

(2013) 03 MAD CK 0041

In the Madras High Court

Case No : Writ Petition No. 1680 of 2013 and M.P. No. 1 of 2013

R. Krishnamoorthy

APPELLANT

Vs

State of Tamil Nadu and Others

RESPONDENT

Date of Decision : 06-03-2013

Acts Referred:

Tamil Nadu Co-operative Societies Act, 1983 — Section 74

Citation : (2013) LabIC 1821 : (2013) 3 MLJ 230 : (2013) WritLR 1189

Hon'ble Judges : R. Banumathi, J;K. Ravichandrabaabu, J

Bench : Division Bench

Advocate : A. Navaneethakrishnan, Advocate General assisted by I.S. Inbadurai, Special Government Pleader, for the Respondent

Final Decision : Dismissed

Judgement

K. Ravichandrabaabu, J.—The petitioner seeks for issuance of a writ of declaration to declare Section 74 of the Tamil Nadu Co-operative

Societies Act, 1983 along with the Rules 150 and 151 of the Tamil Nadu Co-operative Societies Rules, 1988 as null and void, ultra vires of the

Constitution of India and the provisions of the Tamil Nadu Co-operative Societies Act, 1983. The petitioner is a practising advocate of this Court.

He claims that he served in the Department of Co-operation and Audit in various categories from Co-operative Sub Registrar to Joint Director of

Co-operative Audit for more than 34 years and retired from service on 31.7.2004. Therefore, the petitioner claims that he is very much interested

in the co-operative principles and orderly development of co-operatives in the State of Tamil Nadu. According to the petitioner, the impugned

provision viz., Section 74 of the Tamil Nadu Co-operative Societies Act, 1983 along with the said Rules is in violation of principles of co-

operation and the provisions of the Tamil Nadu Co-operative Societies Act, 1983. Section 74 of the Act, empowering the Government to

constitute the Recruitment Bureau is challenged by the petitioner as unconstitutional. Though the petitioner, appearing as party-in-person, raised

several grounds on the merits of the matter, we raised a doubt as to whether the writ petition is maintainable on the question of locus standi of the

petitioner to file the same. To such query, the petitioner relied on the decision of the Honourable Supreme Court in Ayaubkhan Noorkhan Pathan

Vs. The State of Maharashtra and Others, in support of his submission that the writ petition is maintainable at his instance.

2. We heard the arguments of the petitioner as party-in-person as well as the submissions made by the learned advocate General appearing on

behalf of the respondents on the question of maintainability of this writ petition.

3. The writ petition is the one seeking for a declaration to declare Section 74 of the Tamil Nadu Co-operative Societies Act, 1983 along with

Rules 150 and 151 of Tamil Nadu Co-operative Societies Rules, 1988 as null and void and ultravires of the Constitution of India. Section 74 of

the Act deals with constitution of Recruitment Bureaus by the Government for recruitment of such categories of paid officers and servants for

employment by such classes or categories of registered societies. Rules 150 and 151 also deal with the constitution of the Recruitment Bureau as

well as the procedure to be followed by the said Bureau. Thus, a combined reading of Section 74 and Rules 150 and 151 would only show that

they are in connection with constitution of a Recruitment Bureau for recruiting employees to the co-operative societies at various levels. Thus in

effect, the said provisions are in relation to the service matter, more particularly, with regard to the recruitment process. Admittedly, the petitioner

herein is not presently an employee of a co-operative society or intending to apply for any such post. Even according to the petitioner, he served in

the co-operative department and retired as early as 31.7.2004. Certainly, therefore, the petitioner cannot be termed as an "aggrieved person" to

challenge Section 74 as well as Rules 150 and 151 of the said Act and Rules. Consequently, the writ petition filed by the petitioner in his individual

capacity, challenging the said provision of Act and Rules is not maintainable as he is not an aggrieved person.

4. It is not the case of the petitioner that he has filed the writ petition as a public interest litigation. Not even a single averment is made in the affidavit to that effect. On the other hand, he himself has stated at para 4 of the affidavit that he is aggrieved and become unrest by the act of the respondents in violating the statutory provisions and therefore, he has filed this writ petition. As we have found that he is not an aggrieved person, the writ petition filed is not maintainable.

5. This leads us to consider as to whether the writ petition can be treated as a public interest litigation and entertained for hearing on merits, even though, it is not so claimed by the petitioner. Certainly, the prayer sought for in this writ petition cannot be entertained even if we treat the writ petition as the one of public interest litigation. It is well settled that no writ involving service matter can be filed as a public interest litigation.

Therefore, the petitioner cannot maintain this writ petition even as a public interest litigation.

6. In the decision of the Apex Court relied on by the petitioner in *Ayaaubkhan Noorkhan Pathan v. State of Maharashtra* (supra) at paragraphs 21 and 22 it is observed as follows:

21. In *Vinoy Kumar Vs. State of U.P. and Others*, , this Court held:

Even in cases filed in public interest, the Court can exercise the writ jurisdiction at the instance of a third party only when it is shown that the legal wrong or legal injury or illegal burden is threatened and such person or determined class of person is by reason of poverty, helplessness or disability or socially or economically disadvantaged position, unable to approach the Court for relief.

22. Thus, from the above it is evident that under ordinary circumstances, a third person, having no concern with the case at hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, in the exceptional circumstances as referred to above, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the Court, and a person, who has no personal agenda, or object, in relation to which, he can grind his own axe, approaches the Court, then the Court may examine the issue and in exceptional circumstances, even if his bona fides are doubted, but the issue raised by him, in the opinion of the Court, requires consideration, the Court may

proceed suo motu, in such respect.

The petitioner wants to rely on the observation made by the Honourable Apex Court at para 22 to contend that in the exceptional circumstances,

the Court can examine the issue at the instance of the petitioner, if the actual person aggrieved is not in a position to approach the Court. Going by

the facts and circumstances pleaded in the affidavit and the relief sought for, we are of the view that the petitioner has misconstrued his position to

place reliance of the decision of the Apex Court. On the other hand, the very decision relied on by the petitioner, in fact, goes against his

contention to maintain the writ petition. In the said decision, the Honourable Apex Court has pointed out at para 13 that a public interest litigation is

not permissible so far as service matters are concerned. Further, it is pointed out by the Honourable Apex Court that a third party, having no

concern with the case on hand, cannot claim to have any locus standi to raise any grievance whatsoever. However, it is pointed out, in exceptional

circumstances, if the actual persons aggrieved, because of ignorance, illiteracy, in articulation or poverty, are unable to approach the Court, a

person, who has no personal agenda can approach the Court. Certainly, it is not the case of the petitioner that the actual person aggrieved is by

reason of poverty, helplessness or disability unable to approach the Court for the relief. When that is not the case of the petitioner, the exceptional

circumstances referred to by the Honourable Apex Court at para 22 is not available to the petitioner. Consequently, the writ petition filed by the

petitioner is not maintainable on the ground that he is not having locus standi to file the same either in his individual capacity or even as a public

interest litigant. Therefore, the writ petition is dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.