

(2007) 12 MAD CK 0070
In the Madras High Court
Case No : Writ Petition No. 14850 of 2005

M. Manohar

APPELLANT

Vs

The State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 12-12-2007

Acts Referred:

Industrial Disputes Act, 1947 — Section 12(3)

Tamil Nadu Co-operative Societies Act, 1961 — Section 12, 18, 180(1), 181(1), 24

Citation : (2007) 12 MAD CK 0070

Hon'ble Judges : V. Dhanapalan, J

Bench : Single Bench

Advocate : G. Jeremiah, for the Appellant; A. Edwin Prabakar, Additional Government Pleader for RR 1 to 4, V. Subbarayan, for R5 and A.V. Bharathi, for R6, for the Respondent

Final Decision : Dismissed

Judgement

V. Dhanapalan, J.—This writ petition has been filed seeking to call for the records of the first respondent in G.O. (2D) No. 37, Cooperative

Food and Consumer Protection Department dated 05.04.2005 and quash the same.

2. The brief facts of the petitioner's case, as culled out from his affidavit, are as follows:

2.1 The petitioner is a member of the fifth respondent society, one of the few profit making societies in Tamil Nadu. According to By-law No. 64

of the fifth respondent society, the cost of establishment shall not exceed 2% of the turnover/working capital and this has also been made clear by

the first respondent vide G.O. Ms. No. 89 dated 16.05.2000 and also by various circulars issued by the second respondent.

2.2 While so, a 12(3) Settlement was entered into between the then Board of

Directors of the fifth respondent Society and the Employees Union

vide proceedings dated 16.03.2000 contrary to directions of the second respondent in the matter of fixation of salary and also in violation of the

provisions of the Tamil Nadu Cooperative Societies Act (for short "the Act") and Rules. Resultantly, the salary of the employees of the fifth

respondent society was fixed more than the ceiling of 2% of principal capital of the society in addition to various other benefits, thus affecting the

financial condition of the fifth respondent society and also the rights of its members. In fact, the settlement was also submitted before the

respondents 3 and 4 for approval under the provisions of the Act and since the fifth respondent society did not get the approval approval from the

competent authorities, the 12(3) Settlement was not able to be given effect to and subsequently, the fourth respondent-Deputy Registrar issued a

letter dated 19.12.2001 holding that the 12(3) Settlement dated 16.03.2000 is invalid and thus, rejected to grant approval for the 12(3)

Settlement.

2.3 While the fact remains that the employees numbering 68 in the fifth respondent society are well paid and the establishment costs is 2.9% of the

turnover, contrary to the By-law 64, the Government, due to the pressure of the employees of the fifth respondent society, issued G.O. (D) No.

994 dated 13.11.2002 directing the Inspector of Labour, Cuddalore to prosecute the Special Officer of the fifth respondent society for not

implementing the 12(3) Settlement dated 16.03.2000 and this Government Order was challenged before this Court by the Special Officer in W.P.

No. 45490 of 2002 and an order of interim stay of the said Government Order was granted by this Court on 19.12.2002 in W.P.M.P. No.

66423 of 2002.

2.4 On being approached once again by the employees of the fifth respondent society, the first respondent by its G.O. (2D) No. 37 dated

05.04.2005, granted exemption of G.O. No. 89 dated 16.05.2000 insofar as the fifth respondent society is concerned and further directed that the

employees of the fifth respondent society be paid 10% of the settlement as an interim measure until a new settlement is arrived at and this

Government Order in G.O. (2D) No. 37 is under challenge in this writ petition inasmuch as it is contrary not only to the provisions of the Act but

also the ruling of the Supreme Court and a Division Bench of this Court that the first respondent cannot issue directions to a cooperative society

contrary to the by-law which is governed only by the Act.

3. The first respondent has filed counter contending that:

3.1 the fifth respondent society is under the administrative control of the fourth respondent and its employees' pay has to be fixed by the

management of the society after sending proposals to the second respondent and after getting his consent;

3.2 the proposals for entering into 12(3) Settlement for the period from 01.07.1993 to 30.06.1998 with the Employees' Union by the

management of the fifth respondent society were sent to the second respondent and after obtaining permission, the third respondent accorded

permission to the management of the society to enter into 12(3) Settlement and as the 12(3) Settlement for the said period came to an end by

30.06.1998, the management of the fifth respondent society sent proposals to the third respondent on 08.10.1999 requesting permission to enter

into 12(3) Settlement for the period 01.07.1998 to 30.06.2003;

3.3 on receipt of proposals from the management of the fifth respondent society, the fourth respondent, in his letter dated 21.10.1999, informed

the President of the fifth respondent society that a State Level Committee has been constituted under the Chairmanship of the Additional Registrar

(Credit), Office of the Registrar of Cooperative Societies, to analyse pay fixation of Employees Thrift and Credit Societies in the State according

to the financial condition of the societies and as such, 12(3) Settlement proposals could not be recommended to the third respondent;

3.4 the Employees Union then issued a strike notice to the management of the fifth respondent society and entered into an indefinite strike from

13.03.2000 and then, the management of the fifth respondent society entered into a 12(3) Settlement with the Employees Union for a period of

five years from 01.07.1998 to 30.06.2003 without obtaining permission of the third respondent and in the meantime, the second respondent issued

a Circular dated 29.05.2000 in accordance with G.O.Ms. No. 89 dated 16.05.2000 in which the Employees Thrift and Credit Societies were

classified and the pay scales of the employees were prescribed according to the loan transaction of the societies;

3.5 it was stated in the Circular that the package of pay and allowances shall be made available to the employees who agree to accept them

through a fresh settlement made u/s 12(3) of the Industrial Disputes Act, 1948 and in consultation with the State Level Employees Unions and

Circle Deputy Registrar as the 12(3) Settlement entered into by the management of the fifth respondent society was not in consultation with the

State Level Employees Union and the fourth respondent;

3.6 as the Settlement period was over on 30.06.2003, the Employees Union gave fresh demands to the Special Officer of the Society on

29.12.2003 to enter into a fresh settlement and after having talks with the Employees Union, the fifth respondent society sent their demands to the

fourth respondent on 24.11.2004 and requested permission for payment of 30% of interim relief to the employees till a fresh settlement was made

and the fourth respondent, after scrutiny of the proposals sent them to the third respondent on 26.11.2004, who in turn forwarded the proposals to

the second respondent recommending for payment of 10% of interim relief to the employees and the second respondent sent the proposals to the

Government, the first respondent, who, vide G.O.(2D)No. 37 dated 05.04.2005, gave exemption to G.O.Ms. No. 89 dated 16.05.2000 as a

special case since the society was working on its own funds and earning profit and also permitted for payment of 10% interim relief to the

employees from the date of issue of the said Government Order till a fresh settlement was arrived at and that the interim relief shall be recovered

from the arrears of payment to be made on fixation of new pay based on the fresh 12(3) Settlement to be made;

3.7 if the petitioner is refused any service in the fifth respondent society, he can seek redressal of his grievance u/s 24 of the Act and when that is

not the case, he does not have locus standi to file this writ petition and as such, on this score alone, this petition has to be dismissed in limine;

3.8 there is no special by-law No. 64 as stated by the petitioner, but, in the Appendix-I to the By-laws governing the service conditions of the

employees of the Cooperative Societies, under Special By-law No. 1, it has been stated that the cost of the establishment shall not exceed 2% of

the turnover/working capital and subject to the instructions that may be issued in respect of each type of society by the second respondent;

3.9 in G.O. Ms. No. 89 dated 16.05.2000, it has been stated that the pay scales should be implemented subject to the norms prescribed by the

second respondent on the percentage of the Establishment and Contingency Charges to working capital from time to time and the second

respondent, in his Circular dated 06.06.1997, has issued instructions that the Employees' Cooperative Societies working on own funds and which

have paid dividends to its members not below 8% continuously for three years, those Societies' Establishment and Contingency Charges may be

within 2% to 3% of the working capital and the proposed demands of the employees of the fifth respondent society to pay 10% interim relief are

well within the limit prescribed by the second respondent and even after the proposed payment of interim relief, the Establishment and Contingency

Charges will be within the limit prescribed by the Registrar of Cooperative Societies.

3.10 The 12(3) Settlement arrived at by the then Board of Directors was for a period of five years till 30.06.2003 which is still in force since a

dispute has been raised and pending before the Labour Court, Cuddalore by the employees for fresh settlement u/s 12(3) of the Industrial Disputes

Act.;

3.11 the petitioner is not at all aggrieved by the 12(3) Settlement for the period 01.07.1998 to 30.06.2003 as the salary of the employees was

revised only according to the working condition of the society and even after revision of salary, the society worked at a profit of Rs. 151 lakhs, Rs.

190 lakhs and Rs. 222 lakhs during the years 2001-2002, 2002-2003 and 2003-2004 respectively and had also declared dividends to its

members @ 9.5%, 10.5% and 11.5% respective during these three years;

3.12 normally, an Employees Cooperative Society would have about 200 to 300 members whereas the fifth respondent society has more than

16,000 members for which relaxation in respect of G.O. Ms. No. 89 was given as a special case and that too, only after entering into 12(3)

Settlement on 16.03.2000 which is still in force and as such, the petitioner's statement that the Settlement was unable to be implemented is not

true;

3.13 the fourth respondent, vide his letter dated 19.12.2001, has not stated that the 12(3) Settlement is irregular but has only offered his remarks

to the third respondent as to why permission for implementation of 12(3) Settlement could not be accorded;

3.14 there are only 66 employees in the fifth respondent society and not 68 employees as claimed by the petitioner and as per the Audit Report for

the year 2003-2004, the cost of Establishment and Contingencies during the year is only Rs. 1,36,67,857/- which is 1.88% of the working capital

of the fifth respondent society amounting to Rs. 72,42,32,211/-; and

3.15 the 12(3) Settlement entered into on 16.03.2000 has 32 clauses out of which 28 clauses were implemented, leaving four clauses un-

implemented for which the Employees Union filed a petition before the Inspector of Labour, Cuddalore and hence, the Inspector of Labour,

Cuddalore sent proposals to prosecute the fifth respondent and the Government has issued G.O. (D) No. 994 dated 13.11.2002 empowering the

Inspector of Labour to file a charge sheet in Judicial Magistrate's Court at Mandarakuppam against the fifth respondent who subsequently moved

this Court and obtained an order of interim stay of the said Government Order;

4. The fifth respondent, in his counter, has only reiterated the stand taken by the first respondent in his counter and the sixth respondent Sangam

which has since been impleaded subsequent to the filing of the writ petition, has contended that:

4.1 it has more than 25 employees as its members and the writ petitioner has falsely represented that the contingent expenditure due to salary and

pay exceeded the prescribed norms of turnover / working capital whereas such expenditure is only less than 2% even after the inclusion of the

financial implication arising from the implementation of the impugned order granting interim relief;

4.2 when the fifth respondent society sought and obtained an order of exemption from the implication of G.O.Ms. No. 89 so as to enable its

employees to get financial benefits, the same cannot be questioned by a member who cannot, in an employer-employee relationship, interfere by

challenging an order passed in favour of the employees of the cooperative society;

4.3 the writ petition is liable to be dismissed in view of the solvent financial position of the fifth respondent society and the fulfilment of norms by the

society even after granting revision in scales of pay and interim relief;

4.4 the very fact that the petitioner had given the annual wage bill amount of Rs. 1,12,14,875.90 per annum but deliberately suppressing the

quantum of turnover and working capital would clearly prove the facts that the writ petition lacks bona fides;

4.5 as per the information gathered by the petitioner, the annual turnover as on 31.12.2004 is Rs. 201,03,23,418/- 2% of which comes to around

Rs. 4 crores whereas the cost of establishment is only Rs. 1.36 crores;

4.6 the petitioner understands that the working capital of the fifth respondent society which includes share plus deposits and reserve fund yet to be

invested has gone upto Rs. 75,85,38,377.00, 2% of which amounts to only Rs. 1.50 crores as against the establishment cost of Rs. 1.36 crores

which includes, apart from wage bill, other contingencies also and as such, looked either from the point of view of turnover or working capital, the

cost of establishment is far below the prescribed norms of 2%;

4.7 as far as the self-reliant fifth respondent society is concerned, the cost of establishment could be upto 3% of the turnover/working capital and

as such, the petitioner's allegation that 2% is the prescribed norm in this regard is factually incorrect; and

4.8 the impugned Government Order exempting the fifth respondent society from the implication of G.O. Ms. No. 89 and ordering 10% of

Settlement amount to be paid as as an interim measure to the employees of the fifth respondent society, is no way violative of either the By-laws of

the fifth respondent Society or the Act and the decision of the Division Bench of this Court which is affirmed by the Supreme Court is not factually

applicable to the case on hand.

5. I have heard Mr. G. Jeremiah, learned Counsel for the petitioner, Mr. A. Edwin Prabakar, learned Additional Government Pleader appearing

for the respondents 1 to 4, Mr. Subbarayan, learned Counsel for the fifth respondent and Ms. A.V. Bharathi, learned Counsel for the sixth

respondent. I have also perused the records placed before this Court.

6. The learned Counsel for the petitioner has contended that without the approval of the competent authorities under the Act, the 12(3) Settlement

cannot be implemented by the fifth respondent suo motu in which event, surcharge proceedings will be initiated against the fifth respondent u/s 87

of the Act and as such any proceedings under the Industrial Disputes Act,

without reference to the Tamil Nadu Cooperative Societies Act is unsustainable in law. He has further contended that the impugned Government Order is contrary to G.O. Ms. No. 89 by which the first respondent fixed the norms for all cooperative societies that the establishment cost should not exceed 2% of the turnover / working capital.

7. It is the strenuous contention of the learned Counsel for the petitioner that if the new 12(3) Settlement is given effect to, the employees of the fifth respondent society would receive higher wages than the employees who are the members of the fifth respondent society. By placing reliance on an unreported decision of this Court in W.P. No. 4773 of 1996, he has contended that the service conditions of the Cooperative Societies are covered by the Act and as such, the first respondent has no jurisdiction to issue the impugned Government Order. In this regard, he has placed further reliance on a First Bench decision of this Court reported in 2002 (4) CTC 385 in the case of L. Justine and Anr. v. The Registrar of Cooperative Societies, Chennai-10 and Two Ors. wherein it has been held in para 19(vii) as under:

That either the provisions of Tamil Nadu Industrial Establishments (Conferment of Permanent Status to Workmen) Act, 1981 or the Industrial Disputes Act, 1947, or the settlements entered under Sections 12 and 18 thereof, shall have no application to the staff of the cooperative societies appointed without adequate qualifications or beyond the cadre strength for the period from 09.07.1980 to 11.03.2001. This is equally applicable to the staff appointed to the cooperative societies, otherwise than through employment exchange, for the period from 12.03.2001 onwards.

8. Lastly, it is the contention of the learned Counsel for the petitioner that if the impugned Government Order passed by the first respondent is given effect to, the fifth respondent society which is presently a profit-making one would run into losses and its members including the petitioner, would be put to great financial loss by losing their share capital.

9. The learned Additional Government Pleader appearing for the respondents 1 to 4, by pointing out Section 181(1) of the Act, has strenuously contended that the Registrar of Cooperative Societies, in the public interest or for the purpose of securing proper implementation of cooperative production and other development programmes approved or undertaken by the

Government, may by order, issue directions to them from time to time and all registered societies shall be bound to comply with such directions. He has further contended that when the second respondent, in his Circular dated 06.06.1997, has issued instructions that the employees cooperative societies working on own funds and which have paid dividends to its members not below 8% continuously for three years may spend between 2% and 3% of the working capital of the society under the head Establishment and Contingent Charges and when the expenditure under that head had not exceeded the limit, the contention of the petitioner that the fifth respondent society would run into losses cannot have legs to stand. It is also his contention that when the first respondent has considered the overall factors into consideration such as the strong financial condition and the more number of members of the fifth respondent society before exempting the fifth respondent society from the implication of G.O. Ms. No. 89, the impugned order passed by the first respondent does not need to be quashed inasmuch as the establishment and contingent costs have not exceeded even the 2% ceiling fixed under the by-laws of the fifth respondent society.

10. The learned Counsel for the sixth respondent Sangam, at the threshold, has contended that there is no By-law No. 64 as contended by the petitioner stipulating that the establishment and contingent cost should not exceed 2% of the turnover / working capital. Further, by relying on the Circular dated 09.06.2007 of the second respondent, she has contended that the establishment and contingent expenditure in the range of 2% to 3% of the working capital is permissible and that too, as per paragraph 4 of the counter, when the same has not exceeded the ceiling of 2% and works out to only 1.85% even after the inclusion of the financial implication arising from the implementation of the impugned order granting interim relief, the petitioner is estopped from questioning the impugned order passed by the first respondent who has taken cognizance of overall factors before passing the same.

11. I have carefully considered the rival submissions made by the counsel for the parties and the points emerging for consideration in this petition are as under:

a. Whether the first respondent is correct in passing the impugned order in G.O.

(2D) No. 37 exempting the fifth respondent society from the purview of G.O. Ms. No. 89 in violation of Bylaw No. 64 of the fifth respondent society?

b. Whether the establishment cost would exceed 2% of the turnover/working capital if the new 12(3) Settlement is given effect to?

12. While deciding the first point for consideration, it would be necessary and worthwhile to pay attention to the series of events which led to the passing of the impugned order by the first respondent and let me proceed on that line.

13. Since the 12(3) Settlement initially proposed had come to an end by 30.06.1998, the Management of the fifth respondent society had sent

proposal to the third respondent requesting the latter's accord to enter into 12(3) Settlement for the period 01.07.1998 to 30.06.2003, pursuant

to which the fifth respondent society was informed by the fourth respondent vide letter dated 21.10.1999 that the Settlement could not be

recommended to the third respondent for the reason that a State Level Committee had been constituted to analyse the pay fixation of Employees

Thrift and Credit Societies in the State. Subsequent to the indefinite strike resorted to by the Employees Union, the Management of the fifth

respondent society had entered into a 12(3) Settlement with the Employees Union for the period 01.07.1998 to 30.06.2003 without the

permission of the third respondent. Meanwhile, a Circular dated 29.05.2000 had come to be issued by the second respondent to the effect that the

package of pay and allowances would be made available to the employees on their agreement to enter into a fresh 12(3) Settlement and in

consultation with the State Level Employees Union and Circle Deputy Inspector since the 12(3) Settlement already entered into was sans the

consultation with the State Level Employees Union and approval of the fourth respondent. Pursuant to the demand of the Employees Union to

enter into a fresh 12(3) Settlement as the period of the earlier 12(3) Settlement was over, the fifth respondent society had sent the Employees

Union's demand to the fourth respondent seeking 30% of interim relief till a fresh Settlement was made which was forwarded to the third

respondent, who, in turn, recommended to the second respondent for payment of 10% as interim relief and accordingly, the first respondent, viz.,

the Government, upon receipt of proposal from the second respondent, had passed the impugned order dated 05.04.2005 exempting the fifth

respondent society, as a special case, from the purview of G.O. Ms. No. 89 dated 16.02.2000 considering the fact that the fifth respondent

society was a self-reliant and profit making one and gave its accord for payment of 10% interim relief from the date of the said order till a fresh

Settlement was arrived at. In the impugned order, the first respondent-Government had also not failed to order that the interim relief so paid would

be recovered from the arrears of payment once the fresh 12(3) Settlement was made.

14. From the above series of events, it is amply clear that the first respondent had not suo motu passed the impugned order or that it has passed an

order without proper reasoning. To put it in other words, a reading of the impugned order would reveal that the Government, before passing the

impugned order, had given due consideration to the recommendation of the second respondent on the aspect of financial standing of the fifth

respondent society, particularly its profitability and dividend-paying capacity and it had also made it categorical that such an interim relief is granted

only as a special case. That apart, it had also fairly ordered that such interim relief would be deductible once the fresh 12(3) Settlement is entered

into.

15. In the above context, the main argument advanced on the side of the petitioner is that the first respondent-Government cannot pass such an

order in contravention of the fifth respondent's Bylaw No. 64 which specifically stipulates that the establishment costs shall not exceed 2% of the

turnover/working capital. This argument, at the threshold, has to fall to ground for the reason that from a perusal of the documents, it is seen that

there is no By-law as contended by the petitioner and it is only an Appendix to the Special By-laws which can certainly not have an over-riding

effect on the object of the Act and Rules as well as the Settlement entered into.

16. Further, in this connection, it has to be stated that the object of the Act is to amend and consolidate the law relating to and to make better

provision for the organisation, management and supervision of cooperative societies in the State of Tamil Nadu. In order to have effective control

over the cooperative societies and for the orderly development and also for the

promotion of thrift, self help and mutual aid among the persons with a common socio-economic needs so as to bring about improvement in various fields of cooperation and in furtherance of the above object, the

Government has been provided with the authoritative power to make rules to carry out all or any of the purposes of the Act u/s 180(1) of the Act

which reads as under:

The Government may, for the whole or any part of the State of Tamil Nadu and for any registered society or class of such societies, make rules to

carry out all or any of the purposes of this Act.

17. Apart from the above, the Registrar of Cooperative Societies, who, in the instant case, has issued the Circular dated 06.06.1997, is endowed

with certain powers u/s 181(1) of the Act which reads as under:

Power of Registrar to give directions in the public interest, etc.

Where the Registrar is satisfied that in the public interest or for the purpose of securing proper implementation of cooperative production and other

development programmes approved or undertaken by the Government or to secure the proper management of the business of any class of

registered societies generally, or for preventing the affairs of any registered society being conducted in a manner detrimental to the interests of the

members, or of the depositors or the creditors thereof, it is necessary to issue directions to any class of registered societies generally or to any

registered society or registered societies in particular, he may, by order issue directions to them from time to time, and all registered societies or the

registered society concerned, as the case may be, shall be bound to comply with such directions.

18. In view of the above settled proposition, I find no force in the argument advanced by the learned Counsel for the petitioner that the first

respondent-Government has no power to issue the impugned order exempting the fifth respondent society, more so, when the first respondent, on

receipt of proposal from the Management of the fifth respondent society through the second, third and fourth respondents with due

recommendation to grant interim relief, had ordered grant of interim relief and deduction thereof. As for the reliance placed by the learned Counsel

for the petitioner in this regard on a Division Bench judgment of this Court reported in 2002 (4) CTC 385, I am of the view that the said judgment

cannot be of any help to the petitioner's case since the facts and circumstances set out therein are not the same as those on hand and more so, in

the instant case, the first respondent Government has acted in accordance with the provisions of the Act and the Rules and therefore, the question

of applicability of other Acts does not arise in this case. Thus, the first point for consideration is answered against the petitioner.

19. Coming to the second point for consideration, it is seen from the Audit Report of the fifth respondent society for the year 2005-2006 that even

if the financial implication imposed in the impugned order is given effect to, the expenditure incurred under ""Establishment & Contingencies"" is well

within the 2% ceiling as stipulated in G.O. Ms. No. 89 and to be precise, it works out to 1.76% of the working capital and the said figure for the

year 2003-2004 also is only 1.88% of the working capital. In such view of the matter, I have no hesitation in holding that the petitioner has only

made a bald allegation to the effect that the fifth respondent society would run into losses if the new Settlement is given effect to and as such, this

point for consideration also is answered against the petitioner.

20. Lastly, in addition to answering the above points for consideration, it will not be out of place to note that the fifth respondent society had paid

dividends of 11.5%, 12.75% and 13.50% to its members numbering more than 16,000 during the years 2003-2004, 2004-2005 and 2005-2006

respectively. In fact, the fifth respondent society had been paying dividend to its members over and above 8% which is specified in the Circular

dated 06.06.1997 issued by the second respondent and the relevant translated portion of the said Circular reads as under.:

The expenditure incurred under the head Establishment and contingent charges by self-reliant cooperative banks and societies which pay a

minimum of 8% of dividend to their members may be in the range of 2% to 3% of their working capital.

Thus, when the second respondent has taken due care of the interest of its members while giving liberty to the cooperative societies to incur

establishment cost upto 3% as against the ceiling of 2% and when the petitioner who is also a member of the fifth respondent society has been in

receipt of his due share of dividend and in fact, more than what has been specified by the second respondent in the above referred to Circular, it

can conveniently and safely be concluded that he is estopped from making a bald allegation that the fifth respondent society would run into losses if

the proposed 12(3) Settlement is given effect to.

For all the foregoing reasons, especially, keeping in view the fact that neither the financial condition of the fifth respondent society is going to be

affected nor the petitioner is going to be deprived of his due share of dividend if the proposed 12(3) Settlement is given effect to, G.O. (2D) No.

37 dated 05.04.2005 passed by the first respondent is upheld and resultantly, the writ petition which is bereft of any merit deserves no

consideration and is accordingly dismissed. However, there shall be no order as to costs.