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W.P.No.34984 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.01.2023

CORAM :

The Hon'ble Mr.JUSTICE M.SUNDAR

W.P.No.34984 of 2022
and
W.M.P.No.34421 of 2022
in
W.P.No.34984 of 2022

R.B.Palanivel
President
Thirukazhikundram Milk Producers Cooperative
Sangam Limited G 1549
No.39, North Street
Ruthiran Koil, Thirukazhikundram
Kancheepuram District.

.. Petitioner

Vs.

1. The Additional Milk Commissioner
(Additional Incharge)
Milk Production and Dairy Development Department
TCMPF Limited
Aavin Illam
3A, Pasumpon Muthuramalingar Salai
Nandanam, Chennai-600 035.

2. Deputy Registrar (Milk Development) of
Cooperative Societies
Kancheepuram District.

.. Respondents



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Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the entire records which culminated in the impugned communication bearing Na.Ka.No.13644/M1/2016-1 dated 05.12.2022 on the file of the first respondent insofar as the petitioner is concerned, quash the same.

For Petitioner : Mr.P.Ganesan
For Respondents : Mr.S.Ravikumar
Special Government Pleader

ORDER

In the captioned main writ petition, a 'notice dated 05.12.2022 bearing reference Na.Ka.No.13644/M1/2016-1 issued by the first respondent calling upon the writ petitioner and 10 others to participate in a personal hearing' [hereinafter 'impugned notice' for the sake of convenience and clarity] has been called in question.

2. To be noted, writ petitioner is noticee No.1 in impugned notice. Subject matter of captioned writ petition pertains to a co-operative society which goes by the name 'திருக்கழுக்குன்றம் பால் உற்பத்தியாளர்கள் கூட்டுறவு சங்கம்' [hereinafter 'said Society' for the sake of convenience



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and clarity].

3. Learned counsel for writ petitioner submitted that the second respondent - Deputy Registrar of Co-operative Societies, based on an Audit report initiated proceedings under Section 81 of 'Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983)' [hereinafter 'said Act' for the sake of convenience and clarity] intimating the same by way of communication calling upon the writ petitioner to appear for an enquiry. It is further submitted that the writ petitioner appeared for such enquiry and gave his explanation but proceedings under Section 87 of said Act (Surcharge Proceedings) were initiated. Charges were framed and ultimately, the second respondent based on an enquiry report returned a finding vide order dated 12.05.2016 that at least seven charges levelled against the writ petitioner stood proved. Learned counsel for writ petitioner submits that this order dated 12.05.2016 made by the second respondent has been challenged under Section 153 of said Act vide C.M.A.No.2 of 2017 on the file of Principal District Judge's Court at Chengalpattu. Pending challenge to the order of second respondent, the impugned notice has been issued *inter alia* for disqualification proceedings



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under Section 36 of said Act and this is impermissible is learned counsel's say.

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4. Owing to the narrow compass of the captioned writ petition, this writ Court directed Mr.S.Ravikumar, learned Special Government Pleader to accept notice on behalf of both respondents. To be noted, learned Special Government Pleader was ready with instructions and was instructed by a competent officer. Therefore, the captioned main writ petition was taken up with the consent of both sides.

5. Learned Special Government Pleader / State counsel, on instructions, submits that impugned notice is the second enquiry notice qua Section 36 of said Act and on 29.12.2022 at 3.00 p.m. out of 11 noticees, the writ petitioner alone appeared. This submission is recorded but it may not be necessary to go into this aspect further as the first noticee who is a former President of said Society alone is before this Court.



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6. Before proceeding further, this writ Court deems it appropriate to extract and reproduce Section 153 of said Act. Section 153 of said Act reads as follows:

'153. Revision.- (1) The Registrar may of his own motion or an application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of Section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a proceeding in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and if, in any case, it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly.

Provided that every application to the Registrar or the Government for the exercise of the powers under this Section shall be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.



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(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representations.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof

(4) The Registrar or the Government may award costs in any proceedings under this Section to be paid either out of the funds of the society or by such party to the application for revision as the Registrar or the Government may deem fit.'

7. A careful perusal of Section 153 of said Act shows that the revision lies to the Registrar but there is nothing to demonstrate how the learned Principal District Judge, Chengalpattu is in seizin of the matter. However, it may not be necessary to delve into that aspect of the matter, as the simple and lone point urged by learned counsel for writ petitioner is, pending challenge to the order of second respondent dated 12.05.2016 confirming at least seven charges, impugned notice of hearing qua proceedings under Section 36 of said Act cannot be issued. A careful perusal of the aforementioned provisions brings to light that there is no bar for Section 36 proceedings being initiated pending revision qua proved



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charges / surcharge proceedings. If at all and if that be so, it is for the writ petitioner to move a suitable interlocutory application in CMA that is said to be pending before learned Principal District Judge, Chengalpattu. Not having done that, no case has been made out for interfering with the impugned notice in the captioned writ petition.

8. Learned State counsel adds that challenge in CMA.No.2 of 2017 is only qua enquiry report under Section 81 of said Act and surcharge proceedings under Section 87 of said Act, whereas the impugned notice pertains to Section 36 of said Act i.e., disqualification. There is no difficulty in accepting this submission, as already alluded to supra, there is no bar qua one another.

9. This writ Court is not inclined to interfere qua impugned notice. The captioned writ petition fails but it is made clear that it is open to writ petitioner to move a suitable interlocutory application in C.M.A.No.2 of 2017 said to be pending on the file of Principal District Judge's Court, Chengalpattu, if so advised and if so desired. If the writ petitioner chooses



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to do so, it is open to the learned Principal District Judge, Chengalpattu to consider the same on its own merits and in accordance with law but this again is subject to the delineation of Section 153 of said Act as already alluded to supra.

10. Captioned Writ Petition fails and the same is dismissed. Consequently, connected Writ Miscellaneous Petition is also dismissed. There shall be no order as to costs.

03.01.2023

Index: Yes/No
Speaking / Non-speaking order
Neutral Citation : Yes / No

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