

**(2010) 06 MAD CK 0212**

**In the Madras High Court**

**Case No :** Writ Petition No. 24643 of 2008 in M.P. No. 1 of 2008

S. Rajendran

APPELLANT

Vs

The Special Officer, Thirupalakudi Primary Agricultural  
Cooperative Bank Ltd.

RESPONDENT

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**Date of Decision :** 28-06-2010

**Acts Referred:**

Constitution of India, 1950 — Article 21

Tamil Nadu Co-operative Societies Act, 1983 — Section 153

**Citation :** (2010) 06 MAD CK 0212

**Hon'ble Judges :** K. Chandru, J

**Bench :** Single Bench

**Advocate :** S. Ayyathurai, for the Appellant; N. Senthilkumar, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

K. Chandru, J.—The writ petition is filed by the petitioner challenging the show cause notice, dated 10.09.2008 as to why he should not be dismissed from service. The writ petition was admitted on 14.10.2008 and an interim stay was granted on the same day. Subsequently, on 18.06.2009, the interim stay was extended until further orders. In M.P. No. 2 of 2008, this Court directed the respondent to pay subsistence allowance on 10.9.2009. Subsequently, the said order came to be reiterated by a further order dated 22.10.2009. When the matter came up on 8.1.2010, in view of the earlier order passed by this court, M.P. No. 2 of 2008 was closed.

2. On notice from this court, the respondent Thiruppalakkudi Primary Agricultural Cooperative Bank Limited filed a counter affidavit, dated Nil (March, 2009). In the counter affidavit, it was contended that the writ petition is not maintainable and that the petitioner has to go before the revisional authority u/s 153 of the Tamil Nadu Cooperative Societies Act, 1983.

3. It is seen from the records that the petitioner joined the respondent society as an Attendar. Subsequently, he was promoted as a Clerk and thereafter, as a

Senior Clerk. Whenever the Secretary of the Society went on leave, he was entrusted the work of the Secretary. The petitioner did not report for duty on 09.1.2004. Therefore, another salesman attached to the fair price shop was asked to maintain the cash book and cash balance. The petitioner did not hand over the cash balance of Rs. 3563/-. Hence, a disciplinary action was taken and the petitioner was kept under suspension. A charge memo, dated 2.4.2005 was served on him. Though he was placed under suspension, due to lack of funds, he was not paid subsistence allowance. A domestic enquiry was ordered. The Enquiry Officer found him guilty of charges. Thereafter, as per the bye-laws, the second show cause notice was given. It is against this show cause notice, the writ petition was filed.

4. The writ petition is liable to be dismissed on the ground that such a writ petition against the Cooperative society is not maintainable in view of the larger bench judgment of this Court in K. Marappan Vs. The Deputy Registrar of Co-operative Societies and The Special Officer, Vattur Co-operative Agricultural Bank, .

5. The petitioner has filed an additional affidavit, dated 29.11.2009, stating that the order of this Court was not disobeyed even though there was a clear direction. On the question of maintainability, the learned Counsel submitted that the writ petition is maintainable because deprivation of livelihood without following due procedure would amount to infringement of Article 21 of the Constitution of India. Therefore, notwithstanding Marappan's case (cited supra), the writ petition is maintainable.

6. For the purpose of contending that he is entitled for subsistence allowance, the learned Counsel for the petitioner relied upon the judgment of the Supreme Court in D.K. Yadav v. J.M.A. Industries Ltd. Reported in 1993 (II) LLN 575. He contended that non payment of subsistence allowance would amount to infringement of Article 21 and any deprivation of livelihood without due procedure will be contrary to Article 21 of the Constitution.

7. The learned Counsel also placed reliance upon the judgment of this Court in S. Sukumar v. C.E. 17 Dharapuram Public Servants' Cooperative Thrift and Credit Society Ltd. rep. by its Special Officer, Erode reported in 2007 (2) MLJ 1100. In that case a division bench of this Court took the view that Marappan's case will not apply in cases involving infringement of Article 21. The said decision was referred to a Full Bench of this Court. The Full Bench vide its decision in T.K. Ananda Sayanan v. Joint Registrar Co-operative Societies Vellore Region Vellore and Anr. reported in 2007 (5) MLJ 637, after considering all submissions (including similar submissions raised before this court) has held in paragraph 16 which is as follows:

16. For every alleged or imagined invasion of his rights, an employee of a co-operative society cannot move the writ Court on the ground that his rights under Article 21 have been infringed. The effect of the Supreme Court cases cited in K.

Marappan v. Deputy Registrar of Co-operative Societies Namakkal case (supra) and the propositions set down in K. Marappan v. Deputy Registrar of Co-operative Societies Namakkal case (supra) cannot be set at naught merely by mentioning Article 21, even if the order is illegal.

8. Therefore, this Court is not persuaded to entertain the writ petition in the light of the above binding legal precedents. Hence the writ petition will stand dismissed. No costs. Consequently, connected miscellaneous petition stands closed. The petitioner is directed to give his explanation within two weeks from the date of receipt of copy of this order and in case of any adverse order, he is at liberty to work out his rights in an appropriate forum.