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W.P.No.9633 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.10.2024

CORAM

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

W.P.No.9633 of 2024

and

W.M.P.Nos.10667 & 10669 of 2024

N.V.Rajendran

.... Petitioner

Vs

1.Registrar of Co-operative Societies,
170 , N.V.Natarajan Maligai,
Poonamalli High Road,
Kilpauk, Chennai – 600 010.

2.Joint Registrar of Co-operative Societies,
Dharmapuri District - 636 705.

3.Deputy Registrar of Co-operative Societies,
Dharmapuri District - 636 705.

4.The Special Officer,
KK 168, Primary Agricultural Co-Operative
Credit Society, Naripalli (P.O)
Harur (T.K) ,
Dharmapuri (D.T) – 636 907.

.... Respondents

Prayer:- Writ Petition filed under Article 226 of Constitution of India for the issuance of Writ of Certiorari, calling for records on the files of the 2nd respondent herein, and quash the impugned order in Na.Ka. 353/2003 sa.pa dated 30.10.2023.



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For Petitioner : Mr.N.Chandrasekar
For R1 to R3 : Mr.M.Murali
Government Advocate
For R4 : Mr.M.Bindran
Additional Government Pleader

ORDER

This Writ Petition has been filed challenging the order passed by the second respondent dated 30.10.2023 under Section 36 of the Tamil Nadu Co-operative Societies Act, thereby removed the petitioner from his membership of the fourth respondent Society.

2. Heard the learned counsel appearing on either side and perused the materials available on record.

3. The petitioner served as President of the fourth respondent Society from 1997 to 2001. On 20.05.1998 onwards, new fertilizer sales outlet wing was established at Sikkalur Village. In order to carry out the sale of fertilizers, the board of directors passed a resolution dated 20.05.1998 to appoint one qualified person viz., Kanimozhi, on a daily wage basis. The said appointment was made based on a list of eligible persons obtained from the Krishnagiri Employment office. However, it was objected by the authorities and by a



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notice dated 09.10.2000, the said Kanimozhi was removed from the post by virtue of the resolution dated 23.10.2000. The said Kanimozhi filed a writ petition before this Court challenging her removal. This Court granted an order of *status quo*.

4. Further, the petitioner, as a member of the Society, availed loan of Rs77,000/- as per the resolution dated 16.07.1999 to establish the poultry, after mortgaging the property. The loan was disbursed to the petitioner in two installments. Action was subsequently taken as against the petitioner regarding this issue. Finally, the petitioner was served with a notice dated 02.09.2015 and thereafter, the petitioner was served with a second show cause notice dated 07.12.2015. On receipt of such notices, the petitioner submitted a detailed explanation. On receipt of the explanation submitted by the petitioner, no action has been taken as against the petitioner. However, after a period of eight years, once again the petitioner was served with notices dated 31.07.2023 and 13.09.2023.

5. A perusal of the notices dated 31.07.2023 and 13.09.2023, reveals that the petitioner's name was not found and the



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petitioner was not served with any such notices. After a period of eight years, the petitioner was removed from membership of the fourth respondent Society based on the aforesaid allegations. The only contention raised by the petitioner is that he was not given an opportunity of hearing before passing an order. Though the petitioner was served with notices on 02.09.2015 and 07.12.2015 and on receipt of the explanation submitted by the petitioner, no action has been taken for the past eight years. All of a sudden, after a period of eight years, the petitioner was served with notices dated 31.07.2023 and 13.09.2023 and an impugned order has been passed, thereby removing the petitioner from membership of the fourth respondent.

6. In this regard, it is relevant to extract the provision under Section 36 of the Tamil Nadu Co-operative Societies Act, which reads as follows :

36. Disqualification and removal

(i) Wherein the course of an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83, it appears that a person who is, or was, a



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member of a board has misappropriated or fraudulently retained any money or other property or been guilty of breach of trust in relation to the society (xxx) (The expression or of any corrupt practice as defined in Section was omitted by section 4 of the Tamil Nadu Co-operative Societies (Second Amendment) Act, 2004 (Tamil Nadu Act 18 of 2004) or of gross of persistent negligence in connection with the conduct and management of, or of gross mismanagement of the affairs of the society, the Registrar may, without prejudice to any other action that may be taken against such member by order in writing, disqualify him permanently from holding in future any office in any registered society. The Registrar shall, if such person holds office of member of the board, also by the same order remove him from that office.

(2) No person shall be disqualified or removed under sub-section (1) without being given an opportunity of making his representations. A copy of the order disqualifying or removing him shall be communicated to him.”



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7. Thus, it is clear that before disqualifying a member, the member must be given an opportunity to make a representation. On this sole ground, the order passed by the second respondent dated 30.10.2023 under Section 36 of the Tamil Nadu Co-operative Societies Act, cannot be sustained and is liable to be quashed. Accordingly, the order impugned in this writ petition is hereby quashed. The second respondent is at liberty to issue fresh notice on the said allegations, after giving an opportunity of hearing to the petitioner and pass orders on merits and in accordance with law.

8. With the above direction, this writ petition stands allowed. Consequently, connected miscellaneous petitions are closed.
No costs.

19.10.2024

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
Lpp

To

The Revenue Divisional Officer,
Coimbatore North,
Coimbatore.



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G.K.ILANTHIRAIYAN, J.

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