

(2008) 03 MAD CK 0186

In the Madras High Court

Case No : Writ Appeal (MD) No. 162 of 2008 and M.P. (MD) No. 1 of 2008

K. Thangarajan, The General Manager In-charge, Madurai District Co-operative Milk Producers Union Ltd. **APPELLANT**

Vs

K. Palanisamy and The District Collector, The Chairman, Madurai District Co-operative Milk Producers Union Ltd. **RESPONDENT**

Date of Decision : 28-03-2008

Acts Referred:

Constitution of India, 1950 — Article 21, 226

Citation : (2008) 03 MAD CK 0186

Hon'ble Judges : P.K. Misra, J;P. Murgesen, J

Bench : Division Bench

Advocate : A. Raja for S. Vivekanandan, for the Appellant; M. Md. Ibrahim Ali, for Respondent-1 and Pala Ramasamy, Special Govt. Pleader for Respondent-2, for the Respondent

Final Decision : Dismissed

Judgement

P.K. Misra, J.—The present appeals have been filed on behalf of Madurai District Co-operative Milk Producers Union Ltd., against the common order dated 24.1.2008 passed by the learned single Judge in W.P. Nos. 10342 & 10343 of 2007, whereunder the learned single Judge has allowed the writ petitions and quashed the orders of transfer in respect of two writ Petitioners (present Respondent No. 1 in each of the appeal).

2. The two writ Petitioners in question were working as Selection Grade Senior Assistants under the Madurai District Cooperative Milk Producers Union Ltd., Sathamangalam, Madurai. On the transfer of the General Manager of the Madurai District Co-operative Milk Producers Union Ltd., the present Appellant was posted as General Manager Incharge. By proceedings in Na. Ka. No. 3200/PA.KU.2/07 dated 6.12.2007, he transferred the two writ Petitioners to Theni Milk Chilling Unit. Such transfer orders came to be challenged in the two writ petitions solely on the ground that the General Manager Incharge had no power to transfer

because as per the service rules the General Manager had got such power to transfer. The writ Petitioners relied upon the judgment reported in 1997 Writ L.R. 33 (C. Baskaran v. The District Collector, Trichy and Anr.) to buttress the contention to the above effect. The learned single Judge by extracting para 4 of the aforesaid decision, came to the conclusion that an Incharge Officer cannot transfer any employee.

3. In the present appeals, the learned Senior Counsel appearing for the Appellant has contended that in view of the Full Bench decisions of this Court reported in T.K. Ananda Sayanan Vs. The Joint Registrar co-operative Societies, Vellore Region and The Special Officer, Sinampattadai Primary Agricultural Co-operative Bank, , a writ petition against a Co-operative Society was not maintainable. Learned Senior Counsel has further contended that even on merits, the conclusion of the learned single Judge that the General Manager Incharge was not empowered to pass an order of transfer, is not sustainable.

4. learned Counsel appearing for the first Respondent in both the appeals, on the other hand, has contended that the District Collector is the Chairman of the Madurai District Co-operative Milk Producers Union Ltd., and was also a Respondent in the writ petitions and, therefore, it cannot be said that the writ petitions are not maintainable. He has reiterated the contention that the General Manager Incharge was not empowered to issue any order of transfer and is only the "General Manager" who can pass any order of transfer.

5. Even though the District Collector was made as a party in the writ petitions, we find that no order passed by the District Collector was in question in the two writ petitions nor there was any relief real or imaginary claimed against the District Collector. Therefore, inclusion of the District Collector as a Respondent would not make the writ petitions maintainable, if essentially the writ petitions are directed against a co-operative society.

6. The controversy relating to maintainability of a writ petition against a Co-operative Society was considered at great length by a Full Bench in the decision reported in 2007 (3) CTC 17 (The Special Officer, The Nazarath Urban Co-operative Bank Ltd. v. C. Deva Anbu). Notwithstanding the aforesaid decision, many writ petitions were filed claiming relief essentially against the Co-operative Society, by giving appearance of the alleged violation of Article 21 of the Constitution. In the above context, the subsequent Full Bench clarified the matter by observing in 2007 (3) CTC 17 (cited supra) as follows:

18. Therefore, every order affecting the service of a workman would not automatically amount to an infringement of his right under Article 21 enabling him to move the Writ Court. We cannot ignore the settled position that applications to secure performance of obligations owed by a Government or a society towards its employees or to resolve any private dispute cannot be decided on the basis of the Article 21. The Appellant herein may perhaps have a good case on other grounds. But the order of suspension suspending him from

the post of Secretary does not amount to infringement of Article 21 and while the decision in the judgment of the Division Bench in *The Nazarath Urban Co-operative Bank Ltd.*'s case (cited supra) may be right on the facts of that case, the observations made regarding the application of Article 21 need to be and are clarified as above. The mere fact that he was kept under suspension beyond one year without the approval of the Registrar cannot be said to violate Article 21. It must be seen whether the invocation of Article 21 is justified in the particular case and whether the order challenged by a workman of a Co-operative Society is of such a nature that it would truly take away his right under Article 21 of the Constitution and that it is taken away otherwise than by due process of law.

7. In the present case, there is not even a single whisper about the alleged violation of Article 21 of the Constitution. What was being impugned in the writ petition was the mere order of transfer. By no stretch of imagination, an order of transfer, even an illegal order of transfer, can be held to be in violation of the exalted principle reflected in Article 21 of the Constitution. As already indicated, even though the Collector has been made as a formal party, the essence of the relief claimed is the order of transfer. Viewed from any angle, it is apparent that the writ petition was directed against the Co-operative Society.

8. In the above context, it is necessary to point out that though a writ petition may not be maintainable against a Co-operative Society, wherein the jurisdiction of the High Court is invoked under Article 226 for issuing a writ of Certiorari, such a writ petition may be maintainable when the question before the High Court is the decision of a judicial or quasi-judicial authority, even though the party ultimately to be affected may be a Co-operative Society. However, where the writ petition is essentially against an administrative order of a Co-operative Society containing no element of exercise of any judicial or quasi-judicial function, such a writ petition would not be maintainable.

9. Thus, it is apparent that, in the present case, the two writ petitions were not maintainable.

10. Apart from the above, we are inclined to accept the contention of the learned Senior Counsel for the Appellant that the authority in question, even assuming that he was a "General Manager In-charge" and not a "General Manager", the order of transfer cannot be said to be without jurisdiction.

11. learned Counsel appearing for Respondent No. 1 has placed strong reliance of the Division Bench decision, which has been referred to earlier (1997 Writ L.R.33). In the said Division Bench decision, so strongly relied upon by the learned Counsel for the present Respondent No. 1, the question was relating to cancellation of community certificate. The Division Bench found that cancellation took place on the basis of materials collected behind back of the Appellant and, therefore, the order was found to be defective. The Division Bench went on to observe:

4. There is one more aspect of the matter which has not been noticed by the

Petitioner/Appellant and also by the learned single Judge. The order is not passed by the District Collector, Trichy, but it is passed by the officer-in-charge of the office of the District Collector. The very title of the proceedings shows that it is the order passed by the Incharge Collector. In-charge Collector cannot be considered to be the Collector and he is entitled to discharge the statutory functions of the Collector. He is only intended to look after the day-to-day administration and is not entitled to exercise the statutory powers. Therefore, on this ground also, the impugned order is liable to be set aside.

(Emphasis added by us)

12. The aforesaid observation of the Division Bench obviously was in the context that the District Collector was required to exercise his statutory power and, therefore, the Incharge Collector should not have exercised such statutory function. However, the Division Bench had also emphasised that the Incharge Officer could look after day-to-day administration.

13. We have specifically posed the question to the counsel for Respondent No. 1 as to whether the order of transfer can be considered as a day-to-day function or a pure statutory function and the learned Counsel has not been able to furnish any satisfactory answer that an order of transfer can be anything but a mere day-to-day administrative function. Therefore, even applying the ratio of the Division Bench decision, we find that there was no embargo for the General Manager Incharge to pass the order of transfer.

14. In view of the above conclusion, the other contention of the learned Senior Counsel for the Appellant to the effect that in fact the incumbent was the General Manager for all purposes, need not be gone into.

15. For the aforesaid reasons, the writ appeals are allowed and both the writ petitions are dismissed. No costs.