

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

AND

THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A.No.1096 of 2013
and M.P.No.1 of 2013

K.Mayavan

...Appellant/Petitioner

Vs

- 1.The Election Commission,
For Tamil Nadu State Co-operative Society,
Rep. by its Commissioner,
No.273, Anna Salai, Kamadenu Super Market Complex,
Teynampet, Chennai-600 018.
- 2.Joint Registrar/Election Observer,
Villupuram, Villupuram District.
- 3.Election Officer,
CL SPL 266 Eraiyur Primary Agricultural,
Co-operative Credit Society Ltd.,
Eraiyur, Vanoor Taluk, Villupuram District.
- 4.Special Officer,
CL SPL 266 Eraiyur Primary Agricultural,
Co-operative Credit Society Ltd.,
Eraiyur, Vannor Taluk, Villupuram District.

...Respondents/Respondents

Prayer:- Writ Appeal filed under Clause 15 of Letters Patent Act, to set aside the order passed in W.P.No.11953 of 2013 dated 26.04.2013.

Prayer in WP.No.11953/2013:Declaring the action of the 3rd respondent in not including the name of the petitioner in the list of valid nominations for the election of the Board of Directors of the 4th respondent Society as illegal arbitrary and contrary to law and consequently direct the respondents No.1 to 3 to hold the election scheduled on 27.04.2013 or any other subsequent date fixed by this Honourable Court by including the name of the petitioner in the list of candidates and not to conduct the election till such process is over.

For Appellant : Mr.Balan Haridas

For Respondents: Mr.L.P.Shanmugasundaram

Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by
K.K.SASIDHARAN, J.)

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Introductory

The failure on the part of the Election Officer appointed by the Government to conduct election to elect the Board of

Management of CL SPL 266 Eraiyur Primary Agricultural Co-operative Credit Society Limited by publishing the list of candidates whose nominations have been accepted as valid, made the appellant to file a writ petition in W.P.No.11953 of 2013. The writ petition was disposed of by the learned single Judge with a direction to the Election Officer to furnish a copy of the order rejecting the nomination of the appellant so as to enable him to take appropriate proceedings before the authority constituted for challenging the election. The order is under challenge at the instance of the unsuccessful writ petitioner in W.P.No.11953 of 2013.

The Facts

2. The Government announced election for various Co-operative Societies including CL SPL 266 Eraiyur Primary Agricultural Co-operative Credit Society Limited. The appellant submitted nomination in accordance with the notification issued by the Election Officer. As per the Election Schedule published in respect of Eraiyur Primary Agricultural Co-operative Credit Society, nomination should be filed between 10.00 a.m. and 4.00 p.m. on 15 April 2013. The nominations would be scrutinised thereafter and the valid list would be published by 6.00 p.m. The Election would be held on 27 April 2013 and it would be followed by counting on 30 April 2013.

3. The appellant submitted his nomination on 15 April 2013. There were 24 nominations filed by various other candidates. The appellant was not given acknowledgment in token of receipt of nomination. It is the case of the appellant that there was no scrutiny of the nominations and a final list of valid nominations was also not published. The appellant made an attempt to visit the Election Officer. However, he was manhandled by a group of people at about 6.30 p.m. on 15 April 2013. Similarly, the other candidates belong to a rival group were also manhandled and they were made to run from the building.

4. The appellant submitted a written complaint to the Election Officer on 16 April 2013. However, there was no response. The Election Officer accepted the valid nominations and announced the result on the ground that there was no opposition. To put it otherwise, the members of the Board were elected unopposed. The appellant immediately thereafter filed the writ petition.

5. The writ petition filed by the appellant was not entertained by the learned single Judge on the ground that there is an alternative remedy available to him by challenging the election.

The Issue

6. This appeal raises an important question with regard to the conduct of election to the cooperative societies, registered on cooperative principles of democracy, equity, equality and solidarity.

Discussion

7. The Co-operative Societies formed with the ideal "Each for All and All for Each" should be administered in a democratic manner. The role of Co-operative Society is important in the present day context. The Constitution of India has given importance to the Co-operative movement. Article 43B of the Constitution provides for promotion of Cooperative Societies as an institution of autonomous functioning, democratic control and professional management.

8. The Co-operative Societies were conferred with a constitutional status by the 97th Amendment. Part IXB of the Constitution of India deals with Co-operative Societies. The primary object of the 97th Amendment and more particularly for giving constitutional status to the Cooperative Societies, appears to be to ensure their complete autonomy and democratic way of functioning. The Co-operative Societies must promote inner democracy and equality in its functioning.

9. The election to elect the Board of Management of the Cooperative Societies must be conducted keeping in view the constitutional and legislative mandate.

10. The right to elect and right to be elected are statutory rights available to the members of the Cooperative Societies. The statute provides for the conduct of elections and the method of challenge to the election. Therefore, the entire process of election must be in accordance with the statute.

11. There is a procedure for conduct of election to elect the members of the Board of Management of the Co-operative Societies. Chapter V of the Tamil Nadu Co-operative Societies Rules, 1988, provides for the eligibility to contest the election, the procedure to be followed by the Election Officer and matters incidental thereto.

12 (a) Rule 52 (8)(c) of the Tamil Nadu Co-operative Societies Rules, 1988, provides that Election Officer on receiving the nomination shall enter on the nomination paper its serial number and certify the date and hour at which the nomination paper has been presented to him. He must also acknowledge the receipt of the nomination paper.

b) Rule 52(8)(d) of the said provision indicates that on the date and time fixed in the election notice for the scrutiny of nomination papers, the Electoral Officer shall decide in writing the objections, if any, which may be made to any nomination and after making such enquiry, he should pass an order on merits.

c) Rule 52(8)(f) provides that the Election Officer shall endorse on each nomination paper his decision either accepting or rejecting the nomination. In case nomination is rejected, the Election Officer shall record in writing a brief statement of the ground of such rejection.

d) Rule 52(8)(g) provides that after all the nomination

papers have been scrutinised and decisions accepting or rejecting the same had been recorded, the Election officer shall prepare a list of candidates whose nominations have been accepted as valid. The list shall be published in the notice board at the office of the Society or at such other places as the Election Officer may specify on the date and time fixed in the election notice for such publication. There are other provisions relating to withdrawal of candidature and conduct of election.

13. There is no dispute that election can be challenged only by way of an Election Petition in accordance with the provisions of the Tamil Nadu Co-operative Societies Act and the Rules made thereunder. However, it cannot be said that the Election Officer can violate the rules with impunity.

14. The Election Officer is appointed by the Election Commission for conducting the election in a fair and transparent manner. He should give opportunity to all the eligible members of the Society to contest the election. There should not be any kind of biased approach in the matter of conducting election to the Board of Management of the Society.

15. There is a statutory mandate to give acknowledgment to the candidate on receipt of nomination. Similarly, there is a legislative mandate to conduct scrutiny of the nominations and to publish the list of valid nominations. The grievance is that the Election Officers are not following the mandatory provisions of the statute. The candidates were approaching the High Court even during the currency of the Election process with a grievance that their candidature was rejected without stating valid reasons or that even the list of valid nominations was not published.

16. The Hon'ble Supreme Court in *Vipulbhai M. Chaudhary v. Gujarat Cooperative Milk Marketing Federation Limited and others* [2015 (3) Scale 841] indicated that the Cooperative Societies are bound to function as democratic institutions. The Supreme Court said:

" 53. The cooperative society registered under the Central or the State Act is bound to function as a democratic institution and conduct its affairs based on democratic principles. Democratic functioning on democratic principles is to be reflected in the respective Acts or Rules or bye-laws both on the principle and procedure. If not, it is for the court to read the democratic principles into the Act or Rules or bye-laws....."

17. The bedrock of democratic accountability of a co-operative society rests on the confidence of the members of the society. In case the elected representative body does not enjoy the confidence of the electorates, and the election was a sort of selection by resorting to unfair means and tainted procedure, it would have a cascading effect on the administration of the society.

18. We therefore make the position clear that the Election Officer must follow the election procedure indicated in the the Tamil Nadu Co-operative Societies Rules, 1988, in its letter and spirit. The Election Commission must issue appropriate guidelines to the Election Officers. In case, it is found that any of the Election Officers violate the guidelines with impunity, he should not be appointed as Election Officer thereafter. We hope and trust that the Election Commission would rise to the occasion and protect the democratic functioning of the co-operative societies by ensuring a fair election process.

19. The intra court appeal is disposed of with the above observation. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
The Election Commission,
For Tamil Nadu State Co-operative Society,
No.273, Anna Salai, Kamadenu Super Market Complex,
Teynampet, Chennai-600 018.
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- 4.The Special Officer,
CL SPL 266 Eraiyur Primary Agricultural,
Co-operative Credit Society Ltd.,
Eraiyur, Vannor Taluk, Villupuram District.

+1cc to Mr.Balan Haridas, Advocate Sr.No.16521
+1cc to Government Pleader SR.No.17438
+1cc to Mr.L.P.Shanmugasundaram, Advocate sR.No.16498

SVI (CO)
sm:18.5.2018

W.A.No.1096 of 2013