

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 21354 of 2018
and
W.M.P. 25033 of 2018

K.Sukumaran

... Petitioner

Vs

1. The Election Commissioner,
Tamil Nadu State Co-operative
Societies Election Commissionerate,
No.278, Anna Salai,
Teynampet, Chennai-600 018.
2. The Joint Registrar of Co-operative
Societies,
O/o. The Joint Registrar of
Co-operative Societies,
Beach road, Cuddalore-607 001.
3. The District Election Officer/Deputy
Registrar of Co-operative Societies,
Chidambaram Region,
Periyar Street, Chidambaram-608 001.
4. The Election Officer,
E-2584 Thillaividangam Primary
Agricultural Co-operative Credit
Society, Thillaividangam Post,
Chidambaram.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration, calling for the records relating to 1st respondent's proceedings made in Na.Ka.No.3403/2018/Koo.Tha.1 dated 11.08.2018 and to declare the same as null and void and consequently direct the respondents to continue and complete the election of 4th respondent's society from the place where the election process stopped.

For Petitioner : Mr.L.Chandrakumar

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

: Mr.L.P.Shanmugasundaram,
Special Government Pleader
for R-2 to R-4

O R D E R

1. The Writ Petition has been filed challenging the order dated 11.08.2018 passed by the 1st respondent ordering fresh election to the 4th respondent co-operative society.

2. According to the petitioner, the election to the 4th respondent society was scheduled to be held on 30.04.2018 and as per the schedule, the filing of nominations was scheduled on 30.04.2018 and on the said date, 65 nominations were filed including the petitioner. On 02.05.2018, the nominations were scrutinised and declared that there were 28 valid nominations. The list of contesting candidates was published on 02.05.2018 at 05.00 p.m. and the withdrawal of nominations was posted on 03.05.2018. On that day, some unknown unruly elements had entered in the premises of the co-operative society and thrown away the nomination papers and also torn into pieces. In the said circumstances, the election process was stopped.

3. Thereafter, the 1st respondent in and by its proceedings in Na.Ka.No.3403/2018/Koo.Tha.1 dated 15.05.2018 passed an order under Rule 52(18)(c) of Tamil Nadu Co-operative Societies Rules to conduct the election from the stage, which was stopped. After that, now, once again, the 1st respondent passed the impugned order in and by its proceedings in Na.Ka.No.3403/2018/Koo.Tha.1 dated 11.08.2018 directing the 4th respondent to conduct the election from the date of receiving nominations and to complete the election process. Hence, challenging the above said order, the present Writ Petition has been filed.

4. Mr.L.Chandrakumar, learned counsel appearing for the petitioner submitted that the nominations were scrutinised and after scrutinising the nominations, totally 28 valid nominations are available and the list was also published by the Election Officer. Thereafter, on the date of withdrawal, some untoward incidents took place in the society, in which some of the candidates were rejected and they have entered into the premises of co-operative society and damaged the nomination papers. Hence, the election was stopped, and as per the report of Election Commissioner, the District Election Officer had passed an order dated 15.05.2018, thereby directing the 4th respondent to conduct the election from the stage, which was stopped. But,

all of a sudden, without any reason, the 1st respondent has ordered to commence the election process from the date of receiving nominations, which is totally illegal.

5. Mr.L.P.Shanmugasundarm, learned Special Government Pleader appearing for the respondents 2 to 4 submitted a position note, wherein it has been stated that on 30.04.2018, totally 65 nominations were filed and after scrutiny on 02.05.2018 37 nominations were rejected and there were 28 valid nominations. The petitioner's nomination was also one of the valid nomination. After the election officer published the list of 28 valid nominations on 02.05.2018 at about 05.00 p.m., on 03.05.2018, the date fixed for withdrawal of nominations, the crowd of about 20 persons along with one Mr.K.Thirumurugan, whose nominations were rejected entered in the premises of co-operative society and snatched the nomination papers and torn into pieces. In the said circumstances, a criminal complaint was also filed in the Killai Police Station in Crime No.78/2018, thereafter, on the report submitted by the election Officer, the election was stopped. Even though the election was stopped on the date fixed for the withdrawal, the further process cannot be started in view of the fact that the nominations received were totally damaged. Hence, the Election Commissioner had passed an order to conduct the fresh election.

6. Mr.M.S.Palanisamy, learned standing counsel appearing for the 1st respondent has produced the records and submitted that as per the report submitted by the District Election Officer stating that all the valid nominations have been torn into pieces and as on date, the nominations filed by the petitioner and others are not available in the society. In the said circumstances, the impugned order has been passed for conducting the election at the stage of receiving nominations.

7. I have considered the rival submissions and perused the records carefully.

8. It is an admitted fact that the election process has been commenced and the nominations were received from 25.08.2018 and the valid list of nominations was published on 02.05.2018. Only subsequent to that, on the date of withdrawal, there was a problem and somebody had entered in the premises of the co-operative society and damaged the nomination papers.

9. Earlier, considering the report submitted by the District Election Officer, the 1st respondent passed an order dated 15.05.2018 directing the election officer to conduct the election from the stage, which was stopped. In the said circumstances, now it is not open to the 1st respondent to pass another order without giving any valid reason directing the

Election Officer to conduct the election from the stage of receiving nominations. Now, the only reason stated by the 1st respondent is that the nominations papers are not available with the 4th respondent. Hence, the election should be conducted from the very beginning.

10. It is an admitted fact that the nominations were received and scrutiny of nominations also over and valid list of candidates also published, but merely because that somebody has taken away the nomination papers. It is not the ground to commence the election from the very beginning. Under Rule 18(18) (c) of the Tamil Nadu Co-operative Societies Rules, the 1st respondent has power to order election at any stage, but for a valid reasons. The 1st respondent has passed the earlier order dated 15.05.2018 directing the Election Officer to conduct the election from the stage, which was stopped, now it is not proper for the 1st respondent to pass another order directing the authority to conduct the election from the date of receiving nominations. If at all, the nomination papers are not available, it is always open to the 4th respondent to receive the nominations from the candidates, whose nominations were already declared as eligible candidates.

11. In the said circumstances, the impugned order is liable to be set aside and accordingly, it is set aside and the matter was remanded back to the 1st respondent and the 1st respondent is directed to pass a fresh order directing the 4th respondent to conduct the election from the stage of withdrawal of nominations after obtaining fresh nominations from the candidates, whose nominations are found valid, and also to complete the election process as per the fresh election schedule. The above process should be completed within a period of four weeks.

12. With the above direction, the Writ Petition stands disposed of. Consequently, the Writ Miscellaneous Petition is closed. No costs.

सत्यमेव जयते

Sd/-

Assistant Registrar(CS-IV)

//True copy//

Sub Assistant Registrar

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To

1. The Election Commissioner,
Tamil Nadu State Co-operative
Societies Election Commissionerate,

No.278, Anna Salai,
Teynampet, Chennai-600 018.

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O/o. The Joint Registrar of Co-operative Societies,
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Chidambaram Region,
Periyar Street, Chidambaram-608 001.
4. The Election Officer,
E-2584 Thillaividangam Primary Agricultural Co-operative Credit Society, Thillaividangam Post,
Chidambaram.

+1cc to Mr.L.Chandrakumar, Advocate SR.No.58212

+1cc to Mr.L.P.Shanmugasundaram*, Advocate SR.No.58608

+1cc to Government Pleader SR.No.58354

W.P. 21354 of 2018
and
W.M.P. 25033 of 2018

GMY (19/09/2018)

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