



W.A.(MD) No.1374 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.08.2023

CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY**

**W.A.(MD) No.1374 of 2023
and
C.M.P.(MD)No.10656 of 2023**

1.M.K.Sridharan
2.N.Govindaraj

... Appellants/Petitioners

-vs-

1.The Joint Registrar Co-operative Societies,
Tamil Nadu Co-operative Department,
Ramanathapuram District,
Ramanathapuram.

2.The Deputy Registrar Co-operative Societies,
Tamil Nadu Co-operative Department,
Paramakudi Circle, Paramakudi,
Ramanathapuram.

... Respondents /Respondents

PRAYER: Writ Appeal has been filed under Clause 15 of Letters Patent to set aside the order, dated 02.06.2023 made in W.P.(MD)No.10949 of 2023 on the file of this Court.

For Appellants : Mr.Raja. Karthikeyan

For Respondents : Mr.T.Villavankothai
Additional Government Pleader



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JUDGMENT

[Judgment of the Court was made by D.BHARATHA CHAKRAVARTHY, J.]

This Writ Appeal is filed aggrieved by the order of the learned Single Judge dated 02.06.2023 made in W.P.(MD)No.10949 of 2023 by which the writ petition filed by the petitioners was dismissed. In the writ petition, the petitioners challenged the order of the Joint Registrar of Co-operative Societies, Ramanthapuram, dated 07.10.2020 by which he granted permission/sanction to initiate criminal proceedings against the petitioners.

2. The first petitioner is a retired Sub Registrar of Co-operative Societies and he has reached the age of superannuation as on 31.05.2016. The second petitioner was a Secretary of a Co-operative Society and reached the age of superannuation as on 31.01.2018. Whiles after their retirement, permission is granted for initiating criminal prosecution against them. It is the contention of the petitioners that as per Section 164(3) of the Tamil Nadu Co-operative Societies Act, 1983, when sanction is granted, a reasonable opportunity has to be given to the persons concerned and in this case the impugned order of sanction is passed without giving any opportunity. Therefore, the petitioners challenged the said order.



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3. The learned Single Judge found that sanction was not necessary at all in respect of the instant case as the petitioners were to be prosecuted for the offences under the Indian Penal Code and therefore, there was no question of grant of any opportunity before passing the sanction order and dismissed the writ petition. Aggrieved by which, the present writ appeal is filed.

4. *Mr.Raja. Karthikeyan*, learned counsel appearing on behalf of the appellants would submit that when a sanction order has been passed in exercise of Section 164(3) of the Tamil Nadu Co-operative Societies Act, 1983 and when the said provision clearly makes it mandatory to give a reasonable opportunity to the individual to represent his case, the impugned order is liable to be quashed. He would submit that more so when the impugned order is passed much after their retirement, the petitioners have valid reasons to show cause and have facts to bring to the knowledge of the Joint Registrar before any prosecution is launched against them. The learned counsel would further submit that the conduct of 81 enquiry against them itself was unwarranted after their retirement.



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5. *Mr.T.Villavankothai*, the learned Additional Government Pleader appearing on behalf of the respondents would submit that after due application of mind, a formal permission is granted. There was no question of hearing the petitioners, who are accused of criminal offences before launching of the prosecution.

6. We have considered the submissions made on either side and perused the material records of the case.

7. Chapter XVIII of the Tamil Nadu Co-operative Societies Act, 1983 makes and enumerates certain acts as offences punishable under the Co-operative Societies Act. When the offences are defined and punishment are provided from Sections 157 to 163 of the Co-operative Societies Act, Section 164 provides the manner in which, the cognizance of the offences can be taken. While Section 164(1) holds that no Court inferior than that of a Metropolitan Magistrate or a Judicial Magistrate shall try the offences. Section 164(2) makes the offence as non cognizable. In case for prosecuting the persons in respect of the said non-cognizable offences, a further provision of previous sanction is provided under Section 164(3). When the petitioners are to be prosecuted only for the offences under the Indian Penal Code, the



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same is absolutely not applicable. When the sanction itself was only superfluous and unnecessary, there was no question of hearing the petitioners. The petitioners being proposed accused, there can be no principles of natural justice of hearing them before the registration of the case or before investigation. The petitioners being accused of criminal offences, can have a right of audience only during the trial and not before. Therefore, no exception whatsoever can be taken for the findings of the learned Single Judge and the conclusion arrived at.

8. In the result, the Writ Appeal stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[S.S.S.R., J.] [D.B.C., J.]

25.08.2023

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

1. The Joint Registrar Co-operative Societies,
Tamil Nadu Co-operative Department,
Ramanathapuram District,
Ramanathapuram.



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2.The Deputy Registrar Co-operative Societies,
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