



W.P.(MD)No.6375 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.6375 of 2015

and

M.P(MD)No.2 of 2015 &

W.M.P(MD)No.3683 of 2018

1.M.Murugan

2.R.Nagarajan

3.A.Rajendran

4.P.Rajendran

5.N.S.Moorthy

6.M.Vengateswari

7.R.Parvathy

... Petitioners

Vs.

1.The Government of Tamil Nadu,
Represented by the Principal Secretary to Government,
Co-Operation, Food and Consumer Protection Department,
Fort St. George,
Chennai - 9.

2.The Registrar Of Co-operative Societies,
N.V. Natarajan Maligai,
170, E.V.R Periyar High Road,
Kilpauk, Chennai – 10.



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3.The Joint Registrar Of Co-Operative Societies,
Kanyakumari Division,
Nagercoil,
Kanyakumari District.

4.The Deputy Registrar of Cooperative Societies,
Nagercoil Region,
Cooperative Societies,
Nagercoil, Kanyakumari District.

5.The Sub Registrar Of Co-operative Societies,
Field Office, Rajakkamangalam,
Kanyakumari District.

6.Priyatharshini ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the Proceedings of the Deputy Registrar dated 15.04.2015 in Na.Ka.No. 1063/2014/SaPa and quash the same and all consequential proceedings and actions.

For Petitioners : Mr. N.Dilip Kumar

For Respondents : Mr. D.Gandhiraj
Special Government Pleader
for R.1 to R.5

No Appearance for R.6

ORDER

Heard the learned counsel on either side.



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2. The writ petitioners are office bearers and members of the Board of Y.160 Vadaseri Cooperative Stores Limited. By the impugned order dated 15.04.2015, the Deputy Registrar of Co-operative Societies, Nagercoil disqualified the petitioners herein. Under Section 34 (1) (b) (iii) and 34 (2) of Tamil Nadu Co-operative Societies Act, 1983. The impugned order was preceded by notice dated 16.03.2015. Even though the learned counsel appearing for the petitioners would strongly contend that the impugned proceedings are vitiated because no notice was issued to the Board as contemplated by Section 34 (6) I reject the said contention. The question of issuing independent notice to the Board would arise when a member of the Board is sought to be disqualified. In this case all the officer bearers and members comprising the Board were sought to be disqualified. When notice was issued to all the members of the Board, the question of issuing an independent notice to the Board will not arise at all. This contention advanced by the petitioners' counsel does not have any merit.

3. Section 34 which provides for disqualification of membership of Board is fairly stringent. Section 34(1) (b) (iii) states that a person against whom any decree, decision, award, order or certificate referred to



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in Section 143 has been obtained would not be eligible for being elected as a member of a Board of any registered society. Section 34(5) (b) states that even if proceedings under Section 87 of the Act are pending, that would also operate as disqualification.

4. In this case, admittedly surcharge order has been passed against the petitioners on 14.01.2015. Questioning the same, the petitioners filed C.M.A(CS)Nos. 5 and 6 of 2015 before the Principal District Court, Nagercoil, Kanyakumari. The petitioners failed to obtain any interim order from the Co-operative Tribunal. Therefore, the impugned order was rightly passed and cannot be interfered with.

5. Be that as it may, the fact remains that the petitioner was successful in obtaining an interim order of stay before this Court when the matter was admitted. Since 22.04.2015 till date, the interim order is holding good. The learned counsel appearing for the petitioners points out that the interim application filed by the petitioners was ordered to be taken up along with the main appeal and the main appeal itself was adjourned from time to time on the ground that the records were awaited. Arguments were already advanced. The matter was posted for order on 16.06.2022. Till date the orders have not been pronounced. The case



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stands adjourned to 03.10.2023. It is well settled that an appeal is a continuation of the original proceeding. The appeals filed by the petitioners herein could have been disposed in June / July 2022 itself. No person shall suffer prejudice on account of the act committed by the Court. If the Civil Miscellaneous Appeals filed by the petitioners had been disposed of one way or other, the issue would have already attained quietus by now. The impugned order rests entirely on the surcharge order passed under Section 87 of the Act. The Interlocutory Application filed by the petitioner in the co-operative appeal ought to have been taken up and disposed of. The appeals also should have been disposed of shortly thereafter. The parties cannot suffer on account of Court's delay. It is for this reason, instead of dismissing the writ petition, I dispose it of in the following terms:

- a) The order impugned in this writ petition is not interfered with for the present
- b) It shall abide by the outcome of C.M.A(CS)Nos. 5 and 6 of 2015.

The learned Principal District Judge, Nagercoil, Kanyakumari District shall pronounce judgment in C.M.A(CS)Nos. 5 and 6 of 2015 on



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03.10.2023 and the order copy shall also be issued on the same date.

There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

19.09.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
MGA

To

- 1.The Principal Secretary to Government,
Government of Tamil Nadu,
Co-Operation, Food and Consumer Protection Department,
Fort St. George,
Chennai - 9.
- 2.The Registrar Of Co-Operative Societies,
N.V. Natarajan Maligai,
170 E.V.R Periyar High Road,
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- 3.The Joint Registrar Of Co-Operative Societies,
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- 4.The Deputy Registrar of Cooperative Societies,
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5.The Sub Registrar Of Co-Operative Societies,
Field Office, Rajakkamangalam,
Kanyakumari District.

Copy to:

The Principal District Judge,
Nagercoil,
Kanyakumari District.



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G.R.SWAMINATHAN,J.

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