



W.P(MD)No.23902 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.02.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.23902 of 2022

and

W.M.P(MD)No.17969 of 2022

Alphones

... Petitioner

Vs

1.The Regional Joint Registrar of
Co-operative Society,
Kanyakumari Region,
Collector Office New Building, 2nd Floor,
Nagercoil,
Kanyakumari District.

2.The Deputy Registrar Co-operative Society,
Thuckalay Circle,
Nagercoil,
Kanyakumari District.

3.The Filed Officer / Co-operative Registrar,
3921, Pechiparai Primary Agricultural
Co-operative Society,
Pechiparai Post,
Kanyakumari District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order of suspension passed by the first respondent



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herein in his proceedings vide Na.Ka.No.4302/2022 sapa dated 13.09.2022 and quash the same order and consequently direct the respondent not to disturb the position in the society.

For Petitioner : Mr.Aayiram K.Selvakumar

For Respondents : Mr.A.Sivanupandian
Government Advocate

ORDER

Heard the learned counsel on either side.

2.The writ petitioner was elected as a Vice President of 3921, Pechiparai Primary Agricultural Co-operative Society. Following the demise of the president, he became in-charge President. It is a primary Society. By the impugned order dated 13.09.2022, he was suspended. Challenging the same, the present writ petition has been filed.

3.The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to quash the order impugned in the writ petition.

4.The first respondent has filed a detailed counter affidavit and the learned Government Advocate took me through its contents. The stand of the first respondent is that the impugned order does not call for interference.



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5.I carefully considered the rival contentions and went through the materials on record. The impugned order has been passed primarily on the ground that the petitioner had resisted the efforts of the Department to post one T.Vimala Bai as Secretary of the Society. It is not in dispute that at present the said T.Vimala Bai has been allowed to join. The stand of the petitioner has been that the said T.Vimala Bai was working as Secretary in an 'A' class Society and that she has to be paid a higher sum as salary. In order to safeguard the financial interest of the Pechiparai Primary Agricultural Co-operative Society, the petitioner chose to make one Society employee, by name, Wilson to hold additional charge of the post of Secretary. The stand of the petitioner may be right or wrong but his aim was only to safeguard the Society's revenue interest. The secretary of an 'A' class Society is paid a sum of Rs.79,710/- whereas the Secretary of 'C' class is paid only a sum of Rs.31,880. Pechiparai Primary Agricultural Co-operative Society is a 'C' class Society.

6.I therefore have no doubt in my mind that the petitioner did not want Pechiparai Primary Agricultural Co-operative Society to spend more money than required on the person holding the post of Secretary. Section 76(A) of the Tamil Nadu Co-operative Societies Act, 1983 can be invoked to suspend the elected office bearer only in certain circumstances. Such 76(A) is as follows :



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““76-A.Suspension of President or Vice-President of a registered society under certain circumstances:— (1) Where it is brought to the notice of the Registrar, on a complaint or otherwise, that the President or the Vice-President of a registered society has committed or has been otherwise responsible for misappropriation or breach of trust or gross mismanagement of the affairs of the registered society or committed any offence involving criminal misconduct or moral turpitude and if, in the opinion of the Registrar, there is a prima facie evidence against the President or the Vice- President and the suspension of the President or the Vice-President is necessary in the interest of such society or in the public interest, the Registrar may, by order, place the President or the Vice- President, under suspension for a period not exceeding six months, pending inquiry under [section 81](#) or inspection or investigation under [section 82](#) or investigation into the offence involving criminal misconduct or moral turpitude. (2) Notwithstanding anything contained in sub-section (1), where an action under section 36 has been initiated against the President or the Vice- President, the period of suspension may be extended by the Registrar, from time to time, for the reasons to be recorded in writing, for a further period of six months or till final order is passed under section 36, whichever is earlier.”.

By no stretch of imagination the conduct of the petitioner can be said to attract any of the circumstances set out in the above provision. The first respondent was not justified in suspending the petitioner.

7.The suspension order was passed as early as in September 2022. We are now in February 2023. A substantial part of the suspension period has already expired. The impugned order is vulnerable on yet another ground. Section 76(A) confers the power of suspension only on the Registrar. Of



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course, under Section 3 of the Tamil Nadu Co-operative Societies Act, the Government may appoint any officer of the Government to be Registrar of co-operative societies for the State of Tamil Nadu or any portion of it or for any class or classes or category or categories of registered societies, and may, by general or special order, confer on any other officer of the Government or any officer of anybody corporate owned or controlled by the Government all or any of the powers of a Registrar under this Act. The respondents invoked G.O (2D) No.108 Co-operative Food and Consumer Protection Department dated 31.08.2005 and G.O (2D) 109 dated 31.08.2005 in support of their contention that the impugned order is well within the power of the first respondent. The said Government Orders state that in respect of any primary or central Society, the Joint Registrar of Co-operative Societies can exercise all the powers of Registrar under the Act and the Rules. The aforesaid Government Orders whereby the powers of the Registrar were conferred on the Joint Registrar of Co-operative Societies were issued on 31.08.2005. Section 76(A) of the Act was introduced vide TN Act 13 of 2020 with effect from 26.02.2020.

8.The question that arises for consideration is whether an order passed under Section 3 of the Act would include subsequently conferred powers on the Registrar. A learned Judge of this Court vide order dated 10.08.2021 in W.P(MD)Nos.12476 and 12894 of 2021 had commented Section 76(A) is a



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drastic power which interferes with the democratic process. The Hon'ble

Supreme Court in **(2012) 4 SCC 407 (Ravi Yashwant Bhoir v. Collector)**

observed that any elected official in local self-government has to be put on a

higher pedestal as against a government servant and that for the removal of the

elected official, a very stringent procedure and standard of proof is required.

Of course, I am conscious that the validity of this provision has been

subsequently upheld by the Hon'ble Division Bench in the decision dated

07.10.2021 made in WP No.21652 of 2021 **(D.Krishnamoorthy v. The**

Secretary to Government). When the aforesaid Government Orders conferring

all the powers of the Registrar on the Joint-Registrar in respect of primary or

central Societies were issued, Section 76(A) of the Act was not in the statute

book. In **N.Varadarajan v. State of Tamil Nadu (2001) 4 CTC 339**, the

Hon'ble Division Bench held that Section 3 of the Act cannot be said to be a

piece of delegated legislation. The power of the Government to confer the

powers of the Registrar that are found scattered all over the Act in favour of

certain officers was described as “conditional legislation”. The legislature has

conferred such a power into the Government to distribute such powers for

better working of the Act. From the above discussion found in the decision of

the Hon'ble Division Bench, one can conclude that conferral of the power of

the Registrar on specified officers is an exercise preceded by due application of



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mind. When notification is issued under Section 3 of the Act, it must be understood as encompassing and including only those powers of the Registrar that are then available and not those powers with which the Registrar may be invested in future. While it is open to the Government to confer the power of the Registrar under Section 76(A) of the Act on the Joint Registrar, a specific Government Order is required to be issued. This Court cannot mechanically assume that the G.Os issued in the year 2005 would encompass within their scope the powers subsequently conferred on the Registrar in the year 2020. This is more so because the power under Section 76-A of the Act is exercised in respect of elected officer bearers of the Co-operative Societies. In this view of the matter, I have to hold that the impugned order of suspension is also without jurisdiction.

9.This writ petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

24.02.2023

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

Note: Issue Order Copy on 06.03.2023.



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G.R.SWAMINATHAN, J.

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