

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.04.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.Nos.8495 and 8496 of 2018

and

W.M.P.Nos.10456 and 10457 of 2018

R.B.Pazhanivel ... Petitioner in W.P.No.8495/2018

T.V.Kanniappan ... Petitioner in W.P.No.8496/2018

... Vs ...

1. The Commissioner,
Tamil Nadu State Co-operative
Societies Election Commission,
First Floor, Kamadhenu Super Market,
No.273, Anna Salai,
Teynampet,
Chennai - 600 018.
2. The Deputy Registrar of Co-operative Societies,
(Milk Development)/District Election Officer,
Orikkai, Kancheepuram,
Kancheepuram District 631 502. ... Respondents in both W.Ps.

Prayer in both W.Ps: Petitions filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the second respondent to consider the representation of the petitioners dated 06.04.2018 and permit the petitioners to participate in the election process commencing on 09.04.2018 for the post of President and Vice President respectively to the Thirukazhukundram Milk Producers, Co-operative Sangam Limited, G.1549 Ruthirankoil, Thirukazhukundram, Kancheepuram District.

In both W.Ps.

For Petitioners: Mr.M.Ramamoorthi

For R-1 : Mr.M.S.Palanisamy,
Standing Counsel

For R-2 : Mr.L.P.Shanmugasundaram
Special Government Pleader

COMMON ORDER

The petitioners have come to this Court seeking to issue a Writ of Mandamus, directing the second respondent to consider their representation dated 06.04.2018 and permit them to participate in the election process commencing on 09.04.2018 for the post of President and Vice President respectively to the Thirukazhukundram Milk Producers, Co-operative Sangam Limited, G.1549 Ruthirankoil, Thirukazhukundram, Kancheepuram District.

2. Learned counsel appearing for the petitioners submitted that the petitioners have suffered 87 Surcharge proceedings on 12.05.2016, wherein, the petitioners were directed to pay the amount of loss caused to the Co-operative Society. Aggrieved by the said order dated 12.05.2016, passed by the second respondent/Deputy Registrar of Co-operative Societies (Milk Development), Kanchipuram, the petitioner in W.P.No.8495 of 2018 viz., R.B.Pazhanivel has filed an appeal in C.M.A.No.2 of 2017 in the Month of August 2016 and the learned Principal District Judge, Chengalpattu, having heard the appeal and on completion of arguments of both sides, reserved the said appeal for pronouncing orders. In the meanwhile, election notification was issued on 05.03.2018. But the petitioners were not permitted to take part in the election. On enquiry, they were informed that they are neither eligible to be a voter nor entitled to take part in the election process in any manner. When the petitioner in W.P.No.8495 of 2018 viz., R.B.Pazhanivel has a fair chance of succeeding in the appeal in CMA No.2 of 2017, the respondents cannot take away the constitution right of the petitioners to contest in the ensuing election.

3. This Court is unable to entertain the writ petitions. The reason is that the petitioners have already suffered surcharge proceedings and an order dated 12.05.2016 has already been passed by the second respondent directing the petitioner in W.P.No.8495 of 2018/President to pay a sum of Rs.48 lakhs for the loss caused to the Co-operative Society and now, he has preferred an appeal against the said order and the same is also pending for pronouncing orders, it is not known whether the petitioners are going to succeed or fail. When the Rule is clear, this Court is unable to find any merit in the writ petitions. The reason is Section 34(1) (b) (iii), which is given as under, clearly goes against the petitioners.

"34. Disqualifications for membership of board.- (1) No person shall be eligible for being elected or nominated as a member of a board of any registered society if he -

a.

b. (i)

(ii)

(iii) is a person against whom any decree, decision, award, order or certificate referred to in section 143 has been obtained; or a representative of the registered society against which such decree, decision, award, order or certificate has been obtained ; or"

4. A mere reading of the above Section shows that no person shall be eligible for being elected or nominated as a member of a board of any registered society, if he is in default to such registered Society.

5. In the present case, as mentioned above, the petitioners have suffered an order dated 12.05.2016 passed by the second respondent. Secondly, that order is consequential. As there is already a bar as per Section 34(1)(b) (iii), this Court is not able to find any merit in the writ petitions. Therefore, both the Writ Petitions are dismissed. No costs. The connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS VIII)

//True copy//

Sub Assistant Registrar

Jrl

To

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Societies Election Commission,
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Chennai - 600 018.
2. The Deputy Registrar of Co-operative Societies,
(Milk Development)/District Election Officer,
Orikkai, Kancheepuram,
Kancheepuram District 631 502.

+1cc to Government Pleader SR.No.27307

W.P.Nos.8495 & 8496/2018

KAN(CO)
GN(11/05/2018)