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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.09.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

WP(MD)Nos.17537 & 19532 of 2022

and

WMP(MD)Nos.12767, 12769, 14259, 14260, 14261 of 2022

in WP(MD)No.17537 of 2022 : -

R.S.837, Sivagangai District Consumers
Co-operative Wholesale Stores Ltd.,
Sivagangai,
Rep.by its President A.V.Nagarajan

... Petitioner

v.

The Registrar of Co-operative Societies,
NVN Maaligai,
170, EVR Periyar High Road,
Kikpauk, Chennai – 10.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari calling for the impugned Circular issued by the first respondent vide Circular No.7 of 2022/SaNa1 in Na.Ka.No. 72656/2021/SaNa1 dated 22.03.2022 and quash the same.

For Petitioner : Mr.B.Saravanan for Mr.C.Jeganathan

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader



in WP(MD)No.19532 of 2022 : -

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Poovanendhiran
President rep.by
R.S.854, Sivagangai District Co-operative
Union,
Sivagangai, Sivagangai District.

... Petitioner

v.

- 1.The Registrar of Co-operative Societies,
NVN Maaligai,
170, EVR Periyar High Road,
Kikpauk, Chennai – 10.
- 2.The Co-operative Sub-Registrar /
Managing Director (Additional Incharge),
R.S.854, Sivagangai District Co-operative
Union,
Sivagangai, Sivagangai District.
- 3.The Deputy Registrar,
Thiruppathur Road,
Sivagangai, Sivagangai District.
- 4.The Branch Manager,
Sivagangai District Central Co-operative Bank,
Sivagangai, Sivagangai District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned circular passed by the 1st respondent vide circular No.07/2022/SaNa1 (Na.Ka.No.72656/2021/SaNa1) dated 22.03.2022 and quash the same as illegal and consequently directing the 2nd and 3rd



respondents to grant the cheque power to the petitioner within a time frame that may be stipulated by this Court regarding the R.S.854 Sivagangai District Co-operative Union, Sivagangai, Sivagangai District, on the basis of the petitioners representation dated 21.06.2022.

For Petitioner : Mr.R.Udhayakumar

For Respondents : Mr.Veera Kathiravan,
Additional Advocate General
assisted by Mr.P.Thilak Kumar
Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Advocate General assisted by the learned Government Pleader for the respondents.

2.The petitioners are the Presidents of various Schedule – II societies. By the impugned Circular No.07/2022 dated 22.03.2022, the Registrar of Co-operative Societies has exclusively vested the cheque signing power with the Chief Executive Officers or the Managing Directors of the said societies. Challenging the same, these writ petitions have been filed.

3.The learned counsel appearing for the petitioners took me through the averments set out in the affidavits filed in support of the writ petitions.



He submitted that as per Section 2(7) of the Tamil Nadu Co-operative Societies Act, 1983, "the board/society" would mean the board of directors or the governing body of a registered society by whatever name called, to which the direction and control of the management of the affairs of the society is entrusted to. He then pointed out that as per Section 33(9) of the Act whenever resolution is passed by the society and the same appears to the functional director appointed to the board that it is not in accordance with the Act, he shall refer the same to the Registrar who shall take such action as he may deem necessary. According to him, in this case, the societies concerned have already passed resolutions conferring the power of being the joint signatory of the cheques in favour of the respective presidents. The other signatory in all these cases will be the Chief Executive Officers. These resolutions have not been nullified or set aside. He also pointed out that as per Section 87 of the Act, it is the board that has been entrusted with the management of the societies. If any siphoning of funds or misappropriation takes place, the board member will have to answer the surcharge action. He also placed reliance on Article 43(B) of the Constitution of India which states that the State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. If the elected President does not have the cheque signing powers, he is reduced to a mere figure-head. He therefore submitted that the



impugned circular is running counter to the statutory provision and also the constitutional vision.

4.No doubt the contentions advanced by the learned counsel appearing for the petitioners sound highly persuasive. But as rightly pointed out by the learned Additional Advocate General, sub rules to Rule 146 of the Tamil Nadu Co-operative Societies Rules, 1988 provide otherwise. Rules 146 (4) (a) and 146(9) of the Tamil Nadu Co-operative Societies Rules, 1988 read as follows :

"146.Powers and functions of Managing Director or the Chief Executive Officer:-

(1)...

(2)...

(3)...

4(a) The Managing Director or the Chief Executive Officer shall have power to operate the accounts of the society, to endorse and transfer promissory notes, Government and other securities held by the society and to sign, endorse and negotiate cheques and other negotiable instruments, bonds (except bonds for moneys borrowed), receipts and all accounts and other documents connected with the business of the said society for and on behalf of the said society."

"(9)The Managing Director or the Chief Executive Officer may, by order in writing, delegate any of his



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functions to any officer or servant of the society. He may, at any time, withdraw the functions delegated by him. The exercise or discharge of any function so delegated shall be subject to such restrictions, limitations and conditions as may be laid down by the Managing Director and shall also be subject to his control and revision. All such delegations of functions of Managing Director shall be placed before the board for its information."

5.The aforesaid statutory rules categorically confer power on the Managing Director or the Chief Executive Officer to operate the accounts of the society. It obviously means that he can have the exclusive power to sign the cheques. It is of course open to the Managing Director or the Chief Executive Officer to delegate this power to any officer or servant of the society. The impugned circular is in consonance with the aforesaid statutory rule. Of course, the societies concerned might have passed resolution conferring the power of being joint signatory on the respective Presidents. But, on the very face of it, these resolutions do not have any statutory force or value. Therefore, they can very well be ignored. That apart, the petitioners have not questioned the validity or vires of Rule 146. So long as Rule 146 is holding the field, it is not possible for this Court to interfere with the impugned circular.



6. Both the writ petitions stand dismissed. No costs. Connected miscellaneous petitions are closed.

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Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.

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