition.

3. The learned counsel appearing for the petitioners called upon this Court to set aside the impugned order and grant relief as prayed for. The respondents have filed counter affidavit and the learned Additional Government Pleader took me through its contents. He contended that the petitioners have illegally appointed as saleswomen and that therefore the authority felt that proceedings under Section 36 of the Tamil Nadu Co-operative Societies Act,



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1983 must be initiated. Only a notice has been issued and the petitioners can very well respond to it. According to the learned Additional Government Pleader, the writ petition has been prematurely filed and that the writ petitioners' rights have not been infringed at this stage. He pressed for dismissal of the writ petition.

4. I carefully considered the rival contentions and went through the materials on record.

5. Section 36 of the Tamil Nadu Co-operative Societies Act, 1983 reads as under:

“36. Disqualification and removal.” (1)Where 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 appears that a person who is, or was, a member of a board has misappropriated or fraudulently retained any money or other property or been 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, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds



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office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed, under sub-section (1) without being given an opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him.”

6. The question that calls for consideration is whether the impugned proceedings are in consonance with the statutory requirements. The only ground on which the notice has been issued is that the Management has illegally promoted one Vimala Bhai from the post of saleswomen to that of fertilizers sales women. I need not go into the validity of the promotion order passed by the Society. It is not in dispute that the promotion order was rescinded. The excess amount paid to the promotee was also recovered. Thus, the net result is that Society has not suffered any loss. Even if the promotion given to the said Vimala Bai is to be taken as illegal, still that would not constitute gross mismanagement. The expression “Gross mismanagement” has been considered in the decision reported in **2020 SCC OnLine Mad 10186** (Thanga Chinnappa vs. Regional Joint Registrar of Co-operatives Societies, Thanjavur). It was held as follows :

“7.A disqualification in terms of the above provisions can be made only if it can be shown that the writ petitioners are guilty of misappropriation or fraudulent retention of the



Society's assets. The writ petitioners can also be disqualified if it is shown that they were grossly negligent in the management of the Society. The writ petitioners are not accused of having committed any act of misappropriation. They have not retained any of the assets of the Society and there is nothing on record to show that there have been grossly negligent or reckless in the management of the Society. Thus the conditions precedent set out in Section 36 of the said Act for disqualifying a member are wholly absent in this case.”

Applying the aforesaid yardstick, the action of the petitioners will not attract any of the requirements set out in Section 36 of the Act. I therefore hold that the impugned notice is issued without jurisdiction. It has been quashed. This writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

21.12.2022

Index : Yes / No
Internet : Yes/ No
MGA

To

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Kanyakumari District – 529 001.



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