

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.04.2018

CORAM

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.7892 of 2018

S.Gnanasoundari

... Petitioner

Vs.

1.The Secretary to Government,
Co-operative Societies Department,
Fort St.George, Chennai - 600 009.

2.The Election Commissioner,
Election Commission,
Tamil Nadu State Co-operative Societies,
No.273, Kamadhenu Super Market,
1st Floor, Anna Salai, Chennai - 600 018.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus directing the respondents to dispose of the petitioner's representation dated 28.03.2018.

For Petitioner : Mr.S.Ilamvaludhi

For Respondents: Mr.P.H.Aravindh Pandian,
Additional Advocate General assisted by
Mr.L.P.Shanmugasundaram,
Special Government Pleader (R1)

Mr.M.S.Palanisamy,
Standing Counsel (R2)

ORDER

This Writ Petition has been filed by the petitioner seeking for issuance of Writ of Mandamus directing the respondents to dispose of her representation dated 28.03.2018, wherein the petitioner has prayed for making reservation to the post of President and Chairman in the Co-operative Society.

2.The learned counsel appearing for the petitioner has submitted that on 12.03.2018 a Notification was issued by the

District Election Officer/District Registrar of Thiruvarur (Milk Development) under sub-rule (6)(a) of Rule 52 of the Tamil Nadu Co-operative Societies Rules, 1988, in Daily Thanthi Newspaper, notifying that election will be conducted for the Milk Co-operative Societies of Thiruvarur District and Nagapattinam District. It was also notified that 11 Directors will be elected, out of which, 2 posts were earmarked for Adi Dravidars, 3 posts for Women and 6 posts for General Category. Under the constitutional provision, reservation has been provided to Scheduled Caste and 33% for Women, but this has been ignored in the impugned Notification. Therefore, the petitioner seeks for a direction to the respondents to consider her representation dated 28.03.2018.

3. Answering to the above said contentions, the learned Additional Advocate General appearing for the 1st respondent has submitted that the Writ Petition is liable to be dismissed since identical prayer has already been made in the Writ Petition in W.P.No.28189 of 2012 before this Court. The Division Bench of this Court in W.P.No.28189 of 2012, by order dated 03.12.2015, while dismissing the Writ Petition, has observed as follows in paragraph-17:

"...

17. Having given our thought to the matter, we find really no merit in the petition. The Parliament enacts the law. The Court interprets the law. The Parliament in its wisdom provided for in the 73rd Amendment, while dealing with Part IX-A of the Municipalities, such kind of reservation by rotation even for Chairpersons. However, while making the subsequent amendment by the 97th Amendment in the year 2011 in respect of Part IX-B dealing with Co-operative Societies, reservation has been provided for membership of the Board and not for the post of a President. This Court cannot step in and assume the role of the Parliament to in fact amend the Constitution of India Part IX-B, which would be the logical consequence, were the plea of the petitioner to be accepted. This is the role exclusively of the Parliament and this is not a matter where the Court can step in to fill in, what the petitioner claims to be, a lacuna or a gap. In fact, there is no such lacuna, and the reason for the constitutional amendment to be so worded possibly arises from what is set out in paragraph 16 of counter affidavit, as it may infringe the right of other members to be President of the Co-operative Society."

4. The learned Additional Advocate General has further stated that while making the 97th Amendment in the year 2011 in respect of Part IX-B dealing with Co-operative Societies, reservation has been provided for membership of the Board and not for the

post of a President. Moreover, this Court has held that when Parliament enacts the law and the Court interprets the same, it is for the petitioner to work out her remedy by approaching the appropriate authorities, who can enact suitable laws for reservation and therefore, the petitioner's representation cannot be considered.

5. This Court also fully agrees with the submission made by the learned Additional Advocate General. This Court, considering the findings given by the Division Bench of this Court in W.P.No.28189 of 2012 dated 03.12.2015 in paragraph-17, finds no merits in the Writ Petition.

6. This Writ Petition fails and accordingly, it is dismissed. No costs.

Sd/-

Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

va

To

- 1.The Secretary to Government,
Co-operative Societies Department,
Fort St.George, Chennai - 600 009.
- 2.The Election Commissioner,
Election Commission,
Tamil Nadu State Co-operative Societies,
No.273, Kamadhenu Super Market,
1st Floor, Anna Salai, Chennai - 600 018.

+1cc to Government Pleader in sr.no.25647

W.P.No.7892 of 2018

kj(co)
nr 27/04/2018