



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.12.2024

PRONOUNCED ON : 20.12.2024

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No. 21146 of 2019

And

W.M.P.No. 20349 of 2019

And

W.M.P.No. 39575 of 2024

O.Sundaram

... Petitioner

..Vs..

1. The Joint Secretary
Central Registrar of Cooperative Societies
Department of Agriculture and Cooperative
Ministry of Agriculture
Krishi Bhavan, Rajendra Prasad Road,
New Delhi 100 001.
2. Union of India
Rep. By its Secretary
Ministry of Home Affairs
North Block, New Delhi 110 001.
3. The Repatriate Cooperative Finance
and Development Bank (Repco Bank)
Rep. By its Managing Director
No.33, North Usman Road
T.Nagar, Chennai 600 017.



4. The Principal Secretary to Government
Public and Rehabilitation Department
Government of Tamil Nadu and Chairman
REPCO Bank,
Secretariat, Fort St. George
Chennai – 600 009.

... Respondents

PRAYER: Petition under Article 226 of the Constitution of India, praying for the issue of a Writ of Certiorarified Mandamus to call for the records in Circular Clr.No.20/2019/05/PAD, dated 25.02.2019 passed by the third respondent and quash the same as illegal, incompetent and without jurisdiction and further direct the respondent not to recognise the public/B-Class members as Repatriate voting members.

For Petitioner	:: Mr. B.Ullasavelan
For RR 1 & 2	:: No appearance
For 3 rd Respondent	:: Mr. A.Ilangovan
For 4 th Respondent	:: Mr.A.Anandan Government Advocate

ORDER

The Writ Petition has been filed in the nature of a Certiorarified Mandamus seeking records in Circular Clr.No.20/2019/05/PAD, dated 25.02.2019 passed by the third respondent/ the Repatriate Cooperative Finance and Development Bank (REPCO Bank) and quash



the same and direct the respondent not to recognise the public/B-Class members as Repatriate voting rights.

2. In the affidavit filed in support of the Writ Petition, it had been contended that the writ petitioner is a Burma Repatriate and voting member of the third respondent Bank, namely, REPCO Bank. The main object of the said bank was to help and promote the rehabilitation of repatriates from Sri Lanka, Burma, Vietnam and other countries. It had been stated that however contrary to such object, the third respondent had issued the impugned circular enabling admission of public and B class members as ordinary members (voting rights). The petitioner had stated that this was in total violation of the bye laws of the third respondent against the object of the third respondent. It had been further stated that the third respondent is a Cooperative Society established in the year 1969 under the Madras Co-operative Society Act 1961. It is now deemed to be established under the Multistate Cooperative Societies Act. It had been contended that the by-laws of the society provides for two classes of members. 'A' class members constitute repatriate with voting rights and 'B' class members are nominal or admission members. It had been further stated that the third respondent had stated that the B class members must be given the status of A class



members. It was under those circumstances that the impugned circular came to be passed on 25.02.2019. In the circular, it had been stated that a decision had been taken to admit other than repatriates as 'A' class members of the bank as per the provision available in the by-laws of the Bank. This circular has been challenged in the present Writ Petition.

3. It must however be mentioned that two other writ petitions had been filed questioning this very circular. Those Writ Petitions were W.P.No. 9623 of 2009 and W.P.No. 29390 of 2016. In both the Writ Petitions, directions had been issued by this Court to amend the circular and to bring a fresh circular. It had thus been stated that the circular now challenged in the Writ Petition had been withdrawn by the respondents and therefore, a fresh circular had been issued on 28.11.2019.

4. Seeking to amend the relief sought to call for the records relating to Circular No. 74/2019/11/PAD dated 28.11.2019 which was the fresh circular issued and quash the said circular, the petitioner had filed W.M.P.No. 39575 of 2024. It had been contended that in the circular issued afresh once again the general public / non repatriates were permitted to be admitted as A class members with voting right



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5. It must however also be mentioned that questioning this amended circular dated 28.11.2019 W.P.No. 23985 of 2021 had been filed by one A.Rajagopal. A learned Single Judge of this Court had dismissed the said Writ Petition by order dated 10.11.2021. The Writ Appeal filed by A.Rajagopalan in W.A.No.179 of 2022 had also been dismissed by the Division Bench by order dated 13.06.2024.

6. The learned counsel for the petitioner however contended that the Writ Petition should be heard and therefore advanced arguments at length. He again argued that the third respondent was formed for the benefit of repatriates and therefore Class A members should be restricted only to repatriates and they alone can exercise voting rights to elect the Board of Directors. The learned counsel pointed out that by the impugned circular, the respondent had attempted to expand the members who could exercise their voting rights by also permitting admission of non repatriates as Class A members. The learned counsel therefore stated that this Court must examine whether the circular is in conformity with the object of the bank and therefore urged that the Writ Petition should be allowed.



7. In this connection, the learned counsel also placed reliance on the following Judgments/orders:-

(1) The Judgment of the Division Bench in *W.P.No. 33133 of 2019 dated 03.03.2021 in S.P.Ganesan Vs. the Authorised Officer, Repco Bank, Chennai*. The Division Bench in this case had very clearly observed that the Repco Bank is not a financial institution and cannot be regarded as a Bank. It had therefore been held that the respondent, namely, the Repco bank cannot resort to any of the measures under the SARFAESI Act. The ratio laid down in the aforementioned order is not directly applicable to the facts of this case.

(2) The Judgment of the Division Bench in *W.A.No. 179 of 2022, order dated 13.06.2024 A.Rajagopalan Vs. Union of India, represented by Home Secretary, New Delhi*. This Writ Appeal had been filed against the order passed by the learned Single Judge in *W.P.No. 23988 of 2021* who by an order dated 10.11.2021 had dismissed the said Writ Petition.

The said Writ Petition has been filed to quash the amendment in the circular dated 25.11.2019 which is the very same relief now



sought by way of amendment to the relief sought in the Writ Petition by filing W.M.P.No. 39575 of 2024. The Division Bench had held that a Writ Petition is not maintainable against a Co-operative Society and therefore, had dismissed the Writ Appeal.

(3) The Judgment of the Division Bench in *W.P.No. 27593 of 2023, the order dated 25.07.2024 in P.Thanapal Vs. Union of India, represented by Home Secretary Ministry of Home Affairs, New Delhi and two others*. The Division Bench had again held that the Writ Petition is not maintainable specifically against the REPCO Bank.

(4) The order in *W.M.P.No. 17282 and 19861 of 2022 in W.P.Nos. 17939 & 20789 of 2022* wherein by an order dated 29.09.2022, the learned Single Judge had examined the relief sought in the Writ Petition to remove the word “Bank” from the Corporate name of the REPCO. It had been held that the first respondent therein cannot usurp the powers of the general body and substitute its own decision and direct the REPCO bank to drop the word “bank” from Corporate name when the RBI had withdrawn the exemption granted.



(5) The order in *W.P.No. 32122 of 2023 R.Varadarajan Vs. the Chairman, REPCO Bank, T.Nagar, Chennai and another, order dated 31.07.2024*. That was a case where the Writ Petitioner therein had been appointed as General Manager of the respondent bank and FIR had been registered against him by the CBI under the provisions of the Prevention of Corruption Act, 1989. He attained the age of superannuation and was permitted to retire from service. The first respondent thereafter closed the disciplinary proceedings holding that the writ petitioner was not entitled for any benefit. The learned Single Judge had directed the respondents to release the terminal benefits of the writ petitioner. The ratio laid therein is not applicable to the facts of this case.

8. The issue in this Writ Petition is whether a Writ Petition is maintainable as against the respondent REPCO Bank. The petitioner has questioned circular dated 25.02.2019. Subsequently, that circular had been withdrawn by the respondents. Therefore, the relief sought in the Writ Petition cannot be granted or need not even be addressed.

9. A fresh circular had been issued on 28.11.2019. Questioning that particular circular, W.P.No. 23985 of 2021 had been filed by one A.Rajagopalan and the learned Single Judge had dismissed the same



by order dated 10.11.2021. The Writ Appeal filed against that particular order also suffered an order of dismissal by order dated 13.06.2024 in W.A.No. 179 of 2022. The observation of the Division Bench is as follows:-

*“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 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 cooperative 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 byelaws 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."*

5. Therefore, in the light the above said decision of the Larger Bench of this Court, writ petition is not maintainable against the Cooperative 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. "

10. The Division Bench had very clearly stated that the appellant therein has to approach the competent authority to seek his



remedy and the Writ Petition would not lie particularly in the teeth of the Judgment of the Full Bench of this Court reported in **2006 (4) CTC 689 (K.Marappan Vs. The Deputy Registrar of Co-operative Societies, Namakkal)**.

11. The entire exercise of the writ petition is thus an exercise in futility.

12. The Writ Petitioner has challenged the circular dated 25.02.2019 in the Writ Petition. That circular had been withdrawn by the respondents. The Writ petitioner then filed W.M.P.No. 39575 of 2024 to amend the relief to challenge the subsequent circular dated 28.11.2019. Even before the petitioner could challenge that circular, another member A.Rajagopalan had challenged the said circular and his attempts failed. The order of the Division Bench is binding and therefore, the Writ Petition has to suffer the same order, namely, an order of dismissal. Accordingly, this Writ Petition stands dismissed. W.M.P.No. 39575 of 2024 stands dismissed. Consequently, connected Writ Miscellaneous Petition stands closed. No costs.

20.12.2024

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Index: Yes/No
Internet: Yes/No
Speaking / Non Speaking Order

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C.V.KARTHIKEYAN, J.,

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To

1. The Joint Secretary
Central Registrar of Cooperative Societies
Department of Agriculture and Cooperative
Ministry of Agriculture
Krishi Bhavan, Rajendra Prasad Road,
New Delhi 100 001.
2. The Secretary
Union of India
Ministry of Home Affairs
North Block, New Delhi 110 001.
3. The Managing Director
The Repatriate Cooperative Finance
and Development Bank (Repco Bank)
No.33, North Usman Road
T.Nagar, Chennai 600 017.
4. The Principal Secretary to Government
Public and Rehabilitation Department
Government of Tamil Nadu and Chairman
REPCO Bank,
Secretariat, Fort St. George
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Pre-Delivery Order made in

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