



W.P(MD)Nos.13955 & 17070 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.02.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)Nos.13955 & 17070 of 2020

and

W.M.P.(MD)Nos.11621 & 14261 of 2020

K.Vijayakumar

... Petitioner in both W.Ps.

Vs.

- 1.The Principal Secretary to Government,
Animal Husbandry, Dairying and Fishes Department,
St.George Fort, Secretariat,
Chennai-09.
- 2.The Commissioner/Registrar,
Milk Production and Diary Development Department,
Madhavaram Milk Colony,
Chennai-51.
- 3.The Managing Director,
Tamil Nadu Co-operative Milk Production Federation Ltd.,
Aavin Illam,
Nandanam, Chennai-35.
- 4.The Deputy Registrar (dairying),
Mudivithanenthal,
Vagaikulam Post,
Thoothukudi.
- 5.The Administrator,
TUT 20 Thoothukudi District Co-operative Milk Producer Union Ltd.,
Bala Vinayagar Temple Street,



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Thoothukudi-628 002.

6. The General Manager,
TUT 20 Thoothukudi District Co-operative Milk Producer Union Ltd.,
Bala Vinayagar Temple Street,
Thoothukudi-628 002.

7.O.922 Thoothukudi District Milk Co-operative Milk Consumer Union,
Chidambara Nagar,
Near IOB Regional Office,
Thoothukudi-628 002. ... Respondents in both W.Ps.

8.N.Chinnadurai ... Respondent in W.P.(MD)No.17070 of 2020

Prayer in W.P.(MD)No.13955 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the resolution passed in the Special General Body Meeting held on 12.09.2020 conducted by the fifth respondent as void as it is held against the rules of the Tamil Nadu Cooperative Societies Act, 1983 within a time period stipulated by this Court.

Prayer in W.P.(MD)No.17070 of 2020 : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Declaration, to declare the proceedings in Na.Ka.No.1162/E/2019, dated 23.09.2020 on the file of the fourth respondent and the consequential order in Na.Ka.No. 4327/K3/2020, dated 09.10.2020 on the file of the second respondent nominating the eighth respondent as president as illegal within a time stipulated by this Court.

For Petitioner : Mr.S.Rajasekar
For Respondents : Mr.M.Lingadurai
Special Government Pleader for R1 to R6
(in both W.Ps) : Mr.C.Mayilvahana Rajendran for R7



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COMMON ORDER

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Heard both sides.

2. The question that calls for consideration is whether TUT 20 Thoothukudi District Co-operative Milk Producer Union Limited and O.922 Thoothukudi District Co-operative Milk Consumer Union were amalgamated in compliance with the statutory requirements. The petitioner was a member of TUT 20 Thoothukudi District Co-operative Milk Producer Union Limited. He has filed these two writ petitions. In W.P.(MD)No.13955 of 2020, the petitioner has questioned the resolution passed by the 5th respondent Society on 12.09.2020. In the other writ petition, the petitioner has challenged the proceedings dated 23.09.2020 passed in the joint meeting of both the societies. He has also challenged the impugned consequential proceedings.

3. I do not want to go into the contentious aspects. I will go by the admitted position. Section 13(2) of the Tamil Nadu Co-operative Societies Act, 1983 sets out the statutory procedure to be followed in the matter of amalgamation of two or more registered societies. It reads as follows:-

“(2) (a) Two or more registered societies may, at meetings of their respective general bodies specially called for the purpose of which at least fifteen clear days' notice shall be given to their respective members resolve to amalgamate into one society. The said resolution is hereafter in this sub-section referred to as the preliminary resolution. The proposed by-laws of the amalgamated society shall be



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annexed to the preliminary resolution.

(b) (i) A copy of the preliminary resolution of each society shall be sent to all the members and creditors thereof.

(ii) Any member of any such society may, notwithstanding any by-laws to the contrary, within a period of one month from the date of receipt by him of the preliminary resolution, intimate his intention not to become a member of the amalgamated society; by notice given to the society of which he is a member.

(iii) Any creditor of any such society may, notwithstanding any agreement to the contrary, within a period of one month from the date of receipt by him of the preliminary resolution, intimate his intention to demand a return of the amount due to him, by notice given to the society of which he is a creditor.

(c) After the expiry of two months from the date of despatch of the preliminary resolution to all the members and creditors of all the societies, a joint meeting of the members of such societies of which at least fifteen clear days notice shall be given to them, shall be convened for considering the preliminary resolution and the proposed by-laws. The quorum for the joint meeting shall be the sum total of the quorum specified in the by-laws of all the societies or one-fourth of the total number of members of all the societies, whichever is less. If, at such meeting the preliminary resolution and the proposed by-laws are confirmed by a resolution passed by a majority of not less than two-thirds of the members present and voting, either without changes or with such changes as, in the opinion of the Registrar, are not material, he may, subject to the provisions of clause (f) and of section 9, but notwithstanding anything contained in section 8, and on receipt of a copy of such resolution certified in the manner prescribed, register the amalgamated society and the by-laws thereof. On such registration, the registration of the original societies shall be deemed to have been cancelled. The opinion of the Registrar as to whether the changes made



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in the preliminary resolution are, or are not, material shall be final.

(d) At the joint meeting referred to in clause (c), provision shall be made by another resolution for__ (i) (A) the repayment of the share or interest in the capital and other moneys due to all the members who have given notice under sub-clause (ii) of clause (b); and (B) the satisfaction of the claims of all the creditors who have given notice under sub-clause (iii) of clause (b) : Provided that no member or creditor shall be entitled to such repayment or satisfaction until the preliminary resolution is confirmed as provided in clause (c); and (ii) the constitution of an interim board consisting of the members specified in the resolution to conduct the affairs of the amalgamated society for a period of three months from the date of registration or for such further period or periods not exceeding six months in the aggregate from the date of registration as the Registrar may consider necessary; but the interim board constituted under this sub-clause shall cease to function as soon as a board has been constituted in accordance with the provisions of this Act, the rules and the by-laws.

(e) The person by whom a joint meeting referred to in clause (c) shall be convened and the procedure to be followed thereat shall be such as may be prescribed.

(f) If the Registrar is satisfied that provision for the repayment of the share or interest in the capital and other moneys due to all the members and for the satisfaction of the claims of all the creditors referred to in clause (d) has not been made, he may refuse to register the amalgamated society.

(g) The registration of the amalgamated society shall be a sufficient conveyance to vest in it all the assets and liabilities of the original societies.”

4. The aforesaid provision contemplates passing of the preliminary resolution by the societies proposed to be amalgamated. Such resolution will



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have to be passed at meetings of the general bodies to be specially called for the purpose. On the said date, the proposed by-laws of the amalgamated society shall be annexed to the preliminary resolution. The preliminary resolution should be despatched to all the members and creditors of the societies concerned. After the expiry of two months therefrom, a joint meeting of the members of the societies should be convened. Atleast 15 days clear notice should be given. In this case, the general body of the fifth respondent society was convened on 12.09.2020. On the said date, the preliminary resolution was passed. The joint meeting of both the societies was convened on 21.09.2020 and the preliminary resolution was confirmed. The statute contemplates that the preliminary resolution along with the proposed by-laws should be despatched to all the members and two months thereafter, atleast 15 days clear notice should be given for convening the joint meeting. In this case, there was gap of 9 days between the date of passing of the preliminary resolution and the date of passing of the confirmation proceedings. In this case, the procedure set out in Section 13(2)(c) has not at all been complied with. A specific ground had been taken in this regard by the petitioner in the affidavit filed in support of W.P.(MD)No.17070 of 2020. This ground has not at all been controverted. On this sole ground that the statutory procedure has not been complied with, the resolution passed on 21.09.2020 and the consequential proceedings are



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quashed. The second respondent is directed to put the clock back. The position that obtained prior to passing of the resolution on 21.09.2020 shall be restored.

5. At this stage, the learned Special Government Pleader informs the Court that four employees were appointed afresh and out of them, two are still in service. Grant of relief in this petition will not operate adversely to the interest of the employees. In other words, those who are presently serving as employees to the amalgamated society shall continue to the employees either of the fifth respondent society or the 7th respondent society. The societies concerned are at liberty to initiate fresh steps for amalgamation by complying with the statutory procedure.

6. W.P.(MD)No.13955 of 2020 is allowed. In view of the order passed in W.P.(MD)No.13955 of 2020, no orders are necessary in W.P.(MD)No.17070 of 2020. W.P.(MD)No.17070 of 2020 is closed. No costs. Consequently, connected miscellaneous petitions are closed.

13.02.2024

Index : Yes / No
Internet : Yes/ No
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To

1.The Principal Secretary to Government,
Animal Husbandry, Dairying and Fishes Department,
St.George Fort, Secretariat,
Chennai-09.



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G.R.SWAMINATHAN, J.

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