
(1998) 10 MAD CK 0036
In the Madras High Court

M. Sivakumar

APPELLANT

Vs

The Commissioner of Milk Production and Dairy Development
and Others

RESPONDENT

Date of Decision : 12-10-1998

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1999) 1 MLJ 631

Hon'ble Judges : S.S. Subramani, J

Bench : Single Bench

Judgement

S.S. Subramani, J.—Petitioner seeks issuance of writ of certiorari calling for the records of the third respondent in his proceedings dated

12.4.1998 and quash the appointment issued in favour of the 4th respondent and thus render Justice.

2. Petitioner, who is an unemployed graduate, after having completed his degree course, also completed ten months course of co-operative training

offered by Government Institute. Petitioner has also enrolled his name in the district employment office and he is waiting for a long time for getting

an employment. The third respondent, the President of M. Vellalapatti Milk Producers Co-operative Society and 11 elected representatives are to

take the collective decisions. It is also under the control of the respondents land 2 and under their direction, the society has to run.

3. A Board meeting was proposed to be held on 12.4.1998 and by the time the members assemble, the third respondent had taken away all the

papers and nothing happened on that date. But it seems that the third respondent, himself prepared a resolution and declared it as passed and by

virtue of the same, an order of appointment was given in favour of the 4th

respondent. This according to the petitioner is against the provisions of the Tamil Nadu Co-operative Societies Act.

4. It is also said that the 4th respondent is not even qualified to hold the post. It is said that under Rule 149 of the Tamil Nadu Co-operative

Societies Rules, an appointment can be made in normal course only after calling for the list of eligible candidates from the employment exchange

and preference will have to be given to those who have completed co-operative training. According to the petitioner, 4th respondent is not having

any training and therefore is not suitable to hold the post when the vacancy arose. Petitioner has come to this Court with the grievance that when

public money is involved and when the statute provided for following particular procedure, third respondent cannot appoint a person without

following the same. He wanted to cancel the appointment of 4th respondent.

5. Third respondent had filed a counter-affidavit. He challenges the locus standi of the petitioner in filing the writ petition. According to him,

petitioner is neither a member nor a person interested in the management of the society and he is only a third party and therefore he has no locus

standi to question the orders of the third respondent.

6. It is further submitted that the 4th respondent has already filed an application as early as on 3.9.1997 and the same was pending with him for

several months and he was appointed only on 12.4.1998. It is also said that the post of clerk is vacant from 15.4.1994 and the application of the

4th respondent was duly considered and he was found to have appropriate qualifications. Third respondent also refers to a circular of the Registrar

of Co-operative Societies, in which it is stated that preference has been given to the management in appointments rather than appointment through

employment was made. The allegation that the appointment of 4th respondent is against all norms is denied. Petitioner's application is dated only

29.4.1998 that is after the appointment of the 4th respondent.

7. It is also said that resolution was passed by six Directors out of eleven Directors and the same was unanimous. It is not the decision taken by the

third respondent alone, but by the Board itself. It prayed for dismissal of the writ petition.

8. I heard the counsel in detail.

9. The main argument of the learned Counsel for the third respondent was that the petitioner has no locus standi to file this writ petition.

10. Under Rule 149(3) of the Tamil Nadu Cooperative Rules, Rule prohibits appointment, except by following the procedure. The relevant portion

of the Rule read thus:

Rule 149(3)(a): No appointment by direct recruitment to any post shall be made except by calling for from the societies applications from their

employees who possess the qualifications for the post and unless the Government have accorded special sanction for recruitment by advertisement

in dailies, by also calling for a list of eligible candidates from the employment exchange.

(b) Where the employment exchange issues a non-availability certificate or the Government have accorded special sanction for recruitment by

advertisement in dailies, the society shall invite applications from candidates including those working in other societies by advertisement in one

English daily and two Tamil dailies having circulation within the area of operations of the society approved by the Government for the purpose of,

issue of Government advertisements.

(c) Every appointment by direct recruitment shall be made by holding written examination and interview or by holding only interview as decided by

the board and on the basis of the rank given with reference to the marks obtained in the Written examination, if any and the marks awarded in the

interview;

Provided that nothing contained in this sub-rule shall apply to any of the posts for the recruitment of which a recruitment bureau has been

constituted u/s 74 or in respect of which common cadre of service has been constituted u/s 75:

Provided further that nothing contained in this sub-rule shall apply to appointments of dependents of the employees of any society, who died or

medically invalidated while in service.

11. Petitioner is a person who has registered his name with the Employment Exchange and he is also qualified to hold the post of clerk in the

society. When he is waiting for an appointment, circumventing the Rule, if an appointment is made ignoring the Statutory Rules, naturally the

persons who are affected are, the persons who have registered their names in

the Employment Exchange. Their chance of getting appointment is lost. When the Government prescribe that preference will be given to those persons who have registered their name in the employment exchange and when the statute also provide to appoint a person only through the employment exchange, naturally the petitioner is entitled to infer that the society also will follow the same procedure.

12. By circumventing the procedure and without informing the Employment Exchange, if appointment is made, there is no purpose in registering the name in Employment Exchange. So, the petitioner cannot be said to be a person having no locus standi to file this writ petition and questioning the procedure adopted by the third respondent. By not following the procedure, the right of the petitioner to consider his claim for the post is also so lost. In that way, he is an aggrieved person, though he is a third party to the society. The contention that the petitioner has no locus standi to file the writ petition is therefore rejected.

13. It must also be noted that the question of locus standi should not be considered as if in the civil suit. In a proceedings under Article 226 of the Constitution of India, the scope of locus standi is much wider.

14. Further question that arises for consideration is whether the procedure of appointment made by the third respondent is proper?

15. I have already extracted the relevant portions of the Rule 149. Admittedly the Rule is not complied with. The learned Counsel also relied on the circular issued by the second respondent on 1.4.1997, wherein he has directed all the societies not to appoint any person without following the procedure and without obtaining his prior permission. Appointment without prior sanction from the second respondent is prohibited. He has also relied on Rule 149 of the Tamil Nadu Co-operative Societies Rules.

16. Under Tamil Nadu Co-operative Societies Act, every society is bound by orders and directions issued by the Registrar and Deputy Registrar of Co-operative Societies and if there is any disobedience or violation of the direction, proceedings also could be initiated against the society and the Board itself can be superseded under that circumstances. Such being the mandate of the Law, third respondent cannot contend that he has moved for ratification of the appointment made. The question of ratification does not arise in such cases. When the Rule as well as the direction of

the second respondent says that the appointment should be made only after following particular procedure, only that procedure should be

followed. In this case, third respondent admittedly has not followed the procedure and that is statutory violation

17. Petitioner also has a case that the 4th respondent is also not qualified to hold the post. He has no cooperative training and this fact was brought

to the notice of the respondents 1 and 2. It is also said that the second respondent made an inspection of the society and found that the

appointment was improper and irregular. This fact is admitted even by the third respondent in his counter. Third respondent further stated that

thereafter he has made a request to the authorities to ratify the appointment of the 4th respondent. As I stated above, the question of ratification

does not arise in such cases, for the appointment is void.

18. Even though 4th respondent has been served with notice, he has not filed any counter. By passing resolution alone, no appointment could be

made. It is further seen even though vacancy arose in 1994, no attempt was made by the society to inform the vacancy to the employment

exchange, and the 4th respondent moved his application only to the third respondent which was kept months together. I do not think that the

explanation offered by the third respondent could be accented.

19. A representation was made by the petitioner to the respondents 1 and 2 to intimate action. But they have not taken any action against the third

respondent nor they have directed to remove the 4th respondent from the post. Their inaction is also improper.

20. In the result, there will be a direction against the respondents 1 and 2 to take immediate action on the representation of the petitioner dated

13.4.1998 and the reminder dated 29.4.1998 for taking immediate action against the third respondent for violating the statutory rules and pass final

orders on the same within a period of 15 days from the date of receipt of copy of this order on the basis of observations made above.

21. The writ petition is allowed as above. No costs. Consequently, the W.M.P.Nos. 10779 and 10780 of 1998 are closed.