

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P.No. 11794 of 2018
and

W.M.P.s 13773 & 13774 of 2018

R.Gandhi

.. Petitioner

Vs

1. The Registrar of Co-operative Societies,
E.V.K.Sampath Salai,
Kilpauk, Chennai-600 010.
2. The Collector,
Dharmapuri District,
Dharmapuri.
3. The Election Commissioner,
Tamil Nadu Co-operative Societies
Election Commission,
No.273, Kamadhenu Co-operative Stores,
Anna Salai, Chennai-600 018.
4. The Election Officer,
S.2489 Kadathur Primary Agricultural
Co-operative Society Ltd.,
Kadathur, Pappireddipatti Taluk,
Dharmapuri District.
5. S.2489 Kadathur Primary Agricultural
Co-operative Society Ltd.,
Rep. By its Special Officer,
Kadathur, Pappireddipatti Taluk,
Dharmapuri District.
6. G.Panneer
7. M.Murugan
8. Madhu
9. Palani

10. Murugan
11. Sankar
12. Thangaraj
13. Sivan
14. Vijaya
15. Muthammal
16. K.Chandra

.. 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 publication dated 24.04.2018 issued and displayed by the 4th respondent in the 5th respondent's office notice board accepting the nomination of the respondents 6 to 16 for the post of Board of Directors election under Rule 52(8)(g) of the Tamil Nadu Co-operative Societies Act, quash the same and forbear the respondents 1 to 5 from declaring the election result in respect of Board of Directors of the 5th respondent and consequently conducting meeting, election and declaring the result in respect of election of President and Vice-President to the Board of Directors to be constituted in the 5th respondent society.

For Petitioner : Mr.M.Selvam
For Respondents : Mr.M.S.Palaniswamy,
Standing Counsel for R-3

Mr.P.H.Aravind Pandian
Addl. Advocate General for
Mr.L.P.Shanmugasundaram,
Special Government Pleader
for Respondents 1,2,4 & 5

O R D E R

1. The present Writ Petition has been filed forbearing the respondents from conducting the election to the 5th respondent co-operative society.

2. The grievance of the petitioner is that he is a member of the 5th respondent co-operative society and he has filed his nomination for the election to the Board of Directors. As the nominations received from the ruling party supported candidates only accepted and their names only finalised, the petitioners have submitted a representation to recall the entire process of election to the 1st respondent. But, the same not considered by the 1st respondent. Hence, the present Writ Petition has been filed by the petitioner.

3. Mr.L.P.Shanmugasundaram, learned Special Government Pleader (Co-op) appearing for the respondents 2 and 3 submitted that the petitioner's grievance has been covered by the order passed by the Division Bench of this Court dated 03.08.2018 in W.P.(MD) Nos.17730/2018 etc batch, wherein the Division Bench has held that all the pending complaints are to be referred to the zonal Committee chaired by the retired Hon'ble Judge of this Court. Hence, it is submitted that no further order is required in this writ petition.

4. I have considered the rival submissions on either side and perused the records.

5. Earlier in a batch of writ petitions filed before this Court challenging the election conducted to various Cooperative Societies in the State also raising similar grievances, a Division Bench of this Court by an order dated 03.08.2018 considered the grievances and passed the following order:

"137. However, as observed above, the Election Commission has not been conferred with powers to adjudicate disputes with regard to omissions or wrongful inclusion of names in voters' lists, wrongful acceptance, non-acceptance and/or rejection of nomination papers or wrongful acceptance or rejection of ballot papers. Moreover, as stated above, the remedy under Section 90 of the 1983 Act cannot also be availed until results of election are declared.

138. The fact that in 94% of the cooperative societies elections were uncontested and 2514 petitions of objection/complaint were received by the Election Commission, 1525 between 1.3.2018 and 9.5.2018 and 989 between 9.5.2018 and 31.5.2018, in respect of 1,324 cooperative societies, evinces the need for interference of this Court in exercise of its extraordinary power of judicial review under Article 226 of the Constitution of India. In case of 620 cooperative societies, elections have been cancelled at least in part and others have been rejected. The rejections numbering 426 are in question in these writ petitions. This Court is of the view that the overwhelming percentage of uncontested elections, as a consequence of rejection of nominations on an unprecedented scale, requires judicial scrutiny.

139. This Court, therefore, deems it appropriate to appoint Committees chaired by Retired High Court Judges to decide petitions of objection and/or petitions of complaints filed till the date of delivery of this judgment.

142. The Committees will look into the complaints of wrongful inclusions and omissions in the voters' 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. To cite an example, if one candidate has been excluded, but successful candidates have won with margin exceeding one, the election will not be affected.

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.

144. 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.

145. Similarly, 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 this 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 nomination 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.EI.1, dated 19.7.2018 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.

146. 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 1983 Act and refer the disputes to the Registrar of the Cooperative Societies, who

shall appoint a panel of three Arbitrators to adjudicate the dispute."

As per the order of the Division Bench, the respondent/Government has to constitute the committee to look into the grievances of the petitioners, and it is for the petitioner to approach the committee to redress his grievance.

6. Apart from that, subsequent to the above Division Bench Judgment, another set of writ petitions have been filed before the Madurai Bench of this Court in respect of further election conducted for the post of President and Vice President in the Society. The Division Bench after considering the order of the Division Bench passed in the Principal Seat has held as follows:

"6.If the Honourable Committee finds that there is a violation of the order passed by the Division Bench or the objections/complaints are sustainable in law and fact, the natural consequences would be the elections held and proposed to be held would get annul automatically. If there is a violation in the principles, the violator cannot get any benefit for such violation. The aforesaid principle should also be extended to the elected candidates in the election conducted already and to be elected as well. Therefore, we deem it fit to leave it to the wisdom of the Committee, in the light of the observations made above, to take appropriate decision. It is to be noted that this order is only with respect to the pending complaints numbering about 2514.

7. In so far as the other complaints are concerned, the only remedy open is to invoke the jurisdiction of the Registrar concerned under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983. Since the Hon'ble Division Bench, in the judgment referred supra, has already put an embargo for further litigation, thereafter, the other issues including the one step have to be dealt with by the Honourable Committees. But, no complaints have been given and the issues which have arisen thereafter are necessarily to be dealt with under Section 90 of the Tamil Nadu Co-operative Societies Act, alone.

8.For the sake of clarity, the subsequent proceedings in contravention of the order passed by the Division Bench of this Court would certainly be nullity and therefore, the Hon'ble Committees shall proceed as if they have not taken place in the eye of law. In such and eventually, the question of invoking equity and putting the elected candidates on notice would not arise for consideration."

7. In view of the order of the above said Division Bench, the only remedy now open to the petitioner is to approach the committee to redress his grievances and this Court cannot grant the relief sought in the writ petition. In the above circumstances as the petitioner has already filed a complaint before the authorities, it is open to him to approach the concern Zonal Committee.

8. With the above observation, the writ petition stands disposed of. No costs. Consequently, the other Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The Registrar of Co-operative Societies,
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Kadathur, Pappireddipatti Taluk,
Dharmapuri District.

+1cc to Mr.M.Selvam Advocate, S.R.No.56201

+1cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.55807

+1cc to the Government Pleader, S.R.No.56060

W.P.11794 of 2018
and
W.M.P.s 13773 & 13774
of 2018

RSK (CO)
GSP (20/09/2018)



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