

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 31.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 24499 of 2018 and W.M.P.s 28511 & 28512 of 2018
and
Cont. Petn. 2187 of 2018

W.P. 24499 of 2018

1. C.P.Arthanari
2. R.Natarajan
3. A.Krishnan
4. A.Dhanasekaran

... Petitioners

Vs

1. The Tamil Nadu State Cooperative Societies Election Commission, rep. by its Secretary, No.273, Kamadhenu Super Market, Anna Salai, Chennai-600 018.
2. The District Election Officer/Deputy Registrar, Cooperative Societies, Dharmapuri Region, Dharmapuri.
3. The Election Officer, K.K.278, Manjarahalli Primary Agricultural Cooperative Credit Society (PACCS), Manjarahalli, Pennagaram Taluk, Dharmapuri District.
4. M.Sadhasivam, S/o. Mr.Madhesan, Vadievel Goundanur, Manjarahalli Post, Pennagaram Taluk, Dharmapuri District.
5. M.Arumugam, S/o. Madhaiyan, No.3/354, Chithiraipatti Villge, Manjarahalli Post, Pennagaram Taluk, Dharmapuri District.
6. R.Nithya, W/o. Ramakrishnan, Chellakudi, Manjarahalli Post, Pennagaram Tk., Dharmapuri Dt.
7. Jothi, W/o. Krishnan, Aaralkunthi, Pathrahalli Post, Pennagaram Tk., Dharmapuri Dt.

8. Vijaya,
W/o. Perumal,
Goundanur Colony, Manjarahalli Post,
Pennagaram Tk., Dharmapuri Dt.
9. Dharmalingam,
S/o. Mathan,
Vathalpatty, Pathrahalli Post,
Pennagaram Tk., Dharmapuri Dt.
10. Radhakrishnan,
S/o. Perumal,
Pattakaran Kottai, Manjarahalli Post,
Pennagaram Tk., Dharmapuri Dt.
11. Maathi,
W/o. Pachaiyannan,
Earkolpatti, Manjarahalli Post,
Pennagaram Tk.,
Dharmapuri Dt.
12. Senkodan,
S/o. Ganapathy Gounder,
Erusappan Kottai, Manjarahalli Post,
Dharmapuri Dt.
13. P.R.Palanisamy,
S/o. Rama Gounder,
Poochur, Patharahalli Post,
Pennagaram Tk., Dharmapuri Dt.
14. Marimuthu,
S/o. Ammasi,
Chithiraipatti, Manjarahalli Post,
Pennagaram Tk., Dharmapuri Dt. ... Respondents

RR6 the RR14 are impleaded vide court order dt.26.10.2018 and made in WMP.NO.30572/18 in WP.NO.24499/18

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue appropriate Writs, orders or Directions and in particular issue a Writ of Certiorarified Mandamus, calling for the records of the impugned orders made in Na.Ka.No.6869/2018Koo.the.5, dated 01.09.2018 and its consequential order dated 10.09.2018 in Na.Ka.7131/2018/Koo.The.2 passed by the 1st respondent and quash the same, consequently direct the 1st respondent to take appropriate action against the respondents 2 and 3 for their criminal offences of fraud and forgery in the cooperative election of the 3rd respondent society viz.,

K.K.278, Manjarahalli Primary Agricultural Cooperative Credit Society (PACCS), Manjarahalli, Pennagaram Taluk, Dharmapuri District and also directs to conduct the election of the said society with adequate police protection and also videograph the entire election process.

Cont. Petn. 2187 of 2018

M.Sadhasivam

.. Petitioner/Petitioner

Vs.

1. Dr.M.Rajendran, I.A.S.,
The Commissioner,
Tamil Nadu State Cooperative Societies
Election Commission,
No.273, Kamadhenu Super Market,
Anna Salai, Chennai-600 018.

2. Mr.Ravichandran,
The District Election Officer/Deputy Registrar,
Cooperative Societies,
Dharmapuri Region, Dharmapuri.

3. Mr.Ramachandran,
The Election Officer,
K.K.278, Manjarahalli Primary Agricultural
Cooperative Credit Society, (PACCS),
Manjarahalli, Pennagaram Taluk,
Dharmapuri Dt. .. Respondents/Respondents 1-3

PRAYER : Petition filed under Sec.11 of Contempt of Courts Act praying to punish the respondents for the wilful disobedience of this Hon'ble Court's order dated 31.08.2018 made in W.P. No.11145 of 2018.

For Petitioners in W.P. 24499/2018 :Mr.L.Chandrakumar

For Petitioner in Cont. Petn. 2187/2018 :Mr.M.R.Jothimanian

For Respondents in W.P. 24499/2018 & Cont. Petn.2187/2018 :Mr.M.S.Palanisamy, Standing Counsel for R1
Mr.L.P.Shanmugasundaram,
Spl. Govt. Pleader for R2
and R3

O R D E R

This writ petition has been filed challenging the order passed by the 1st respondent Election Commission directing the petitioners to file a petition under Sec.90 of the Cooperative Societies Act challenging the election.

2. According to the petitioners, the election to the 3rd respondent Cooperative Society was scheduled in the month of April 2018, wherein 107 members have filed their nominations on 09.04.2018. Before the scrutiny of nominations, the Madurai Bench of this Court has ordered status quo. Thereafter, on 23.04.2018, the 4th respondent has scrutinised all the nominations and published the final list of eligible contesting candidates containing 55 on 25.04.2018, wherein the petitioners names were found in Serial No.44, 51, 47 and 40 respectively. Thereafter, the election was postponed on the ground of law and order problem. Since no election was conducted, the petitioners have filed a Writ Petition before this Court in W.P.No.11145 of 2018 restraining the respondents from postponing or cancelling the election. When the above Writ Petition came up for hearing, the respondents 2 and 3 have informed this Court that the election to the Board of Directors was over on 27.04.2018 and out of 55 eligible candidates, 45 candidates have withdrawn their nominations. In the said circumstances, the petitioner have filed a complaint before the 1st respondent on 11.05.2018 regarding the election conducted by the respondents 2 and 3. Pursuant to the same, an enquiry was conducted by the 1st respondent on 19.06.2018, and the petitioner also appeared before the enquiry. Thereafter, the impugned order has been passed without considering the petitioners objections, directing the petitioners to file a petition under Sec.90 of the Tamil Nadu Cooperative Societies Act, challenging the election.

3. Earlier, the persons, who were said to have elected are impleaded as party respondents and the notice was also issued to them and their names were also printed in the list.

4. Mr.L.Chandrakumar, learned counsel appearing for the petitioners submitted that the petitioners have made a complaint as early as on 11.05.2018 and the petitioners also made a specific allegation that they did not withdraw their nominations. But, without considering the objections, the Election Commissioner has rejected their representations directing them to file a petition under Sec.90 of the Tamil Nadu Cooperative Societies Act.

5. The learned counsel appearing for the 1st respondent submitted that, already the election was over, now the only remedy available to the petitioners is to file a petition under Sec.90 of the Tamil Nadu Cooperative Societies Act. In the said circumstances, the Election Commissioner had passed an order directing the petitioners to file a petition under Sec.90 of the Act, there is no illegality in the order.

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

7. The specific allegation of the petitioners is that the petitioners have filed their nominations, and it was also found valid, now the election officer has stated that their nominations have been withdrawn by them. It was stoutly denied by the petitioners, and stated that they have never withdrawn their nominations. In view of the above dispute, the election commission ought to have verified the records and perused the nominations and withdrawal forms, in order to find out whether the petitioners have withdrawn their nominations on their own. Without doing so, the Election Commission has simply directed the petitioners to file a petition. When the records are not available with the Election Commission, the Election Commission ought to have verified the same and passed orders on merits, instead of asking the petitioners to file a petition under Sec.90 of the Act.

8. In the said circumstances, the impugned orders passed by the 1st respondent is set aside and the matter has been remanded back to the 1st respondent, and the 1st respondent is directed to consider the petitioners objections and look into the relevant records, and pass suitable orders on merits within a period of six weeks from the date of receipt of the copy of this order.

9. In view of the order passed in the Writ Petition, no further order is required in the Contempt Petition. Hence, the contempt petition is closed.

10. In the result, this Writ Petition is disposed of with the above direction. No costs. Consequently, connected Writ Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner/Secretary,
Tamil Nadu State Cooperative
Societies Election Commission,
No.273, Kamadhenu Super Market,
Anna Salai, Chennai-600 018.

2. The District Election Officer/Deputy
Registrar, Cooperative Societies,

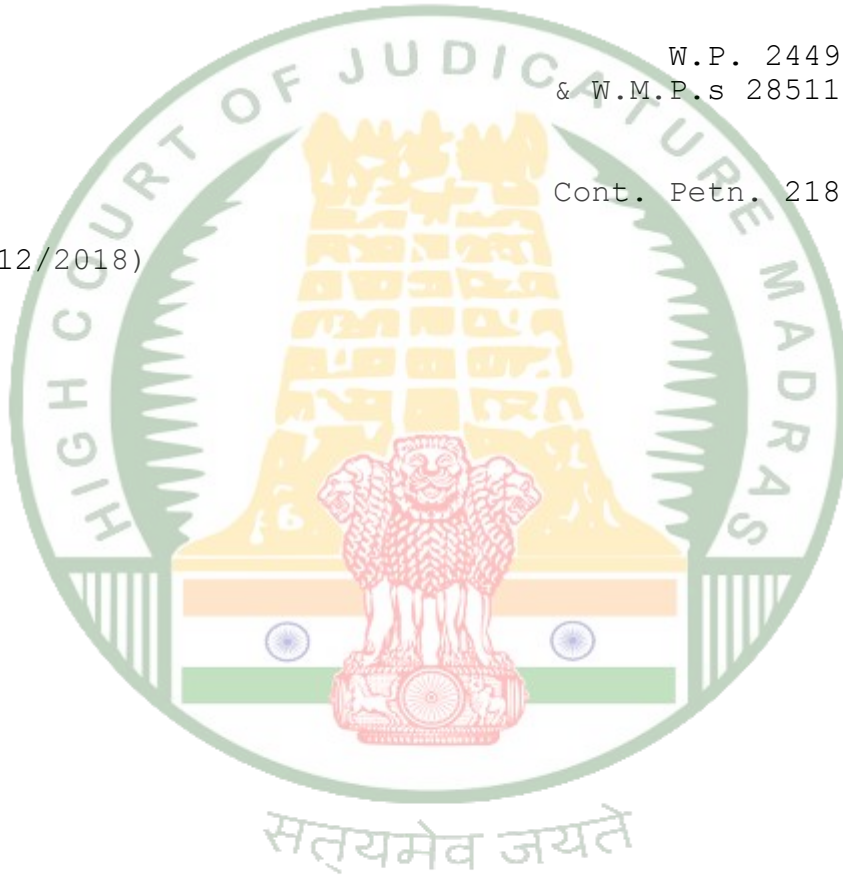
Dharmapuri Region, Dharmapuri.

3. The Election Officer,
K.K.278, Manjarahalli Primary Agricultural
Cooperative Credit Society (PACCS),
Manjarahalli, Pennagaram Taluk,
Dharmapuri District.

+1cc to Mr.M.R.Jothimanian , Advocate SR.No. 74964
+1 CC TO GOVERNMENT PLEADER SR.NO. 75312

W.P. 24499 of 2018
& W.M.P.s 28511 & 28512
of 2018
and
Cont. Petn. 2187 of 2018

ASK(06/12/2018)



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