

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 20848 of 2018

&

W.M.P.s 24473 to 24475 of 2018

1. P.G.Boopathi
2. A.P.Subramaniam
3. K.Ramasamy,
4. L.Palanisamy

... Petitioners

Vs

1. The Election Commissioner,
Tamil Nadu Co-operative Societies
Election Commission,
No.273, Kamadhenu Co-operative
Stores, Anna Salai, Chennai-600 018.
2. The District Election Officer,
Deputy Registrar of Co-operative
Societies, Tiruppur Region,
Tiruppur.
3. The Election Officer,
K.No.2092, Chettipalayam Primary
Agricultural Co-operative Credit
Society, Chettipalayam,
Tiruppur Dt.
4. K.No.2092 Chettipalayam Primary
Agricultural Co-operative Credit Society,
rep. By its Secretary,
Chettipalayam, Tiruppur District.
5. N.Mahalakshmi,
W/o. Nagaraj,
7/11, Thundukkadu,
Angaripalayam Post,
Tiruppur District.

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records relating to the order dated 05.07.2018

made in Na.Ka.No.4438/2018/Co.op. Election.2 passed by the 1st respondent, quash the same and consequently direct the respondents 1 to 3 to pass orders under Rule 53(5) of Tamil Nadu Co-operative Societies Rules declaring that the petitioners are the duly elected candidates as members of Board of directors relating to the 4th respondent society and initiate further proceeding as per law.

For Petitioners : M/s.G.Ethirajulu
For Respondents : Mr.M.S.Palaniswamy,
Standing Counsel for R-1

Mr.L.P.Shanmugasundaram,
Special Govt. Pleader for R2-R4

O R D E R

Heard Mr.G.Ethirajulu, learned counsel for the petitioners, Mr.M.S.Palaniswamy, learned standing counsel for 1st Respondent and Mr.L.P.Shanmugasundaram, learned Special Government Pleader for Respondents 2 to 4.

2. The present Writ Petition has been filed challenging the order passed by the first respondent Election Commission cancelling the election to the 4th respondent co-operative society.

3. According to the petitioner, the election to the Board of Directors to the 4th respondent society originally scheduled to be conducted on 16.04.2018. Subsequently, in pursuant to the order passed by the Madurai Bench of this Court, the election was re-scheduled and the election scheduled to be commenced from 23.04.2018 and 38 nominations were received. On the date of scrutiny, 18 nominations were rejected and in the remaining 20 nominations, 9 nominations were withdrawn including that of the 5th respondent. Thereafter, only 11 candidates nominations were found eligible. In the meantime, the 5th respondent filed a Writ Petition before this Court in W.P.No.11131 of 2018 alleging some fraud in conducting the election.

4. Pending Writ Petition, the 1st respondent had passed the impugned order cancelling the election unilaterally without issuing any notice to the petitioner and others. Hence, the present Writ Petition has been filed.

5. Mr.G.Ethirajulu, learned Counsel appearing for the petitioners submitted that only after the scrutiny and withdrawal of nominations, only 11 candidates were in the field for the post of 11 Board of Directors and all the candidates have to be necessarily declared elected. But, the 5th respondent,

who has withdrawn her nomination, filed a Writ Petition before this Court on the ground that she has not withdrawn her nomination, and alleging that some fraud has been committed in the election. While being so, the 1st respondent without conducting any enquiry and without giving an opportunity to the petitioner, now cancelled the election and also trying to conduct a fresh election.

6. Mr.L.P.Shanmugasundaram, learned counsel appearing for the respondents 2 to 4 on instructions submitted that challenging the rejection of nomination, the 5th respondent filed a Writ Petition before this Court. The Division Bench of this Court while considering a batch of Writ Petitions challenging the election to various co-operative societies in the State passed a final order, thereby referring all those complaints pending before the date of judgement passed in Writ Petition viz., 03.08.2018 to for Zonal Committees headed by a retired Judges of this Court. Since the complaint of the 5th respondent is also pending, the same has to be necessarily be referred to the Committee constituted by this Court and subject to the result of the Committee on the complaint lodged by the 5th respondent, the election to the 4th respondent society may be considered.

7. I have considered the rival submissions made by the Mr.G.Ethirajulu, learned counsel appearing for respondent as well as Mr.M.S.Palaniswamy, learned Standing Counsel for 1st respondent and Mr.L.P.Shanmugasundaram, learned Special Govt. Pleader for respondents 2 to 4.

8. 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 judgment dated 03.08.2018 in W.P.No.7526 of 2018, etc. [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 judgment. In para 143 of the judgment, 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."

9. In the instant case, admittedly, the 5th respondent has made a complaint alleging misconduct in finalizing the nominations well before the judgement of the Division Bench of this court. Therefore, in the light of the judgement of the Division Bench of this Court, the 1st respondent is directed to

refer the complaint of the 5th respondent to the concerned Committee for appropriate action and based on the order passed by the Committee, the respondents are directed to take further action.

10. In the result, this writ petition is disposed of with the above directions. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-
Deputy Registrar

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Sub Assistant Registrar

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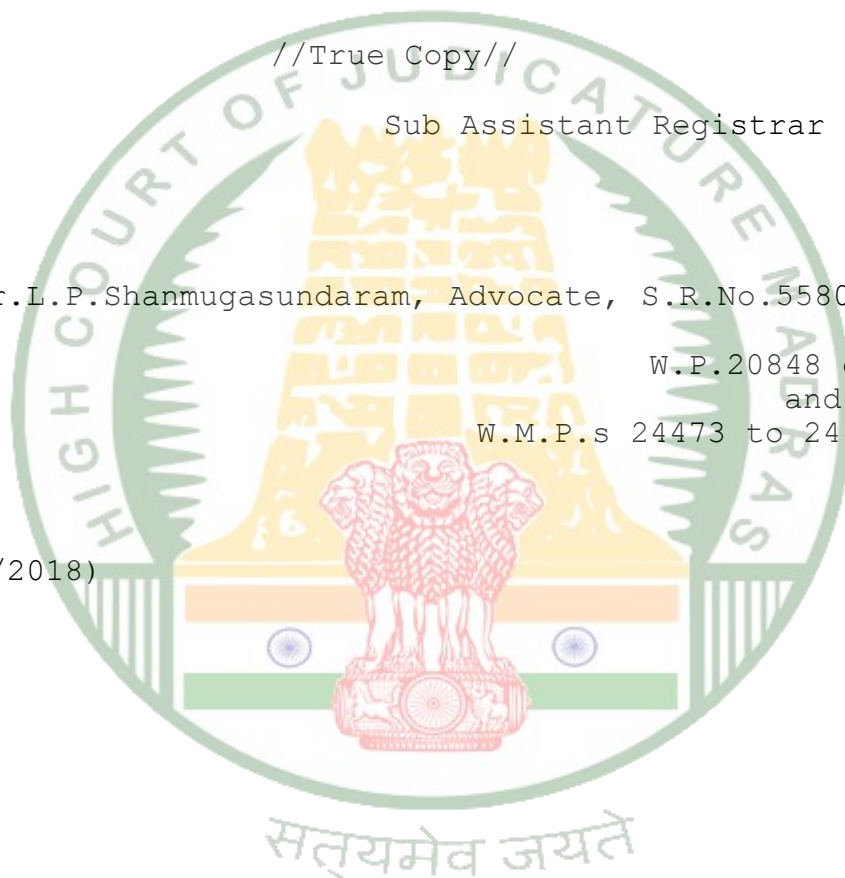
+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.55808

W.P.20848 of 2018

and

W.M.P.s 24473 to 24475 of 2018

GSP (11/09/2018)



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