

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 21079 of 2018
and
W.M.P. 24736 of 2018

M.Nagarajan

... Petitioner

Vs

1. S.1064 Pattaipuliyur Primary Agricultural Co-operative Credit Society Ltd., rep. By its Secretary, Mettupuliyur Village, Jingalkathirampatti Post, Pochampalli Taluk, Krishnagiri Dt.
2. The Election Officer, S.1064 Pattaipuliyur Primary Agricultural Co-operative Thrift Society, Mettupuliyur Village, Jingalkathirampatti Post, Pochampalli Taluk, Krishnagiri Dt.
3. The Commissioner, The Tamil Nadu State Co-operative Societies Election Commission, No.273, I Floor, Kamadenu Building, Teynampet, Chennai-600 018.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, calling for the records, relating to the order dated 06.08.2018 on the file of the 2nd respondent and quash the same as null and void.

For Petitioner : Mr.P.Raja

For Respondent : Mr.L.P.Shanmugasundaram,
Special Govt. Pleader for R1-R2

: Mr.M.S.Palanisamy,
Standing Counsel for R-3

O R D E R

1. The present Writ Petition has been filed challenging the order passed by the 2nd respondent cancelling the election to the post of President of the 3rd respondent Co-operative Society.

2. The brief facts leading to the Writ Petition filed by the petitioner is as follows :-

The election to the 1st respondent co-operative society was conducted by the 2nd respondent. Earlier, the petitioner was elected as Board of Directors unopposed. Subsequently, the election to the office-bearers to the President and Vice-President was conducted on 27.04.2018. The petitioner was declared elected as a President and the declaration form was also handed over to the petitioner by the 3rd respondent under Rule 53(10) of the Tamil Nadu Co-operative Societies Rules.

3. Subsequently, the petitioner has received a communication from the 3rd respondent stating that the election to the petitioner has been cancelled under Rule 53(8) (a) (i) of the Tamil Nadu Co-operative Societies Rules, (hereinafter called as "Rules") on the ground that six Board of Directors have participated in the election have given a written complaint that there is a violation in conducting the election. Challenging the said communication, the present Writ Petition has been filed.

4. The learned counsel appearing for the petitioner submitted that once the election conducted and the results was declared, the 2nd respondent Election Officer has no power to cancel the election invoking his power under Rule 53(8) (a) (i) of the Rules.

5. Under Rule 53(8) (a) (i) of the Rules, the Election Officer is only empowered to reject the ballot paper at the time of counting, if he found with a mark, by which the voter can be identified. In this case, already the counting was over and the results were declared and after the declaration of results, the Election Officer has no power to declare the election as invalid. If at all, any violation, the only remedy is available for the aggrieved person to file an application under Sec.90 of Tamil Nadu Co-operative Societies Act.

6. Mr.L.P.Shanmugasundaram, Special Government Pleader appearing for the 1st and 2nd respondents submitted that he is not in a position to dispute the above contentions.

7. I have heard the submissions made by Mr.P.Raja, learned counsel appearing for the petitioner as well as Mr.L.P.Shanmugasundaram, Special Government Pleader for 1st and

2nd respondents and Mr.M.S.Palanisamy, Standing Counsel for 3rd respondent.

8. As rightly contended by the learned counsel appearing for the petitioner, the impugned order has been passed by the 2nd respondent invoking the provisions under Rule 53(8)(a)(i) of the Rules and the said Rule 53(8)(a)(i) of the Rules is reproduced hereunder:-

"53.(8) (a) A ballot paper shall be rejected -----

(i) if it bears any mark by which the Member who voted can be identified;"

Rule 53(8)(a)(i) only speaks about the rejection of ballot paper. Under Rule 53(8)(a)(i) of the Rules, the Election Officer is only empowered to reject the ballot paper. The above power can be exercised only at the time of counting and not after the counting was over and the results is being declared. Admittedly, in the instant case, the election was over and the petitioner was declared elected as a President.

9. Now, at this stage, the 3rd respondent cannot set aside the election invoking the above said rules. In the said circumstances, the impugned order passed by the 2nd respondent is without jurisdiction and hence, it is liable to be set aside.

10. In view of the above, the present writ petition stands allowed. Consequently, the connected Miscellaneous Petition is also allowed. No costs.

-s/d-

Assistant Registrar (CS-IV)

True Copy

Sub-Assistant Registrar

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To

1. S.1064 Pattaipuliyur Primary Agricultural
Co-operative Credit Society Ltd.,
rep. By its Secretary,
Mettupuliyur Village,
Jingalkathirampatti Post,
Pochampalli Taluk,
Krishnagiri Dt.

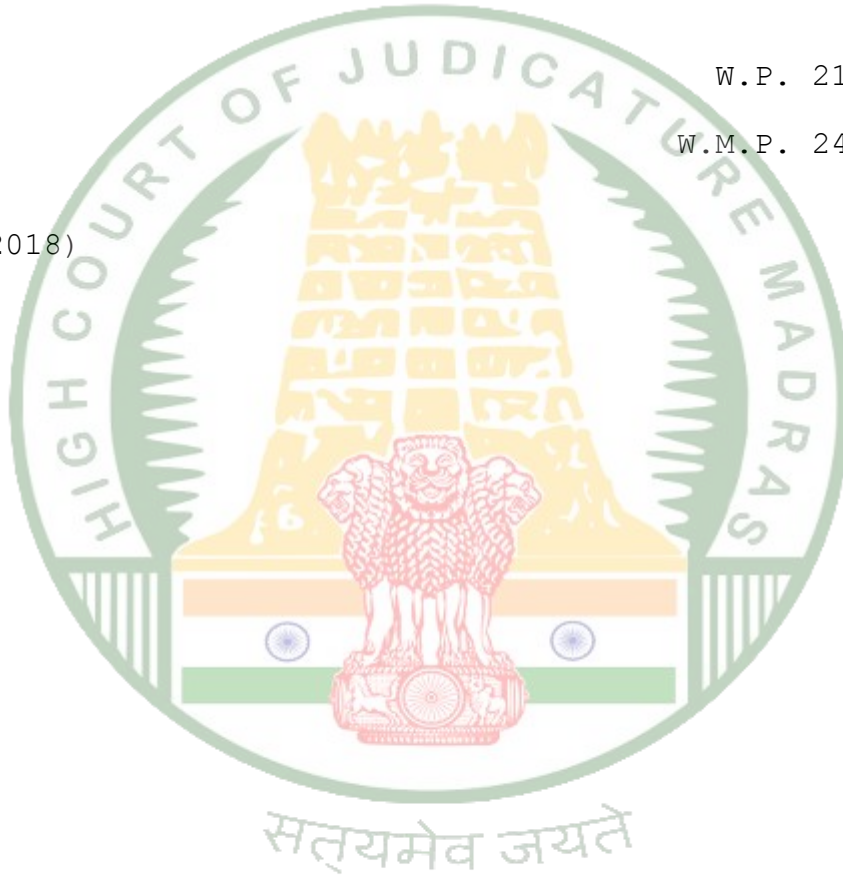
2. The Election Officer,
S.1064 Pattaipuliyur Primary Agricultural
Co-operative Thrift Society,
Mettupuliyur Village,
Jingalkathirampatti Post,
Pochampalli Taluk, Krishnagiri Dt.

3. The Commissioner,
The Tamil Nadu State Co-operative
Societies Election Commission,
No.273, I Floor, Kamadenu Building,
Teynampet, Chennai-600 018.

+1 CC to Mr.P. Raja, Advocate sr 57117.
+1 CC to Mr.L.P. Shanmuga Sundaram, Advocate sr 57464.
+1 CC to Govt. Pleader sr 57670

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and
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SP(17/09/2018)



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