
(2011) 04 MAD CK 0260

In the Madras High Court

Case No : Writ Petition No. 8919 of 2011 and M.P. No. 1 of 2011

Mr. G. Arumugam

APPELLANT

Vs

The Salem Junction Co-operative Building Society

RESPONDENT

Date of Decision : 08-04-2011

Acts Referred:

Constitution of India, 1950 — Article 12, 226

Citation : (2011) 04 MAD CK 0260

Hon'ble Judges : R. Sudhakar, J

Bench : Single Bench

Advocate : T. Ramachandran, for the Appellant; S. Shivashanmugam, Government Advocate, for the Respondent

Final Decision : Dismissed

Judgement

R. Sudhakar, J.—Writ Petition is filed praying to issue a Writ of Certiorarified Mandamus, calling for the records of the Respondent pertaining to loan account No. 73/02-03 dated 6.12.2010 and quash the same as null and void and consequential relief, directing the Respondent to receive a sum of Rs. 39,701/- as the full and final settlement and direct the Respondent to return the original documents to the Petitioner.

2. Mr. S. Shivashanmugam, learned Government Advocate takes notice on behalf of the Respondent. By consent of both parties, the writ petition is taken up for final disposal.

3. The writ petition has been filed challenging the notice dated 6.12.2010 intimating the dues that has to be paid by the Petitioner to the Respondent society. Petitioner could have approached the very same authority and give an explanation or sought for clarification. In stead, Petitioner has chosen to straightaway come to this Court by way of writ petition which is admittedly is not maintainable in view of the larger Bench decision in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative

Agricultural Bank, Para 21 of the larger Bench decision of this Court reads as follows:

21. From the above discussion, the following propositions emerge:

(i) If a particular co-operative society can be characterized as a "State" within the meaning of Article 12 of the Constitution (applying the tests evolved by the Supreme Court in that behalf), it would also be "an authority" within the meaning and for the purpose of Article 226 of the Constitution. In such a situation, an order passed by a society in violation of the bye-laws can be corrected by way of writ petition.

(ii) Applying the tests in *Ajay Hasia* it is held that the Respondent society carrying on banking business cannot be termed as an instrumentality of the State within the meaning of Article 12 of the Constitution.

(iii) Even if a society cannot be characterized as a "State" within the meaning of Article 12 of the Constitution, even so a writ would lie against it to enforce a statutory public duty cast upon the society. In such a case, it is unnecessary to go into the question whether the society is being treated as a "person" or an "authority" within the meaning of Article 226 of the Constitution and what is material is the nature of the statutory duty placed upon it and the Court will enforce such statutory public duty. Although it is not easy to define what a public function or public duty is, it can reasonably said that such functions are similar to or closely related to those performable by the State in its sovereign capacity.

(iv) A society, which is not a "State" would not normally be amenable to the writ jurisdiction under Article 226 of the Constitution, but in certain circumstances, a writ may issue to such private bodies or persons as there may be statutory provisions which need to be complied with by all concerned including societies. If they violate such statutory provisions a writ would be issued for compliance of those provisions.

(v) Where a Special Officer is appointed in respect of a co-operative society which cannot be characterized as a "State" a writ would lie when the case falls under Clauses (iii) and (iv) above.

(vi) The bye-laws made by a co-operative society registered under the Tamil Nadu Co-operative Societies Act, 1983 do not have the force of law. Hence, where a society cannot be characterized as a "State", the service conditions of its employees governed by its bye-laws cannot be enforced through a writ petition.

(vii) In the absence of special circumstances, the Court will not ordinarily exercise power under Article 226 of the Constitution of India when the Act provides for an alternative remedy.

(viii) The decision in *M. Thanikachalam and others Vs. Maduranthakam Agricultural Producers co-operative Marketing Society and others*, is no longer

good law, in view of the decision of the seven-Judge Bench of the Supreme Court in Pradeep Kumar Biswas case and the other decisions referred to here before.

The reference is answered accordingly. Registry is directed to place the paper before the appropriate bench for its disposal.

4. This Court, in the absence of special circumstances, is not inclined to exercise power under Article 226 of the Constitution of India as admittedly, the Petitioner has a remedy under the Co-operative Societies Act.

5. As pointed out by the learned Government Advocate, Petitioner has given a representation/legal notice dated 30.3.2010 to the Respondent. The Petitioner is given liberty to pursue the same and the said authority can proceed further in the matter in accordance with the provisions of the Co-operative Societies Act wherein effective alternative remedy is provided to the Petitioner.

6. The writ petition is disposed of as above. No costs. Consequently, connected miscellaneous petition is closed.