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W.A.No.179 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.A.No.179 of 2022 and

CMP No.1264 of 2022

A.Rajagopalan

Vs.

... Appellant

1. Union of India, rep. by Home Secretary,
Ministry of Home Affairs, North Block,
New Delhi 110 001.
2. The Secretary to Govt. of India,
Legislative Department,
Ministry of Law and Justice,
A-wing, Shastribhawan, New Delhi 110 001.
3. The Joint Secretary to Government of India/
Central Registrar of Cooperative Societies,
Department of Agriculture and Cooperation,
Ministry of Agriculture, Room No130,
KrishiBhawan, New Delhi 110 001.
4. The Repatriate Cooperative Finance and
Development Bank,
Rep. by its Managing Director,
Head Office at No.33, North Usman Road,
T.Nagar, Chennai 600 017.

... Respondents



W.A.No.179 of 2022

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent Act to set aside the order passed by this Court in W.P.No.23985 of 2021, dated 10.11.2021.

For Appellant : Mr.B.Ullasavelan

For Respondents : Mr. M.Karthikeyan,
Central Government Senior Counsel
for respondents 1 to 3.

Mr.A.Ilangovan for fourth respondent

JUDGMENT

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This Intra Court appeal has been filed as against the order passed by the learned Single Judge in W.P.No.23985/2021, dated 10.11.2021, in and by which his claim " *to quash the amendment made by the fourth respondent and registered by the third respondent, vide certification of Registration of Amendment, dated 25.11.2019* ", was dismissed.

2. The learned counsel for the appellant vehemently argued that the appellant is 'A' class voting member of the 4th respondent/ Repatriate Cooperative Finance & Development (REPCO) bank and the amendment to



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Clause 4 of Bye-law of the fourth respondent [by including clause 4(b) as "Individual non-repatriates"] is affecting the rights of the members/repatriates of the bank and hence, the writ petition is maintainable before the Writ Court under Article 226 of the Constitution of India. However, without considering the case of the appellant/writ petitioner in proper perspective, the learned Single Judge has dismissed the writ petition and hence, the order of the writ court is liable to be set aside.

3. Heard the learned counsel for the appellant and the learned counsel for the respondents and we have gone through the materials on record.

4. The appellant is the member of the fourth respondent/REPCO Cooperative Finance and Development bank. Admittedly, the fourth respondent is functioning, as per the provisions of the MSCS Act (Multi State Cooperative Societies Act). Therefore, if the appellant is having grievance over the amendment of the Bye-law, he has to approach the competent Authority seeking his remedy, under the provisions of the above Act. But, without exhausting such remedy by filing statutory appeal, the



petitioner cannot approach the writ court under Article 226 of the Constitution of India to quash the said amendment.

4. Apart from the above, a Larger Bench of this Court in its decision reported in **2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal)**, has decided whether writ will lie against a Co-operative Society and has held as follows:

“21. From the above discussion, the following propositions emerge:-

*(i) If a particular co-operative society can be characterised as a 'State' within the meaning of **Article 12** of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be 'an authority' within the meaning and for the purpose of **Article 226** of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition;*

*(ii) Applying the tests in **Ajay Hasia** it is held that a co-operative society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of **Article 12** of the Constitution;*

*(iii) Even if a society cannot be characterised as a 'State' within the meaning of **Article 12** of the Constitution, a Writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a 'person' or 'an authority' within the meaning of **Article 226** of the Constitution and what is material*



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is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a 'State' would not normally be amenable to the writ jurisdiction under [Article 226](#) of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterised as a 'State' a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterised as a 'State', the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under [Article 226](#) of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in [M.Thanikkachalam v. Madhuranthagam Agricultural Co-operative Society](#), 2000 (4) CTC 556 is no longer good law, in view of the decision of the seven-Judge Bench of the Supreme Court in [Pradeep Kumar Biswas](#) case and the other decisions referred to here before.”



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5. Therefore, in the light the above said decision of the Larger Bench of this Court, writ petition is not maintainable against the Co-operative Societies. Therefore, we are of the view that the claim of the appellant/writ petitioner as against the decision of the co-operative society is not maintainable and hence, we are not inclined to interfere with the order passed by the learned single Judge.

6. Accordingly, this writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed. Liberty is granted to the appellant to agitate the matter before the appropriate Forum.

(D.K.K.J.) (K.B.J.)

13.06.2024

Internet: Yes/No
Index : Yes/No
mst

To

1. The Home Secretary, Union of India,
Ministry of Home Affairs, North Block,
New Delhi 110 001.



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