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S.A(MD)No.1050 of 20



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **16.10.2024**

CORAM

THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

S.A(MD)No.1050 of 2005

State of Tamil Nadu
rep. by the District Collector,
Karur.

... Defendant/Respondent/
Appellant

Vs.

M.Pandian

... Plaintiff/Appellant/
Respondent

Prayer: Second Appeal filed under Section 100 of the Code of Civil Procedure against the judgment and decree made in A.S.No.9/2002 dated 31.10.2002 on the file of the Sub-Court, Kulithalai reversing the judgment and decree made in O.S.No.300/1998, dated 20.02.2002, on the file of the District Munsif Court, Kulithalai.

For Appellant	: Mr.R.Ragavendran Government Advocate
For Respondent	: No appearance

JUDGMENT

The appellant, who is the defendant in the suit, filed the present appeal against the judgment and decree, dated 31.10.20024 made in A.S.No.9 of 2002, on the file of the Sub-Court, Kulithalai reversing the



judgment and decree, dated 20.02.2002 made in O.S.No.300 of 1998, on the file of the District Munsif Court, Kulithalai.

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2. For the sake of convenience, the appellant and the respondent shall be referred to as per their ranks in the plaint, as the defendant and plaintiff respectively.

3. The plaintiff, who is the respondent in the present appeal, filed a suit in O.S.No.300 of 1998 before the District Munsif Court, Kulithalai, for declaration and permanent injunction.

4. On analyzing documentary and oral evidence, the learned District Munsif, Kulithalai, has dismissed the suit. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed an appeal before the Sub-Court, Kulithalai which is taken on file in A.S.No.9 of 2002. Considering the pleadings evidences, judgment and decree of the trial Court, the learned Sub-Judge, Kulithalai has allowed the appeal by reversing the judgment and decree of the trial Court. Aggrieved over the same, the defendant has filed the present appeal.

5. The case set-up by the plaintiff in the plaint is as under:-

The plaintiff is doing various social activities in Kulithalai Town.



He is the State Organiser of Social Vigilance Flying Squad. He is also the Government Registered Contractor for the supply of vegetables, provisions and fuel to the various Sub-Jails, Government Head Quarters Hospital and various other Government Hospitals and he is also a building contractor. He wants a corrupt free and clean administration in all Government departments and working for it.

(ii) The District Collector of Karur, after being satisfied with the integrity and respectability of the plaintiff, was pleased to nominate the plaintiff as a member of the Advisory Committee on Public Distribution System at the Division level in respect of Kulithalai Revenue Division in his proceedings in R.C.K1/19648/97, dated 22.12.1997. The Xerox copy of the order is produced herewith as document No.1. According to him, there are various functions have been allotted by the Advisory Committee including to prevent malpractices in the Fair Price Shops. The plaintiff has received the order only on 28.03.1998 and from that day, he started his work. One Thiru.R.Somu, who is a very affluent person of Kulithalai has taken an arrack vending shop on licence for Rs.5 lakhs, was also given the licence to vend coloured kerosene through a Fair Price Shop. His son-in-law Thiru.Rajendran is a dealer in white kerosene.



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(iii) Thiru.R.Somu has given the coloured kerosene stock to his son-in-law to be sold by one and the same person and thus the card holders are deprived of the lawful supply. The plaintiff could not tolerate this malpractice, hence, he sent a complaint to the District Collector, Karur against the said Somu by a registered post soon after the Parliamentary election, on 03.03.1998 requesting him to take immediate action against the erring individual. The District Collector, Karur received the same on 04.03.1998, but he did not take any action against the said Somu. The District Collector instead of giving reward to the plaintiff, he has illegally removed the plaintiff from his membership of the Advisory Committee. No charge was framed against the plaintiff by the defendant. No charge memo was served upon the plaintiff. No explanation was called for from him. No personal enquiry was held by the defendant. To his knowledge, he did not commit any wrong which will disqualify him to hold the membership of the Committee. The plaintiff is still kept in the dark as to why he was removed from the post of member of the Advisory Committee on Public Distribution System at Division level.

(iv) The plaintiff files this suit for a declaration that the order of defendant in his R.C.K1/19648/97, dated 24.11.1998 is non-est,



arbitrary, illegal and void and for the consequential relief of permanent injunction to restrain the defendant from implementing the order against the plaintiff.

6. The defence set-up by the defendant in the written statement is as under:-

(i) The defendant after being satisfied with the integrity and respectability of the plaintiff was pleased to nominate the plaintiff as a member of the Advisory Committee is not correct. On enquiry, the defendant came to know that the plaintiff is the State Organiser of Tamil Nadu Consumer Social Vigilance Flying Squad since a person belonging to consumer organisation was to be nominated, the plaintiff was chosen and there are no other considerations for his nomination.

(ii) As per the directions of the Government in G.O.Ms.No.203, Co-operation Food and Consumer Protection Department, dated 29.07.1997, the District Level Advisory Committee and Revenue Divisional Advisory Committee be constituted Kulithalai Advisory Committee comprising of R.D.O. as its Chairman, Head Quarter's Taluk Supply Officer as Secretary M.P and M.L.A's of this Division, other Taluk Supply Officer of the Revenue Division, Co-operative Sub-Registrars (P.D.S) Civil Supplies Godown Superintendent/Assistant



Manager Municipal Chairman of all Panchayat Unions, three Town Panchayat Presidents nominated by the Collector and two persons belonging to Consumer organisation nominated by the Collector as its members.

(iii) The main purpose for formation of such advisory Committee is:-

- (a) To monitor the proper functioning of the fair price shop.
- (b) To suggest measures to prevent malpractices in fair prices shops.
- (c) To give suggestions to prevent diversion of public Distribution system commodities, black marketing and hoardings etc.,
- (d) To suggest ways and means for detecting and eliminating bogus family Cars.
- (e) To ensure the quality of the commodities issue in the fair price shops and to offer suggestion for the equitable distribution of commodities.
- (f) To suggest ways and means for transparency in fair price shops.
- (g) To offer suggestions for adequate vigilance over fair price shops.
- (h) To review the functioning of the fair price shops of the



previous month in the committee meeting.

(i) To ensure whether the details regarding number of family Cards attached to each shop, working hours, scale of supply stock on hand, name of the kerosene whole sellers has been displayed in the shop as per Government Orders and also to ensure whether the details of the Telephone numbers of the Taluk Supply Officers, District Supply Officers and Deputy Registrars (PDS) are exhibited in the notice board.

(j) To function only as advisory committee without any statutory powers.

(iv) The averments itself clearly ventilates the personal business enmity between one Somu, Rajendran and this plaintiff. The main function is to monitor the proper functioning of the fair price shops, prevents malpractice in it and to suggest better ways etc., alone. Thiru.R.Somu was granted Retails Registration Certificates under Tamil Nadu Kerosene (Regulation of Trade) Order 1973 to sell Kerosene in Retail at Door No.59E. New Court street after observing all terms and conditions of the Government by the then R.D.O. Karur in his D.Dis 14008/78 dated 09.11.1978 and R.C.No.14/78 and 500 Family Cards are allotted to him.



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(v) The defendant states that the member of the Committee may brought to the notice of the Committee the malpractice committed in distribution system if committed by Somu or any vendor. But, he cannot question/challenge the granting license which is purely administrative one. But in this case no report was received for malpractice against Somu from any of the Family Card holders. The averment that Mr.Rajendran is a dealer in white Kerosene is also not correct. From Ex.A2 it appears that the plaintiff is having personal enmities with Somu. The averment that because of his complaint against Somu, this plaintiff was removed from his membership is utter false. In fact, during the District Level Consumer Protection Committee and District Advisory Committee meetings held on 13.10.1998 and 17.11.1998 the number of allegations were made against this plaintiff for his mis-use and misappropriation of this Honorary nominated post by way of collection of amount in the form of enrolment fee, Annual subscription amount and by threatening the merchants etc., for his own benefits.

(vi) The plaintiff being a nominated member, he has to discharged his duties upto the satisfaction of the defendant. Since the activities of the plaintiffs were against the public interest this



defendant cancelled the nomination of the plaintiff. The plaintiff is not legally entitled for any notice prior to the cancellation of the nomination. Natural Justice also does not required any notice prior to that order of the cancellation. The plaintiff infact, has no Civil Right to file any suit. The suit itself is not maintainable. Since the nomination is the pleasure and satisfaction of the defendant, the plaintiff has no statutory protection. The defendant has not violated any principles of natural justice. Since immediate action needed against the plaintiff to safe guard the public interest the defendant has cancelled the nomination with any prior intimation.

(vii) This defendant states that if such unlawful activities are not nipped in the butt it will in due course be de-protected and cannot be eradicated in the later stage and already the public is suffering because of the deep rooted unscrupulous activities of such mongers. There is no cause of action to the suit. The suit has not been properly valued. Hence, he prayed for dismissal of the suit.

7. Before the trial Court, the plaintiff was examined as P.W.1 and Exs.P1 to P9 were marked. On the side of the defendant, one witness was examined as D.W.1 and Ex.D1 to Ex.D6 were marked.



8. On the basis of the rival pleadings made on either side, the trial Court, after framing necessary issues and after evaluating both oral and documentary evidence, had dismissed the suit.

9. Aggrieved by the judgment and decree of the trial Court, the plaintiff filed an appeal before the Sub-Court, Kulithalai which is taken on file in A.S.No.9 of 2002.

10. The first appellate Court, after hearing both sides and upon re-appreciating the evidence available on record, has allowed the appeal by setting aside the judgment and decree of the trial Court.

11. Challenging the said reversal judgment and decree passed by the first appellate Court, the defendant has filed the present appeal.

12. At the time of admitting the present second appeal, this Court had formulated the following substantial questions of law for consideration:

"1) Whether the lower appellate Court was right in allowing the appeal when the respondent has not challenged the G.O.No.203, dated 29.07.1997 based



on which the consequential order of termination was passed?

2. Whether the lower appellate Court was right in allowing the appeal, when the respondent suit is hit by principles of estoppel, i.e., as per the terms of the G.O., the Collector viz., the appellant need not assign any reasons for terminating any members from the Advisory Committee remains valid and unchallenged?

3) Whether lower appellate Court was right in allowing the appeal, when the respondent/plaintiff had not proved the case pleaded by him by adducing any evidence?

13. The learned counsel appearing for the appellant would submit that the lower appellate Court ought to have seen that as per the term of appointment, the Collector has right to appoint or terminate any member without assigning any reason. Therefore, the respondent if really aggrieved ought to have challenged the particular clause in the appointment order. However, instead of challenging the appointment order, he is challenging the consequential order of termination, which is not valid in law. The lower appellate Court ought to have seen that the respondent had accepted the terms of G.O., and the appointment order at the time of his appointment as the member of the Advisory Committee can not challenge the same on the



ground that the same was against the principles of natural justice and no opportunity was given to him. The lower appellate Court ought to have seen that the respondent is estopped from challenging the termination order. The lower appellate Court ought to have seen that the suit is bad for non-joinder of necessary parties viz., one Thiru.Somu against whom he had many allegations in the plaint.

14. The lower appellate Court ought to have dismissed the suit when admittedly the respondent/plaintiff had not proved the case pleaded by him and his conspiracy theories. The lower appellate Court ought to have confirmed the decree when the appellant/defendant was not appointed as a member of the Advisory Committee only on honorary basis and not on a permanent staff. Therefore, the appointment or termination is not bound by the principles of natural justice, but as per the terms of G.O.No.203 which cannot be found fault with. The lower appellate Court has erred in holding that the impugned order is bad in law for want of enquiry and charge memo etc., The respondent cannot approbate and reprobate the orders suiting his convenience. The lower appellate Court has not properly considered the oral and documentary evidence in its proper perspective. Hence, he prayed for allowing the second appeal.



15. Though notice served on the respondent and his name also printed in the cause list, there is no representation on his behalf.

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16. I have heard the learned counsel for the appellant and the respondents and also perused the materials on record carefully. There is no representation for the respondents.

17. The defendant appointed the plaintiff as a Member of the Kulithalai Public Distribution Advisory Committee as per the order in G.O.No.203 – Ex.P.1. In the said Committee, the persons belonging to that Constituency, namely, the Member of the Parliament, Member of the Legislative Assembly, Circle Supply Officer, Deputy Registrar of the Co-operatives, Civil Supply Superintendent/Assistant Manager, Municipal President, All Panchayat Union Presidents, three Panchayat Presidents and two persons from Consumer Protection Movement, have been appointed. In the said order, the duties of the plaintiff have been stated in detail. As per Ex.P.1, the said Committee is constituted only to give an advice and there is no legal power to the members of the said Committee. It is seen from Ex.P.2, that based on the complaint received from the Consumer Forum against the plaintiff regarding the collection of subscription amount, in the meeting of the Consumer Protection Committee held on 13.10.1998, the Kulithalai



Taluk Supply Officer was directed to enquire on the said complaint and submit the report. Similarly, it is seen from Ex.P.3 that in the meeting held on 17.11.1998, the Taluk Supply Officer was directed to submit a report on the complaint that the plaintiff received money from the shopkeepers as if he is the office bearer of the Consumer Forum and it was decided to take action against the plaintiff through police.

18. It is also clearly seen from Exs.P.6 to P.9 that the plaintiff collected money as annual subscription and entry fee from the consumers. Based on the complaint given against the plaintiff, the defendant, by order dated 24.11.1998 – Ex.P.2, removed him from the Kulithalai Division Advisory Committee. The defendant has appointed the plaintiff as member of the Advisory Committee as per the Government Order. He was not appointed in the salary receiving post. The plaintiff has not disclosed the complaints given against him. If the enquiry has been conducted with regard to the complaint given against the plaintiff, he has to prove his innocence. The complaints given against the plaintiff have been discussed in the District Consumer Protection Committee and based on that, on 24.11.1998 the defendant has issued an order under Ex.P.2 by removing him in the said post. It is clearly stated in the Ex.D5 that the Chairman of the



District Level Advisory Committee on Public Distribution System and the Chairman of the Divisional Level Advisory Committee on Public Distribution System shall nominate, appoint any member to the Committee or remove from the membership of the committee suo-motu without assigning reason therefore to ensure the proper function of Advisory Committee. It shows that the member can be removed from the post at any point of time without assigning any reason. Therefore, the plaintiff did not say state the order of the defendant Ex.P2 is not maintainable as the defendant has not explained the details of the complaint against him and he has not given an opportunity of hearing. It is seen from Ex.D5 that there is no necessity for giving prior notice before removing the plaintiff from the post of member. It is not accepted the allegation of the plaintiff that he has been removed from the post because of the intention that he has taken the action against the Somu. It is clearly seen from Ex.P6 to Ex.P9 that the plaintiff has acted as against the G.O.203. The plaintiff has not been appointed as a permanent member of the Advisory Committee in the Division. Therefore, the plaintiff has not seek for injunction as the order of the defendant Ex.P2 is not maintainable.

19. It is seen that the respondent/plaintiff has sent a notice on 04.01.2002 under Section 80 CPC for defamation made against the



plaintiff in paras 12,13 & 14 of the written statement. Member of the Committee may brought to the notice of the committee regarding the malpractice committed in the Distribution system if committed by Somu or any vendor, but he cannot question/challenge the granting of license which is purely administrative one. But in this case no report was received for malpractice against Somu. During the District Level Consumer Protection Committee and District Advisory Committee meetings held on 13.10.1998 and 17.11.1998 the number of allegations were made against the plaintiff for his mis-use and misappropriation of this honourary nominated post by way of collection of amount in form of enrolment fee, annual subscription amount and by threatening the merchants etc., for his own benefits. Since the activities of the plaintiff were against the public interest, the defendant cancelled the nomination of the plaintiff. The plaintiff is not legally entitled for any notice prior to the cancellation of the nomination. Natural Justice also does not required any notice prior to the order of the cancellation. The plaintiff has no civil right to file any suit. The suit itself is not maintainable. Since the nomination is the pleasure and satisfaction of the defendant, the plaintiff has no statutory protection. The defendant has not violated any principles of natural justice.



20. It is seen that the petitioner has not challenged the said Government Order. In other words, the appointment itself is only for a period of three years. The Collector has a right to appoint or remove any members and that particular clause was found in the appointment order. He has not challenged the said appointment order or the Government Order. It is not a permanent job and honorary post. But now he has challenged the removal order, the same is not correct. Therefore, the trial Court has rightly dismissed the suit. In view of the above, the substantial questions of law are answered in favour of the appellant as against the respondent. Further the suit is of the year 1998, now nothing survives for adjudication at this length of time as no such committee members are continued to serve.

21. Regarding the first question of law, as the Government Order in G.O.No.203 was not challenged, based on which, the plaintiff was terminated, the lower appellate Court proceeded on the ground that violation of principles of natural justice. It is to be noted that it is only a honorary post and administering in nature.

22.Regarding the second question of law, the power granted to Collector to remove any person, hence there is an estoppel on the part of plaintiff to raise this issue.



23. Regarding the third question of law, the Court found to have proceeded only on the ground of violation of natural justice, has not seen the evidence and facts appropriate to come to the conclusion of allowing the appeal.

24. In the result, the Second Appeal is allowed by setting aside the judgment and decree, dated 31.10.2002 made in A.S.No.9 of 2002, on the file of the Sub-Court, Kulithalai. However, there shall be no order as to costs.

16.10.2024

Index : Yes/No
Internet : Yes/No
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To

- 1.The Sub-Court,
Kulithalai.
- 2.The District Munsif Court,
Kulithalai.
- 3.The Record Keeper,
V.R. Section,
Madurai Bench of Madras High Court,
Madurai.



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V.BHAVANI SUBBAROYAN, J.

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Judgment made in
S.A(MD)No.1050 of 2005

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