

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23-06-2016

CORAM

THE HONOURABLE MR. JUSTICE N.KIRUBAKARAN

WRIT PETITION No.20918 of 2016

M.Bharat Kumar

.. Petitioner

Vs.

- 1.Union of India
Represented by its Secretary,
Ministry of Law and Justice, New Delhi.
 - 2.Unio of India
Represented by Government of Puducherry,
Chief Secretariat, Puducherry-605 001.
 - 3.The Registrar,
Co-operative Department,
Government of Puducherry, Puducherry.
 - 4.The President,
The Pondicherry Electricity Employees Co-op
Credit Society Ltd.,
No.20, First Floor, 3rd Cross, Anna Nagar,
Puducherry-605 005.
- .. Respondents

Writ Petition filed under Article 226 of Constitution of India praying for the issuance of a Writ of Mandamus, directing the third respondent to dispose of the petitioner's representation dated 10.6.2016 and conduct elections to the fourth respondent Society in accordance with Gazette Notifications dated 13.1.2012 of the first respondent and Circular dated 6.12.2011 of the third respondent.

For Petitioner : Mr.D.Srinivasan

For Respondent No.1 : Mr.V.Venkatesan,
Senior Central Government
Standing Counsel.

For Respondent Nos.2&3: Mr.A.Tamilvanan,
Additional Government Pleader
(Puducherry)

ORDER

The petitioner, who is working as Junior Accounts Officer in the Puducherry Electricity Department and a member of Co-operative Society from the Electricity Department, approached this Court, challenging the election notification issued by the third respondent for conducting the election for electing 9 Directors for the fourth respondent The Pondicherry Electricity Employees Co-operative Credit Society Limited.

2. The petitioner contends that he is actively involved in the affairs of the fourth respondent Co-operative Society and the election to the Society to elect 9 Directors under three categories, namely, Engineers and Draughts man-2, Bill Collector-1 and others 6 is to be conducted on 26.6.2016 and the same was notified by election notification issued by the fourth respondent on 30.5.2016. The said notification is challenged by the petitioner on the ground that Section 32(3) of The Puducherry Co-operative Societies Act, 1972 which provides reservation for Scheduled Caste candidates has not been followed.

3. Mr.D.Srinivasan, learned counsel appearing for the petitioner would contend that reservation for Scheduled Caste candidate has been provided by virtue of amendment to Section 32 of The Puducherry Co-operative Societies Act, 1972. Sub-section (3)(iii) of Section 32 speaks about the reservation of one seat to the Scheduled Caste if the Committee consist of not exceeding 9 members. However, without making any provision for reservation to the Scheduled Caste, election notification has been issued and therefore, it is liable to be quashed. The learned counsel for the petitioner relied upon a judgment of the Hon'ble Supreme Court in Babaji Kondaji Garad vs. Nasik Merchants Co-operative Bank Ltd, Nasik and others {(1984) 2 SCC 50}.

4. Heard Mr.V.Venkatesan, learned Senior Central Government Standing Counsel appearing for the first respondent and Mr.A.Tamilvanan, learned Additional Government Pleader (Puducherry) appearing for respondents 2 to 4.

5. The learned Additional Government Pleader (Puducherry) for respondents 2 to 4 would submit that the election notification was issued on 30.5.2016 and the election has to be held on 26.6.2016 and therefore in the last minute, the election cannot be cancelled. He would further submit that there is a provision that if any of the Scheduled Caste candidate is not elected, the co-option provision would be invoked and a member would be co-opted as a Director and therefore, he seeks to dismiss the writ petition.

6. Heard the parties and perused the records.

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<https://hcservices.ecourts.gov.in/hcservices/> No doubt, the election notification was issued on 30.5.2016. Though it is contended that belatedly the writ petition has been filed, a perusal of records would show that

the writ petitioner approached this Court on 13.6.2016 itself. What is the material is whether the statute has been followed for conduct of the election. The election to the fourth respondent Co-operative Society has to be conducted as per the provisions of The Puducherry Co-operative Societies Act, 1972.

8. Section 32 of the Act speaks about the appointment of Committee. Sub-Section (3) of Section 32 of the Act was amended by virtue of The Puducherry Co-operative Societies (Amendment) Act, 2010 (Act 9 of 2010) which received assent of the Lieutenant Governor, Puducherry on 31.8.2010 and published in the Official Gazette on 27.9.2010 and came into force on 15.11.2011. It is useful to extract Section 32 of the Act as below:-

"32. Appointment of committee.-(1)
The management of a registered society shall vest in a committee constituted in accordance with the Act, the rules and the by-laws. It shall exercise such powers and perform such duties as may be conferred or imposed respectively by the Act, the rules and the by-laws :

Provided that, in the case of a society registered after the commencement of this Act, the persons who have signed the application to register the society may appoint a committee to conduct the affairs of the society for a period of three months from the date of registration or for such further period not exceeding nine months as the Registrar may consider necessary; but the Committee appointed under this proviso shall cease to function as soon as a committee has been constituted in accordance with the by-laws.

(2) Where the by-laws so provide, the Government or the Registrar may nominate all or any of the members of the Committee for such period as may be specified in the by-laws :

Provided that the entire Committee may be nominated for a total period not exceeding three years from the commencement of the society and thereafter not more than one-third of the Committee may be nominated for a further period not exceeding three years and the remaining by-election.

(3) (i) The Committee shall consist of not less than 7 and not more than 15 members in a registered society classified as a primary society and not less than 9 and not more than 21 members in a

registered society classified as a central or an apex society :

(ii) out of the total number of members of the Committee, a certain number, not less than 2, shall be reserved for women and for weaker sections among the members of such class of societies and in such manner as may be prescribed;

(iii) Every registered primary society, other than a society which is formed exclusively for the benefit of students or fishermen or members belonging to the Scheduled Caste shall provide one seat in a Committee which has a membership of not more than 9 members and 2 seats in a Committee which has a membership exceeding 9 members for the members belonging to Scheduled Caste, who shall be elected by and from among the members of such society.

Provided that, if no member belonging to the Scheduled Castes is elected to the Committee of a registered primary society under this clause, then such Committee shall co-opt the members of the Scheduled Castes from among the members of the society to the membership of the Committee:

Provided further that, a casual vacancy, arising out of resignation, death or otherwise of such member shall be filled up by way of co-option from among the members of the society belonging to Scheduled Castes.

(iv) Nothing contained in clauses (ii) of (iii) shall prevent the women members or members belonging to weaker sections or Scheduled Castes from being elected to the non-reserved seats in the Committee.

(4) (a) Where the Government or a financing bank has taken shares in, or given financial or other assistance to a registered society, the Government or the financing bank, as the case may be, may nominate one member to the Committee of the society, if it is classified as a primary society or a central society and not more than 2 members to the Committee of the society if it is classified as an apex society.

(b) Whether the Government or the financing bank or both should make the nominations shall be determined by the

Government.

(c) Where the Government nominates, the nominee shall be a Government servant.

(d) The Government or the financing bank may, at any time, withdraw any person or persons so nominated and fill up the vacancy or vacancies by fresh nomination.

(5) (a) All the members of any committee constituted under this Act, shall hold office for a term of three years from such date as may be specified. All the members of the Committee including those elected or co-opted in casual vacancies caused by death or resignation or otherwise, shall vacate their office on the expiry of the term. The election of all the members of the Committee shall be completed one week before the date of expiry of the term :

Provided that, in the case of the first election of the members of the Committee under this Act, all the members on any Committee constituted before the commencement of this Act, shall vacate their office on such date as may be notified, irrespective of the period or periods for which they might have been elected.

(b) If for any unavoidable reason election to a committee is not held before the expiry of its term, the Registrar may, for reasons to be recorded in writing, direct that the term of office of the members of the committee shall extend upto such date as he may fix, provided that such extension shall not be for a period exceeding six months.

(c) The term of office of a member of any committee nominated thereto by the Government, the Registrar or the financing bank, if such member is a non-official, shall be for a period not exceeding three years and shall expire with the expiry of the term of office of the elected members.

(6) The election of the members of the Committee shall be by ballot in such manner as may be prescribed :

Provided that, any casual vacancy in the office of a member of the Committee shall be filled in such manner as may be specified in the rules or the by-laws and a member of the committee filling a casual vacancy shall hold office so long only as the member of the committee whose place he

takes would have been entitled to hold office if the vacancy had not occurred.

(7) (a) A meeting of the committed shall be held at least once in three months. The President shall convene the meetings of the committee. He may, at any time, call a special meeting of the committee, and shall call such a meeting within fifteen days of the date of a requisition in this behalf from-

(i) not less than one-third of the members of the committee; or

(ii) the committee of the financing bank to which the society is affiliated; or

(iii) the Register.

(b) The requisition referred to in clause (a) shall be in writing and shall specify the subjects that shall be placed for consideration at the special meeting of the committee".

9. A perusal of the above Section would show that sub-section (3) of Section 32 was amended by substitution and sub-section 3(iii) makes it very clear that one seat shall be reserved for the Committee consist of not exceeding 9 members. In the present case, the Committee consist of 9 members and therefore as per Section 32(3) one seat should be reserved for Scheduled Caste out of 9 seats. The 9 Directors have to be elected under three categories, namely, Engineers and Draughts man-2, Bill Collector-1 and others 6.

10. The notification issued by the third respondent does not make any reservation for Scheduled Caste as per Section 32 (3). If the Statute prescribes reservation for the weaker section, it has to be followed in letter and spirit. In the similar circumstances, the Hon'ble Supreme Court in Babaji Kondaji Garad vs. Nasik Merchants Co-operative Bank Ltd, Nasik and others {(1984) 2 SCC 50}, categorically stated in paragraph-16 as follows:-

"16. The provision contained in Chapter XI-A applies to election to the committees of specified societies categorised in Section 73B. Sec. 144-C requires the Collector to draw an election programme and arrange for conducting the election or under his control by the Returning Officer according to the programme. Now the election programme has to be published. The programme therefore, must in order to comply with legal formality show whether any of the seats to be filled in are reserved and specify the class in whose favour reservation has been made, so as to give notice to persons eligible for contesting

election to reserved seats. This becomes manifestly clear from the form prescribed for filling in the nomination paper being Form No. 2 appended to the rules. In the case of reserved seats a further declaration has to be made in the nomination form that the candidate belongs to Scheduled Castes or Scheduled Tribes or Vimukta Jati or the weaker section candidate. And this declaration has to be signed by the candidate himself. Now therefore, the Collector, a statutory authority charged with a duty to hold election according to the Act, must specify in the election programme inter alia that there are reserved seats to be filled in by election and the class in whose favour reservation is made. This will be notice to the members eligible for contesting election to reserved seats so that they may fill in their nomination. There is not even a whisper in the election programme whether any of the seats were reserved. The omission is glaring and fatal. As pointed out earlier, election has to be held to form the committee. Sec. 73 requires the Collector to hold election in accordance with the Act including Sec. 73B. The failure to hold election in accordance with the Act including Sec. 73B would vitiate the whole election programme from commencement till the end. It would all the more be so because the failure to hold election according to the provisions of the Act which denies an opportunity to the persons who are eligible to get elected to the reserved seats would certainly vitiate the whole election programme. One can safely conclude that the election is held in violation of Sec. 73B. Therefore, in our opinion, the High Court was in error in upholding the election, which is ex facie illegal, invalid and contrary to law."

Therefore, the notification issued by the third respondent suffers from violation of the statute and the same is liable to be quashed.

11. The learned Additional Government Pleader (Puducherry) appearing for respondents 2 to 4 would submit that there are other methods available for appointment of Scheduled Caste Director. No doubt, there is a provision for co-option as per the Amendment Act. There is proviso No.1 as provided in sub-section (3) of Section 32 for co-option of Scheduled Caste candidate in the Committee if there is no Scheduled Caste member available in the Committee. As per the judgment of the Hon'ble Supreme Court (cited supra), co-option should be the other

method and the preferred primary method is only election. That has been categorically stated in paragraphs 6 and 12. The said contention is also dealt with in paragraphs 6 and 12 of the said judgment which is extracted as follows:-

"6. We may now note the rival contentions. Appellants assert that the reservation in favour of the Scheduled Castes and Scheduled Tribes and weaker section of the members on the committee of the society manifests a statutory attempt giving effect to the provisions of the Constitution especially the one contained in Articles 43 and 46 and has to be given effect as if carrying out the constitutional mandate enshrined in Articles 15 and 16 of the Constitution. Proceeding along this line, it was submitted that a democratic polity swears by setting up democratic institutions by election, neither by appointment nor co-option. It was submitted that the Legislature has clearly indicated its preference in favour of election failing which alone the reserved seats may be filled in by appointment or co-option. They have called in aid the chronology of methodology set out in Sec. 73B wherein it is stated that 'if no such persons are elected or appointed,' the committee shall co-opt the required number of members on the committee from amongst the persons entitled to such representation.' Appellants assert that Sec. 73B proceeded to make a statutory reservation of two seats and declared its preference in favour of filling in the reserved seats by election and that is indicated by the expression; 'if no such persons are elected or appointed,' the committee then in order not to defeat legislative intention of giving representation to the class in whose favour reservation is made, shall co-opt the required number of members on the committee. The appellants say that co-option can be availed of as the last resort and cannot be used to supplant election to defeat the legislative mandate according priority to election or appointment. They say that co-option can only be resorted to, to effectuate the purpose underlying Sec. 73B if and only if an attempt having been made at first providing an opportunity to fill in reserved seats by election, failing which appointment and thereafter co-option, which cannot be equated with election or appointment so that anyone mode may be adopted for filling in the reserved seats at the whim or caprice or sweet will either of the statutory

authority or the committee of members.”

“12. When statute requires a certain thing to be done in a certain manner, it can be done in that manner alone unless a contrary indication is to be found in the statute. If the Legislature uses expression 'if no such persons are elected' it indubitably suggests that primarily the reserved seats are to be filled in by election. Failing the election, one can resort to appointment or co-option. The chronology of the methodology by which seats are to be filled in as set out in Sec. 73B clearly manifests the legislative intention. The first and the foremost pride of place is accorded to election. It ought to be so because a representative institution ordinarily must be democratically elected. The section therefore, speaks 'if no such persons are elected' which would mean the authorities charged with a duty to hold election must proceed to arrange for holding the election. If election is held giving out information that there are reserved seats and no candidate is forthcoming to contest for the reserved seats, the Legislature in its wisdom provided that the seats shall not remain vacant but can be filled in by two subsidiary methods such as appointment or co-option which cannot be put on par or equated with election which is a universally recognised method by which representative institutions are set up. Therefore, the language and the chronology of the methodology of filling in reserved seats employed in Sec. 73B provide a clue to its correct construction and there should be no doubt that opportunity must be provided for filling in seats by election. It is the failure of the election machinery to fill in the seats which would enable the concerned authority to fill in the seats by appointment or co-option. The condition precedent to filling in reserved seats by appointment or co-option is holding of the election and failure to elect such persons would permit resort to other methods of filling in the reserved seats.”

12. From the aforesaid paragraphs of the judgment, it is clear that the first and the foremost pride of place is accorded to election and the representative of the institution must be democratically elected and if it is not possible then other methods have to be resorted to. Therefore, co-option should be the second option and the election should be the main option which is mandatory. Therefore, the said contention on

behalf of the respondents 2 to 4 that through co-option, a Scheduled Caste member can be appointed is liable to be rejected even though it is provided under the proviso.

13. Another question has been raised with regard to the reservation of seats. That is also answered in paragraph 16 of the said judgment of the Hon'ble Supreme Court. It is categorically declared that an election programme has to be published. The programme, therefore, must, in order to comply with legal formality, show whether any of the seats to be filled in are reserved and specify the class in whose favour reservation has been made, so as to give notice to persons eligible for contesting election to reserved seat. In case of reserved seat a further declaration has to be made in the Nomination Form that the candidate belongs to Scheduled Castes. Therefore, the Statutory Authority charged with a duty to hold election must specify in the election programme inter alia that there are reserved seats to be filled up in the election and the class in whose favour reservation has been made. Therefore, the third respondent is duty bound to specify the reserved category seat so that the eligible candidate in the election notification can contest for the said election.

14. In view of the above reasonings, the election notification issued by the third respondent is quashed and the third respondent is directed to issue fresh notification indicating the reserved seat and the procedure to be followed and without making any reservation for the Scheduled Caste candidate, there cannot be any election. This Court, while quashing the notification, directs the third respondent to issue a fresh notification indicating the seat reserved to category and follow other procedures as per the statute at the earliest.

15. The writ petition is allowed on the above terms.
No costs.

Sd/-

Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

Svn.

To

1.The Secretary,
Union of India
Ministry of Law and Justice,
New Delhi

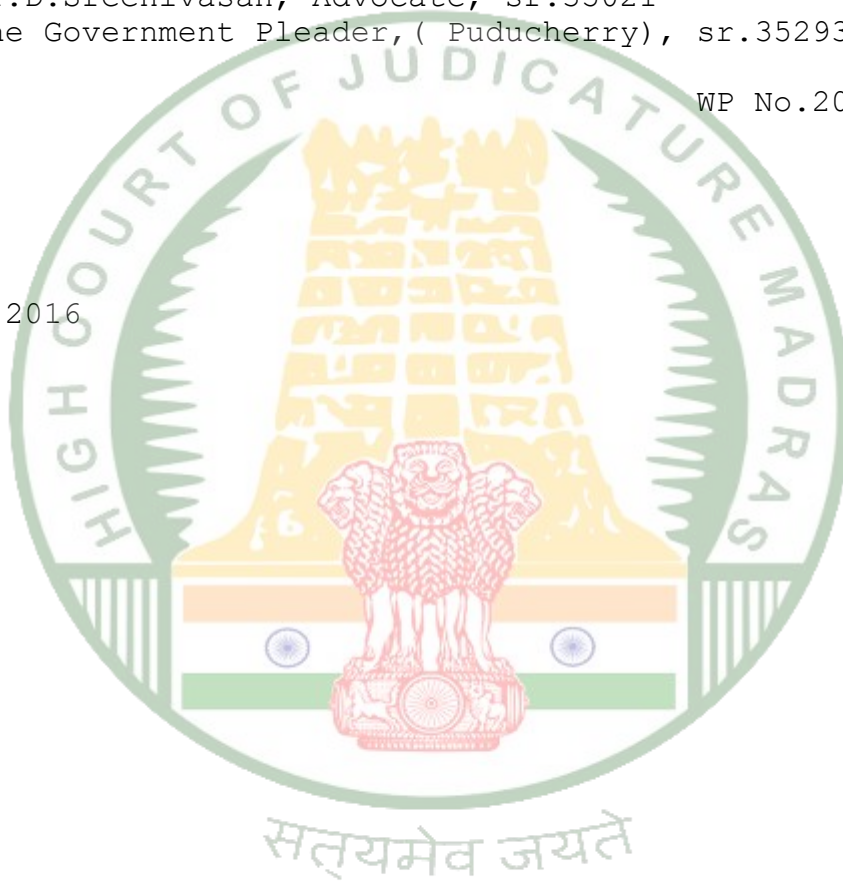
2.Chief Secretariat,
Union of India,
Government of Puducherry,
Puducherry-605 001.

3.The Registrar,
Co-operative Department,
Government of Puducherry,
Puducherry.

1 cc to Mr.V.Venkatesan, Advocate, sr.35030
1 cc to Mr.D.Sreenivasan, Advocate, sr.35021
1 cc to The Government Pleader,(Puducherry), sr.35293

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