



W.P(MD)No.16347 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.16347 of 2023 and
WMP(MD) No.13685 & 13686 of 2023

M.Xavier Manoharan

... Petitioner

Vs

**1.The Commissioner,
Fisheries and Fishermen Welfare Department,
Nandanam,
Chennai -35.**

**2.The Deputy Director,
Fisheries and Fishermen Welfare Department,
Kanyakumari Region,
Nagercoil,
Kanyakumari District.**

**3.The Assistant Director,
Fisheries and Fishermen Welfare Department,
Nagercoil,
Kanyakumari District.**

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified, to call for records relating to the impugned proceedings of the first



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respondent herein in vide Na.Ka.No.12454/D1/2023 dated 23.06.2023 and the order passed by the third respondent in vide Na.Ka.No.2485/E/2021, dated 20.02.2023 and quash the same.

(Prayer amended vide Court order dated 11.08.2023 in WMP(MD) No.15374/2023 in WP(MD) No. 16347/2023 by BPJ)

For Petitioner :Mr.Aayiram K.Selvakumar
For Respondents :Mrs.D.Farjana Ghoushia
Special Government Pleader

ORDER

The petitioner, a President of Y-62 Pozhikarai Fishermen Co-operative Society, Pozhikarai has filed this writ petition, as against the order passed by the first respondent on the appeal preferred by this petitioner under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983.

2.The case of the petitioner is that Y-62 Pozhikarai Fishermen Co-operative Society, Pozhikarai is a registered Society and governed by the Tamil Nadu Co-operative Societies Act, 1983. The Society is managed by the elected Board members with its President as its administrative Head. One Melkiyas, a member of the



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Society has raised a dispute with regard to the election conducted in the year 2019 and filed a petition before the Committee constituted under the administration of Hon'ble Justice R.S.Ramanathan. For that proceedings, the petitioner, in the capacity of the President of the Society has engaged an Advocate and has also paid a sum of Rs.1,00,000/- as remuneration for the Advocate to deal with the election dispute, from the Society fund and it has been paid without obtaining prior permission from the Assistant Director of Fisheries and Fishermen Welfare Department, Nagercoil. Therefore, the respondents have initiated proceedings under Section 82 of the Tamil Nadu Co-operative Societies Act, 1983 and proceeded further under Section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983, thereby, the petitioner and six other members were disqualified from their positions and removed from the Society. Aggrieved over the same, the petitioner has filed this writ petition.

3.The learned counsel appearing for the petitioner submits that in the order passed by the third respondent/the Assistant



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Director, Fisheries and Fishermen Welfare Department, Kanyakumari District in Na.Ka.No.8653/E1/2021, dated 17.02.2023, a liability has been fixed as against the Board members individually and jointly and the petitioner was directed to pay a sum of Rs.1,00,000/-with 18% interest to the Society. Accordingly, the petitioner has also remitted the amount in the account of Central Co-operative Bank on 02.03.2023. However, the second respondent/the Deputy Director, Fisheries and Fishermen Welfare Department has passed an order in Na.Ka.No.2485/E/2021 dated 20.02.2023, under Section 36(1) of the Tamil Nadu Co-operative Societies Act, 1983, disqualifying the petitioner and other six members from the society and also removing them from the Society. According to the learned counsel, the said order has been passed without any opportunity to the petitioner and other members. Therefore, the petitioner along with other members have filed a writ petition in WP(MD) No.5148 of 2023, challenging the order passed by the second respondent in in Na.Ka.No.2485/E/2021 dated 20.02.2023. Based on the representation of the Additional



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Government Pleader in that writ petition that proper notice was served upon the petitioner, this Court, by order dated 15.03.2023 has set aside the order of the second respondent insofar as the other members are concerned and permission was granted to the petitioner to file an appeal under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. Accordingly, the petitioner has preferred an appeal before the first respondent under Section 152 of the Tamil Nadu Co-operative Societies Act, 1983. In the meantime, the petitioner has filed a review application before this Court in Review Application(MD) No.64 of 2023 that no notice was issued to this petitioner before passing the order under Section 36(1) of the Act. This Court, by order dated 28.04.2023 closed the review application filed by the petitioner on the ground that the petitioner has preferred an appeal before the first respondent/Appellate Authority. Subsequently, the appeal preferred by the petitioner was dismissed by the first respondent in Na.Ka.No.12454/D1/2023, dated 23.06.2023 and the same is under challenge in this writ petition.



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4. According to the learned counsel, the issue with regard to the requirement of notice under Section 36(2) of the Tamil Nadu Co-operative Societies Act, 1983 has not been considered by the first respondent in the order impugned in this writ petition. The learned counsel states that Section 36(2) of the the Tamil Nadu Co-operative Societies Act, 1983 mandates a notice before taking any decision as required under Section 36(1) of the the Tamil Nadu Co-operative Societies Act, 1983. However, in this case, without providing any opportunity to this petitioner, the entire exercise has been completed and the order of removal of the petitioner from the Society has been passed behind his back.

5. Per contra, the learned Special Government Pleader appearing for the respondents by referring the counter affidavit submits that this petitioner has paid a sum of Rs.1,00,000/- towards litigation expenses without obtaining administrative sanction. Therefore, this violation under Rule 84 of the Tamil Nadu Co-operative Societies Rules, 1988 has to be treated as



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misappropriation. Therefore, the respondents have conducted an enquiry under Section 82 of the Act and passed an order of termination as contemplated under Section 36(1) of the Act. According to the learned Special Government Pleader, notice was issued to the petitioner during the enquiry proceedings. This issue has already been decided by this Court in Review Application No. 64 of 2023, wherein, permission was granted to the petitioner to work out his remedy in the appeal preferred by him before the first respondent. Therefore, the petitioner cannot raise this issue that the petitioner was not provided an opportunity before taking a decision under Section 36(1) of Act. The learned Special Government Pleader refers Rule 84 of Tamil Nadu Co-operative Societies Rules, 1988 and the same is extracted as under:-

84.Society not to incur expenditure towards election dispute- No Society shall incur any expenditure, towards any dispute relating to, or in connection with, any election without the previous sanction of the Registrar.



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6.This Court considered the rival submissions made and also perused the materials placed on record.

7.The petitioner, when he served as a President of the Society said to have spent a sum of Rs.1,00,000/- towards litigation expenses from the Society fund for the election dispute which has been filed as against the Society. The allegation as against the petitioner is that he has spent the amount without administrative sanction. It is admittedly in violation under Rule 84 of the Rules Therefore, the respondents have conducted an enquiry as contemplated under Section 82 of the Act and proceeded with under Section 36(1) of the Act. Pursuant to the action taken by the respondents, the petitioner was disqualified from his position and removed from the Society. The petitioner has taken a stand that as directed by the third respondent, the petitioner has remitted a sum of Rs.1,00,000/- to the account of Central Co-operative bank on 02.03.2023. Another contention of the petitioner is that no notice has been issued to the petitioner before passing the order under



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Section 36(1) of the Act. In the first round of litigation in W.P(MD)No.5148 of 2023, a specific stand has been taken by the respondent that notice was provided to the petitioner. Accordingly, that writ petition was dismissed by this Court on 15.03.2023 with a liberty to the petitioner to work out his remedy before the first respondent/the Appellate Authority. Accordingly, the petitioner filed an appeal before the first respondent and also filed a review application challenging the order passed by this Court in WP(MD) No.5148 of 2023 before this Court that a wrong information has been provided by the respondent in that writ petition that the notice was issued to the petitioner, when they have not really issued any notice to the petitioner. Since the petitioner has already filed an appeal before the first respondent/Appellate Authority, this Court has closed the Review Application and permitted the petitioner to work out his remedy before the first respondent in the pending appeal by order dated 28.04.2023. However, apparently, the first respondent has passed the order impugned in this writ petition, without considering the requirements as contemplated under Section 36(2) of the Act.



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8.In view of the foregoing discussions and reasons, this writ petition is allowed. The impugned orders passed by the first and third respondents in Na.Ka.No.12454/D1/2023 dated 23.06.2023 and Na.Ka.No.2485/E/2021, dated 20.02.2023 are hereby set aside and the matter is remitted back to the third respondent for fresh consideration, after complying with the requirements as contemplated under Section 36(2) of the the Tamil Nadu Co-operative Societies Act, 1983. No Costs. Consequently connected Miscellaneous Petitions are closed.

14.08.2023

NCC :Yes/No
Index :Yes/No
Internet:Yes
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B.PUGALENDHI, J.

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Order made in
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