



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED: 13.10.2023**

**CORAM**

**THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN**

**W.P.(MD)No.24704 of 2023 AND**  
**W.M.P.(MD)Nos.20882, 20883, 20885 & 20887 of 2023**

A.Velayuthaperumal

... Petitioner

Vs.

1. The Joint Registrar of Co-operative Societies,  
O/o.The Joint Registrar of Co-operative Societies,  
Collector Office Additional Building,  
Nagercoil, Kanyakumari District.
2. The Deputy Registrar of Co-operative Societies,  
O/o.The Deputy Registrar of Co-operative Societies,  
Nagercoil Circle, Nagercoil,  
Kanyakumari District.
3. The Administrator,  
KN.180, The Kanyakumari District Consumers  
Co-operative Wholesale Stores Limited,  
Nagercoil,  
Kanyakumari District.
4. C.John Bright  
(R-4 is impleaded vide order dated 13.10.2023  
in W.M.P.(MD)No.21237 of 2023) ... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned



notice for General Body Meeting dated 04.10.2023 issued by the 3<sup>rd</sup> respondent and quash the Agenda No. 1 and consequential direction to conduct the General Body Meeting scheduled to be held on 04.10.2023 in respect of other Agenda after strictly ensuring the entry of existing members holding identity card issued by the 3<sup>rd</sup> respondent Society with proper identification to the meeting venue with the help of the jurisdictional police and to ensure the law and order and to videograph the entire episode of General Body Meeting.

For Petitioner : Mr.D.Shanmugaraja Sethupathi  
For R-1 & R-2 : Mr.M.Prakash,  
Additional Government Pleader.  
For R-3 : Mr.T.Cibi Chakraborty,  
For R-4 : Mr.M.Mahaboob Athiff

\* \* \*

## ORDER

Heard both sides.

2.KN.180, The Kanyakumari District Consumers Co-operative Wholesale Stores Limited (hereinafter called as 'the Society ') was formed and registered in November 2019. It has 740 individuals and 25 primary societies as its members. An interim Board was constituted and the petitioner



herein is one of its members. Since regular election was not conducted, an official from the Co-operative Department in the rank of Co-operative Sub Registrar was appointed as the Administrator of the Society. When he proposed to convene a general body meeting on 19.10.2022, the petitioner herein filed W.P.(MD)No.23663 of 2022. On 17.10.2022, it was ordered that only the existing members will be allowed to participate in the meeting. Even though there was no restraint on holding the general body meeting, no such meeting was conducted.

3.The Administrator issued notification dated 11.05.2023 proposing to convene the general body meeting on 23.05.2023. Again, the petitioner moved this Court by filing W.P.(MD)No.11925 of 2023. It was disposed of on 18.05.2023 with certain directions. It is stated by the petitioner's counsel that no meeting was convened on 23.05.2023.

4.While so, the third notification was issued by the administrator of the Society on 04.10.2023 proposing to convene the meeting tomorrow (ie.) 14.10.2023. Reiterating



the apprehensions expressed earlier, the present writ petition has been filed.

5.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 grant relief as prayed for.

6.The learned counsel appearing for the administrator submitted that as many as 1197 applications have been received from various individuals and that 10 applications have been received from co-operative societies between 10.01.2021 and 26.07.2022 seeking admission as members of the Society. According to him, by virtue of Second proviso to Section 21(2)(i) of the Tamil Nadu Co-operative Societies Act 1983, these applicants are deemed to have been admitted as members of the Society and that therefore, they will have to be permitted to attend the general body meeting to be held tomorrow. This contention is strongly seconded by the learned counsel appearing for the impleaded respondent. It is stated that the fourth respondent had submitted his application on



30.10.2021 and since he did not hear anything from the Society, he is deeming to have been admitted as a member of the Society by virtue of operation of law. The respondents wanted this Court to dismiss the writ petition.

7.I carefully considered the rival contentions and went through the materials on record. The only question that calls for consideration is the manner of applying the deeming clause set out in the second proviso to Section 21(2)(i) of the Act. Section 21(2) of the Act is as follows:-

*“21(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 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."*



8. Let me first deal with the apprehension expressed by the learned counsel for the petitioner that ineligible members may gain entry by invoking the deeming clause. Section 21(2)(i) of the Act will apply only if the applicant is eligible for admission as a member. If eligibility of the deeming member is questioned, remedy can be obtained by invoking the jurisdiction of Registrar of Co-operative Societies under Section 21(2)(ii) of the Act. Section 21(2)(ii) of the Act enables the Registrar to remove such ineligible members. The statute itself provides for an in-built mechanism. Any aggrieved person can fall back on the said provision.

9. I do not find any merit in the stand of the learned counsel appearing for the impleaded respondent that the issue must be approached in the light of Article 19(1)(c) of the Constitution of India. The said provision confers fundamental right on all citizens to form associations or unions or co-operative societies. Right to form such bodies is one thing whereas right to become a member of an already formed body is another. One cannot be conflated with another. The right to become a member of the Society is a statutory right. One must



fulfill the qualifications that have been prescribed to become a member. This right cannot be elevated to a fundamental right.

10.The statute has provided for a deeming clause with a purpose. Otherwise, any Society will become a closed club. The control will eternally remain in the hands of a few persons. Therefore, the deeming clause will have to be purposively construed. A plain reading of the provision leaves me to conclude that it can be invoked only by those applicants who are eligible for admission as members of the co-operative Society. In other words, their applications must pass muster in terms of the bylaws of the co-operative Society. I sustain the contention of the learned counsel for respondents 2 and 3 that if an ineligible member has sneaked in by invoking the deeming clause, certainly, any aggrieved individual can move the Registrar under sub-clause (ii) of Section 21(2) of the Act. If any such application is filed, it will have to be disposed of as expeditiously as possible after putting the admitted member on notice. I would expect the Registrar to pass final order in such cases within a period of three months from the date of filing of complaint.



11.The Hon'ble Full Bench of the Madras High Court had held that a special officer will not have the power or jurisdiction to enrol new members (**2006 (1) CTC 1 (FB) (K.Nithiyanantham V. State of Tamil Nadu)**). This bar cannot be allowed to be overcome under any circumstance. If I accept the argument of the learned counsel appearing for respondents 2 and 3, then the special officer or administrator after receiving the applications for membership can simply sit over the applications and enable the applicants to become members of the Society by invoking the deeming clause. What cannot be done directly cannot be permitted to be done indirectly.

12.I am conscious that the validity of the deeming clause was upheld by the Hon'ble Division Bench in the decision reported in **2013-3-L.W.20 (M.Arumugam V. State of Tamil Nadu and Others)**. Sub-section (2) of Section 21 of the Act mandates that an individual eligible for membership is entitled to become a member. The formalities of course have to be fulfilled. The Board will have to admit the applicant as member. If there is no Board, this function has to be



discharged by the general body. The admission will relate back to the date of receipt of application in the office of the society.

The Board or the general body can refuse admission. But it can be only for good and sufficient reasons which have to be recorded. The decision has to be communicated to the applicant. If the decision on the application is not communicated within a period of 60 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 the Society on the 60<sup>th</sup> day after the date of receipt of the application in the office of the Society.

13. The question that arises is what happens when there is no Board and the general body has also not been convened. If the deeming clause is applied literally, the consequence will be what has been held illegal in Nithiyanantham case. There is a legal maxim "Lex Non Cogit Ad Impossibilia (the law does not compel a person to do the impossible)". If there is no Board, it is the general body that has to take the call. This is possible only if it is convened. The general body cannot convene itself. The statutory provision envisages that the



decision of the Board should be communicated. If the general body has not been convened, no decision could have been taken. The question of communicating or non-communicating will not arise at all when the general body itself has not been convened. Any legal provision will have to be understood and applied meaningfully. Otherwise, absurd results will ensue. The deeming clause will come into play only if the general body has been convened and the decision taken therein is not communicated to the individual. Of course as and when a general body meeting of the co-operative Society is convened, the applications received earlier will have to be placed before it. If it is not so placed, the deeming clause can be invoked.

14.As and when the general body meeting is convened, it is the duty of the Administrator to place all the applications for consideration of the General Body. The general body must take decision one way or the other. Either it must accept the application or reject it. If the application is accepted, then no one will complain. If the application is rejected, the decision must be communicated within 60 days so that the applicant can take recourse to other remedies under law. If the decision



is not communicated within time, the deeming clause will come into play.

15.I, therefore, hold that since the general body meeting of KN.180, The Kanyakumari District Consumers Co-operative Wholesale Stores Limited has not been convened till date, the question of invoking the deeming clause does not arise at all. This writ petition stands disposed of in the following terms:-

a) The third respondent is directed to conduct the general body meeting as originally notified (ie) 14.10.2023.

b) The administrator shall place the applications for membership before the general body meeting along with other items set out in the Agenda.

c) The existing members alone shall be allowed to participate in the general body meeting.

No costs. Consequently, connected miscellaneous petitions are closed.

**13.10.2023**

NCC : Yes / No  
Index : Yes / No  
Internet : Yes / No  
PMU

**Note : Issue order copy on 19.10.2023.**



**To:**

1. The Joint Registrar of Co-operative Societies,  
O/o.The Joint Registrar of Co-operative Societies,  
Collector Office Additional Building,  
Nagercoil, Kanyakumari District.
2. The Deputy Registrar of Co-operative Societies,  
O/o.The Deputy Registrar of Co-operative Societies,  
Nagercoil Circle, Nagercoil,  
Kanyakumari District.



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W.P.(MD)NO.24704 OF 2023

**G.R.SWAMINATHAN,J.**

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**13.10.2023**