

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:10.09.2018

CORAM:

THE HONOURABLE MR. JUSTICE S. MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE SUBRAMONIAM PRASAD

W.P.No.22444 of 2018
W.M.P.Nos.26302 to 26304 of 2018

S.L.Kanniappan ... Petitioner

Versus

1. The Election Commissioner,
Tamil Nadu Co-operative Societies Election Commission,
No.273, Kamathenu Co-operative Stores,
Anna Salai, Chennai 600 018.
2. The District Election Officer,
Deputy Registrar of Co-operative Societies,
Chennai Region, Chennai.
3. The Election Officer,
G.619 Saidapet Co-operative Bank Ltd.,
Saidapet, Chennai 600 015.
4. The Special Officer,
G.619 Saidapet Co-operative Bank Ltd.,
Saidapet, Chennai 600 015.
5. M.Nagandreaan
6. E.Uthampandian
7. K.Manjula
8. P.Muthulakshmi
9. S.Uma
- 10.S.V.Anbu
- 11.R.Paulraj
- 12.N.Deena Dhayalan
- 13.E.Subramani
- 14.N.Venkatesan
- 15.V.Veeraraghavan ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writs of Certiorarified Mandamus, to call for the election held on 16.08.2018 by the 3rd

respondent and the declaration of the result on 18.08.2018 by the 3rd respondent, quash the same, in pursuant to the order passed by the 1st respondent, dated 04.05.2018 in Ref.No.Na.Ka.2342/2018/Coop.Election.2 and consequently, direct the respondents 1 to 3 to conduct election afresh for the 4th respondent-Bank.

For Petitioner .. Mr.G.Ethirajulu

For 1st Respondent .. Mr.M.S.Palanisamy
Senior Counsel

For Respondents 2 to 4 .. Mr.L.P.Shanmugasundaram,
Spl. Government Pleader
(Co-op.)

For Respondents 5 to 15... No appearance

O R D E R

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioner, a Votor, has challenged the election held on 16.08.2018 and the declaration of results on 18.08.2018, by the Election Officer, G.619 Saidapet Co-operative Bank Ltd., Saidapet, Chennai, 3rd respondent herein, pursuant to the order passed by the Election Commissioner, Tamil Nadu Co-operative Societies Election Commission, Chennai, 1st respondent herein, dated 04.05.2018, and consequently, prayed for a direction to the respondents 1 to 3, to conduct election afresh, for the 4th respondent-Bank.

2. It is the case of the petitioner that he is a member of the 4th respondent bank - G.619 Saidapet Co-operative Bank Ltd., Saidapet, Chennai, bearing membership No.A 3158. The 4th respondent-Co-operative Bank is registered under the provisions of Tamil Nadu Co-operative Societies Act. Management of the said Bank vest in a Board, constituted in accordance with the provisions of Tamil Nadu Co-operative Societies Act, Rules and bye-laws, in terms of Section 33(i) of the Tamil Nadu Co-operative Societies Act, 1983. The affairs of the registered bank has to be carried on by the Board of Members. The President and Vice-president are elected among the members of the board. There should be not less than 11 and not more than 29 members, as may be specified in the rules or bye-laws, as the case may be. In terms of Section 33(11)(a) of the Tamil Nadu Co-operative Societies Act, the Members of the Board of the registered society shall be elected by the members of the registered bank, by a secret ballot in such manner, as may be prescribed.

3. The petitioner has further submitted that the term of the Board of Directors of the 4th respondent bank expired during the month of April' 2018. Therefore, Special officers were appointed to manage the banks, in the State of Tamil Nadu, and continuously extended their period, from time to time, at the instance of the ruling party. The petitioner states that the Election Commissioner, Tamil Nadu Co-operative Societies Election Commission, Chennai, 1st respondent herein, announced election for various co-operative societies, in the State of Tamil Nadu, including the 4th respondent society, in four phases, as per the notification, dated 23.04.2018. As per the notification, the last date, for filing of application for the post of member of the board is 30.04.2018, from 10 a.m. to 5 p.m. and scrutinization of the application, should be done on 02.05.2018 from 11 a.m. to 4.00 p.m. and the announcement of valid application was to be made at 5.00 p.m. Withdrawal should be made on 03.05.2018, between 10 a.m. to 4 p.m. Final notification of contesting candidates has to be released on 03.05.2018 at 5.00 p.m. and election to be held on 07.05.2018, from 8.00 a.m. to 5.00 p.m. But no election was conducted on the stipulated date, since the Election Commissioner, Tamil Nadu Co-operative Societies Election Commission, Chennai, 1st respondent herein, by order, dated 04.05.2018, in Rc.No.2342/2018/Coop.Election-2, cancelled the election by exercising his power, under Rule 52(23) of the Tamil Nadu Cooperative Societies Rules 1988.

4. To the shock and surprise of the petitioner, the Election Officer, G.619, Saidapet Co-operative Bank Ltd., Chennai, 3rd respondent herein, affixed a notice, dated 10.08.2018, in the notice board of the 4th respondent bank on 13.08.2018, as if election would be conducted on 16.08.2018, in the first floor of the 4th respondent bank. It is pertinent to note that the 1st floor of the bank, consists of the Chairman room and another room, to an extent of 250 sq.ft. The staircase leading to the 1st floor was narrow, and cannot accommodate, more than single person, at the same time. The total listed voters are 27,294. The election was proposed to be held, between 8 a.m. and 5.00 p.m. on 16.08.2018. Therefore, the petitioner along with several others, including one of the candidates namely, M.Sukumar gave a written complaint dated 16.08.2018, to the 3rd respondent, to have some other convenient venue for the election as contemplated, under Rule 52(21) of the Tamil Nadu Cooperative Societies Rules 1988. Despite the same, the 3rd respondent did not initiate any action on the representation of the petitioner and continued the election. However, out of 27,294 voters only 959 votes were cast in the subject election.

5. It is the further case of the petitioner that when the 1st respondent has cancelled the earlier election, by order, dated 04.05.2018, respondents 1 to 4 without publishing a fresh

election notification, shockingly have conducted a fresh election, on the strength of preparation of the candidates list, which has been cancelled by the 1st respondent. Said procedure adopted by respondents 1 to 4 is violative of Rule 52(23) of the Tamil Nadu Cooperative Societies Rules, 1988. The petitioner has further stated that respondents 1 to 4 should have issued a fresh election notification, by refixing the dates for filing nomination, scrutinization and finalization of candidates list, and the date of election. According to the petitioner, action of the respondents 1 to 4, vitiates the entire election itself. Petitioner, being a member, could not cast his vote, because of the inconvenience caused to the voters, improper arrangement, and failure on the part of the 3rd respondent to exercise his power vested under Rule 52(21), to change venue of election to facilitate voters. But, the 3rd respondent, conducted the election, counting the votes, and declared the results on 18.08.2018 in the notice board of the 4th respondent bank.

6. The petitioner has further stated that this Court in a batch of W.P.No.7526 of 2018, passed an order on 03.08.2018, appointing a Redressal Committee, for the entire state of Tamil Nadu, to redress the grievances of the candidates, as well as the voters, in the election conducted, for cooperative societies. Even though, two weeks time was granted to constitute a committee, till date, State of Tamil Nadu, has not taken any effective steps, to constitute the committee to hear the grievance, but making an attempt to conduct further election to the post of President and Vice-President, among the elected candidates, in order to nullify the aforesaid order. Hence, the petitioner has filed this writ petition, for the reliefs, as stated supra.

7. Petitioner has contended that the impugned order, dated 10.08.2018, notice calling for the election to be held on 16.08.2018, by the Election Officer, G.619 Saidapet Co-operative Bank Ltd., Chennai, 3rd respondent, and the consequential declaration of results on 18.08.2018, by the 3rd respondent suffers from illegalities, irregularities, and is in excess of jurisdiction.

8. According to the petitioner, the respondents have failed to note that the 1st respondent has already cancelled the election to be held on 07.05.2018 by its order dated 04.05.2018 made in Na.Ka.2342/2018/Co-op-Election.2, but conducted the election on 16.08.2018, even without issuing a fresh election notice, based on the nominations filed and accepted on 30.04.2018 and 03.05.2018 respectively. The said procedure adopted by the respondents violates Rule 52(23) of the Tamilnadu Co-Operative Society Rules, wherein it is mandated that when an election is cancelled under Rule 52(23), the Election Commission

may start election proceedings afresh in all respects as is for a new election to fill up the vacancy or vacancies and the said failure leads to miscarriage of justice.

9. The petitioner has further contended that the election, dated 16.08.2018 has been conducted in an arbitrary manner, without following the mandatory procedure contemplated under Rule 52(21) of the Tamilnadu Co-Operative Society Rules, wherein the 3rd respondent is vested with a power to change the venue of the election to which all voters shall have access. However, without considering the necessity of access as contemplated in the provision, the 3rd respondent despite representation dated 16.08.2018 continued with the election, in an arbitrary manner, and the attitude of the 3rd respondent would vitiate the objective of election and has taken away the right to vote.

10. It is the further contention of the petitioner that the respondents have failed to note that out of 27,294 voters only 959 voters alone were able to cast their votes representing only 3.5% of the total voters due to want of free access to the booth situated in the first floor of the 4th respondent-Bank, within a area of 250 sq.ft. According to the petitioner, the 4th respondent-Bank has wantonly and purposely conducted the elections in a cramped space in order to facilitate victory of few members of their choice and therefore, the impugned notice, dated 10.08.2018, calling for the election to be held on 16.08.2018 and the consequential declaration of results on 18.08.2018 by the Election Officer, G.619 Saidapet Co-operative Bank Ltd., Chennai, 3rd respondent herein, is illegal, and is liable to be set aside.

11. Inviting the attention of this Court to the proceedings of the Commissioner for Co-operative Elections, dated 30.04.2018, Mr.G.Ethirajulu, learned counsel for the petitioner submitted that when there was law and order problem, election was cancelled. Added further, he submitted that the decision rendered by the Hon'ble Division Bench in a batch of W.P.No.7526 of 2018, dated 03.08.2018, does not cover the facts of the instant case. For the abovesaid reasons, he prayed for the reliefs, as stated supra.

12. Mr.M.S.Palanisamy, learned Senior Counsel appearing for the 1st respondent-Election Commissioner, fairly submitted that the case on hand, is not covered by the decision of the Hon'ble Division Bench in a batch of W.P.No.7526 of 2018, dated 03.08.2018. He further submitted that election for G.619 Saidapet Co-operative Bank Ltd., is over.

13. Referring to Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 and Rule 52(23) of the Tamil Nadu Co-operative Societies Rules, 1988, learned counsel for the 1st respondent submitted that the writ petition is not maintainable. Referring to G.O.(D)No.158, Co-operation, Food and Consumer Protection (CJ 1) Department, dated 27.08.2018, he submitted that committee, as ordered by this Court in W.P.(MD)No.7620 of 2018 etc., dated 03.08.2018, has been constituted.

14. Inviting the attention of this Court to the decision of the Hon'ble Supreme Court in Civil Appeal No.8515 of 2018, dated 24.08.2018 [West Bengal State Election Commission v. Communist Party of India], Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-operatives), appearing for respondents 2 to 4, submitted that once the election process is commenced and results declared, remedy lies under Section 90 of the Tamil Nadu Co-operatives Societies Act and the Rules framed thereunder.

Heard the learned counsel appearing for the parties and perused the materials available on record.

15. Earlier, the petitioner has sent a representation, dated 16.08.2018, expressing difficulty in having access to the venue, was it was too small to accommodate large voters. For brevity, the translated version of the said representation, is extracted hereunder:

"Vanakkam, Election to Saidapet co-operative Bank is to be held on today at 8.00 a.m. I am the member of the co-operative bank. It is not feasible to conduct the election in the first floor of the bank premises. There are more than 28,000 qualified voting members in the Bank. They have not got proper information regarding the election to be conducted today. The space available in the first floor is not enough to conduct election and it will cause inconveniences to elders and women. There is no sufficient time and facilitation provided for the voters to cast their vote. Therefore it is humbly requested in order to cast votes by every voters the election has to be conducted in some Choultry or school to discharge voters democracy duty and right to exercise their franchises."

16. However, instant writ petition has been filed, with averments that the election was cancelled by the 1st respondent for law and order problem, but without re-notifying the same, election has been conducted. The petitioner has alleged irregularities. Paragraph 5 of the supporting affidavit to the writ petition, reads thus,

"5. The petitioner states that the 1st respondent cancelled the earlier election by its order dated 04.05.2018 but the respondents 1 to 4 without publishing fresh election notification, shockingly conducted the election on the strength of preparation of candidates list which has been cancelled by the 1st respondent. The said procedure adopted by the respondents 1 to 4 is violative of Rule 52(23) of the Tamil Nadu Cooperative Societies Rules, 1988. The petitioner states that the respondents 1 to 4 should have issued fresh election notification by refixing the dates for filing nomination, scrutinization and finalization of candidates list and date of election. The said approach of the respondents 1 to 4 vitiates the entire election itself. The petitioner being the member could not cast his vote because of the inconvenience caused to the voters, improper arrangement and failure on the part of the 3rd respondent to exercise his power vested under Rule 52 (21) to change venue of election to facilitate voters. However, the 3rd respondent conducted the election, counting the votes and declared the results on 18.08.2018 in the notice board of the 4th respondent bank. The petitioner states that this Hon'ble High Court in W.P.No.7526 of 2018 batch was pleased to pass an order on 03.08.2018 appointing the Redressal Committee all over for the entire state of Tamil Nadu to redress the grievances of the candidates as well as voters in the election conducted for the cooperative societies. Even though two weeks time was granted to constitute the committee, till this date the State of Tamil Nadu has not taken any effective steps to regulate the committee to hear the grievance but making an attempt to conduct further election to the post of President and Vice-President among the elected candidates in order to nullify the aforesaid order.5. The petitioner states that the 1st respondent cancelled the earlier election by its order dated 04.05.2018 but the respondents 1 to 4 without publishing fresh election notification, shockingly conducted the election on the strength of preparation of candidates list which has been cancelled by the 1st respondent. The said procedure adopted by the respondents 1 to 4 is violative of Rule 52(23) of the Tamil Nadu Cooperative Societies Rules, 1988. The petitioner states that the respondents 1 to 4 should have issued fresh election notification by refixing the dates for filing nomination, scrutinization and finalization of candidates list and date of election. The said approach of the respondents 1 to 4 vitiates

the entire election itself. The petitioner being the member could not cast his vote because of the inconvenience caused to the voters, improper arrangement and failure on the part of the 3rd respondent to exercise his power vested under Rule 52 (21) to change venue of election to facilitate voters. However, the 3rd respondent conducted the election, counting the votes and declared the results on 18.08.2018 in the notice board of the 4th respondent bank. The petitioner states that this Hon'ble High Court in W.P.No.7526 of 2018 batch was pleased to pass an order on 03.08.2018 appointing the Redressal Committee all over for the entire state of Tamil Nadu to redress the grievances of the candidates as well as voters in the election conducted for the cooperative societies. Even though two weeks time was granted to constitute the committee, till this date the State of Tamil Nadu has not taken any effective steps to regulate the committee to hear the grievance but making an attempt to conduct further election to the post of President and Vice-President among the elected candidates in order to nullify the aforesaid order."

17. Firstly, in his representation, dated 16.08.2018, the petitioner has expressed difficulties faced in having access to the venue to cast his vote. Cause of action for filing the writ petition appears to be the said representation. Alleged irregularities, stated supra, in the supporting affidavit, were not raised before any competent authority, except in the instant writ petition.

18. Vide proceedings in R.C.No.2342/2018/Co-op.2, dated 04.05.2018, the Commissioner of Co-operative Elections, Chennai, has cancelled the elections for G.619 Saidapet Co-operative Bank Ltd., and the translated copy of the said proceedings, reads thus,

Tamil Nadu Co-operative Societies Election
Commissioner Proceedings Order (Under Rule 52(23) of
Tamil Nadu Co-operative Societies Rules 1988)
Present: M.Rajendran, I.A.S.,
Commissioner.

Na.Ka.No.2342/2018/Coop.2

Date: 04.05.2018

Sub: Co-operative Society Elections-G.2018-
Election
for Board of Directors-G.619, Saidapet
Cooperative Urban Bank-order
cancelling the Election for Board of
Directors-Regarding.

Ref: Deputy Registrar (Loan)/District
Election officer
Letter Na.Ka.No.778/2018/Sa.Pa. Dated
04.05.2018.

In the reference cited above report of the District Election officer it is stated that the election to G.619 Saidapet Cooperative Urban Bank election proceedings cannot be conducted due to law and order problem and also suggested cancellation of election.

The Tamil Nadu Co-operative Society Election commission carefully analyzed the same and ensure to conduct the election freely, fairly and lawful manner invoking the jurisdiction provided under Rule 52(23) of the Tamil Nadu Co-operative Societies Rule hereby ordered to cancel election process announced to G.619, Saidapet Cooperative Urban Bank, Saidapet, Chennai.

sd/-
Commissioner.

19. Thereafter, notice, dated 10.08.2018, has been issued by the Election Officer, G.619 Saidapet Co-operative Bank Ltd., Chennai, fixing 16.08.2018, as the date for election of Board of Directors, for the said society. Subsequently, notice is stated to have been issued for the election to the Office of the President and the Vice President of the Society. Towards implementations of the directions issued in W.P.(MD)Nos.7620 of 2018, dated 03.08.2018, Government of Tamil Nadu have issued G.O.(D)No.158, Co-operation, Food and Consumer Protection (CJ 1) Department, dated 27.08.2018, constituting Committees with members. Appedix to the said Government Order reads thus,

APPENDIX.

NOTIFICATION

In pursuance of the orders dated 03.08.2018 of the Hon'ble High Court of Madras in W.P. (MD) No.7620 of 2018 and Batch of cases the Governor of Tamil Nadu hereby appoints Four Committees, Chaired by Retired High Court Judges, to decide petitions of objections/ or petitions of the complaints on Co-operative Elections filed till 03.08.2018 as follows:-

Chairperson	Zone	Head quarters	Districts comprising of	Members of the Committee nominated	
				District Collector	Additional/ Joint Registrars
Thiru Justice S.Rajeswaran, (Retd.)	West	Coimbatore	Coimbatore, Nilgris, Erode, Tiruppur, Salem, Namakkal, Karur and Dindigul	1. Coimbatore 2. Tiruppur	Joint Registrar, Coimbatore Joint Registrar, Tiruppur
Thiru Justice K.Venkatararan, (Retd.)	North	Chennai	Chennai, Tiruvallur, Vellore, Krishnagiri, Dharmapuri, Villupuram, Tiruvannamalai and Kanchipuram	1. Chennai 2. Thiruvallur	Additional Registrar, Chennai Joint Registrar, Thiruvallur
Thiru Justice R.S.Ramanathan, (Retd.)	South	Madurai	Madurai, Tirunelveli, Kanyakumari, Thoothukudi, Ramanathapuram, Virudhunagar, Sivagangai and Theni	1. Madurai 2. Virudhunagar	Joint Registrar, Madurai Joint Registrar, Virudhunagar

Chairperson	Zone	Head quarters	Districts comprising of	Members of the Committee nominated	
				District Collector	Additional/ Joint Registrars
Thiru Justice G.Rajasuriya, (Retd.)	East Central	Tiruchirappalli	Tiruchirappalli, Cuddalore, Perambalur, Ariyalur, Tanjavore, Pudukottai, Tiruvarur and Nagapatinam	1.Tiruchirappalli 2.Ariyalur	Joint Registrar, Tiruchirappalli Joint Registrar, Ariyalur

2. The Terms of reference of the Committees shall be as follows:-

(i) The Committees shall decide objections and / or complaints of wrongful inclusions or omissions in the voters' lists, wrongful acceptance, non-acceptance or rejection of nomination papers, wrongful acceptance or rejection of ballot papers and other disputes with regard to the elections. When deciding disputes with regard to specific cooperative societies, the Chairperson shall co-opt the Joint Registrar of Co-operative Societies and the Collector of the District in which the co-operative society is located, unless they are already members of the Committee.

(ii) The Committees will look into the complaints of wrongful inclusions and omissions in the voter's list, if such disputes have been raised prior to the holding of elections, but not decided and / or wrongfully decided by the Election Officer concerned. Finding of wrongful omission from or inclusion in the voters' list if not material will not affect the election. For example, if one candidate has been excluded, but successful candidates have won with margin exceeding one, the election will not be affected.

(iii) Only objections and / or complaints with regard to voters' lists and nominations already made by approaching the Court or alternatively by approaching the Election Commission and / or Registrar and / or any other appropriate authority shall be entertained and no new complaints and / or objectors who never raised any objection till the date of the judgment shall be entertained by the Committees. The

Committees shall check if the nomination papers comply with the requisites of Rule 52 of the Tamil Nadu Co-operative Societies Rules, 1988 and the Circular No. Na.Ka. 321/2018/Co.EI.1, dated: 19.07.2018 of the Election Commission. In particular, the Committee shall look into the following aspects:

a) If the nomination of a candidate for the election is in Form No.18, and proposed and 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 Tribe 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 papers was filed in time or out of time.

(iv) Objections with regard to voters' lists may only be raised by an aggrieved voter, whose name has been excluded, or by a contestant. Similarly, objections with regard to acceptance, non acceptance, withdrawal or rejection of nomination papers may only

be raised by aggrieved contestants, who have filed and / or intended to file nomination papers.

(v) The Committees will go into the complaints of wrongful acceptance, non-acceptance or rejection of nomination papers only in cases where such complaints have already been made either before the Court or before the Election Commission or any other authority. The Committees will look into whether nomination papers were filed within the date stipulated in the election notification, whether the nominations forms were duly signed by the candidate and by the proposer and the seconder and whether the nomination form was complete in all respects. The Committees shall verify the nominations having regard to the requisites of Rule 52 of the Rules read with Circular No.Na.Ka.321/2018/Co.El.1, dated 19.07.2018 of the Election Commission. Nomination papers are not to be rejected for frivolous reasons such as discrepancies in signature, if the signatures are identifiable, affixing of signature at the wrong place, etc.

(vi) In disputes with regard to polling, counting of votes, etc., the Committees will look into the ballot papers to see if the votes have validly been cast. However, in the event resolution of the dispute requires detailed evidence, the Committee shall remit the complainants / objectors to their alternative remedy under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 and refer the disputes to the Registrar of the Cooperative Societies, who shall appoint a panel of three Arbitrators to adjudicate the dispute.

(vii) The Committees will not intervene in those cases where candidates have been elected and / or nominated by consensus, as no other candidate offered himself / herself for contest and / or withdrew his / her candidature. However, where nominations are alleged to have been wrongfully rejected or not accepted, it may be necessary to scrutinize the reason.

(viii) Objections / Complaints may be filed before the Committee within seven days from the date of its constitution, at the address notified by publication in one vernacular daily having circulation in the District.

(ix) The Committees shall within two weeks from the date of receipt of a certified copy of this order, publish a notice in a vernacular newspaper having circulation in the concerned zone notifying its constitution and inviting petitions of objection / complaint within the date and at the address specified

in the notice.

(x) Only petitions of objections / complaints in respect of voters' list and nominations will be entertained, which have earlier been filed before the authorities and / or before the High Court by initiation of writ proceedings and / or any other proceedings".

(xi) Disputes with regard to the conduct of elections, that is, polling, counting etc. may be raised within fifteen days from the date of publication of notice."

20. Proceedings in Rc.No.2342/2018/Co-op.1, dated 30.04.2018, issued by the Commissioner for Co-operative Elections, Chennai, relates to cancellation of election in X.75 Theyagaraya Nagar Co-operative Bank, due to the law and order problem.

21. After referring to the decisions in Manda Jaganath v. K.S.Rathanam reported in (2004) 7 SCC 492 and Ramesh Rout v. Rabindra Nath Rout reported in (2012) 1 SCC 762, the Hon'ble First Bench of this Court in W.A.No.902 of 2013, dated 30.04.2013 and W.A.No.1282 of 2013, dated 17.06.2013, held that once the election process is commenced, the remedy open to the aggrieved person is only to invoke the jurisdiction of the concerned Electoral Tribunal.

22. While rejecting the contention of the appellant therein in W.A.No.1282 of 2013 dated 17.6.2013 (R.Murali Mohan vs. The Cooperative Election Commissioner, No.273, Anna Salai, Nandanam, Chennai - 600018 and 5 others), liberty has been granted by the Hon'ble First Bench of this Court, to invoke the provisions of Section 90 of the Tamil Nadu Co-operative Societies Act, 1983 to file an election petition. Paragraph Nos.8 and 9 of the said judgment reads as follows:-

"8. A perusal of the affidavit filed as well as the documents available in the typed set of papers would disclose the factual disputes, namely whether issuance of nomination forms was denied to the appellant/writ petitioner and whether any irregularities took place on the eve of election. In the considered opinion of the Court, the said factual disputes can be adjudicated only in the form of election petition and appellant/writ petitioner is also having an effective alternative remedy under Section 90 of the Tamil Nadu Co-operative Societies Act.

9. Learned Single Judge after taking into consideration the said position of law has rightly

dismissed the writ petition and we find no error apparent or infirmity in the impugned order."

23. In W.A.No.902 of 2013, dated 30.04.2013 [K.Anandaraj v. State of Tamil Nadu], the appellant/petitioner alleged that though he had submitted his nomination, before the Election Officer, within the prescribed time, it was rejected, without assigning any valid reasons. As the written objection had not been considered, a writ petition has been filed for a Mandamus, directing the Election Officer, to conduct the election, as per the Schedule, in terms of Rule 52 of the Tamil Nadu Co-operative Societies Rules, 1988, which contemplated an opportunity to be given to the candidates, who have filed their nominations, before rejection. However, a learned Single Judge dismissed the same, taking note of the written instructions produced by the learned Government Advocate. While disposing of the writ petition, the learned Single Judge, granted liberty to the appellant/petitioner, to work out his remedy, in the manner known to law. Correctness of the dismissal order of the writ petition, has been tested in Writ Appeal. After considering the rival contentions, the Hon'ble First Bench, framed the following points for consideration,

"The point arises for consideration in this writ appeal is as to whether the appellant/writ petitioner can file writ petition seeking relief, when his nomination was rejected for the post of Director of the Primary Agricultural Co-operative Bank."

After considering the decisions in (2004) 7 SCC 492 (Manda Jaganath v. K.S.Rathnam), (2009) 1 SCC 168 (City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla), (2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev. State of Maharashtra), and (2012) 1 SCC 762 (Ramesh Rout v. Rabindra Nath Rout), the Hon'ble Division Bench, at Paragraphs 8, 12 and 13, held as follows:

"8. In this case, the appellant's nomination was rejected on the ground that the signature of the secondor is not genuine. The said issue is a disputed fact, which can be gone into only in the forum provided for proving such disputed fact by raising a dispute. This Court sitting under Article 226 of the Constitution of India, cannot issue any writ if the facts are in dispute. The said issue is a settled principle of law.

12. Moreover, in this case, the election date was on 12.4.2013, which was already over and the further election to the post of President was held on 16.4.2013 and a President was also elected. Thus, the prayer sought for in the writ petition to hold election on

12.4.2013 as per the election schedule, cannot be ordered at this juncture.

13. In view of the above, we are not inclined to entertain this writ appeal. Consequently the writ appeal is dismissed and the order of the learned single Judge dated 12.4.2013 is confirmed. No costs. Connected miscellaneous petitions are also dismissed."

It is worthwhile to reproduce the judgments cited in K.Anandaraj's cases, as follows:

"9. In the decision reported in (2004) 7 SCC 492 (Manda Jaganath v. K.S.Rathanam) rejection of nomination to contest as an official candidate of a political party was challenged in the writ petition before the Andhra Pradesh High Court and the High Court entertained the writ petition and passed an interim order. The said order was challenged before the Hon'ble Supreme Court and in Paragraph 12, the Supreme Court held thus,

"12. In our opinion, whether the Returning Officer is justified in rejecting this Form B submitted by the first respondent herein or not, is not a matter for the High Court to decide in the exercise of its writ jurisdiction. This issue should be agitated by an aggrieved party in an election petition only."

The Hon'ble Supreme Court not only set aside the interim order passed by the Andhra Pradesh High Court, but also dismissed the writ petition holding that the issue raised can be decided only in an election petition.

10. The other decision relied on by the learned counsel for the appellant reported in (2012) 1 SCC 762 (Ramesh Rout v. Rabindra Nath Rout) arose out of an election case and that the Supreme Court upheld the order of the High Court, declaring the election of the candidate as null and void. Thus, the said decision has no application to the facts of this case.

11. The Supreme Court in the decision reported in (2009) 1 SCC 168 (City and Industrial Development Corporation v. Dosu Aardeshir Bhiwandiwalla) held that if adjudication of the writ petition involves any complex and disputed questions of fact, and if there is any alternate remedy available, writ is not maintainable. The said decision is followed in the subsequent decision reported in (2011) 2 SCC 782 (Kanaiyalal Lalchand Sachdev v. State of Maharashtra)."

24. In West Bengal State Election Commission v. Communist Party of India (Marxist) [Civil Appeal No.8515 of 2018, dated 24.08.2018, the Hon'ble Supreme Court considered the correctness of the directions issued by the High Court, Calcutta, in the matter of the elections to the local bodies in Calcutta. Considering the statutory provisions on the Panchayat Act and the decisions of the Hon'ble Supreme Court in Boddula Krishnaiah v. State Election Commissioner, reported in (1996) 3 SCC 416, NP Ponnuswami v. Returning Officer, Namakkal Constituency [1952 SCE 218] and in Lakshmi Charan Sen v. AKM Hassan Uzzaman [(1985) 4 SCC 689], the Hon'ble Supreme Court, at Paragraph 27, 29 and 31, ordered as hereunder:

"27 There is merit in the submission that the discipline which is mandated by the provisions of the Constitution and enforced by the enabling state law on the subject must be maintained. Any dispute in regard to the validity of the election has to be espoused by adopting a remedy which is known to law namely through an election petition. It is at the trial of an election petition that factual disputes can be resolved on the basis of evidence. This principle has been consistently adhered to in decisions of this Court. In Boddula Krishnaiah (supra), a three Judge bench, adverted to the decisions of the Constitution Bench in NP Ponnuswami v Returning Officer, Namakkal Constituency and in Lakshmi Charan Sen v AKM Hassan Uzzaman. After referring to Ponnuswamy, it was observed:

"In NP Ponnuswamy v Returning Officer, Namakkal Constituency a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed, while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the 'election; and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress."

The binding principle must be followed.

29.Thirdly, once the election process has commenced, it is trite law that it should not be interdicted mid stage. The electoral process is afforded sanctity in a democracy. That is the reason why in a consistent line of precedent, this Court has insisted upon the discipline of the law being followed so that any challenge to the validity of an election has to be addressed by adopting the remedy of an election petition provided under the governing statute. For this Court to set aside elections to over 20,000 seats would be to prejudge the basic issue as to whether in each of those constituencies, the election stands vitiated by obstruction having been caused to candidates from filing their nominations. A general assumption of this nature cannot be made. Ultimately whether this is correct would depend upon the evidence adduced in the facts of individual cases where such a grievance has been made in an election petition. The Court has been apprised that approximately 1,700 complaints were filed and about 168 election petitions have been instituted. We are emphatically of the view that any challenge to the election must take place in a manner which is known to law.

31. For these reasons, we are of the view that challenges in regard to the validity of the elections to the uncontested seats in the panchayats, panchayat samitis and zilla parishads must also be pursued in election petitions under Section 79(1) of the Panchayat Elections Act. We leave it open to any person aggrieved to raise a dispute in the form of an election petition in accordance with the provisions contained in the Panchayat Elections Act. In exercise of the power conferred by Article 142, we direct that the period of 30 days for filing election petitions in respect of the uncontested seats shall commence from the date of the publication of the results in the Official Gazette."

25. Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, dealing with disputes, reads thus,

"90. Disputes:

(1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub-section (3) of section 75 or the Registrar or the society or its board against a paid servant of the society) arises-

(a) among members, past members and persons

claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member, past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past, agent or past servant, or the nominee, heirs or legal representatives of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation.-

For the purposes of this section, a dispute shall include-

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of the deceased member whether such debt or demand be admitted or not.

(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions of assignment or allotment of such land or other immovable property and

(iii) a decision by the board under sub-section (3) of section 34;

Provided that no dispute relating to, or in connection with, any election shall be referred under this sub-section till the date of the declaration of the result of such election.

(2) The Registrar may, on receipt of such reference;

(a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause (a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and-

(a) decide the dispute himself; or

(b) transfer it for disposal to any person

subordinate to and empowered by him; or

(c) refer it for disposal to an arbitrator or arbitrators; or

(d) retransfer the same for disposal to the person from whom it was withdrawn; or

(e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purposes of this section any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section (3) relates to immovable property, the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or retransferred under sub-section (2) or sub-section (3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or arbitrators aforesaid, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure, 1908 (Central Act V of 1908) shall apply to any decision passed or award made under this section.

(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the dispute were a suit and the Registrar a civil court,. Subject to the following modifications, namely:-

(i) when the dispute relates to a society in respect of which a special officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years from the date of the order issued section 88 or section 137, as the case

may be:

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of sub-section (1), the period of limitation, shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired."

26. As per Sub-Sections (a)(iii) and (b) of Section 90 of the Tamil Nadu Co-operative Societies Act, when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election and notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired.

27. Rule 52(23) of the Tamil Nadu Cooperative Societies Rules 1988, states that,

"(23) Notwithstanding anything contained in the Rules, where the Election Commission suo-motu or on complaint or on the report of the District Election Officer or observer is of the opinion that, it is not possible to hold free and fair election on account of the prevailing law and order problem, or riot or open violence, or communal clash or on account of natural calamity or bundh or such other sufficient cause, the Election Commission shall have the power to cancel the elections to co-operative societies, recording the reasons there for. In such a case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies."

28. The petitioner has raised irregularities in the conduct of election to G.619 Saidapet Co-operative Bank Ltd. Under the Tamil Nadu Co-operative Society Act, 1983 and the Rules framed thereunder, he is not remediless to invoke the extraordinary jurisdiction of this Court. Irregularities have to be substantiated by adducing evidence, in an election petition, if raised under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983.

29. In the light of the statutory provisions, decisions and discussion, we are not inclined to grant the relief, as prayed for. It is open to the petitioner to take re-course under the provisions of the Tamil Nadu Co-operative Societies Act and the Rules framed thereunder.

30. In the result, the writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is also closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

skm/dm

To

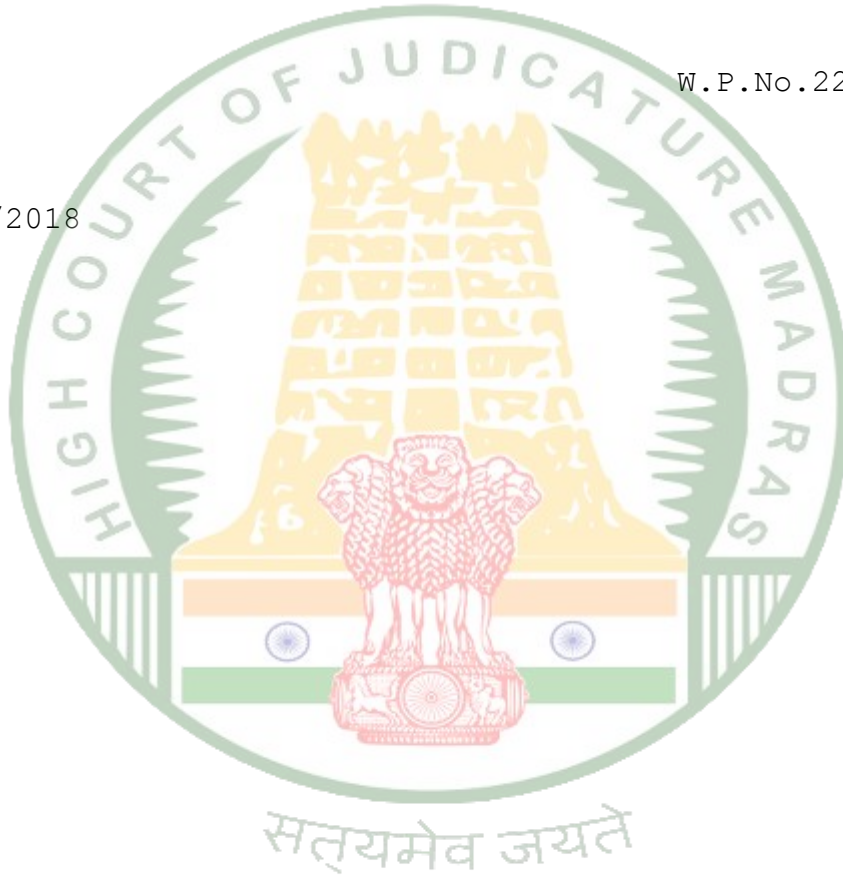
1. The Election Commissioner,
Tamil Nadu Co-operative Societies Election Commission,
No.273, Kamathenu Co-operative Stores,
Anna Salai, Chennai 600 018.
2. The District Election Officer,
Deputy Registrar of Co-operative Societies,
Chennai Region, Chennai.
3. The Election Officer,
G.619 Saidapet Co-operative Bank Ltd.,
Saidapet, Chennai 600 015.

4. The Special Officer,
G.619 Saidapet Co-operative Bank Ltd.,
Saidapet, Chennai 600 015.

+cc to M/S.L.P.Shanmugasundaram, Advocate Sr.63075
+lcc to MS.G.Ethirajulu, Advocate Sr.63234
+lcc to the Government Pleader Sr.62974

W.P.No.22444 of 2018

rsv[co]
srg 05/10/2018



WEB COPY