BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 07.04.2022

PRONOUNCED ON : 01.09.2022

CORAM

THE HONOURABLE MRS.JUSTICE **S.SRIMATHY**

W.P.(MD)Nos.13900 of 2014 and 618 of 2015
and
M.P.(MD)Nos.1 of 2014 and 1 and 2 of 2015

W.P.(MD)No.13900 of 2014:

M.Selvakumar ... Petitioner

vs.

1.The Secretary to Government,
Co-operation Food and Consumer
Protection Department,
Fort St. George, Chennai – 9.

2.The Registrar of Cooperative Society
of Tamil Nadu,
NV Natarajan Maligai,
170, E.V.R. High Road,
Kilpauk, Chennai – 10. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent Registrar of Cooperative Societies relating to his impugned circular No. 7/2014, dated 28.02.2014, Na. Ka. No.17933/2013-Thou.Way.Sa.1, to quash the same and to direct the respondents 1 and 2 to allow the Athinathapuram Primary Agricultural Cooperative Credit Society in Tiruchendur Taluk, Thoothukudi District to decide and to determine its own employees salary and other monetary benefits, recruitment of its staff and other independence acts in terms of Section 136-D(2)(IV) of the Tamil Nadu Cooperative Societies Act.

W.P.(MD)No.618 of 2015:

Chelladurai Nadar ... Petitioner

vs.

1.The Secretary to Government,
Co-operation Food and Consumer
Protection Department,
Fort St. George, Chennai – 9.

2.The Registrar of Cooperative Society
of Tamil Nadu,
NV Natarajan Maligai,
170, E.V.R. High Road,
Kilpauk, Chennai – 10.

3.The Deputy Registrar of
Cooperative Society,
Thiruchendur and Post,
Tuticorin District. ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus, to call for the records from the 2nd respondent Registrar of Cooperative Societies relating to his impugned circular No. 7/2014, dated 28.02.2014, in Na.Ka. No.17933/2013/Tho.Way.Koo.Sa.1, to call for the records from the 3rd respondent regarding the subsequent impugned letter in Na. Ka. No.788/2014.Thou way Koo. Sa., dated 03.03.2014, illegally dictating mandatory guidelines for fixing the next monthly salary of Meignanpuram Primary Agricultural Cooperative Credit Society, Thiruchendur Taluk, Tuticorin District and to decide and determine its own employees salary and other monetary benefits, recruitment of its staff and other independence acts in terms of Section 136-D(2)(IV) of the Tamil Nadu Cooperative Societies Act.

In both cases:

For Petitioner	: Mr.P.Senthur Pandian
For Respondents	: Mr.P.Thilak Kumar Government Pleader Assisted by Mr.P.Thambi Durai Government Advocate (Civil side)

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COMMON ORDER

The Writ Petition in W.P.(MD)No.13900 of 2014 is filed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned circular No. 7/2014, dated 28.02.2014, Na. Ka. No.17933/2013-Thou.Way.Sa.1 and to direct the respondents 1 and 2 to allow the Athinathapuram Primary Agricultural Cooperative Credit Society in Tiruchendur Taluk, Thoothukudi District to decide and to determine its own employees salary and other monetary benefits, recruitment of its staff and other independence acts in terms of Section 136-D(2)(iv) of the Tamil Nadu Cooperative Societies Act.

2. The writ petition in W.P.(MD) No. 618 of 2015 is filed for Writ of Certiorarified Mandamus, to quash the impugned circular No. 7/2014, dated 28.02.2014, in Na. Ka. No.17933/2013/ Tho. Way. Koo. Sa.1 of the 2nd respondent and the subsequent impugned letter in Na. Ka. No.788/2014.Thou way Koo. Sa., dated 03.03.2014 issued by the 3rd respondent, which illegally dictating mandatory guidelines for fixing the next monthly salary of Meignanpuram Primary Agricultural Cooperative Credit Society, Thiruchendur Taluk, Tuticorin District and allow to decide and determine its own employees salary and other monetary benefits, recruitment of its staff and other independence acts in terms of Section 136-D(2)(iv) of the Tamil Nadu Cooperative Societies Act.

3. The brief facts of the case as stated in the affidavit filed in W.P.(MD)No. 13900 of 2014 are that the petitioner is one of the elected Director of Aathinathapuram Primary Agricultural Cooperative Credit Society. Initially, the Cooperative movement in this State was strong and served the needy public, particularly farming public. Subsequently, it fell into the hands of unscrupulous persons and many of them started running the society in loss and so the credit needed agriculturists and rural / village population was affected, particularly in the peak of agricultural operation season to borrow loan to buy seeds and fertilizers. For many years, the administration of the Society was in the hands of the Officers of the Cooperative Department under the control of the respondents which lead to the said situation and the society was not run democratically and economically. In order to rejuvenate and to infuse fresh blood and put them back to their glorious day of democratic function and economic independence, a committee under the efficient and effective Chairmanship of Professor Vaithiyanathan was constituted by the Central Government. The Committee submitted a detailed guideline and stipulated certain do's and not's.

4. The Central Government had accepted the said report and the State Governments also accepted the said report. The State of Tamil Nadu represented by the first respondent had also accepted the said report and entered into a "Triparty Memorandum of Understanding" dated 03.01.2008, which was entered between State Government represented by first respondent, Central Government and National Rural Agricultural Bank known as NABARD. The said report and the memorandum of understanding mainly and mandatorily stipulated that all the "Short Term Cooperative Credit Structures" should be made an autonomous and self-deciding body, particularly regarding the recruitment and salary of its employees are concerned. Based on the recommendation, the Constitution of India was amended and incorporated and based on the Constitutional amendment, the State Government has amended the Tamil Nadu Cooperative Societies Act by introducing chapter XIVA including Sections 136A, 136B, 136C, 136D. Under Section 136-D sub clauses 1, 2 and 25 emphasis has been laid that each and every Cooperative Primary Agricultural Credit Society should become autonomous without exception. Especially the short term Cooperative Credit Structures which includes the Primary Agricultural Credit Societies under section 136-(D)(2) shall

have total autonomy in financial and internal administrative matters. The same section stipulates the said structural Society are totally autonomous regarding personal policy, recruitment, posting and remuneration. The respondents have issued the present circular giving direction to fix the salary of the employees which is destroying the autonomy and it is against the Constitution of India. Aggrieved over the same, the present Writ Petition is filed.

5. The respondents have filed a counter affidavit stating that the Cooperative Societies is a subject enumerated in Entry 32 of the State List of the Seventh Schedule of the Constitution. The Tamil Nadu State Legislature have accordingly enacted the Tamil Nadu Cooperative Societies Act, 1983. It is an Act to amend and consolidate the law to make better provision for the organization, management and supervision of Cooperative Societies in the State of Tamil Nadu to promote the voluntary formation, autonomous functioning, democratic control and professional management of Cooperative Societies in the State and to provide for an orderly development of the cooperative movement such as open membership, democratic management, limited interest on capital, distribution of

surplus based on patronage, provision for cooperative education and co-operation among the cooperatives for the promotion of thrift, self-help and mutual aid among persons with common socio-economic needs so as to bring about improvement in agriculture and industry, better methods of production, better business and better living and for that purpose to amend and consolidate the law relating to Cooperative Societies. In order to bring improvement in the financial position of the credit Societies and to strengthen the short term Cooperative Credit structure, a task force was constituted by the Government of India and the Tamil Nadu Government has accepted the recommendations of the task force and amended the Tamil Nadu Cooperative Societies Act, 1983 and a new chapter was introduced and it was published in the Tamil Nadu Government Gazette Extraordinary, dated 21.10.2008, which was later replaced by the Tamil Nadu Act 62 of 2008 published in Tamil Nadu Government Gazette Extraordinary, dated 02.01.2008. Though Section 136-B has overriding effect in respect of short term Cooperative Credit Structure Society, it does not expressly repeal any of the provisions of the Tamil Nadu Cooperative Societies Act, 1983. Section 73 of the said Act deals with appointment of paid Officers and servants of Registered

Society and their conditions of service. According to the Section 73 the existing provisions would prevail until Reserve Bank of India or NABARD have issued any guidelines in respect of personal policy, staffing, recruitment, posting and remuneration of staff. Until now, no such guidelines were issued and in the absence of these guidelines, the existing Act, 1983 and Rules, 1988 shall continue to be in force. The provisions of Section 73 and Rule 149 of Tamil Nadu Cooperative Societies Act, 1983 are still in force.

6. The respondents submitted that the NABARD, Chennai in the letter NB.TN/DCRR/234/DCRR-2/2008-09, dated 13.01.2009, has issued its guidelines to facilitate prudent business management in PACS by defining 'Capacity to Pay', prescribing permissible levels of cost of staff and cost of management and laying down principles for running viable non-credit business and for prudent human resource management including cadre strength, recruitment, qualifications and outsourcing. The respondents submitted that in judgment, dated 25.09.2008, in Writ Appeal Nos.1103 and 1104 of 2008, Division Bench of this Court has held as follows:

> *"It is informed that the respondent has not framed any bylaw under Rule 149. If no such bylaw has been framed by the Bank, prescribing the conditions of service, such as scale of pay of its employees and staff in that case, it is always open to the State Government to make minimum prescription of the scale of pay to be paid in favour of such employees and staff."*

Based on the said judgment, the respondents have issued the impugned Circular No.7/2014, dated 28.02.2014 of the second respondent and it is applicable to the employees of the Athinathapuram Primary Agricultural Cooperative Credit Society and Meignanpuram Primary Agricultural Cooperative Credit Society for fixation of salary and other monetary benefits. In such circumstances, the Writ Petition is not maintainable and the same is liable to be dismissed.

7. The respondents submitted that Prof. Vaithianathan Committee's recommendations were accepted and the Government of Tamil Nadu executed the Memorandum of Understanding to implement the Government of India package for revival of Short Term Cooperative Credit Structure Societies. Accordingly, the same is being implemented in the State. The elections to the Cooperative Societies in Tamil Nadu were held in 2013 and the elected Boards have assumed

Office. At present, the Elected Boards are managing the affairs of the Cooperative Societies including the Short Term Cooperative Credit Structure Societies.

8. The present impugned circular has been issued to save the interest of the employees and the Societies. The second respondent have issued the circular instructions for wage revision through a letter, dated 28.02.2014. The Government has also issued Circular No.14 of 2018 in proceedings, dated 08.11.2015 and from 2018 onwards this present circular will prevail for fixing the salary. There are four accounts of credit Societies and the summary classified is under:

		Classification	No.of PACCS
(i)	Those Primary Agricultural Cooperative Credit Societies working with profit 5 years continuously and have not obtained any credit facilities from District Central Cooperative Bank and working with their own funds (ie from 200-08, except financial assistance received for crop loan, Government Welfare Schemes viz., TABCEDCo, TAMCO, THDCO and other schemes.	A	74

(ii)	Those Primary Agricultural Cooperative Credit Societies working with profit for 5 years continuously but borrow funds from District Central Cooperative Banks from 2007-08.	B	597
(iii)	From 2007-08 those Primary Agricultural Cooperative Credit Societies working profit in some years, and but with cumulative loss.	C	3442
(iv)	From 2007-08, those Primary Agricultural Cooperative Credit Societies working with current loss and cumulative loss	D	411

9. Therefore, the respondents had issued instructions fixing the pay scale and allowance of the employees of 23 Districts Central Cooperative Office and the first respondent has issued instructions fixing the pay scale and allowance of the employees of the Tamil Nadu State Cooperative Banks which are of short term Cooperative Structure Societies as defined in Clause G of Section 136-C. None of the Central Cooperative Banks nor the Tamil Nadu State Cooperative Society, none of the employees of the 23 District Central Cooperative Banks nor the Tamil Nadu State Cooperative Society numbering 4787 had challenged the legality of the circular. Therefore, the petitioner is not having any right to raise these. Based on the circulars, the employees have executed the 12(3) agreement. The respondent submitted that in the absence of any guidelines and stipulations

issued by the Reserve Bank or NABARD, the government has power to issue guidelines and hence the present circular is fully sustainable in law and prayed to dismiss the writ petition.

10. Heard Mr.P.Senthur Pandian, the Learned Counsel for the petitioner, Mr.P.Thilak Kumar, the Learned Government Pleader assisted by Mr.P.Thambi Durai, Government Advocate (Civil side) and perused the records.

11. The relevant portion of the report of Professor Vaithiyanathan Committee and the memorandum of understanding read as follows:

> *"4. Whereas to achieve the objections outlined above, it is considered expedient for the Central Government, the Stage and NABARD to enter into this Memorandum of Understanding (MoU) for implementation of the package arrived through a series of discussions held by the Central Government with the States on the recommendations made by Vaidyanathan Committee on revival and reform of CCS. A copy of the Package is appended to this Memorandum as Annex A and the same may be read as part and parcel of this MoU.*
>
> *"9. The State undertakes to bring in amendments to or incorporate a Special chapter in the Tamil Nadu Cooperative Societies Act 1983 to give effect to the reforms envisaged under the package in respect of all entities which are part of the CCS. Pending such amendments, the State*

undertakes to issue an Ordinance under the powers conferred on it under Article 213 of the Constitution of India to provide for the following in respect of all entities which are part of the CCS:

9.1. ensuring full voting membership rights to all depositors / borrowers in cooperatives other than cooperative banks;
9.2. ***providing autonomy to CCS in all financial and internal administrative matters, especially in the following area****;*

- *i. Interest rates on deposits and loans in conformity with RBI guidelines,*
- *ii. Borrowings and investments,*
- *iii. Loan policies and individual loan decisions*
- *iv. Personnel policy, staffing, recruitment, posting and compensation to staff and*
- *v. Internal control systems, appointment of auditors and compensation for the audit. "*

After the recommendations the State Government has entered into Triparty Agreement wherein it has agreed to amend the Societies Act. Until the amendment is carried out, the State Government had agreed to issue an Ordinance so that the societies are granted autonomy with immediate effect. In order to implement the policy of providing autonomy to Central Cooperative Societies in all financial and internal administrative matters, especially in personnel policy, staffing, recruitment, posting and compensation to staff etc. the State Government has passed the Ordinance No. 8 / 2008 dated 21.10.2008 incorporating the mandatory provisions.

12. Thereafter the State Government in terms of the report of Professor Vaithilingam Committee has amended the Tamil Nadu Cooperative Societies Act by introducing the Chapter XIV A including section 136A, 136B, 136C, 136D. Under section 136-D – 1,2,24 and 25 it is emphasized that each and every cooperative primary agricultural credit society without exception shall have total autonomy in financial and internal administrative matters. Especially section 136-D(2)(iv) mandates that the structural society are totally autonomous regarding personal policy, recruitment, posting and remuneration. Under 136-D(25) also mandates the Government or the Registrar from doing any mischief curtailing any of the freedom or doing any act which has the effect of even remotely curtailing the total independence and autonomy of the Primary Cooperative Agriculture Credit Society. The petitioner submitted that the respondents under the guise of laying down guidelines the respondents have issued circular for fixing the salary of the society employees as well as in appointing the staff of the societies, thereby

the State Government has interfered with the affairs of the petitioner society. The petitioner also submitted that the State Government is statutorily prohibited and the impugned circular is against the statue. The State Government has passed the Ordinance No. 8 / 2008 dated 21.10.2008 incorporating the same mandatory provisions and the same is replaced with the provisions pari materia without altering any provisions by the amended Tamil Nadu Cooperative Societies (Third Amendment) Act 62 of 2008 with effect from 21.10.2008. The provision is applicable to the Short Term Cooperative Credit Structure Societies and the Athinathapuram Primary Agricultural Cooperative Credit Society in Tiruchendur and Meignanpuram Primary Agricultural Cooperative Credit Society, Thiruchendur falls under the said classification.

13. The Learned Counsel for the writ petitioner relied on the provisions of the Act and submitted that the State Government has no power to interfere in the affairs of the society and relied on Section 136-D. The relevant portion of the section is extracted hereunder:

"136-D. Special provisions applicable to short term co-operative credit structure societies.—
(1) (a) A depositor holding a minimum deposit of rupees five thousand or such minimum sum as may be specified by the Government, from time to time, for a continuous period of minimum two years in a primary agricultural credit society shall become a member of the registered society under section 21 by subscribing the minimum share capital specified in the by-laws and shall have full membership, voting rights and eligible for patronage rebate, bonus and dividend.
(b) An individual or group borrower shall have the right to become a member of the registered society under section 21.
(c) Every group depositor or group borrower who has become a member under section 21 shall be entitled to vote through one delegate nominated by the group.

(2) ***A short term co-operative credit structure society shall have autonomy in all financial and internal administrative matters including the following areas****: —*
(i) interest rates on deposits and loans in conformity with the guidelines issued by the Reserve Bank;
(ii) borrowing and investments;
(iii) loan policies and decisions on individual loan;
(iv) personnel policy, staffing, recruitment, posting and remuneration to staff; *and*
(v) internal control systems, appointment of auditors and remuneration for the audit.

(3) ***The Government's subscription in the share capital of any short term co-operative credit structure society shall not exceed twenty-five per cent and the Government or short term co-operative credit structure society may reduce the Government's subscription further at its choice.***

(4) (a) ***There shall be only one nominee of the Government in the Board of the State Apex Cooperative Bank or a Central Cooperative Bank if the Government has subscribed to its share capital****.*
(b) ***There shall be no nominee of the Government in the Board of a primary agricultural credit society irrespective of Government's subscription to the share capital.***

(5) ***A short term co-operative credit structure society may affiliate or disaffiliate with a federal society at its choice*** *subject to the condition that the said short term co-operative credit structure society which exits with the existing structure and affiliates with another federal society shall display this in the name board of the said short term co-operative credit structure society.*

(6) A short term co-operative credit structure society shall have the freedom of entry and exit at any tier and there shall be no mandatory restrictions of geographical boundaries for its operations.

(7) ***A short term co-operative credit structure society may, subject to the guidelines of the Reserve Bank, invest or deposit its funds in any Bank or financial institution regulated by the Reserve Bank and not necessarily in the federal society to which it is affiliated****.*

(8) A short term co-operative credit structure society ***may, obtain loans from any Bank or financial institution regulated by the Reserve Bank and re-finance from the National Bank or any other financing institution directly or through any Reserve Bank regulated financial institutions and not necessarily from the federal society to which it is affiliated****.*

(9) A primary agricultural credit society ***may pay dividend*** *in accordance with the guidelines framed by the Registrar in consultation with the National Bank.*

(10) ***The Government or the Registrar shall have no powers to direct any short term co-operative credit structure society to contribute to any fund other than those required for improving its net worth or own funds****.*

(11) No person shall be elected, nominated or co-opted or allowed to continue as a member of the Board of a short term co-operative credit structure society, if he,__
(i) is a person who represents a society other than a primary agricultural credit society on the Board of a Central Co-operative Bank or the State Apex Co-operative Bank, if such society to whom he represents has committed a default towards the payments of such Bank for a period exceeding ninety days;
(ii) is a person who committed a default towards the payments to a primary agricultural credit society or represents a primary agricultural credit society on the Board of a Central Co-operative Bank or the State Apex Co-operative Bank, if such society to whom he represents has committed a default towards the

payments of such Bank for a period exceeding one year unless the default is cleared;
(iii) is a person, who represents a society whose Board is superseded.

(12) (a) The supersession of the Board of the State Apex Co-operative Bank and the Central Co-operative Banks shall be done only with prior consultation of the Reserve Bank.
(b) Omitted

(13) (a) Omitted
(b) Omitted
(c) A member of the Board of a primary agricultural credit society which has been superseded under this Act shall not be entitled to contest the election again for a period of three years from the date of supersession.

(14) (a) The bye-laws or any amendment to the bye-laws of a short term co-operative credit structure society shall be registered by the Registrar within thirty days from the date of receipt of the application.
(b) If the Registrar is satisfied that the proposed bye-laws or the amendments to the bye-laws are contrary to the provisions of the Act and the rules made thereunder, he shall reject the same duly recording his reasons thereon within thirty days from the date of receipt of the application.

(15) The prudential norms including capital to risk weighted assets ratio shall be prescribed by the Registrar for all the primary agricultural credit societies in consultation with the National Bank.

(16) The Directors and Chief Executive Officers of the State Apex Co-operative Bank or the Central Co-operative Banks who do not fulfil the criteria stipulated by the Reserve Bank shall be removed by the Registrar or the appointing authority, as the case may be, at the recommendation of the Reserve Bank or the National Bank.

(17) Omitted

(18) The Registrar shall ensure conduct of audit and certification of accounts of the State Apex Co-operative Bank and the Central Co-operative Banks by Chartered Accountants appointed by such Bank from a panel approved by the National Bank.

(19) The Registrar shall ensure conduct of special audit of the State Apex Co-operative Bank or a Central Co-operative Bank ***if requested by the Reserve Bank*** *in the manner and form stipulated by the Reserve Bank and also furnish the report to Reserve Bank within the time stipulated.*

(20) (a) The Registrar shall ensure that Reserve Bank's regulatory prescriptions in case of State Apex Co-operative Bank and Central Co-operative Banks including recommendation for supersession of the Board and winding up of the State Apex Co-operative Bank and Central Co-operative Banks are implemented within one month of being so advised by the Reserve Bank.
(b) The Registrar shall ensure that the Liquidator or the Administrator, as the case may be, is appointed within two months of being so advised by the Reserve Bank for winding up or supersession.
(c) If in the opinion of the Reserve Bank or National Bank, the Chief Executive Officer of the State Apex Co-operative Bank or a Central Co-operative Bank, does not fulfil eligibility criteria specified by the Reserve Bank, the Registrar shall ensure removal of Chief Executive Officer within one month of being so advised by the Reserve Bank or the National Bank.

(d) If in the opinion of the Reserve Bank or the National Bank, a person has been coopted as a member of the Board without having the requisite special knowledge or experience in such fields as may be stipulated by the Reserve Bank, the Registrar shall, on being advised by the Reserve Bank or the National Bank, ensure removal of that person coopted within one month of being so advised by the Reserve Bank or the National Bank.

(21) No primary agricultural credit society or its federation or association, except those which are permitted to act as a Bank under the Banking Regulation Act, 1949 (Central Act X of 1949), shall be registered with the words 'Bank' or any other derivative of the word 'Bank' in its registered name or shall use the same as a part of its name:

Provided that where any primary agricultural credit society or its federation or association, except those which are permitted to act as a Bank under the Banking Regulation Act, 1949 (Central Act X of 1949), has been registered or using the same as a part of its name before the 21st day of October 2008 with the word 'Bank' or any of its derivatives in its registered name, it shall within three *months from that date, change its name so as to remove the word 'Bank' or its derivative, if any, from its name:*

Provided further that where any such society fails to comply with the above provisions within the period specified therein, the Registrar shall order the winding up of such society forthwith.

(22) Save as otherwise provided in this section, the existing provisions of the Act, rules and guidelines shall continue to be in force till the guidelines or stipulations are issued by the Reserve Bank or the National Bank wherever required for effective implementation of the provisions of this section.

(23) Omitted.

(24) ***No short term co-operative credit structure society shall be exempted by the Government from the application of the provisions of this Chapter without the prior approval of the Reserve Bank or the National Bank, as the case may be.***

(25) The Government or the Registrar shall not do anything or take action or issue any order or direction which may have the effect of, curtailing any of the freedoms or powers given under this Chapter to any short term co-operative credit structure society or adversely affecting other provisions of this Chapter.*"*

14. The writ petitioner submitted that the society had fixed higher remuneration, but the impugned circular has reduced the remuneration fixed by the Society which is against the provisions of the Act. However the respondents submitted that the circular was issued to disburse the salary uniformly for the entire Tamil Nadu. The Learned Government Pleader had submitted that though Section 136-B has overriding effect in respect of short term Cooperative Credit

Structure Society, it does not expressly repeal any of the provisions of the Tamil Nadu Cooperative Societies Act, 1983 and therefore the circular is legally sustainable. The Learned Counsel for the writ petitioner submitted that section 136-B has over riding effect and hence the respondents cannot invoke any Act or any provisions which are inconsistent with the provisions under section 136-A to 136-D. The relevant portion of section 136B is extracted hereunder:

> "136-B. Provisions of this Chapter to have overriding effect.— Notwithstanding anything contrary or inconsistent contained in any other chapter of this Act or rules framed thereunder or bye-laws of any registered society or orders issued thereunder, the provisions of this Chapter shall have overriding effect in respect of short term co-operative credit structure society."

This Court is not convinced with this plea of the respondents, if there is non-obstante clause, then it is not necessary that the other provisions which deals with the same subject matter ought to be repealed. A non obstante clause is generally appended to a section with a view to give the enacting part of the section, in case of conflict, an overriding effect over the provision in the same or other Act mentioned in the non obstante clause. The provisions ought to be construed that the non obstante clause will prevail over the other provisions on the same subject matter. In such circumstances the sections 136-A to 136-D will prevail over the sections 73 read with section 149.

15. It is seen that the provision under clause 136-D(2) states that "a short term co-operative credit structure society shall have **autonomy in all financial and internal administrative matters** including the following areas. And one such area is mentioned under sub clause (iv) as "personnel policy, staffing, recruitment, posting and **remuneration to staff**". The contention of the respondents is that the Reserve Bank of India or the NABARD have not issued any guidelines in this regard and in such circumstances the earlier provisions under section 73 read with 149 would prevail. On perusal of the section 136-D, under sub clause (22) it is seen that the existence provisions would prevail until the RBI or NABARD issue guidelines, **wherever required for effective implementation of the provisions of this section**. Under the clause for 136-D (2) (i) it has been stated that for fixation of rates of interest the RBI has to issue guidelines. But for fixation of the salary there is no provision under section 136-D for any guidelines from RBI. Moreover the provision clearly states with a

qualification i.e. "**wherever required for effective implementation of the provisions of this section".** Since there is no provision for any guidelines from RBI or NABARD for fixation of the salary the respondents have wrongly interpreted as if the RBI or NABARD ought to issue guidelines for fixation of salary etc. to the staff. Therefore this Court is of the considered view that there is no necessity for any guidelines from RBI or NABARD for fixing remuneration of the staff and hence the impugned circular is liable to be quashed.

16. The respondents submitted that earlier the government issued circular under G.O. Ms. No. 189 dated 17.11.2009 wherein the salary was fixed from 01.04.2008 until 31.03.2013. Since the five years period was completed, hence for the period from 01.04.2013 onwards for fixation of salary a committee was constituted and on the basis of the recommendations of the said committee the present circular is issued with guidelines for fixation of salary. The respondents have not stated in the counter under which power the committee was constituted and the circular was issued. Therefore this Court is of the considered opinion that the circular is against the section 136-D(2)(iv). Moreover this Court has held that

the impugned circular is liable to be quashed because of non obstante clause under section 136-B and now under section 136-D(2)(iv) also the impugned circular will not stand the scrutiny of law since the impugned circular is hitting the autonomy of the societies.

17. The Learned Counsel for the petitioner also submitted that the provisions from sections 136-A to 136-D was inserted in order to grant autonomy to the short term cooperative credit structure of the country. Especially under section 136-D the sub clauses would clearly indicate that the autonomy is granted in all possible ways to the society and where ever possible the power of the government was curtailed. This Court has anxiously considered the section 136-D and its sub clauses and the same is narrated as under:

- Under sub clause (3) the Government's subscription in the share capital is only up to twenty-five per cent and the Government or the society may reduce the Government's subscription further at its choice. This would clearly indicate that the society has power to take a decision to reduce the government subscription.

- Under Sub Clause (4) (a) the government can have only one nominee that too only in the Board of the State Apex Cooperative

Bank or a Central Cooperative Bank, that too if the Government has subscribed to its share capital. If the government has not subscribed any share capital, then the government cannot have any nominee.

- Under sub clause 4 (b) states that there shall be no nominee of the Government in the Board of a primary agricultural credit society irrespective of Government's subscription to the share capital, which means the government cannot have its nominee at all and the primary agricultural credit society will have full autonomy.

- Under sub clause (5) a short term co-operative credit structure society may affiliate or disaffiliate with a federal society at its choice. This would clearly indicate that the society has it choice of affiliation.

- Under sub clause (7) a short term co-operative credit structure society may, subject to the guidelines of the Reserve Bank, invest or deposit its funds in any Bank or financial institution regulated by the Reserve Bank and not necessarily in the federal society to which it is affiliated. This means that the society shall act independently under the RBI guidelines to invest or deposit its funds. It is pertinent to state herein that the RBI guidelines are not for fixing of remuneration for its employees. Therefore the claim of the respondents that RBI has not issued any guidelines is erroneous.

- Under sub clause (8) a short term co-operative credit structure society would have independent financial status and would be eligible to avail loan from any nationalized banks and not necessarily from the federal society to which it is affiliated

- Under sub clause (9) a primary agricultural credit society may pay dividend in accordance with the guidelines framed by the Registrar in consultation with the National Bank. Again it only for the dividend and not for remuneration.

- Under sub clause (10) it is specifically stated that the Government or the Registrar shall have no powers to direct credit society to contribute to any fund other than those required for improving its net worth or own funds.

- Under sub clause (15) the Registrar shall prescribe prudential norms in consultation with the National Bank and the Registrar has no independent power.

- Under sub clause (24) no short term co-operative credit structure society shall be exempted by the Government from the application of the provisions of this Chapter without the prior approval of the Reserve Bank or the National Bank. This is very crucial since the government has no power to exempt any society from applicability of this sections 136-A to 136-D.

- Under sub clause (25) the Government or the Registrar shall not do anything or take action or issue any order or direction which may have the effect of, curtailing any of the freedoms or powers given under this Chapter to any short term co-operative credit structure society or adversely affecting other provisions of this Chapter. Again this is also very crucial since the government has no power to issue any order or direction curtailing the power of the society. Therefore this Court is of the considered opinion that the impugned circular is clearly violative of the section 136-D (25).

18. This Court is of the considered opinion that the aforesaid narration of the section 136-D would clearly indicate the scheme of the Act and the autonomy granted to the short term cooperative credit structure societies and the non obstinate clause under section 136-B read with the section 136-D would state that autonomy granted to the short term cooperative credit structure societies. Especially sub clause 24 of section 136-D, wherein the government has no power to take away any society from the provision of section 136-A to 136-D and sub clause 25 of section 136-D wherein the government cannot do anything to curtail the freedom of power of the society. The provisions are strongly worded in order to grant absolutely autonomy without any kind of interference from the government / registrar. Therefore this Court is of the considered opinion that even the government has no power to amend the provisions of section under this Chapter XIV-A and in such circumstances the impugned G.O. is definitely curtailing the freedom of autonomy. This Court is of the considered opinion that the impugned circular is clearly violative of the section 136-D (25) and hence it is liable to quashed.

19. This Court further proceeded to analysis the granting of autonomy based on the "Statement of Objects and Reasons for Act 82 of 2008", wherein it is stated as under:

> *"In order to bring improvement in the financial position of the credit societies and to strengthen the short term cooperative credit structure societies of the Country, a task force was constituted by the Government of India. The task force has suggested implementable action plan for reviving the short term rural cooperative credit structure societies. The Government have accepted the recommendations of the task force on revival of short term cooperative credit institutions and decided to amend the Tamil Nadu Cooperative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) so as to insert a new chapter applicable to the cooperative credit society, in the said Act, Accordingly the Tamil Nadu Cooperative Societies (Third Amendment) Ordinance, 2008 (Tamil Nadu Ordinance 8 of 2008) was promulgated by the Governor on the 20th October 2008 and the same was published in the Tamil Nadu Government Gazette Extraordinary dated the 21st October 2008."*

The said Act 62 of 2008 was published in Tamil Nadu Extraordinary part IV, S.2 dated 02.12.2008 with effect from 21.10.2008. From the statement of objects and reasons it is evident that in order to grant autonomy to the short term cooperative credit structure societies the government has enacted this special provisions under Chapter XIV-A through amendment in the year 2008. Therefore this Court is of the considered opinion that the autonomy granted is a "Statutory Guarantee" granted under the Act and the impugned circular issuing guidelines to fix salary as per slab is against the provisions of the Act. The Society is having independent power and right to fix salary as per its financial status.

20. It is brought to the notice of this Court that there are few writ petitions challenging the fixation of salary by contending that the salary is lower than the guidelines. Few writ petitions wherein the Registrar would have cancelled the salary fixation order by stating that the salary is fixed by the Society which is higher than the prescribed slab stated in the guidelines issued by the Government. This Court is of the considered view that the Society which has autonomous power to fix salary and the guidelines issued by the government to fix salary is against the statutory provisions of section 136-D of the Tamil Nadu Societies Act. The salary may be higher than the guideline or lower than the guideline and the same cannot be challenged by comparing with the guideline since the guideline itself is against the statutory provisions.

21. The Learned Counsel for the petitioner submitted that subsequently the Constitution of the India was amended vide 97^{th} amendment 2011 Act, wherein

the Article 43-B was inserted in Part IV of the Constitution after the Article 43-B and then after Part IX-A of the Constitution, Part IX-B was inserted under the heading “the Cooperative Societies”. However it was brought to the notice of this Court that the said amendment was challenged before Gujarat High Court and the 97th amendment was declared as ultra vires. Aggrieved over the Central Government had filed an appeal before the Hon’ble Supreme Court. The Hon’ble Supreme Court has upheld the judgment of the Gujarat High Court in part, whereby the amendment was held ultra vires partly since the half of the States have not submitted its consent for the amendment. Therefore this Court is rejecting the argument of the petitioner since the 97th amendment of the Constitution of India is declared as ultra vires by confirming the judgment of the Gujarat High Court partly.

22. For the reasons stated above the writ petitions are allowed and the impugned circular fixing the remuneration of the employees of the Societies is against the provision of sections 136-A to 136-D of the Tamil Nadu Cooperative Societies Act and is hereby quashed.

23. Therefore the writ petitions are allowed and connected miscellaneous petitions are closed. No Costs.

Index : Yes / No

Internet : Yes

01.09.2022

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S.SRIMATHY, J

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Note:
In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the Advocate/litigant concerned.

To

1.The Secretary to Government,
Co-operation Food and Consumer
Protection Department,
Fort St.George, Chennai – 9.

W.P.(MD)Nos.13900 of 2014 and 618 of 2015

2.The Registrar of Cooperative Society
of Tamil Nadu,
NV Natarajan Maligai,
170, E.V.R. High Road,
Kilpauk, Chennai – 10.

3.The Deputy Registrar of
Cooperative Society,
Thiruchendur and Post,
Tuticorin District.

01.09.2022