

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders Reserved on
23..11..2018

Order Pronounced on
30..11..2018

CORAM

THE HON'BLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition No.27014 of 2018 &
W.M.P.Nos.31408, 31414 & 32861 of 2018
Writ Petition No.27297 of 2018 & W.M.P.No.31764 of 2018
and
Writ Petition 29726 of 2018 & W.M.P.No.34682 of 2018

W.P.No.27014 of 2018

V.Vediappan

.... Petitioner

-Versus-

- 1.The Election Commissioner cum
The Registrar of Co-operative Societies,
No.273, Anna Salai, Teynampet,
Chennai.
- 2.The Joint Registrar,
Co-operative Societies,
Vellore District,
Vellore.
- 3.The Deputy Registrar / District Election Officer,
Vellore - Tiruvannamalai District Milk
Production Co-operative Union,
Sathuvachery, Vellore,
Vellore District.
- 4.D.Velazhagan
- 5.V.Vijayakumar

[Respondents 4 & 5 were impleaded as per order
of this court dated 23.11.2018 in W.M.P.No.32883
of 2018]

... Respondents

Writ Petition filed under Article 226 of the Constitution of
India, praying to issue a Writ of Certiorarified Mandamus
calling for the entire records pertaining to the Election

Notification in so for to the District Co operative Milk Production Union in proceedings No. Nil dated 15.09.2018 passed by the 1st Respondent and to quash the same as illegal and for a consequential direction to the respondents to include the left out nominations for the District Election pursuant to the nomination dated 06.10.2018 and to conduct election in a fair and democratic manner for Vellore - Tiruvannamalai District Milk Production Co-Operative Union Sathuvachery Vellore Vellore - District.

W.P.No.27297 of 2018

A.Rajendran

... Petitioner

-Versus-

1. Tamil Nadu State Co-Operative Societies Election Commissioner,
No. 273 Kamadhenu Supermarket I Floor,
Anna salai,
Chennai- 60018.
- 2.The District Election Officer (Co-operative Societies)
Erode District cum Deputy Registrar of Co-operative Societies,
Erode.
- 3.The Election Officer,
C 1325 Vellore
Thiruvannamalai Milk Producers
Co Operative union Arcot Road
Sathuvachery, Vellore
- 4.D.Velazhagan
- 5.V.Vijayakumar

[Respondents 4 & 5 were impleaded as per order of this court dated 23.11.2018 in W.M.P.No.32894 of 2018]

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Declaration declaring the entire process of current election to the 3rd respondent society as illegal null and void and for consequential direction to the respondents to conduct fresh election to the 3rd respondent society by accepting all the nominations in accordance with The Tamil Nadu Co-operative Societies Act 1983 and Tamil Nadu Co-operative Societies Rules 1988 and instructions in the Co-

operative Election Manual and conduct the election in a free and fair manner within a reasonable time to be fixed by this court.

W.P.No.29726 of 2018

- 1.R.Muthukumar
- 2.V.Sivakumar
- 3.S.Venkatachalapathy
4. P. Sudha

... Petitioners

-Versus-

- 1.The Election Commissioner cum
The Registrar of Co-operative Societies,
No.273 Anna Salai Teynampet,
Anna Salai, Chennai.
- 2.The Joint-Registrar,
Co-operative Societies,
Vellore District, Vellore.
- 3.The Deputy Registrar / District Election Officer,
Vellore - Tiruvannamalai District Milk Production
Co-operative Union,
Sathuvachery, Vellore ,
Vellore-District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus calling for the entire records pertaining to the Election Notification in so far to the District Co-operative Milk Producers' Union in proceedings No. Nil dated 15.09.2018 passed by the 1st Respondent and quash the same as illegal and for a consequential direction to the respondent to include the nominations of the petitioners for the District Election pursuant to the nomination dated 06.10.2018 and to conduct election in a fair and democratic manner for Vellore-Tiruvannamalai District Milk Production Co Operative Union Sathuvachery, Vellore, Vellore District.

For Petitioner(s)

: Mr.P.Wilson, Senior Counsel
for the petitioner in
W.P.No.27297 of 2018 for
Mr.R.Girirajan

Mr.P.Thangavel for
Petitioner(s) in
W.P.Nos.27014 & 29726 of
2018

For Respondents

: Mr.M.S.Palaniswamy,
Standing Counsel for R1 in
all Writ Petitions

Mr.L.P.Shanmugasundaram,
Spl. Govt. Pleader for R2 &
R3 in all Writ Petitions

Mr.C.Prakasam for R4 and R5
in W.P.No.27014 of 2018 &
W.P.No.27297 of 2018

COMMON ORDER

(i) The writ petition in W.P.No.27014 of 2018 has been filed challenging the Election Notification dated 15.09.2018 issued by the 1st Respondent and to quash the same as illegal in so far it relates to the District Co-operative Milk Production Union and for a consequential direction to the respondents to include the left out nominations and to conduct election in a fair and democratic manner for Vellore - Tiruvannamalai District Milk Production Co-operative Union Sathuvachery, Vellore, Vellore - District;

(ii) The writ petition in W.P.No.27297 of 2018 has been filed seeking to declare the entire process of current election to the 3rd respondent society as illegal null and void and for consequential direction to the respondents to conduct fresh election to the 3rd respondent society by accepting all the nominations in accordance with The Tamil Nadu Co-operative Societies Act, 1983 and Tamil Nadu Co-operative Societies Rules, 1988 and instructions in the Co-operative Election Manual and conduct the election in a free and fair manner within a reasonable time to be fixed by this court; and

(iii) The writ petition in W.P.No.29726 of 2018 challenging Election Notification dated 15.09.2018 issued by the 1st Respondent and quash the same as illegal in so far it relates to the District Co-operative Milk Producers' Union and for a consequential direction to the respondent to include the nominations of the petitioners for the District Election and to conduct election in a fair and democratic manner for Vellore-Tiruvannamalai District Milk Production Co-operative Union Sathuvachery, Vellore, Vellore District.

2. Since the issues involved in all these writ petitions are identical relating to the conduct of election to the cooperative societies, all these three writ petitions were heard together and they are being disposed of by way of this common order.

3. The case of the petitioner in W.P.No.27014 of 2018 in brief is that he is the member of TPD 959 Mazhar Milk Production Cooperative Union Society. Pursuant to the election notification, he had filed his nomination to the post of Board of Director of the said society and he was duly declared as Board of Director and then he was declared as elected President of the society on 11.09.2018 by the Election Officer. While so, the 1st respondent, by way of notification dated 15.09.2018, had notified District Election for 17 Union and as per the election schedule, the filing of nominations was on 06.10.2018, the scrutiny of nomination was on 08.10.2018, for withdrawal of nomination the date was fixed as 09.10.2018 and on the same date at 05.00 p.m., the final list of candidates who were eligible for contesting election had to be published and, if necessary, election had to be conducted on 11.10.2018. The petitioner also filed his nomination on 06.10.2018 for the District Election to post of Chairman. The grievance of the petitioner is that the 3rd respondent, without properly conducting any scrutiny on his nomination and without rejecting his nomination, had published the list of eligible candidates for contest to the post of Chairman in the District Election. While scrutiny of nomination and publishing the final list of eligible candidates for contest in the election, the 3rd respondent did not follow the procedures contemplated in the Tamil Nadu Cooperative Societies Act and the Tamil Nadu Cooperative Societies Rules and therefore, the entire election process is vitiated. Hence, the writ petition.

4. The 3rd respondent filed his counter affidavit contending that there was election to the post of Board of Directors to the TPD 959, Mahazar MPCS and the petitioner has been elected as President of the said society. The Election to the Vellore - Tiruvannamalai District Cooperative Milk Producers' Union was scheduled to be held in the month of October, 2018. As per the Election Schedule the date for filing nomination was fixed as 06.10.2018 and the date for scrutiny of nominations was fixed as 08.10.2018. On the date of filing of nominations, there were totally 29 nominations received out of which 17 nominations were under the General category as against the required 9, 4 nominations were under the SC/ST category as against the required 3 and 8 nominations were under the Women category as against the required 5. On the date of scrutiny of nominations, 12 nominations were rejected of which 8 nominations pertained to the General category, 1 nomination pertained to the SC/ST category and 3 nominations pertained to the Women category and as such, the candidates remained for contest were only 17 and on the date of withdrawal of nominations i.e., 09.10.2018, none of the candidates had withdrawn nominations. Therefore, according to the 3rd respondent, those 17 candidates who nominations were accepted as valid, were declared as elected unopposed on 09.10.2018. The nomination of the petitioner was rejected on

the ground that he he had not mentioned the number of the constituency to which he is contesting.

5. The 3rd respondent further contended that that the election was over and the results of the election have also been declared on 09.10.2018 and the instant writ petition has been filed only after the results of the election had been declared. Therefore, the petitioner cannot maintain the writ petition and the only remedy available to him is to raise an election dispute under Section 90 of The Tamil Nadu Cooperative Societies Act, 1983.

6. The case of the petitioners in W.P.No.29726 of 2018 in brief is they are the members of the different cooperative societies. They were elected as Board of Directors of their respective society and and subsequently they were declared as the duly elected President of the respective society. While so, the District Election for 17 Union was notified by the 1st respondent on 15.09.2018 and the 3rd respondent was appointed as Election Officer for Vellore - Thiruvannamalai Milk Union. As per the election schedule, the filing of nominations was fixed on 06.10.2018 and the date for scrutiny of nominations was fixed as 08.10.2018. The date for withdrawal of nominations was fixed as 09.10.2018 and the date for publication of final list of candidates eligible for contest in the District Election was also fixed as 09.10.2018. If any contest, polling was scheduled to be held on 11.10.2018. While so, the 3rd respondent in collusion with the some other political party members deliberately proceeded to omit the names of many of the candidates in the final list of candidates eligible for contest. Further, according to the petitioner, the 3rd respondent while scrutinizing the nominations did not at all follow the procedures contemplated in with The Tamil Nadu Co-operative Societies Act, 1983 and Tamil Nadu Co-operative Societies Rules, 1988 and the 3rd respondent had refused to receive the representation given by him on 08.10.2018 pointing out the irregularities in the preparation of list of valid nominations. The grievance of the petitioner is that the names of the many candidates were left out while preparing the list and the 3rd respondent had proposed to conduct the election only with the selected members as per their whims and fancies. Hence, this writ petition.

7. According to the 3rd respondent, the nomination of the petitioners 2 & 3 were rejected on the ground that they had not mentioned the number of the constituency to which they were contesting and the nominations of the 1st petitioner was rejected on the ground that the number of the societies in which the nominee as well as the seconder represent had been wrongly mentioned and the nomination of the 4th respondent was rejected on the ground that she had marked two constituencies for contest

and the signature of the nominee differs from the signature put up in the Resolution Register maintained by the Society.

8. The case of the petitioner in W.P.No.27297 of 2018 in brief is that he is the member of TPD 315 Thenkadappathangal Milk Producers' Cooperative Society and he is eligible candidate to contest in the Election to the post of Board of Director to the 3rd respondent society. The election was scheduled to be held in the month of October, 2018. As per the election schedule, the filing of nominations was on 06.10.2018, the scrutiny of nomination was on 08.10.2018, for withdrawal of nomination the date was fixed as 09.10.2018 and on the same date at 05.00 p.m., the final list of candidates who were eligible for contesting election had to be published and, if necessary, election had to be conducted on 11.10.2018. Further, according to the petitioner, pursuant to the election notification, he filed his nomination to the post of Board of Director of the 3rd respondent society. The grievance of the petitioner is that the 3rd respondent, without properly conducting any scrutiny on his nomination and without rejecting his nomination, had published the list of eligible candidates for contest to the post of Chairman in the District Election. While scrutiny of nomination and publishing the final list of eligible candidates for contest in the election, the 3rd respondent did not follow the procedures contemplated in the Tamil Nadu Cooperative Societies Act and the Tamil Nadu Cooperative Societies Rules and therefore, the entire election process is vitiated. Hence, the writ petition.

9. According to the 3rd respondent the nomination of the petitioner was rejected on the ground that he had not mentioned the number of the constituency to which he was contesting.

10. The learned senior counsel appearing for the petitioners submitted that the rejection of the nomination of the petitioners either on the ground that nominee had marked two constituencies for contest and the signature of the nominee differed or the candidates had not mentioned the number of the constituency to which they were contesting or the nominee/seconded did not mention the correct society number to which they represent is totally illegal which is in violation of proviso to Section 52(8)(d) of the Tamil Nadu Cooperative Societies Rules. That apart, according to the learned senior counsel, the Election Commissioner had already issued a circular dated 19.07.2018 wherein it has been specifically stated that the nominations of the candidates may not be rejected for the flimsy reason that the nomination paper is not filled up properly, membership number is not furnished, signature is not matching and candidate has not put his signature at the appropriate place and hence, the very rejection of nominations in the instant cases are not valid in the eye of law and as a

consequence, the entire election / process of election to the respective society is liable to be set aside.

11. The learned senior counsel further submitted that the election officer is not competent to say that the signature of the nominee found in the nomination differed from the signature found in the resolution register maintained at the office of the respondent society and that it was only the nominee who had the nominated the candidate.

12. The learned counsel appearing for the respondents 4 and 5 in W.P.Nos.27014 & 27297 of 2018 submitted that the issues involved in the writ petition relate to only two constituencies, namely, 3 and 6 and so far as the other constituencies are concerned, there is no dispute and by virtue of the interim order of stay granted by this court, the election to the other constituencies are also withheld by the Election Officer concerned.

13. Per contra, the learned Special Government Pleader submitted that at the time of scrutiny of nominations, after verifying the records, the Election Officer concerned had found that the petitioners 2 and 3 in W.P.No.29726 of 2018 and the petitioner in W.P.No.27014 and the petitioner in W.P.No.27297 of 2018 failed to mention the number of the constituency to which they were contesting and in so far as the 1st petitioner in W.P.No.29726 of 2018 is concerned, the Election Officer had found that the number of the societies in which the nominee as well as the seconder represent were wrongly mentioned and as far as the 4th petitioner in W.P.No.29726 of 2018 is concerned, the Election Officer had found that the nominee had marked two constituencies for contest and the signature of the nominee also differed from the signature found in the register maintained by the society concerned. The Election Officers have got power to verify genuineness of the signatures of the contestant/nominee/proposer/seconder found in the nomination as per the provision in Rule 52(8)(d)(ii) of the Rules. Therefore, according to the learned Special Government Pleader, there is no illegality or irregularity in the order passed by the rejecting the nominations of the respective petitioner.

14. The learned Special Government Pleader further contended that after the election was over and the results of the election have been published, the only remedy available to the petitioners is to file an election dispute under Section 90 of The Tamil Nadu Cooperative Societies Act and therefore, according to learned Special Government Pleader, the petitioner cannot maintain the writ petitions and the writ petitions are liable only to be dismissed.

15. I have considered the rival submissions carefully.

16. The predominant contention of the learned senior counsel for the petitioners is that the nominations of the petitioners were rejected on the flimsy grounds that the nominations were not filled up properly and the signature of the nominee differed without adhering to the circular issued by the 1st respondent on 19.07.2018 in this regard. It has been disputed by the Election Officer concerned.

17. Now, the issues to be decided are as to whether the petitioners have filled up their nominations correctly, whether the signature of the nominee found in the nomination of the one of the petitioners was that of the nominee and whether the nominations of the petitioners were rejected on the flimsy grounds. These are all disputed question of fact and the issue as to the difference in the signature of the nominee could be decided only based on the hand writing expert's opinion after comparing the disputed signature with the admitted signature and, in any case, it is a matter of evidence which cannot be decided in a proceedings under Article 226 of the Constitution of India. That apart, it has been submitted by the respondents that the results of the election were declared as early as on 09.10.2018 and after the election was over and the results have been declared, the present writ petitions have been filed and in one of the writ petition, an interim order of injunction was granted only on 12.10.2018. It is the settled law that once the elections were over and the results of the election have also been declared, the dispute relating to election can only be raised before the authority concerned under Section 90 of the Tamil Nadu Cooperative Societies Act.

18. Earlier, in a batch of writ petition, when elections to the Cooperative Societies were put under challenge before this court, a Division Bench of this Court has held that the Tamil Nadu State Election Commissioner for Cooperative Societies is not conferred with the power to adjudicate the disputes relating to the elections and the appropriate authority under Section 90 of the Act is the Registrar of Cooperative Societies. The Division Bench has further held that even in case of wrongful acceptance, non acceptance or rejection of nomination papers, after the declaration of results of the elections, the remedy available to the aggrieved is only under Section 90 of the Act. The relevant portion of the judgement of the Division Bench of this court referred to supra in R.Sakkarapani, Member of the Legislative Assembly v. The State of Tamil Nadu [W.P.No.7256 of 2018 etc batch dated 03.08.2018] reads as follows:-

"93. Until the results of an election are declared, a person whose nomination is wrongfully rejected has no other remedy

except to approach the Court. It is only in those cases where the election result has been declared, that remedy of reference under Section 90 is available. However, the remedy cannot be said to be equally efficacious, for the reasons discussed above."

19. Recently, another Division Bench of this court in D.Thulukkanam and others v. The Election Commissioner, Cooperative Societies Election and others [W.P.No.11479 of 2018 dated 09.11.2018] after having considered the dispute regarding the rejection of nomination papers has held that once the election was over and the result of the election has been declared, the remedy available to the aggrieved person is to raise an election dispute under Section 90 of the Act before the appropriate authority. The relevant portions of the judgement read as follows:-

"4. We are not inclined to go in the second contention. On the first issue, we are satisfied that the third respondent is the election officer. The question with respect to acceptance or rejection of the nomination would touch upon the dispute pertaining to election which was in progress at the relevant point of time. Now, the entire process is over and the Board of Directors have been conducted including office bearers such as President, Vice President, Secretary etc., They are also not the parties before us. Therefore, we are not inclined to entertain the writ petitions.

5. In such view of the matter, these three writ petitions stand disposed of, giving liberty to the petitioners to raise a dispute under Section 90 of the Tamil Nadu Cooperative Societies Act, 1983 before the appropriate authority. As and when such a dispute is raised, the same shall be disposed of within a period of three months from the date of raising such dispute. All the issues are left open to be decided in the dispute to be raised by the petitioners."

20. This court also in M.Sadhasivam v. The Tamil Nadu State Cooperative Societies Election Commissioner [W.P.No.11145 of 2018 dated 31.08.2018] following the judgement of the Division Bench of this court in R.Sakkarapani's case cited supra, has held that once the election was over and the results of the

elections were declared, the only remedy available to the aggrieved is to raise an election dispute under Section 90 of the Act.

21. In view of the above said settled law, since in the instant cases elections were already over and the results of the elections have also been declared, now the remedy available to the petitioners is only to file a petition under Section 90 of the Tamil Nadu.

22. Even though the learned senior counsel for the petitioners made an attempt to put forth the case of the petitioners that the petitioners were informed as if some of the candidates had withdrawn their notations, but, most of the candidates whose nominations were stated to have been withdrawn, did not at all withdraw their nominations and they were ready to contest the election, but their signatures were forged by the Election Officer himself to set up a case as if the candidates had withdrawn their nominations. It is also a disputed question of fact as to whether the candidates withdrew their nominations on their own or their signatures have been forged. This court, however, in view of the facts and circumstances of the case and the settled legal position, does not want to express any opinion about the same and this contention is also left open for adjudication by the appropriate authority.

23. In view of the foregoing discussions, all these writ petitions are liable to be dismissed, however, with directions.

24. In the result, the writ petitions are dismissed, however, giving liberty to the petitioners to raise dispute under Section 90 of The Tamil Nadu Cooperative Societies, 1983 before the appropriate authority. If any such dispute is raised, the authority concerned will dispose of the same within a period of three months after giving sufficient opportunities to the petitioner and other interested persons. It is made clear that this court has not expressed any opinion on the merits of the case and it is for the authority concerned to decide the matter on its own merits and in accordance with law. Consequently, connected WMPs are closed.

s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

- 1.The Election Commissioner cum Registrar of Co-operative Societies, No.273, Anna Salai, Teynampet, Chennai.
 - 2.The Joint Registrar, Co-op. Societies, Vellore District, Vellore.
 - 3.The Deputy Registrar / District Election Officer, Vellore - Tiruvannamalai District Milk Production Co-operative Union, Sathuvachery, Vellore, Vellore District.
 - 4.The District Election Officer (Co-operative Societies) Erode District cum Deputy Registrar of Co-operative Societies, Erode.
 - 5.The Election Officer, C 1325 Vellore Thiruvannamalai Milk Producers Co Operative union Arcot Road Sathuvachery, Vellore
 - 6.The Deputy Registrar / District Election Officer, Vellore - Tiruvannamalai District Milk Production Co-operative Union, Sathuvachery, Vellore, Vellore-District.
- +2 Ccs to Mr.Ma.P. Thangavel, Advocate sr 82582, 82609.
+1 CC to Mr.R.Neelakandan, Advocate sr 82053.
+4 Ccs to Mr.L.P.Shanmugasundaram, Advocate sr 82369 & 82371.
+1 CC to Govt. Pleader sr 82614.
+2 Ccs to Mr.C.Prakasam, Advocate sr 82838 & 82839

Writ Petition No.27014 of 2018

&

Writ Petition No.27297 of 2018

and

Writ Petition 29726 of 2018

TM(CO)
SP(06/12/2018)

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