



W.P(MD)No.3375 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.3375 of 2019

M.Baskar

... Petitioner

Vs.

1.The Registrar of Cooperative Societies,
Chennai.

2.The Deputy Registrar,
Tamilnadu Government Fisheries Department,
Beach Road, Thoothukudi.

3.The President,
FTN-36, Siluvaipatti Fishermen Cooperative Society,
Siluvaipatti, Thoothukudi.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 05/02/2019 issued by the 3rd respondent and quash the same and consequently direct the respondents to allow the petitioner to continue as Member of the 3rd respondent society.



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For Petitioner : Mr.C.Jeganathan

For Respondents : Mr.A.Sivanu Pandian,
Government Advocate.

ORDER

Heard the learned counsel on either side.

2.By the impugned communication passed by the third respondent, the petitioner has been expelled from the third respondent society. The third respondent society is Fishermen Cooperative Society. The society passed a resolution holding that the petitioner is not a fisherman. Challenging the said decision, this writ petition has been filed.

3.I entertained a doubt regarding the maintainability of the writ petition. The learned counsel for the petitioner draws my attention to Section 25 of the Tamil Nadu Cooperative Societies Act, 1983. The said provision reads as follows:-

“25. Expulsion.__(1) Any member of a registered society who has acted adversely to the interests of the society may be expelled upon a resolution of the general body passed at a special meeting convened for the purpose by the votes of not less than two-thirds of the total



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number of the members present and voting at the meeting. The quorum for such special meeting shall be -

(i) in the case of societies having membership not exceeding one thousand, not less than one-fourth of the total membership, or one hundred members, whichever is less;

(ii) in other cases two hundred members:

Provided that no such special meeting shall be called by the board except upon the requisition in writing by not less than one-fourth of the total number of members of the society or twenty-five members, whichever is less.

(2) No member shall be expelled under sub-section (1) without being given an opportunity in the manner prescribed of making his representations and until the resolution referred to in that sub-section is approved by the Registrar. A copy of the resolution expelling the member as approved by the Registrar shall be communicated to the member.”

4.The above provision is not applicable. It applies only in those cases where a member is expelled on the ground that he had acted adversely to the interest of the society. The relevant provision is Section 21 of the Act. It is reads as follows:-

“21. Qualifications for membership of society.__(1) (a)

Subject to the provisions of Section 23-

(i) any individual competent to contract under section 11 of the Indian Contract Act, 1872 (Central Act IX of 1872),



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(ii) any other registered society,

(iii) the Government, and

(iv) any body of persons whether incorporated or not and whether or not established by or under any law, if such body is approved by the Government in this behalf by general or special order, shall be eligible for admission as a member of a registered society:

Provided that the individual or the registered society or the body of persons referred to in items (i), (ii) and (iv) shall possess such further qualifications as may be specified in the rules or the by-laws:

Provided further that a Hindu undivided family as such shall not be eligible for admission as a member of a registered society:

Provided also that persons who are minors or of unsound mind may be admitted as members of such class of registered societies as may be prescribed and such members shall possess only such privileges and rights of members and be subject only to such liabilities of members as may be prescribed:

Provided also that no individual shall be eligible for admission as a member of any financing bank or apex society, except as an associate member.

(b) Notwithstanding anything contained in this Act or in any other law for the time being in force, every individual member other than an associate member of every financing bank and every apex society shall cease to be a member of such bank or society, as the



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case may be, on and from such date as the Government may, by notification, specify and such individual member shall be entitled to receive his share or interest in the capital and other moneys due to him in such manner and within such time as may be prescribed.

(2) (i) In the case of every registered society, every individual eligible for admission as a member of any such society under the provisions of this Act, the rules and the by-laws of the society shall , on application made in such form and in such manner as may be prescribed, be admitted by the board or by the general body, where there is no board as a member of the society with effect from the date of receipt of such application in the office of such society:

Provided that the board or the general body, as the case may be, may, for good and sufficient reasons to be recorded in the minutes of the meeting at which the application for admission is considered, refuse admission to any individual and the decision of the board or the general body, as the case may be, shall be communicated to the individual:

Provided further that if the decision of the board or the general body, as the case may be, on the application is not communicated to the individual within a period of sixty days from the date of receipt of the application in the office of the society, the individual shall be deemed to have been admitted as a member of such society, on the sixtieth day after the date of receipt of the application in the office of the society.

(ii) Notwithstanding anything contained in clause (i), or in any



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other provision of this Act, the Registrar may, either suo motu or on application at any time, by order and after recording the reasons in writing, remove any individual deemed to have been admitted as a member of the society under clause (i) from such membership if such individual is not eligible to be a member of such society under the provisions of this Act, the rules and the by -laws of the society:

Provided that an order under this clause shall be passed within such period as may be prescribed.

(iii) No order under clause (ii) shall be passed without giving a reasonable opportunity of being heard to the parties concerned.

(3) No member of a registered society shall exercise the rights of a member unless and until he has made such payment to the society in respect of membership or acquired such interest in the society as may be specified in the rules or the by-laws within such time as may be prescribed:

Provided that no member in respect of whom a proceeding under clause (ii) of subsection (2) is pending shall be eligible to exercise the rights as a member till the termination of such proceeding.”

5.If according to the third respondent, the petitioner did not have the qualification to become a member of the society, then that issue will have to be decided only by the Registrar and not by the President of the society. The learned counsel for the petitioner is right in his contention that the impugned



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order has been passed without jurisdiction. Breach of the statutory provision is apparent. In such cases, the Writ Court can definitely interfere. I, therefore, set aside the impugned order. The grounds on which the impugned order stands quashed are two fold. (a) It has been passed without putting the petitioner on notice and thus, there has been a clear violation of principle of natural justice. (b) It is contrary to Section 21 of the Act, whereby the Registrar alone will have the authority to remove the petitioner from the membership.

6.The writ petition stands allowed. No costs. Consequently connected miscellaneous petitions are closed.

02.01.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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G.R.SWAMINATHAN, J.

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