



W.P.(MD).No.27461 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.02.2024

CORAM

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.P.(MD).No.27461 of 2023
and W.M.P(MD) No.23590 of 2023

P.Pitchai

... Petitioner

Vs

1. The Registrar of Co-operative Societies,
O/o.The Registrar of Co-operative Societies,
N.V.R.Natarajan Maaligai,
Poonthamalli High Road, Kilpauk,
Chennai - 600 010.
2. The Joint Registrar of Co-operative Societies,
O/o.The Joint Registrar of Co-operative Societies,
Collectorate Campus, Virudhunagar,
Virudhunagar District.
3. The Deputy Registrar of Co-operative Societies,
O/o.The Deputy Registrar of Co-operative Societies,
Srivilliputhur, Virudhunagar District.
4. The Administrator,
R.A.337, Tamil Nadu Electricity Board,
Rajapalayam,
Srivilliputhur and Sivakasi Division Employees
Co-operative Thrift and Credit Society,
Rajapalayam.



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5. The Public Information Officer /
Deputy Registrar of Co-operative Societies,
O/o.The Joint Registrar of Co-operative Societies,
Virudhunagar Region, Virudhunagar.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order vide Na.Ka.8001/2019/Pa.Tho, dated 22.01.2020 passed by the 5th respondent and quash the same and consequently direct the respondents to disburse the encashment of earned leave salary for the remaining period of 180 days payable to the petitioner in pursuance of the Government Order vide G.O.(2D) No.15 Co-operative, Food and Consumer Protection Department, dated 17.02.1995 and the Circulars issued by the 1st respondent.

For Petitioner : Mr. D.Shanmugaraja Sethupathi

For Respondents : Mr.J.K.Jayaseelan
Government Advocate

ORDER

The present writ petition has been filed challenging the impugned order in Na.Ka.8001/2019/Pa.Tho, dated 22.01.2020 passed by the 5th respondent and consequently to direct the respondents to disburse the encashment of earned leave salary for the remaining period of 180 days payable to the petitioner, in pursuance of the Government Order vide G.O.(2D) No.15,



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Co-operative, Food and Consumer Protection Department, dated 17.02.1995 and the Circulars issued by the 1st respondent.

2.(i).The petitioner was appointed as Clerk in the 4th Respondent Society on 01.07.1980. Thereafter, he was promoted periodically and retired from service on 31.08.2010, when he was working as Secretary in the said Society. He was allowed to retire from service on 31.08.2010 and he was paid with retirement benefits by the 4th Respondent. However, the respondents paid earned leave encashment for 60 days salary, instead of 240 days salary. The first respondent, vide Government Order in G.O(2D) No.15, dated 17.02.1995 has clarified that the encashment of earned leave benefit shall be extended to all the employees, who had already retired from service with effect from the date of Government Order ie., on 17.02.1995, following which, the first respondent, vide circular, dated 18.05.2011, directed all the society to follow the said Government Order. In addition to that, the first respondent issued another letter, dated 13.09.2011 to all the Regional Joint Registrar to uniformly follow the Government Order for granting earned leave encashment benefit to all the employees. It was further clarified that every 11 working days, the employees



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are entitled to get one day earned leave and the employees are entitled to accumulate maximum 240 days in their credit.

(ii).Relying upon the letters issued by the first respondent, dated 08.05.2012 and 13.04.2015, the Deputy Registrar of Co-operative Societies, Nagercoil has issued proceedings, dated 27.06.2016 stating that in pursuance of the said clarification letters issued by the first respondent, the employees of the Employees Co-operative Thrift and Credit Societies are entitled to get the benefit of 240 days earned leave encashment with effect from the date of the Government Order, dated 17.02.1995.

(iii).Hence, the petitioner submitted a representation, dated 23.07.2019 to the fourth respondent requesting to disburse the balance amount payable to him in lieu of 180 days earned leave encashment. He had further sent another representation to the fourth respondent on 27.11.2019. In the meanwhile, he also made an application under the Right to Information Act to the first respondent seeking information regarding the disbursement of the remaining 180 days earned leave salary. The said application under the Right to Information Act was forwarded to the second respondent by the office of the first respondent. The second respondent further forwarded the same to the third respondent. The third respondent has sent a reply vide communication, dated



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30.10.2019. As against the same, the petitioner filed a second appeal before the Tamil Nadu State Information Commission and the same was disposed by order, dated 20.10.2022.

(iv).In the meanwhile, the office of the second respondent passed an order, dated 22.01.2020, rejecting the petitioner's request to pay the earned leave encashment for the remaining period of 180 days. Challenging the same, this writ petition came to be filed.

Submission of the petitioner:

3.The learned counsel for the petitioner Mr. Shanmugaraja Sethupathi submitted that by virtue of the Government Order in G.O(2D) No. 15, Co-operation, Food and Consumer Protection Department, dated 17.02.1995, the first respondent directed that the provisions of Rule 149 of the Tamil Nadu Co-operative Societies shall be adopted with modification that the maximum earned leave accumulation is allowed. The learned counsel for the petitioner further submitted that by virtue of G.O(2D) No.15, Co-operation, Food and Consumer Protection Department, dated 17.02.1995, it was directed that the provisions of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1989 shall be adopted with modification that the maximum earned leave



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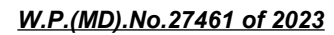
accumulation is allowed up to a maximum of 240 days. Pursuant to the said Government Order, all the employees of the Primary Agricultural Co-operative Bank, Primary Land Development Banks and Urban Banks were allowed for accumulation of 240 days earned leave and they were allowed to encash the same, on attaining the age of superannuation. That apart, the first respondent, vide circular, dated 18.05.2011 and letter, dated 13.09.2011 has instructed and clarified to uniformly follow the said G.O. for granting earned leave encashment benefit to all the employees. In addition to that, the first respondent has also issued another letter, dated 08.05.2012 directed all the Regional Joint Registrars to give the benefit of the said G.O. in respect of earned leave encashment to all the employees of the various societies.

4.The learned counsel for the petitioner further insisted that the fifth respondent does not have any authority or jurisdiction to reject the claim of the petitioner for encashment of earned leave. The fifth respondent/ Public information officer is only required to furnish the information sought for by the petitioner. On the other hand, the fifth respondent had gone into the merits of the case and rejected the representation of the petitioner, stating that he is not entitled to get the benefit of the Government Order, since he retired from



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service on 31.08.2010 itself, ie., prior to the circulars issued by the first respondent. He further submitted that the fifth respondent has passed the impugned order in violation of the principles of natural justice depriving the petitioner from getting encashment of earned leave in accordance with the Government Order in G.O(2D) No.15, dated 17.02.1995. Since the fifth respondent has denied the right of getting encashment of earned leave in accordance with the said G.O., the fifth respondent ought to have issued notice to the petitioner and thereafter, having given an opportunity of hearing, the impugned order should have been passed. Since the said exercise is not followed by the 5th respondent, the same is *per se* illegal. That apart, he also insisted that the claim of the petitioner was rejected only on the ground that the 1st respondent issued a circular only on 08.05.2012. Therefore, the petitioner, who had retired from service on 31.08.2010 itself is not entitled to get the benefit. The finding given by the 5th Respondent is absolutely erroneous and not sustainable. The 1st Respondent has already clarified vide Circular, dated 13.04.2015 stating that all the employees are entitled to get the benefit of the said G.O., and get 240 days of earned leave encashment with effect from the date of G.O., ie., on 17.02.1995.



Submission of the respondent:

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for the period of 60 days only. However, based on the circular of the Deputy Registrar, dated 03.12.2012, the existing by-law of the 4th Respondent Society was amended by virtue of Section 11(3) of the Tamil Nadu Co-operative Societies Act, 1983, in which, vide amendment, dated 03.12.2012, the earned leave for the period of 240 days was permitted. The writ petitioner has already reached the age of superannuation on 31.08.2010. At that point of time, the special by-law No. 8 of the 4th Respondent Society, dated 18.02.1992 was in force. Accordingly, the petitioner was eligible for encashment of earned leave for a maximum period of 60 days alone and not for 240 days. The amendment, dated 03.12.2012, by which the earned leave was enhanced to a maximum of 240 days cannot be claimed by the petitioner, since he already reached the age of superannuation on 31.08.2010. Out of the maximum eligible earned leave, ie., 60 days, as per Special by-law No. 8, dated 18.02.1992, already the eligible leave of 49 days was surrendered by the writ petitioner and it was encashed in his favour, vide cheque No. 157553, dated 15.10.2010. The remaining 11 days was accounted into the leave, which was taken by the petitioner and thus, the writ petitioner exhausted the entire 60 days of earned leave, and therefore, he is not entitled for any relief as claimed in the writ petition. On that basis, the learned Government Advocate prayed for dismissal of the writ petition.



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7. Heard the learned counsel for the petitioner Mr. Shanmugharaja Sethupathy and the learned Government Advocate for the respondents. Carefully perused the materials available on record.

Analysis:

8. The petitioner retired from the service of the fourth respondent society as Secretary on 31.08.2010. The fourth respondent is the Tamil Nadu Electricity Board, Rajapalayam, Srivilliputhur and Sivakasi Division, Employees Thrift and Credit Society, Rajapalayam, Virudhunagar District. The plight of the petitioner is that he has been paid with earned leave encashment only for 60 days salary instead of 240 days salary. The basis on which he claims earned leave encashment for 240 days salary is nothing but a G.O of the Co-operative, Food and Consumer Protection Department in G.O(2D) No.15, dated 17.02.1995, by which, the scale of pay and other allowances, including payment of retirement benefits, were revised to the employees of the Primary Agricultural Co-operative banks, Primary Land Development banks, and Urban Banks.



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9.The learned petitioner's counsel categorically submitted that pursuant to the issuance of the said G.O(2D) No.15, dated 17.02.1995, the first respondent has issued clarification letters and circulars in this regard. Especially, the petitioner's counsel relied upon the circular of the first respondent, dated 18.05.2011 and another letter of the first respondent, dated 08.05.2012, by which, the first respondent has directed all the Co-operative societies to follow the said G.O(2D) No.15, dated 17.02.1995, thereby giving the benefit of the said order in respect of earned leave encachment to all the employees of the various societies. The petitioner's counsel further insisted that vide letter, dated 13.04.2015, that the first respondent has clarified that the said benefit shall be extended to all the employees, who had already retired from service with effect from the date of the Government Order, ie., on 17.02.1995.

10.Only on the basis of aforesaid G.O., dated 17.02.1995, the circular of the first respondent, dated 18.05.2011, letter of the first respondent dated 08.05.2012 and subsequent letter of the first respondent, dated 13.04.2015, the petitioner made an applications on 23.07.2019 and 27.11.2019 to the fourth respondent requesting to disburse the balance amount payable to him in lieu of 180 days earned leave encachment.



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11.In the meanwhile, the petitioner also sought information from the first respondent under the Right to Information Act regarding disbursement of earned leave salary for the remaining 180 days. After the said two representations, he made yet another application under the Right to Information Act on 28.11.2019 to the first respondent regarding the disbursement of earned leave salary.

12.However, without passing order on the representations made by the petitioner on 23.07.2019 and 27.11.2019, the fifth respondent/Public Information Officer, the fifth respondent has given information under Right to Information Act vide communication, dated 22.01.2020 on the basis of the details received from the Sub Registrar, Arupukotai and the Deputy Registrar of Co-operative Societies, Sriviliputur Virudhunagar District, dated 21.01.2020. The said information given by the fifth respondent reveals that the petitioner is not entitled to seek the balance amount payable to him in lieu of 180 days earned leave encashment on the basis of G.O.(2D) No.15, Co-operative, Food and Consumer Protection Department, dated 17.02.1995 for the following three reasons.



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- One, G.O.(2D) No.15, Co-operative, Food and Consumer Protection Department, dated 17.02.1995 is applicable only to the employees of the Primary Agricultural Co-operative banks and the same is not applicable to the employees of Co-operative Thrift and Credit societies.
- Two, it is reiterated vide letter, dated 13.04.2015 that, the first respondent has issued clarifications only with respect to the employees of Primary Agricultural Co-operative Banks and the same is not applicable to the employees of Co-operative Thrift and Credit Societies.
- Three, the fourth respondent amended its by-laws only with effect from 03.12.2012 by virtue of the circular of the Deputy Registrar, dated 03.12.2012, with respect to the grant of earned leave for a period of 240 days.

Since the petitioner had retired from service as early as on 31.08.2010 and his terminal benefits were also been disbursed off, he is not entitled to claim the benefit of the amendment made with effect from 03.12.2012 in the fourth respondent society and to claim the benefit of earned leave to be disbursed for a period of 240 days. The fourth respondent society, from whose service the petitioner retired, is governed by the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules, 1988. Rule 149 of the



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Tamil Nadu Co-operative Societies Rules, 1988 deals with the conditions of service of paid officers and servants of societies. In terms of the mandates of Rule 149, it is clear that every society, every Co-operative society should adopt the special by-law covering the service conditions of its employees with the prior approval of the Registrar of Co-operative Societies. Precisely, the conditions of service of paid officers and employees of the societies are governed by those special by-laws. Amendment to those by-laws could be effected only in accordance with Section 11 of the Tamil Nadu Co-operative Societies Act, 1983.

14.The petitioner reached the age of superannuation on 31.08.2010 and got retired on the same day, and thereafter, he was disbursed with all the service benefits by the fourth respondent society. The fourth respondent society amended its by-law No.8 vide amendment, dated 18.02.1992 and the same mandates that the maximum period of earned leave is 60 days. In the meanwhile, the Government of Tamil Nadu vide G.O.(2D) No.15, Co-operative, Food and Consumer Protection Department, dated 17.02.1995, directed that the provisions of Rule 149 of the Tamil Nadu Co-operative



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Societies rules, 1989 shall be adopted with modification that the maximum earned leave accumulation is allowed up to a maximum of 240 days.

15.Pursuant to the same, the first respondent issued a circular, dated 18.05.2011, letters, dated 03.09.2011, 08.05.2011 and 13.04.2015 clarifying that the encachment of earned leave benefit shall be extended to all the employees for a period of 240 days salary and even the said benefit shall be extended to all the employees, who had already been retired from service with effect from the date of Government Order, ie., from 17.02.1995. On the basis of those circular and letters of the first respondent, the petitioner has submitted two representations, dated 23.07.2019 and 27.11.2019 to the fourth respondent seeking the benefit of disbursement of encachment of earned leave benefit for 180 days in lieu of the fact that he has been already disbursed with earned leave encashment for a period of 60 days. In the meanwhile, he also made an application under Right to Information Act to the first respondent seeking information in this regard. Following which, he made another application under Right to Information Act on 28.11.2019 in this regard again. However, even before the fourth respondent passed any orders on the representations of the petitioner, dated 23.07.2019 and 27.11.2019, the fifth respondent, on the basis



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of the inputs received from the third respondent, had given an information vide impugned communication, dated 22.01.2020, explaining that the petitioner's request regarding disbursement of earned leave salary for the remaining 180 days cannot be heeded to for three reasons as elaborated supra.

16.No doubt, that the impugned communication of the fifth respondent, dated 22.01.2020 is an information given to the petitioner for his application, dated 28.11.2019, and the information has been given by the fifth respondent exclusively on the basis of the details received from the third respondent. The same can be understood from the references cited in the impugned communication. Hence, the learned petitioner counsel's argument that the fifth respondent does not have any authority or jurisdiction to reject the claim of the petitioner for encashment of earned leave is not sustainable. The reason behind that is, the impugned communication, dated 22.01.2020 is not at all an order, but only a communication issued by the fifth respondent in response to his application made under the Right to Information Act vide application, dated 28.11.2019. That apart, even before patiently waiting for the fourth respondent to pass appropriate orders on his representations, dated 23.07.2019 and 27.11.2019, the petitioner has filed this writ petition,



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challenging the impugned communication of the fifth respondent given to the petitioner in response to his application under the Right to Information Act, dated 28.11.2019.

17.As far as the legality of the information given by the fifth respondent is concerned, the first ground for the rejection of the petitioner's claim is that the said G.O.(2D) No.15, Co-operative, Food and Consumer Protection Department, dated 17.02.1995 is applicable only to the employees of Primary Agricultural Co-operative banks. A careful perusal of the said G.O would reveal that the mandates of the said G.O is applicable to the employees of Primary Agricultural Co-operative banks, Primary Land Development banks, and Urban Banks. The second ground is that the first respondent's clarification letter, dated 13.04.2015 is also applicable only to the Primary Agricultural Co-operative banks. On perusal of the same, the subject of the said clarification letter and the content of the said letter would reveal that the same is with respect to the employees of the Primary Agricultural Co-operative banks alone. The third ground is that the fourth respondent society adopted the mandates of the circular of the Deputy Registrar, dated 03.12.2012 and amended its by-laws with effect from 03.12.2012 with respect to the grant of earned leave for a



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period of 240 days. Hence, the petitioner, who retired as early as on 31.08.2010, cannot seek the benefit of the subsequent amendment dated 03.12.2012, thereby, seeking earned leave for a period of 240 days. There is umpteen number of judgments on the proposition that, in the absence of express statutory authorization, delegated legislation in the form of Rules or Regulations cannot operate retrospectively. The Hon'ble Apex court has dealt with a case of delegated legislation in the case of *Assistant Excise Commissioner Kottayam and others Vs Esthappan Cherian and another in Civil Appeal No. 5815 of 2009* and the relevant portion applicable to this case is extracted as follows.

“14. There is profusion of judicial authority on the proposition that a rule or law cannot be construed as retrospective unless it expresses a clear or manifest intention, to the contrary. In Commissioner of Income Tax v Vatika Township this court, speaking through a Constitution Bench, observed as follows:

“31. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot



*apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bed rock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as *lex prospicit non respicit* : law looks forward not backward. As was observed in *Phillips vs. Eyre*, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law.*

*32. The obvious basis of the principle against retrospectivity is the principle of 'fairness', which must be the basis of every legal rule as was observed in the decision reported in *L'Office Cherifien des Phosphates v. Yamashita-Shinnihon Steamship Co.Ltd.* Thus, legislations which modified accrued rights or which impose obligations or impose new duties or attach a new disability have to be treated as prospective unless the legislative intent is clearly to give the enactment a retrospective effect; unless the legislation is for purpose of supplying an obvious omission in a former legislation or to explain a former legislation. We need not note the cornucopia of case law available on the*



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subject because aforesaid legal position clearly emerges from the various decisions and this legal position was conceded by the counsel for the parties. In any case, we shall refer to few judgments containing this dicta, a little later.”

15. Another equally important principle applies: in the absence of express statutory authorization, delegated legislation in the form of rules or regulations, cannot operate retrospectively. In Union of India v M.C. Ponnose this rule was spelt out in the following terms:

“The courts will not, therefore, ascribe retrospectivity to new laws affecting rights unless by express words or necessary implication it appears that such was the intention of the legislature. The Parliament can delegate its legislative power within the recognised limits. Where any rule or regulation is made by any person or authority to whom such powers have been delegated by the legislature it may or may not be possible to make the same so as to give retrospective operation. It will depend on the language employed in the statutory provision which may in express terms or by necessary implication empower the authority concerned to make a rule or regulation with retrospective effect. But where no such language is to be found it has been held by the courts that the person or authority exercising subordinate legislative functions cannot make a rule, regulation or bye-law which can operate with retrospective effect.”



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16. The principle has been affirmed in many decisions such as Hukum Chand v Union of India⁶, Regional Transport Officer v Associated Transport Madras; Federation of Indian Mineral Industries v Union of India⁸ and recently, in Union of India v G.S. Chatha Rice Mills.”

18. That apart, the petitioner claims the benefit of the various letters of the first respondent, dated 13.09.2011 08.05.2012 and 13.04.2015 and circular dated 18.05.2011, by which, he had directed and clarified his subordinates to uniformly follow the G.O.(2D) No.15, Co-operative, Food and Consumer Protection Department, dated 17.02.1995 in the matter of grant of encachment of earned leave benefit, clarifying that the employees are entitled to accumulate maximum 240 days in their credit. But the pertinent point, which has to be decided now is that whether the first respondent vide his circular, dated 18.05.2011 and letters, dated 13.09.2011, 08.05.2012 and 13.04.2015 on the basis of a Government Order in G.O.(2D) No.15, Co-operative, Food and Consumer Protection Department, dated 17.02.1995, direct all the Co-operative Societies to follow the said Government Order without amending the by-laws of the respective societies suitably in terms of Rule 149 of the Tamil Nadu Co-operative Societies Rules, 1989, r/w section eleven of the Tamil Nadu Co-operative Societies Act 1983, as amended by the Tamil Nadu Act V of 2013.



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The said benefit would become operative only with effect from 03.12.2012 and the employees cannot seek the benefit of the same retrospectively.

21.Hence, obviously, the petitioner, who had retired as early as 31.08.2010, cannot claim the benefit of a subsequent amendment effected in the by-laws of the fourth respondent society with effect from 03.12.2012. Accordingly, the claim of the petitioner fails, and I did not find any infirmity in the information given by the fifth respondent to the petitioner. However, the fourth respondent is directed to pass appropriate orders in accordance with law on the representations of the petitioner, dated 23.07.2019 and 27.11.2019, within a period of four weeks from the date of receipt of copy of this order.

22.Accordingly, the writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

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NCC : Yes / No
Index : Yes / No
Internet : Yes
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O/o.The Registrar of Co-operative Societies,
N.V.R.Natarajan Maaligai,
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Chennai - 600 010.
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O/o.The Joint Registrar of Co-operative Societies,
Collectorate Campus, Virudhunagar,
Virudhunagar District.
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ORDER IN
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