

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.10.2015

CORAM :

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

Writ Petition No.31307 of 2015 and
M.P.Nos.1 & 2 of 2015

G.Santhamoorthy

.. Petitioner

vs.

1.The Joint Registrar of
Co-op. Societies,
24/43, 4th Street,
Co-operative Colony,
Krishnagiri.

2.The Deputy Registrar of
Co-operative Societies,
2-A, K.P.K Complex,
Co-operative Colony IV Cross,
Krishnagiri.

3.Mr.L.Karthikeyan

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorari calling for the entire records of the impugned order passed by the first respondent in Na.Ka.611/2015/Sa.Pa dated 28.09.2015 confirming the order passed by the second respondent in Election Petition 1972/2014/Koo dated 03.11.2014 and quash the same.

For Petitioner : Mr.V.Jeevagiridharan

For RR1 & 2 : Mr.D.Venkatachalam

For R.3 : Mr.M.S.Palanisamy

ORDER

The petitioner was elected as President of S-512-Vilangamudi Primary Agricultural Co-operative Credit Society on 16.04.2013, after having been elected as one of the Directors of the Society. The third respondent sent an objection to the second respondent stating that the petitioner's election as President of the said Society should be set aside as his close relative one Mr.Anbarasu is an employee of the said society and it is in violation of Rule 63 of the Tamil Nadu Co-operative Societies Rules 1988 (hereinafter referred to as "the Rules").

2.The second respondent conducted an enquiry. After enquiry in the Election Petition, the second respondent set aside the election of the petitioner stating that one Mr.Anbarasu, the petitioner's paternal uncle's son is working as an employee of the society and therefore, there is a bar under Section 34(1) (a) of the Tamil Nadu Co-operative Societies Act (hereinafter referred to as "the Act") r/w 63 of the Rules. The said order is being challenged before this court.

3.Mr.V.Jeevagiridharan, learned counsel for the petitioner would submit that the issue of limitation raised by the petitioner has not been considered by the second respondent while passing the impugned order. Secondly, so far as the issue of blood relative working in the society is concerned, though the second respondent positively held in favour of the third respondent, there is no proof that the said Mr.Anbarasu is the petitioner's paternal uncle's son. According to the petitioner, the said Mr.Anbarasu is only a foster son of the petitioner's grand father and therefore, the issue of blood relative working in the society does not arise attracting Section 34(1) (a) of the Act r/w 63 of the Rules.

4.Further, the learned counsel for the petitioner would submit that the question of limitation has not been discussed in the impugned order and has not been stated as to whether the third respondent filed a condone delay petition as he filed the petition beyond the period of limitation as per Section 90(9) (a) (iii) of the Act.

5.On the other hand, Mr.D.Venkatachalam, learned counsel for the respondents 1 and 2 and Mr.M.S.Palanisamy, learned counsel for the third respondent would contend that the question of limitation raised by the petitioner does not have any merit as the second respondent has got powers under Section 90(9) (b) of the Act.

6.Secondly, they would submit that the issue of blood relative employed in the society was already raised in the earlier Election Original Petition No.2/1997 and it was found that the petitioner's relative was working in the said society and his election was set aside by order dated 22.10.1997 which has attained finality. Further, they would submit that the petitioner is also an employee of the postal Department which is a prohibition under Section 34(1) (c) (ii) of the Act. Hence, they seek dismissal of the writ petition.

7.Heard the parties and perused the records.

8.It is seen from the records that the election was conducted on 16.04.2013 and he was elected as President of the said Society on that date. However, the third respondent filed the Election Original Petition on 04.06.2014. At the first look of the matter, it may appear, as if the said Election Original Petition has been filed beyond limitation. As per Section 90(9) (a) (iii) of the Act, which would speak about two months time for challenging the election. However, a reading of Section 90 of

the Act in entirety would reveal that under Section 90(9) (b) of the Act, the second respondent has got powers to deal with the dispute beyond the period of limitation, if the petition disclose sufficient cause. Therefore, it cannot be said that the second respondent has got no power to condone the delay or to entertain the election petition beyond two months.

9. Though, the learned counsel for the petitioner would submit that there is no finding with regard to the conclusion arrived by the second respondent in the impugned order, the very fact that the petition has been entertained would denote that the second respondent was satisfied with the reasons given by the petitioner. If the question of limitation has been urged by the petitioner, he should have challenged the very maintainability of the petition at its threshold after receiving the summons. Having kept quiet and took part in the proceedings and suffered an adverse order, it is not open to the petitioner to make the limitation as a point in this writ petition. Therefore, the said contention of limitation is liable to be rejected.

10. With regard to the employment of blood relative in the society, even in the previous proceedings, in Election Original Petition No.2/1997, initiated by one Mr.V.A.Poongavanam and another against the petitioner, regarding election of petitioner as President of the Co-operative Society was raised stating that one Mr.Anbarasu, the paternal uncle's son was employed in the society. Though the petitioner denied such a relationship, it was decided in the aforesaid Election Original Petition on 22.10.1997 that Mr.Anbarasu is the blood relative of the petitioner attracting the disqualification of the election of the petitioner under Rule 63 Item 15 of the Rules r/w Section 34 of the Act. The said order has attained finality.

11. When the order has already attained finality, it is not open for the petitioner to put forth a different argument stating that, the said Mr.Anbarasu is not a blood relative of the petitioner and he is only petitioner's grand father's foster son. No evidence was produced before the second respondent to prove his contention and therefore, the said contention has got no nexus to stand before this Court or before the second respondent and which was rightly rejected by the second respondent.

12. There is a disqualification for any Government Servant to contest the election as a Director of the Co-operative societies under Section 34(1)(c)(ii) of the Act. A perusal of the said Section would reveal that any Government employee is not entitled to contest the election. However, the communication dated 06.02.2014 issued by the Superintendent of Post Officer to the third respondent would reveal that the petitioner is working as Postman under the Department of Posts. Therefore, it is evident that the petitioner, in violation of Section 34(1)(c)(ii) of the Act, had contested the election and got elected as President of the said Society and therefore, there is disqualification for the petitioner to contest the election as

he is the Government servant. Even on that ground, the petitioner is not entitled to become one of the Directors of the Society. Hence, the impugned order passed by the second respondent cannot be found fault with.

13. In the result, the writ petition fails and accordingly, the same is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst. Registrar (CS II)

/true copy/

Sub Asst. Registrar

jbm

To

1. The Joint Registrar of
Co-op. Societies,
24/43, 4th Street,
Co-operative Colony,
Krishnagiri.

2. The Deputy Registrar of
Co-operative Societies,
2-A, K.P.K Complex,
Co-operative Colony IV Cross,
Krishnagiri.

1 cc to Mr. Ms. Palanisamy, Advocate, Sr. 53896
1 cc to Government Pleader, Sr. 54207
1 cc to Mr. Jeevagiridharan, Advocate, Sr. 54013

W.P.No.31307 of 2015

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