

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 16..08..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.20624 of 2018

&

W.M.P.No.24237 of 2018

G.Jayasankar

... Petitioner

-Versus-

- 1.The State Election Commissioner,
Cooperative Election,
Kamadhenu Super Market Building,
No.273, Scheme Road,
Subburaya Nagar,
Teynampet, Chennai 600018.
 - 2.The District Election Officer / District
Registrar of Cooperative Societies,
Tindivanam Circle, Tindivanam,
Villupuram District.
 - 3.The Election Officer,
CL.SPL. 144 Alampoondi Primary Agricultural
Cooperative Credit Society,
Alampoondi, Gingee Taluk,
Villupuram District.
- ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the 1st respondent to consider the written representation of the petitioner made on 07.08.2018 on merits and pass appropriate orders on the same within a period to be stipulated by this court.

For Petitioner
For Respondents

: Mr.C.Prakasam
: Mr.M.S.Palanisamy, Standing
Counsel for R1
Mr.L.P.Shanmugasundaram,
Spl. Govt. Pleader for R2
and R3

ORDER

This writ petition has been filed seeking for a direction to the 1st respondent to consider the representation of the petitioner dated 07.08.2018.

2. According to the petitioner, there were more than 30 nominations filed by the members of the society for the election of the Board of Directors to the CL.SPL. 144 Alampoondi Primary Agricultural Cooperative Credit Society. However, the 3rd respondent had proceeded to declare the names of 11 candidates as duly elected unopposed Board of Members without passing any orders on the rest of the nominations filed by the other members. In the above circumstances, the petitioner sent a representation to the 1st respondent on 07.08.2018 alleging irregularities in the election. The grievance of the petitioner is that the representation sent by him in this regard is yet to see the light of the day. Hence, this writ petition.

3. Heard both sides.

4. Earlier, while disposing of a batch of Writ Petitions, which were filed challenging the elections to various cooperative societies, a Division Bench of this Court, by judgement dated 03.08.2018 [W.P.No.7526 of 2018 etcetera batch - R.Sakkarapani, Member of Legislative Assembly, Oddanchathiram Constituency v. State of Tamil Nadu and others], has constituted four Zonal Committees Chaired by Retired Judges of this High Court to decide the complaints regarding voters' list and nominations which were filed on or before the date of judgement. In para 143 of the judgement, the Division Bench has held as follows:-

"143. Only objections and/or complaints with regard to voters' lists and nominations already made by approaching this Court or alternatively by approaching the Election Commission and/or Registrar and/or any other appropriate authority shall be entertained and no new complainants and/or objectors who never raised any objection till the date of this judgment shall be entertained by the Committee. The Committee shall check if the nomination papers comply with the requisites of Rule 52 read with Circular No. Na.Ka.321/2018/Co.EI.1, dated 19.7.2018 of the Election Commission. In particular, the Committee should look into the following aspects:

(a) if the nomination of a

candidate for the election is in Form No.18, and proposed, seconded by two other members whose names are included in the voters list, and is signed by the candidate, the proposer and the seconder.

(b) If the nomination paper has to be rejected on the ground that it is not signed by the candidate for election, or it is not signed by two other members whose names are included in the voters list, one as the proposer and the other as the seconder for the nomination. Of course, where there is only one member in the voters list, the nomination need not be seconded, and where excluding the candidate there are no members in the voters' list, the nomination need not be either proposed or seconded.

(c) In case of a central or apex society which has only one society member and no individual member, for election to the board of such central or apex society to fill up the seats reserved for Scheduled Castes and Scheduled Tribes or for women, a person whose name is not included in the voters list, shall also be eligible for being nominated as a candidate.

(d) If the seat is reserved for Scheduled Castes and Scheduled Tribes, whether the candidate seeking election to such reserved seat had furnished a declaration in the nomination form made by him specifying the caste or tribe to which he belongs and the area in relation to which that caste or tribe is notified as a Scheduled Caste or Scheduled Tribes of the State.

(e) Whether there is any

contravention of the rule that the candidate may be nominated by more than one nomination paper, but not exceeding four nomination papers.

(f) Any candidate contesting as a candidate in an election to a single member constituency has signed any nomination papers as a proposer or seconder:

(g) The Committee may examine if the nomination paper was filed in time or out of time."

5. In the instant case, admittedly, the petitioner made his objections alleging misconduct in finalizing the nominations after the judgement of the Division Bench of this court. In para 146 of the judgment, the Division Bench has held thus:

"146. In disputes with regard to polling, counting of votes, etc., the Committees will look into the ballot papers to see if the votes have validly been cast. However, in the event resolution of the dispute requires detailed evidence, the Committee shall remit the complainants/objectors to their alternative remedy under Section 90 of the 1983 Act and refer the disputes to the Registrar of the Cooperative Societies, who shall appoint a panel of three Arbitrators to adjudicate the dispute."

In the light of the judgement of the Division Bench of this Court, the only remedy available to the petitioner is under Section 90 of the Act. Accordingly, liberty is given to the petitioner to approach the authority under Section 90 of The Tamil Nadu Cooperative Societies Act. Therefore, the petitioner is not entitled for any relief in this writ petition.

6. In the result, this writ petition is dismissed with the above observation. No costs. Consequently, connected MP is closed.

Sd/-
Assistant Registrar (CS-V)

// True Copy//

Sub Assistant Registrar

To
The State Election Commissioner,
Cooperative Election,
Kamadhenu Super Market Building,
No.273, Scheme Road,
Subburaya Nagar,
Teynampet, Chennai 600018.

+lcc to Mr.C.Prakasam, Advocate SR.No.57091
+lcc to Mr.L.P.Shanmugasundaram, Advocate SR.No.56774
+lcc to Government Pleader SR.No.56859

W.P.No.20624 of 2018

SMI/31.08.2018



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