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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2018

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THE HONOURABLE MR.JUSTICE M.S.RAMESH

Civil Revision Petition (PD) 1813 of 2018
and
C.M.P.No.10204 of 2018

- 1.The Election Officer,
F.E.95, Tindivanam Educational District
Teaching and Non Teaching Employees
Cooperative Thrift and Credit Society,
Muthu Krishna Mudali Street,
Kidangal - 1,
Tindivanam.
- 2.The Deputy Registrar of Co-operative Societies,
O/o the Deputy Registrar of Co-operative Societies,
Jayapuram, Tindivanam.
- 3.The Joint Registrar of Co-operative Societies,
O/o the Joint Registrar of Co-operative Societies,
Villupuram. ... Petitioners/Defendants

Vs

- 1.N.Arockiadass
- 2.I.Rahamadhunnissa ..Respondents/Plaintiffs

Prayer:- This Civil Revision Petition is filed under Article 227 of the Constitution of India to strike off the plaint in O.S.No.155 of 2018 pending on the file of the learned Principal District Munsif at Tindivanam.

For Petitioners : Mr.L.P.Shanmugasundaram

For Respondents : No Appearance

ORDER

The relief sought for in the present suit is in effect, challenging the Co-operative Society election proceedings under Section 156 of the Tamil Nadu Co-operative Societies Act. Since, the suit does not disclose the cause of action and also it is barred under the provisions of the Tamil Nadu Co-operative



Societies Act, the present Civil Revision Petition has been filed by invoking Article 227 of the Constitution of India, to strike off the plaint.

2. Heard Mr.L.P.Shanmugasundaram, learned counsel for the petitioners. No representation on behalf of the respondents.

3. Section 156 of the Tamil Nadu Co-operative Societies Act reads as follows:-

"156. Bar of jurisdiction of civil courts._

Notwithstanding anything contained in any other law for the time being in force no order or award passed, decision or action taken or direction issued under this Act by an arbitrator, a liquidator, the Registrar or an officer authorized or empowered by him, the Tribunal or the Government or any officer subordinate to them, shall be liable to be called in question in any court and no injunction shall be granted by any court in respect of anything which is done or intended to be done by order under this Act."

4. A bare reading of the aforesaid provision stipulates that the Civil Court is ousted of its jurisdiction in entertaining any suit and that no injunction shall be granted by any civil Court in respect of anything which is done or intended to be done by invoking the Tamil Nadu Cooperative Societies Act.

5. Apparently, the present election proceedings are the outcome of the provisions of the Tamil Nadu Co-operative Societies Act and any challenge to the same in a Civil Suit is a bar under Section 156 of the Tamil Nadu Cooperative Societies Act.

6. Incidentally, a batch of writ petitions came to be filed before a Division Bench of the Madras High Court and the Madurai Bench of Madras High Court in W.P.Nos.7526 of 2018 etc., and the Hon'ble Division Bench, by an order dated 03.08.2018, was pleased to observe as follows:-

"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



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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.

140. There will be four Committees for four Zones in Tamil Nadu, namely, North Zone with its Headquarters at Chennai, comprising of Chennai, Tiruvallur, Vellore, Krishnagiri, Dharmapuri, Villupuram, Tiruvannamalai and Kanchipuram Districts; South Zone with its Headquarters at Madurai comprising of Madurai, Tirunelveli, Kanyakumari, Thoothukudi, Ramanadapuram, Virudhunagar, Sivagangai and Theni Districts; West Zone with its Headquarters at Coimbatore, comprising of Coimbatore, Nilgiris, Erode, Tiruppur, Salem, Namakkal, Karur and Dindigul Districts; and East



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Central Zone with its Headquarters at Tiruchirappalli, comprising of Tiruchirappalli, Cuddalore, Perambalur, Ariyalur, Tanjavore, Pudukottai, Tiruvarur and Nagapatinam Districts. Each of the Committees shall be chaired by a retired High Court Judge.

141. Mr. Justice S. Rajeswaran, (Retd.) is appointed as Chairperson of the Committee for the West Zone, Mr. Justice K. Venkataraman, (Retd.) as Chairperson of the Committee for North Zone, Mr. Justice R. S. Ramanathan, as Chairperson of the Committee for South Zone and Mr. G. Rajasuriya, as Chairperson of the Committee for East Central Zone. The Committees headed by the retired Judges shall comprise two Joint Registrars of Cooperative Societies and two District Collectors of the Zone, nominated by the Chairperson. The Committees chaired by retired High Court Judges 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 Cooperative Societies and the Collector of the District/Districts in which the cooperative society is located, unless they are already members of the Committee.

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



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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.



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(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



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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.

147. 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.

148. The Committees shall be constituted and notified within two weeks from date. 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.

149. The State shall provide infrastructure and secretarial facilities to the Committees as also space from where the Committees can function. 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.



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150. It is clarified that 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 this Court by initiation of writ proceedings and/or any other proceedings. "

7.From the above observations and findings of the Hon'ble Division bench, the objections/petitions in connection with the elections shall be referred to the Committees chaired by retired High Court Judges and who shall decide such objections/petitions. The above said order came to be passed after analysing the provisions of the Tamil Nadu Co-operative Societies Act, as well as the various judgments touching upon the issues. The said judgment has become final.

8.In view of the statutory bar under Section 156 of the Tamil Nadu Co-operative Societies Act, as well as the judgment of the Hon'ble Division Bench of this Court dated 03.08.2018, whereby the objections/petitions have been referred to the committee like the case of the plaintiff herein, the present suit may not be maintainable. I am also unable to comprehend as to how the trial Court can reach a logical conclusion in view of the statutory bar as well as the above cited judgment of this Court. While that being so, it would not be appropriate to permit the trial Court to proceed with the suit.

9.In the light of the above observations, the suit in O.S.No.155 of 2018 on the file of the learned Principal District Munsif, Tindivanam is struck off. The Civil Revision Petition stands allowed. In case, the respondents herein intend to approach the Committee, in order to raise their objections, liberty is granted to them to work out their remedies in accordance with law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IX)

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Sub Assistant Registrar



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The Principal District Munsif,
Tindivanam.

CRP (PD). 1813 of 2018

srg 26/10/2018