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**(2015) 09 MAD CK 0106**

**In the Madras High Court**

**Case No :** W.P. No. 8523 of 2015 and M.P. Nos. 1 and 2 of 2015

A. Malaisamy

APPELLANT

Vs

Union of India and Others

RESPONDENT

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**Date of Decision :** 29-09-2015

**Acts Referred:**

**Citation :** (2015) 09 MAD CK 0106

**Hon'ble Judges :** M. Sathyanarayanan, J.

**Bench :** Single Bench

**Advocate :** V.S. Venkatesh, for the Appellant; A. Murugan, Central Govt. Standing Counsel, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

M. Sathyanarayanan, J.—The petitioner claims that he is one among the shareholders in Repatriates Cooperative Finance and Development Bank Limited [in short "REPCO Bank"] and would state that it was initially registered as a Cooperative Society on 19.11.1969 under the provisions of the Madras Cooperative Societies Act, 1961 with jurisdiction spread over the State of Tamil Nadu, Andhra Pradesh, Karnataka, Kerala and Union Territory of Puducherry for the purpose of promoting the rehabilitation activities for repatriates from neighbouring countries like Sri Lanka and Burma. The said bank is also deemed to be registered under the Multi State Cooperative Societies Act, 2002. The petitioner would state that REPCO bank is a Government of India enterprise, comes under the administrative control of Freedom Fighters and Rehabilitation Division, Ministry of Home Affairs, Government of India and it is in association with State Governments of Tamil Nadu, Kerala, Karnataka and Andhra Pradesh.

2. According to the petitioner, REPCO Home Finance Limited (fifth respondent) is a subsidiary of REPCO Bank, as the Government of India is holding 37.37% of shares and it is the single major shareholder in the fifth respondent Company and it provides housing finance and that the Chairman, Managing Director and other Directors are appointed by the Government of India and three Officers of

Indian Administrative Services (IAS) are also representing the Government of India and the Government of Tamil Nadu in the Board of Directors of the said company.

3. Grievance expressed by the petitioner is that an advertisement was published on 17.02.2015 inviting applications for recruitment to the post of Managing Director of the fifth respondent Company and as per the said publication, the age of entry is fixed as 55 years to 62 years and it is contrary to the norms for recruitment to Public Sector Undertakings for the reason that general age of superannuation of Central Government Employees, Public Sector Undertakings and Public Sector Banks is fixed as 60 years. It is contended by the petitioner that though Section 196 of the Companies Act, 2013 fixes the age criteria of 70 years in general and the fifth respondent is a subsidiary company of REPCO Bank and further that the Government of India is the single largest shareholder, it should strictly follow the service rules applicable to Public Sector Undertakings and the age prescription for eligibility, fixed as 55 years to 62 years, is only to accommodate someone very close to hierarchy and hence, came forward to file this writ petition praying for a Writ of Declaration, declaring that the notice/advertisement for recruitment to the post of Managing Director dated 17.02.2015 issued by the fifth respondent, as null and void.

4. Mr. V.S. Venkatesh, learned counsel appearing for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that in respect of Public Sector Undertakings which comes under the control of the Government of India, the age of entry is fixed up to 60 years and therefore, prescription of age in the impugned advertisement between 55 years and 62 years, on the face of it is unsustainable. It is the further submission of the learned counsel appearing for the petitioner that the term of office as per the impugned advertisement is for a tenure of 3 years extendable by another 2 years, subject to age criteria specified under Section 196 of the Companies Act, 2013, which means that a person selected as Managing Director can continue till 67 years and it is also against the norms prescribed by the Government of India for recruitment to such a post in the Public Sector Undertakings and the conditions mentioned in the advertisement are tailor-made to suit a particular individual and therefore, it is vitiated on account of malafides also and prays for a declaration, declaring the said advertisement as null and void with a further direction to re-issue the advertisement in accordance with the relevant norms fixed by the Government of India.

5. Mr. A. Murugan, learned Central Government Standing Counsel appearing for the respondents 1 and 2 has invited the attention of this Court to the counter affidavit filed by the first respondent as well as the typed set of documents and would submit that the fifth respondent Company was originally promoted by the fourth respondent and over a period of time, shareholding of the fourth respondent was reduced to give more autonomy to the fifth respondent Company and as early as in the year 2013, the fifth respondent Company became a Listed

Company and at present, the fourth respondent is having a shareholding of only 36.26% and the remaining shares are held by the public. Moreover, the Chairman, Managing Director and other Directors of the Board are being appointed in the Annual General Body Meeting of the fifth respondent Company and not by the fourth respondent Company. Insofar as the averments made by the petitioner that since serving IAS Officers are in the Board of the fifth respondent Company, the learned Central Government Standing Counsel would submit that the IAS Officers, who are acting, are Non-Executive and Non-Independent Directors and they merely represent the fourth respondent Company. It is also the categorical stand of the first respondent that the fifth respondent is neither a Public Sector Undertaking nor a Public Sector Bank and such an age limit prescribed for holding the post of Managing Director insofar as Public Sector Undertakings/Banks will not be applicable to the fifth respondent Company and even as per the own admission of the petitioner, Section 196 of the Companies Act, 2013 prescribes the age limit as 70 years. In sum and substance, it is the submission of the learned Central Government Standing Counsel appearing for the respondents 1 and 2 that the fifth respondent is incorporated under the provisions of the Companies Act and it is not a Government Company/Public Sector Undertaking and as such, relevant provisions of the Companies Act alone are applicable and it is neither controlled by the first respondent nor the fourth respondent and in respect of the impugned advertisement, it was headed by the fourth respondent and issued with the approval of the competent authority and as such, the plea made by the petitioner is wholly unsustainable on facts and in law and prays for dismissal of this writ petition.

6. The Court heard the submissions of Mr. S. Natana Rajan, learned counsel appearing for the third respondent who would submit that the third respondent is only a formal party and will abide by any orders passed by this Court.

7. Mr. G. Rajagopalan, learned Senior Counsel assisted by Mr. A. Ilangovan, learned counsel appearing for the fourth respondent has drawn the attention of this Court to the counter affidavit filed by the fourth respondent and would submit that the petitioner is guilty of suppression of material facts for the reason that he along with his family members had obtained huge loan of Rs. 6.50 Crores from the fourth respondent Company for the development of a property at Madhavaram, by suppressing the fact that the property intended to be given as security belongs to the Government and it was given as security and on annual inspection/verification of the property by obtaining Encumbrance Certificate, it was found that a Suit in O.S. No. 170/2004 was filed against Tamil Nadu Leather Development Corporation (TALCO) on the file of the District Munsif Court, Thiruvottiyur, wherein the said Court has given a finding that the property belongs to the Government and suppressing the said fact, the petitioner, in collusion with one Mr. Palani, then Branch Manager, REPCO Bank, had obtained loan and further that the Chennai Metropolitan Development Authority (CMDA) has already cancelled the extension of planning permission on the ground of

violation of developmental regulation. It is the further submission of the learned Senior Counsel appearing for the fourth respondent that when the fourth respondent sought to initiate recovery proceedings, the petitioner, in order to intimidate the said respondent, has filed W.P. No. 21953/2014 praying for a Writ of Declaration, declaring the functioning of the present Managing Director and Executive Director of the REPCO Bank beyond the age of 60 years as null and void and to terminate them and subsequently, the said writ petition was dismissed as withdrawn/not pressed and all the above said material facts have been deliberately suppressed in order to gain unfair advantage in the form of interim order.

8. It is also the submission of the learned Senior Counsel appearing for the fourth respondent that the fourth respondent is having a limited shareholding of 37.26% only and adopted the stand taken by the first respondent that the Chairman, Managing Director and other Directors are appointed by the Board in the Annual General Body Meeting and the IAS Officers, who are in the Board of the fifth respondent Company, merely representing the fourth respondent and they have nothing to do with the affairs of the fifth respondent Company. Attention of this Court was also drawn to para 8 of the counter affidavit of the fourth respondent, wherein it has been stated among other things that the Board of Directors of the fourth respondent Company, as early as in the year 2007, had resolved that the age of superannuation for the Managing Director and Executive Director shall be 62 years and the same was also incorporated in the service regulations for the officers of the REPCO Bank and the preceding Managing Director of the fourth respondent superannuated at the age of 62 years on 30.09.2010 and would contend that even the age prescription of 60 years in respect of Public Sector Undertakings coming under the control of the Government of India, is not applicable to the fourth respondent Company. Lastly it is submitted by the learned Senior Counsel appearing for the fourth respondent that as per Section 196(3) of the Companies Act, 2013 age limit prescribed for the Managing Director is 70 years and the age prescription mentioned in the advertisement is below the age of 70 years and therefore, would contend that the writ petition deserves dismissal with costs.

9. Mr. R. Yashod Vardhan, learned Senior Counsel assisted by Mr. Vinodkumar, learned counsel appearing for the fifth respondent has invited the attention of this Court to the counter affidavit of the fifth respondent/affidavit filed in M.P. No. 2 of 2015 for vacating the interim order and would submit that the writ petitioner has no locus standi to file or maintain the writ petition for the reason that he has not participated in the selection process for the post of Managing Director and he cannot be termed as an aggrieved person and adopted the stand taken by the respondents 1 and 4. It is the further submission of the learned Senior Counsel appearing for the fifth respondent that the impugned notice of recruitment was also approved by the Ministry of Home Affairs and that the fifth respondent is not the subsidiary of the fourth respondent Company and the fourth respondent is a Cooperative Society registered under the provisions of the Multi State

Cooperative Societies Act, 2002 and as such, it cannot be a Holding Company. It is also the submission of the learned Senior Counsel appearing for the fifth respondent that the fifth respondent is governed by the provisions of the Companies Act, 2013 and therefore, it is neither a Public Sector Undertaking nor Public Sector Bank and the fifth respondent adheres to all applicable directives including those of the Central Vigilance Commission in the selection process and in pursuance to the impugned advertisement, interview was fixed on 26.03.2015 and the petitioner has moved this writ petition and got interim order and therefore, the selection process has been put on hold which caused grave and irreparable prejudice to the affairs of the fifth respondent Company and prays for dismissal of this writ petition with exemplary costs.

10. This Court paid its best attention to the rival submissions and also perused the materials placed before it.

11. Admittedly the petitioner filed W.P. No. 21953 of 2014 against the Union of India, Central Registrar of Cooperative Societies, fourth respondent as well as against two private respondents praying for issuance of a Writ of Declaration, declaring that the private respondents 6 and 7 functioning in the post of the respondents 4 and 5 beyond the age of 56 years, as null and void and violation of bye-laws and service regulations of REPCO Bank with a further direction, directing the first respondent herein and the Central Registrar of Cooperative Societies, New Delhi to take appropriate action to terminate the private respondents 6 and 7 from the post of Managing Director and Executive Director respectively in the REPCO Bank. The said writ petition was dismissed as withdrawn on 30.10.2014. The petitioner, apart from filing the said writ petition, has also filed W.P. No. 16502 of 2015 against the Union of India, represented by the Secretary to Government, Ministry of Home Affairs, New Delhi, the Joint Secretary to the Government of India, Ministry for Personnel, Public Grievance and Pension Department, New Delhi and against REPCO Bank, praying for a Writ of Declaration, declaring the advertisement of the fifth respondent dated 25.5.2015 to fill up the post of Executive Director as illegal. A perusal of the affidavit filed in support of the said writ petition would also disclose that the petitioner has taken the very same stand taken by him in this writ petition and the said writ petition was dismissed on 11.06.2015 and it is relevant to extract the order dismissing the said writ petition:

"The petitioner has sought to question the advertisement of Repco Bank dated 25.5.2015 calling for application for the post of Executive Director to the Bank.

2. The only point raised in the affidavit filed in support of the writ petition is that no age of superannuation is mentioned in the advertisement.

3. In my view, the petitioner has not cited any statutory rules compelling the authorities to mention the retirement age of the post for which application is called for to fill up the post. In any event, the learned counsels, who takes notice for the respondents, submitted that the age of retirement for the post of

Executive Director is 62. In the circumstances, I am not inclined to entertain the writ petition.

Accordingly, writ petition fails and the same is dismissed. Consequently, connected miscellaneous petition is closed. No costs."

12. In the affidavit filed in support of W.P. No. 16502 of 2915, the petitioner has not disclosed about the filing of this writ petition. It is also to be pointed out at this juncture that no whisper has been made as to the filing of W.P. No. 21953 of 2014 and the order of dismissal of the said writ petition as withdrawn. This Court is of the view that the order withdrawing W.P. No. 21953 of 2014 on 30.10.2014 is having a bearing on the merits of the case for the reason that the petitioner has taken the very same stand and failed to get adjudication on the merits of the same. Thus, the petitioner is guilty of wilful suppression of material facts.

13. This Court is also of the considered view that the present writ petition lacks merits and substance for the following reasons.

14. Uniform and consistent stand of the respondents 1, 4 and 5 are that the fifth respondent Company is a separate entity, registered under the provisions of the Companies Act and the fourth respondent is having a shareholding of only 37.26% and the remaining shares are held by public and the Chairman, Managing Director and other Board of Directors were appointed by the Board in the Annual General Body Meeting held under the provisions of the Companies Act, 2013 and the Nominee Directors of the fourth respondent are Non-Executive and Non-Independent Directors and they are in the Board of the fifth respondent Company as the representatives of the fourth respondent. The first respondent has taken a categorical stand that it had already approved the decision to have a separate and exclusive Managing Director for the fifth respondent as well as the fourth respondent Company and the fifth respondent is not at par with other Public Sector Undertakings and as such, the age limit prescribed for Public Sector Undertakings or Public Sector Banks for holding the post of Managing Director will not be applicable to the fifth respondent Company and consequent upon its incorporation under the provisions of the Companies Act, the said Act alone could be applicable and it is neither controlled by them nor they are having major shareholding in the fourth respondent Company. In the light of the said categorical stand taken by the respondents 1 and 4 in their counter affidavits, the plea raised by the first respondent that the prescription of age limit beyond 60 years is against the norms prescribed for selection as Managing Director to a Public Sector Undertakings, is per se unsustainable.

15. The learned Senior Counsel appearing for the fifth respondent is right in his submission that the writ petitioner has no locus standi to maintain this writ petition for the reason that he is not an aspirant for the post of Managing Director and not a shareholder, but only a busy body and the said submission merits acceptance.

16. A perusal of the counter affidavit filed by the fourth respondent would

disclose that the petitioner is a major defaulter and while giving the lands for security, has suppressed the material fact that it belongs to the Government and the said fact has also been deliberately suppressed in this writ petition. It is a well settled position of law that a party who seeks equity of this court, must come with clean hands, however the petitioner is guilty of deliberate suppression of material facts and it would have a bearing on the decision to sustain his case.

17. In the considered opinion of the Court, the petitioner has abused the process of this Court and obtained an interim order and thereby stalled the selection process, which has resulted in grave prejudice to the affairs of the fifth respondent Company. The prescription of age limit is also in consonance with Sections 196(3) and (4) of the Companies Act, 2013 and as per the said provisions, for holding the post of Managing Director, prescribed age is 70 years and admittedly, the age prescription given in the impugned advertisement is well below the said age limit and on that ground also, the contention put forward by the petitioner is to be rejected.

18. In the result, this Writ Petition is dismissed with exemplary cost of Rs. 25,000/- (Rupees Twenty Five Thousand Only) payable by the petitioner to the fifth respondent within a period of four weeks from the date of receipt of a copy of this order, failing which, the fifth respondent is at liberty to initiate appropriate legal proceedings in accordance with law. Interim Order already granted is vacated and consequently, connected miscellaneous petitions are dismissed.