



W.P(MD)No.13170 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.06.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13170 of 2024

and

W.M.P.(MD)Nos.11664 and 11665 of 2024

J.Rajendran

... Petitioner

Vs.

- 1.The Regional Joint Registrar of Co-Operatives,
Sivagangai,
Sivagangai District.
- 2.The Deputy Registrar of Co-Operatives,
Thiruppathur Road, Kanjirangal,
Sivagangai District.
- 3.The Co-Operative Sub-Registrar / Field Officer,
Thiruppuvanam,
Sivagangai District.
- 4.The Co-Operative Sub-Registrar / Administrator,
Q-145, Piramanoor Agriculture
Co-Operative Credit Society,
Piramanoor,
Thiruppuvanam,
Sivagangai District.

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the 2nd respondent in Na.Ka.No.1606/2024/ThoVa dated 05.06.2024 and quash the same.

For Petitioner : Mr.Sricharan Rangarajan, Senior Counsel,
For Mr.C.Jeganathan.

For Respondents : Mr.K.S.Selvaganesan,
Addl. Government Pleader.

ORDER

You are about to have a drink. You find a fly floating. What will you do?. In all probability, you would not take a sip. There is of course another choice. One may remove the offending thing and then gulp. In adjudication as well as administrative decision-making, such situations do arise. A selection process may witness some irregularities. Should the entire selection be set aside?. It all depends on whether it is possible to weed out and segregate the beneficiaries of irregularities or illegalities from the select list. Sometimes the infirmity is of an all-pervasive nature which had undermined the very process itself in its entirety.



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2. In cases which involve subjective satisfaction, the concept of severability is not applied. This is because one does not know to what extent the decision making process has been influenced by the vitiating element. There are no known parameters for determining this. That is why, the decision is thrown out lock, stock and barrel. Classic examples may be drawn from preventive detention orders. In *Shibban Lal Saksena v. State of U.P.* (AIR 1954 SC 179), it was held as follows :

“The question is, whether in such circumstances the original order made under Section 3(1)(a) of the Act can be allowed to stand. The answer, in our opinion, can only be in the negative. The detaining authority gave here two grounds for detaining the petitioner. We can neither decide whether these grounds are good or bad nor can we attempt to assess in what manner and to what extent each of these grounds operated on the mind of the appropriate authority and contributed to the creation of the satisfaction on the basis of which the detention order was made. To say that the other ground, which still remains, is quite sufficient to sustain the order, would be to substitute an objective judicial test for the subjective decision of the executive authority which is against the legislative policy underlying the statute. In such cases, we think, the position would be the same as if one of these two grounds was irrelevant for the purpose of the Act or was wholly, illusory and this would vitiate the detention order as a whole. This principle, which was recognised by the Federal Court in the case of *Keshav Talpade v. King-*



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Emperor [(1943) FCR 88] seems to us to be quite sound and applicable to the facts of this case.”

In ***Keshav Talpade case [(1943) FCR 88]*** the learned Judges stated as follows:

“If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them.”

In ***Dwarka Das Bhatia v. State of J&K (AIR 1957 SC 164)***, it was held as follows :

“4.The principle underlying all these decisions is this. Where power is vested in a statutory authority to deprive the liberty of a subject on its subjective satisfaction with reference to specified matters, if that satisfaction is stated to be based on a number of grounds or for a variety of reasons, all taken together, and if some out of them are found to be non-existent or irrelevant, the very exercise of that power is bad. That is so because the matter being one for subjective satisfaction, it must be properly based on all the reasons on which it purports to be based. If some out of them are found to be non-existent or irrelevant, the Court cannot predicate what the subjective satisfaction of the said authority would have been on the exclusion of those grounds or reasons. To uphold the validity of such an order in spite of the invalidity of some of the reasons or grounds would be to substitute the objective standards of the Court for the subjective satisfaction of the statutory authority.....”



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3.I am conscious that the case on hand does not relate to personal liberty.

But I have been called upon to test the validity of an order passed by the authority for conducting enquiry. This order which has been passed on his own motion necessarily involves his satisfaction. It is subjective in nature. That is why, I have borrowed the principles laid down in the aforesaid decisions.

4.The petitioner before me is the Secretary of a Cooperative Society. Enquiry under Section 81 of the Tamil Nadu Cooperative Societies Act, 1983 has been ordered against him. The petitioner questions the same on the grounds set out in the affidavit filed in support of this writ petition.

5.The learned Senior Counsel appearing for the petitioner pointed out that the enquiry has been ordered not on application but on own motion of the second respondent and that an inspection report dated 30.05.2024 has apparently triggered the process. Pursuant to the direction of this Court, the inspection report was produced. I went through the same. A team of cooperative Sub Registrars had conducted the inspection and indicted the petitioner. Mrs.T.Jayalakshmi was one of the team members. By the impugned proceedings, she has been appointed as the enquiry officer also.



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6. Bias is one of the factors that can vitiate any administrative decision.

Bias can be personal or it can also arise out of one's interest in the subject matter. Mrs. Jayalakshmi is not personally biased against the petitioner. But then, having been one of the authors of the report which has indicted the petitioner, she obviously will not be objective while conducting enquiry under Section 81 of the Act in respect of the very same subject matter. The second respondent could not have appointed any one of the inspection team members as the enquiry officer under Section 81 of the Act. The fact that this elementary aspect was not taken into account by the second respondent leads me to doubt his very objectivity. The failure on the part of the second respondent to notice this elementary aspect vitiates the entire process. If a single drop of poison is put in a tumbler of milk, the entire milk will become unfit for consumption. There is no question of segregation thereafter. I am no celestial swan to separate the two. I am not able to surgically remove that part of the order appointing Mrs. T. Jayalakshmi as enquiry officer and sustain the rest of the proceedings.

7. I have found a fly floating in the drink. I would rather pour away the entire liquid. I set aside the impugned order in toto. When an administrative order is set aside on the technical ground of violation of principles of natural



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justice, the matter is remitted to the file of the concerned authority for fresh consideration. The court is obliged to give liberty to him to proceed afresh on merits and in accordance with law. Now, the question that arises is whether I should remit the matter to the file of the very same authority. I feel I should not do so. If there is substantial time gap between the passing of the order by the authority and the disposal of the writ petition, then, may be the very same authority can be called upon to revisit the issue. In this case, the order was passed on 05.06.2024. The writ petition was allowed on 26.06.2024. Certainly, the second respondent will not be so devoid of human foibles or beyond ego to have a relook dispassionately and objectively. He will definitely be thinking “Oh, you went to the court and succeeded, alright!. Now that you are back to me. I will deal with you”. I do not want the petitioner to quiver before the second respondent. It is not as if the doctrine of necessity will apply. It is not as if the second respondent alone could decide the issue. In fact, Section 81 of the Act empowers the Registrar to order enquiry. The second respondent has been authorised to pass order under Section 81 of the Act only by virtue of delegation of powers. Therefore, any authority superior to him can take a decision in the matter. Even while setting aside the order impugned in this writ petition, liberty is given to any authority superior in rank to the second respondent to take a call in the matter.



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8.This writ petition is allowed on these terms. No costs. Connected

miscellaneous petitions are closed.

26.06.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias/skm

Issue order copy on 04.07.2024

To:-

- 1.The Regional Joint Registrar of Co-Operatives,
Sivagangai, Sivagangai District.
- 2.The Deputy Registrar of Co-Operatives,
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Sivagangai District.
- 3.The Co-Operative Sub-Registrar / Field Officer,
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