



WEB COPY



1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 05.07.2023

PRONOUNCED ON : 10.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

W.P.Nos.19310 and 19800 of 2023

1.D.Venugopal
2.C.Mohanadas
3.G.Palani

... Petitioners in W.P.No.19310 of 2023

T.P.D.310 Padavedu Vettagiripalayam
Milk Producers Co-operative Society

... Petitioner in W.P.No.19800 of 2023

VS

1.Government of Tamil Nadu
Rep. by its Principal Secretary,
Animal Husbandry, Dairying and Fisheries Department,
Fort. St.George,
Chennai – 600 009.

2.Commissioner for Milk Production and Dairy Development,
Madhavaram Milk Colony,
Madhavaram, Chennai – 600 051.

3.Deputy Registrar (Dairying)
Vengikkal Post,
Tiruvannamalai,
Tiruvannamalai District.



4.T.S.D.607, Vettagiripalayam Milk Producers Co-operative Society,
Rep. by its Secretary,
Vettagiripalayam Village, A.K.Padavedu Post,
Polur Taluk, Tiruvannamalai District.

... Respondents in both writ petitions

5.T.P.D.310 Padavedu Vettagiripalayam Milk Producers
Co-operative Society,
Rep. By its Secretary,
Vettagiripalayam Village,
A.K.Padavedu Post,
Polur Taluk,
Tiruvannamalai District

... Respondent in W.P.No.19310 of 2023

Common Prayer: Writ Petitions filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, praying to call for the records from the 3rd respondent, quash the order of the 3rd respondent dated 25.05.2023 bearing Na.Ka.No.474/00/2023 as illegal, arbitrary and contrary to law and consequently direct the 3rd respondent to cancel the registration of the 4th respondent.

For Petitioners
in all W.Ps : Mr.Balan Haridas



For Respondents :C.Selvaraj
Additional Govt. Pleader for R1 to R3
in W.P.No.19800 of 2023
Mrs.S.Anitha
Special Government Pleader for R1 to R3
in W.P.No.19310 of 2023
Mr.T.Mohan
Senior Advocate
for M/s.L.P.Shanmugasundaram
for R4 (in all Wps)

C O M M O N O R D E R

These writ petitions are filed challenging the order passed by the 3rd respondent rejecting the objection made by the petitioners against the registration of 4th respondent Milk Society.

2. W.P.No.19310 of 2023 is filed by members of TPD310 Padavedu Milk Co-operative Society whose territorial limits are affected by registration of 4th respondent society. The writ petition No.19800 of 2023 is filed by the above said Padavedu Society itself.

3. According to the petitioners, the petitioner's society in W.P.No.19800 of 2023 was formed and registered in the year 1977 and it's area of operation consists of two villages namely Padavedu Village and



Vettagiripalayam Village. It is stated by the petitioner that under Section 9(1) (d) of Tamil Nadu Co-operative Societies Act, 1983, the area of operation of a new Society should not overlap with the area of operation of another registered Society of the same class unless it is permitted by the Registrar. The 3rd respondent herein contrary to the above provision of law registered the 4th respondent Society on 20.01.2021. The area of operation of 4th respondent Society was mentioned as Vettagiripalayam Village, which overlaps with the area of operation of the petitioner in W.P.No.19800 of 2023. Since the registration of 4th respondent and allotment of area of operation was not in accordance with law, the petitioners in W.P.No.19310 of 2023 preferred a writ petition in W.P.No.10284 of 2021, challenging the registration of 4th respondent by the 3rd respondent. The said writ petition was allowed by this Court and as a consequence, the registration in favour of 4th respondent society was cancelled. Subsequently, the 4th respondent preferred a Writ Appeal No.2483 of 2021, wherein, a direction was given to the 3rd respondent to consider the claim of the parties afresh. The petitioner further submitted that the impugned order has been passed by the 3rd respondent without considering the points raised by the writ petitioners and hence the order is challenged in this writ petition.



WEB COPY

4. The learned counsel for the petitioners submitted that the registration of the 4th respondent was made on the belief that the petitioner in W.P.No.19800 of 2023 passed a resolution confining its area of operation to Padavedu Village alone and the same was approved by the 3rd respondent on 28.02.2019. The learned counsel submitted that the alleged resolution copies submitted to the Deputy Registrar was forged one and no such resolution was passed by the petitioner in W.P.No.19800 of 2023. The learned counsel by drawing attention of this Court to the order passed in W.A.No.2483 of 2021 submitted that when the question of forgery was raised before this Court in writ appeal, a direction was issued to the 3rd respondent to consider the claim of the 4th respondent afresh in the light of any new material placed before it. It is the specific submission of the learned counsel that the 3rd respondent without considering the issue of forgery raised by the petitioners simply passed the impugned order by referring to the registration of bye-laws based on the forged resolution and therefore, the order impugned in this writ petition is liable to be interfered with.



5. The learned Senior counsel appearing for the contesting 4th respondent society submitted that the bye-laws of the petitioner in W.P.No19800 of 2023 was amended confining its territorial limits to Padavedu Village and the said amendment was registered in the manner known to law by the 3rd respondent by order dated 28.02.2019 and the same has not been challenged by the petitioner in W.P.No.19800 of 2023 by preferring a revision under Section 153 of Co-operative Societies Act. Therefore, as on today the amended bye-laws confining the territorial limits of the petitioners society to Padavedu Village remains valid. Therefore, the 3rd respondent is justified in relying on the same and passing the impugned order. The learned Senior Counsel further submitted that the petitioners have got alternative remedy of revision before the Registrar of Co-operative Societies against the impugned order passed by the 3rd respondent and without availing the alternative remedy, the petitioners have come up with these writ petitions and consequently, the writ petitions are liable to be dismissed.

6. Heard the arguments of Mr.Balan Haridas, learned counsel for the petitioners in both writ petitions and Mrs.S.Anitha, learned



Special Government Pleader for R1 to R3 in W.P.No.19310 of 2023 and Mr.C.Selvaraj, the learned Additional Government Pleader for R1 to R3 in W.P.No.19800 of 2023 and Mr.T.Mohan, the learned Senior counsel for 4th respondent.

7. Section (9) (1) (d) of Co-operative Societies Act, makes it clear that the area of operation of proposed Society or new society shall not overlap with the area of operation of existing registered Society on the same class or category. In the case on hand, according to the petitioners, the petitioner's Society has got area of operation over two villages namely (i) Padavedu Village and (ii) Vettagiripalayam Village. However, the 4th respondent society claims that the petitioner's society passed a resolution amending bye-laws confining its area of operation to Padavedu Village alone and the same has been approved by the Deputy Registrar and in such circumstances, the allotment of Vettagiripalayam Village to 4th respondent Society cannot be said to be against Section 9(1) (d) of Co-operative Society Act.



8. It is the specific case of the petitioner's Society that it has not passed any resolution confining its area of operation to Padavedu Village alone and resolution alleged to have been produced before the Deputy Registrar for amendment of the bye-laws was a forged one. In fact, the said points were raised by the petitioner's Society, earlier in W.A.No.2483 of 2021. The Division Bench of this Court refused to go into the question of territorial limits pleaded by the petitioner on the ground it was not raised before the learned Single Judge earlier. However, the petitioners gave a representation to the 3rd respondent on 06.04.2023 raising the question of forgery specifically. In the representation it is clearly stated by the petitioner that the resolution submitted for amendment of the bye-laws was attested by the then President of the Society but in the signature column his signature was found without his initials. It was also stated that the resolution was counter signed by two other persons who were not members of the society. Therefore, the question of forgery of the resolution was specifically raised before the 3rd respondent by the petitioners by submitting a representation dated 06.04.2023. In the impugned order in reference No.5, the said representation of the petitioner was clearly referred to by the 3rd respondent. However, in the impugned order, there is no discussion regarding the forgery pleaded by



the petitioners. The impugned order simply reads that the bye-laws of the petitioner's Society was amended by a resolution and the same was approved by 3rd respondent on 28.02.2019 and hence under the amended bye -laws, the petitioner's Society has got area of operation only over Padavedu Village. This approach of the 3rd respondent is clearly against the direction given by the Division Bench of this Court in W.A.No.2483 of 2021 where a specific direction was given to the 3rd respondent to consider any new material placed before it. The 3rd respondent should have considered the plea of forgery urged by the petitioners before it and should have given a positive finding with regard to the plea of forgery. Merely, because the amendment to the bye-laws was registered based on a resolution, which is under dispute now, the 3rd respondent should not have assumed that the resolution was validly passed. In the absence of any discussion or finding with regard to the new plea of forgery of the resolution raised by the petitioner in its representation dated 06.04.2023, the impugned order passed by the 3rd respondent is vitiated as he failed to follow the direction of this Court in W.A.No.2483 of 2021.

9. The learned Senior Counsel for the 4th respondent by drawing the attention of this Court to Section 153 of Co-operative Societies



Act submitted that against the impugned order, the petitioners have got alternative remedy of filing a revision.

10. It is settled law that the existence of alternative remedy is not a total bar to entertain a writ petition under Article 226 of Constitution of India, especially, when 3rd respondent failed to follow the positive direction issued by this Court in W.A.No.2483 of 2021. In such circumstances, the impugned order deserves to be set aside.

11. Accordingly, both the writ petitions are allowed by setting aside the impugned order passed by the 3rd respondent. The matter is remanded back to the file of 3rd respondent with a direction to consider the plea of forgery of resolution raised by the petitioner on merits and to pass orders afresh as per the direction of this Court in W.A.No.2483 of 2021. Connected WMP.Nos.18564 and 19117 of 2023 are closed.

10.07.2023

.
Index : Yes / No
NCC : Yes / No
ub



WEB COPY



11

S.SOUNTHAR, J.

ub

Pre-Delivery Order made in
W.P.Nos.19310 and 19800 of 2023

10.07.2023
(1/2)



WEB COPY

