

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.11.2018

CORAM:

THE HONOURABLE MR. JUSTICE S.MANIKUMAR
AND
THE HONOURABLE MR. JUSTICE SUBRAMONIAM PRASAD

Writ Petition No.28817 of 2018
W.M.P.No.33677 of 2018

R.Soundararajan

... Petitioner

Vs.

1. The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Fort St. George, Chennai 600 009.
2. The Election Officer,
G-1254, Saidapet Agricultural Co-operative
Tradesmen Society,
Chenkundram, Chennai 600 052.
3. The Secretary,
G-1254, Saidapet Agricultural Co-operative
Marketing Society,
Chenkundram, Chennai 600 052.
4. The Commissioner,
Tamil Nadu State Co-operative
Societies Election Commission,
No.273, I Floor, Kamadenu Building,
Teynampet, Chennai 600 018.

... Respondents

Prayer: Petition filed under Article 226 of the
Constitution of India praying for the issuance of a writ of
Declaration, declaring the rule 38 of the Tamil Nadu Co-
Operative Societies Rules 1988 as invalid.

For petitioner

... Mr.P.Raja

For respondents 1 to 3

... Mr.L.P.Shanmugasundaram,
Special Government Pleader

For 4th respondent

... Mr.M.S.Palanisamy,
Senior Counsel

O R D E R
(Order of the Court was made by S.MANIKUMAR, J.)

The petitioner, claiming himself to be the former President of G-1254 Saidapet Agricultural Co-operative Marketing Society, has sought for a declaration, declaring the rule 38 of the Tamil Nadu Co-Operative societies Rules 1988 as invalid.

2. It is the case of the petitioner that election for the office bearers of the society, for the period from 2018 to 2023, was announced by the Election Officer of the said Society, 2nd respondent herein and the date of election to the Society has been fixed on 11.10.2018 and eventually, he submitted his nomination for the office of director in the said Society, in proper form, to the 2nd respondent, as he was intending to contest for the post of President again.

3. However, when the final list candidates for the said election was published by the second respondent, on 08.10.2018, in which, his name was not found. Since his name has been removed from the list of valid candidates, he would not be entitled to contest in the said election and he would lose his right to become a director in the said society in the election conducted on 11.10.2018. When he enquired the same with the second respondent, he was informed that he lost his eligibility to be included in the list, for the reason that there is a loan amount, which is due to be paid by him, to G.T.61, Akkarapakkam Agricultural Co-operative Society, Kannigaiper Village, in which, he is also member and in which, he along with his wife had availed loans and that he is a defaulter in repayment of loan amount to the abovesaid Society, and as there is no NOC issued in his name, by the above said Society, he lost his eligibility.

4. The petitioner has further submitted that his wife, Tmt.R.Seethalakshmi had applied for an agricultural loan to the tune of Rs.94,500/- each, totalling Rs.1,98,000/- in the year 2017, but, actually, what they were provided was only with fertilizers bags, worth about Rs. 15,000/-, under two loan account Nos.684 and 685 respectively, for the purpose of agriculture and the balance loan amount was not disbursed by the Secretary and Treasurer of the said G.T.61, Akkarapakkam Agricultural Co-operative Society and only at later point of time, he came to know that the said office bearers of the abovesaid G.T.61, Akkarapakkam Agricultural Co-operative Society had swindled money from the said Society, by cheating few of

its members, and on complaint from various members of the above said Society, action was taken against them. Subsequently, he had received a notice, from the Secretary of the said G.T.61, Akkarapakkam Agricultural Co-operative Society, to repay his loan amount, to the tune of Rs.94,797/- each, for two loan accounts Nos.684 and 685 respectively, standing in his name and in the name of his wife and accordingly, he repaid the entire due to the said G.T.61, Akkarapakkam Agricultural Co-operative Society, though they have not received the entire loan amount.

5. It is the further case of the petitioner that after clearing the entire dues to the said G.T.61, Akkarapakkam Agricultural Co-operative Society, he was issued with a No Due Certificate, dated 03.10.2018, by the Secretary of the above said G.T.61, Akkarapakkam Agricultural Co-operative Society, which was also communicated to the second respondent, even before the publishing of the voters list. As he has cleared the dues, in the above said G.T.61, Akkarapakkam Agricultural Co-operative Society, his name has been included in the voters list, for the upcoming elections in the said G.T.61, Akkarapakkam Agricultural Co-operative Society.

6. However, it is submitted by the petitioner that the omission of his name in the final candidates list, published on 08.10.2018, was done by the second respondent wilfully and therefore, he filed W.P.No.27125 of 2018, on the failure of the 2nd respondent to adhere to the Rule 52 (8) of the Tamil Nadu Co-operative Societies Rules, 1988. The second respondent has filed a counter in the said Writ petition, alleging that he is eligible to contest the election, in view of Section 34(b)(1) of the said Act and Rule 38 of the said Rules.

7. According to the petitioner, rule 38 of the Tamil Nadu Co-operative societies Rules 1988, is against the spirit of the Tamil Nadu Co-Operative societies Act, 1983 and is overriding section 34 of the Act and the same is violative of Tamil Nadu Co-operative Societies Act, 1983. When the Act allows a person to contest the election with default in payment to the society for less than 3 months, and does not state about past default, Rule 38 exceeds the Act, by restricting a person who was in default and should have cleared the dues 30 days prior to the date of election."

Heard the learned counsel appearing for the parties and perused the materials available on record.

8. Section 34 of the Tamil Nadu Co-operative Societies Act, 1983, deals with disqualifications for membership of board and the said Section is extracted

hereunder:

34. Disqualifications for membership of board.- (1) No person shall be eligible for being elected or nominated as a member of a board of any registered society if he-

(a) is such near relation, as may be prescribed, of a paid employee of such registered society; or

(b) (i) is in default to such registered society or any other registered society, in respect of any loan or advance taken by him or dues under credit purchases made by him for a period exceeding three months: or

(ii) is a representative of a registered society which is in default to the financing bank or to any other registered society, in respect of any sum due by the registered society, for a continuous period of one year:

Provided that the disqualification in sub-clause (iii) shall operate only when default of the registered society exceeds thirty per cent of the sum due by that registered society; or

(iii) is a person against whom any decree, decision, award, order or certificate referred to in section 143 has been obtained; or a representative of the registered society against which such decree, decision, award, order or certificate has been obtained; or

(iv) is a person against whom proceedings have been initiated under sections 118, 119, 120, or 144 for the recovery of any debt; or

(c) (i) is employed as legal practitioner on behalf of the registered society or against it or on behalf of or against any other registered society which is a member of the first-mentioned registered society; or

(ii) was employed in any co-operative society or was working as Government servant engaged in administration or audit of co-operative societies and a period of two years has not elapsed from the date of his ceasing to be such employee or Government servant; or

(d) is an associate member; or

(e) is a minor or of unsound mind; or

(f) (i) has been sentenced for any offence under this Act other than an offence under section 162 such sentence not having been annulled and a period of three years has not elapsed from the date of the expiration of the sentence; or

(ii) has been sentenced for any offence involving moral turpitude punishable under any law

with imprisonment for one year and upwards, such sentence not having been annulled and a period of five years has not elapsed from the date of the expiration of the sentence; or

(g) [***] or

(h) has been removed or disqualified from holding the office of the member of the board of the registered society or of any other registered society under section 36; or

(i) does not know to read and write Tamil or English or such other language as the Government may notify in this behalf in relation to any particular area.

(2) A member of the board shall cease to hold his office as such if he-

(a) becomes subject to any of the disqualifications mentioned in sub-section (1);

Provided that a member of the board who ceases to hold office by reason of his having incurred the disqualification mentioned in,-

(i) sub-clause (i) of clause (b) of sub-section (1), shall not be eligible for re-election or re-nomination as a member of the board of the registered society of which he was member or for election or nomination to the board of any other registered society;

(ii) sub-clause (iii) or (iv) of the said clause (b), shall not be eligible for re-election or re-nomination as a member of that board or for election or nomination to the board of any other registered society, for a period of three years which shall be reckoned,-

(A) in the case of the disqualification mentioned in sub-clause (i) of the said clause (b), from the date on which the dues referred to therein have been fully cleared; and

(B) in the case of disqualification mentioned in sub-clause (iii) or (iv) of the said clause (b), from the date on which the dues involved in such decree, decision, award, order certificate or application in respect of which proceedings have been initiated, have been fully discharged:

Provided further that where a member of the board ceases to hold his office as such by reason of his having been sentenced for any offence under this Act, and the sentence is annulled on appeal or revision he shall be restored to office for such portion of the period for which he was elected or nominated as may remain unexpired at the date of such restoration and any person elected or

nominated to fill the vacancy in the interim shall, on such restoration, vacate office; or

(b) ceases to be a member of the registered society; or

(c) purchases directly or indirectly any property of another member of the registered society brought to sale for recovery of any money due from such other member to the registered society; or

(d) absents himself from four consecutive meetings of the board or from all meetings of the board for a continuous period of three months, whichever is longer.

Provided that the member ceasing to hold office under this clause may be restored in accordance with the procedure prescribed if such member makes an application for condonation of the absence.

(3) The board of a registered society may suo motu, and shall on an application made by any person, consider whether any member of the board was or has become disqualified to hold office as such under this section and take a decision. Such a decision shall be communicated to the member and the applicant concerned, if any:

Provided that no decision shall be taken unless the member of the board is given an opportunity of making his representation:

Provided further that pending such decision, the member of the board shall be entitled to continue as such as if he is qualified or is not disqualified.

(4) (a) No person shall, at the same time, be a member of the boards of more than three registered societies.

(b) subject to the provisions of clause (a), no person shall, at the same time, be a member of a board of more than one apex society or more than one central society.

(c) If any person is, on the date of his election or nomination as a member of the board already-

(i) a member of the board of three registered societies; or

(ii) a member of the board of an apex society or a central society and the board to which he is elected or nominated on that date is the board of an apex society, or, as the case may be, a central society, then, his election or nomination on the aforesaid shall be void.

(d) 2[***]

(5) (a) No member of a board which has been superseded under section 88 and no person who was a member of such superseded board on the date of issue of notice of supersession shall be eligible for election or nomination to any board for a period of three years from the date of expiry of the period of supersession.

(b) No member of a board in respect of whom proceeding under section 87 is pending and no member of a board in respect of which proceeding under section 88 is pending, shall be eligible for election or nomination to the board till the termination of such proceeding.

(6) Whenever the Registrar has come to know that any member of the board of any registered society has become disqualified under this section the hold office as such and that the board of the registered society either suo motu or on application made by any person has failed to give a decision under sub-section (3) within one month from the date of incurring the disqualification the Registrar may, at any time, by an order in writing decide the question and direct the removal of such member from the membership of the board, if he is found disqualified:

Provided that no member of the board shall be removed from such membership under this sub-section without such member and the board of which he is a member being given an opportunity of making his or its representation:

Provided further that pending such decision or removal, the member of the board shall be entitled to continue as such as if he is qualified or is not disqualified.

(7) [No person shall be eligible for being elected or nominated as President for more than three registered Societies].

(8) The provisions of this section shall apply also to-

(a) the members of the board who are not Government servants, whether ex-officio members of members nominated by the Registrar, the prescribed authority or the Government; and

(b) the member of the board nominated by the financing bank or the board of other registered Society or other interest:

but shall not apply to members of the Board who are Government servants, whether ex officio members or members nominated by the Registrar, the Prescribed Authority or the Government.

9. In exercise of the powers conferred by sub-sections (1), (2) and (3) of Section 180 of the Tamil Nadu Co-operative Societies Act, 1983 (Tamil Nadu Act 30 of 1983) and in supersession of all the Rules made under the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) and under the Tamil Nadu Co-operative Land Development Banks Act, 1934 (Tamil Nadu Act X of 1934), Tamil Nadu Co-operative Societies Rules, have been framed. Relevant rules are extracted hereunder:-

"38. Restrictions on defaulting Member to vote at election or to represent a Society in any other Society.-

No Member shall be entitled to vote at any election in the Society of which he is a Member or be entitled to be elected or nominated to represent the Society in any other Society or to vote at any election in the other Society if on thirty days prior to the date of election,-

(a)(i) he was in default to the Society of which he is a Member or any other Society, for a period exceeding three months; or

(ii) a decree has been obtained against him and the decree is subsisting; or

(iii) proceedings have been initiated against him under sections 118, 119, 120 or 144 for recovery of any debts and the debt has not been fully discharged; and

(b) where the Member represents a Society in any other Society, if-

(i) the Society he represents is in default to any other Society for a continuous period of one year and the default exceeds thirty percent of the sum due by that Society; or

(ii) a decree has been obtained against the Society he represents and the decree is subsisting.

51A. Eligibility to vote at, or stand for, election. - Notwithstanding anything contained in the bye-laws of a society, the members who are not otherwise disqualified to vote at, or stand for, any election in accordance with the provisions of the Act, or these rules, shall be eligible to vote at, or stand for, any election to the society.

52. Election of members of the board. -[(1)

(a) Every society shall report to the Election Commission, the date of expiry of the term of office of the members of the board for which elections are to be held and the number of members to be elected and the particulars of casual vacancy in the office of the members of the

board which may arise and which have to be filled up by election as per the provisions of the Act, within fifteen days of its occurrence.

(b) On receipt, of such report, the Election Commission shall appoint as many officers of the Government or officers sub-ordinate to the Registrar not below the rank of Deputy Registrar of Co-operative Societies in the Co-operative Department or not below such rank in other departments of the Government as may be necessary, as District Election Officers for each district or for a part of a district for conducting the election of members of the board of co-operative societies in the respective district or part of a district. The District Election Officer shall take necessary steps for the conduct of election to the society or societies concerned and the society shall render all necessary assistance to the District Election Officer for the conduct of election to the board.

(c) The District Election Officer shall appoint as many officers of the Government not below the rank of Senior Inspector in the Co-operative Department or not below such rank in other departments as may be necessary as Electoral Officers. The Electoral Officers shall be responsible for preparation and publication of voters list of the society or the societies concerned.

(d) Notwithstanding anything contained in clause (a), the Election Commission may, at any time, arrange for the conduct of election of members of the board of a society to fill up the existing or future vacancies in accordance with the provisions of the Act and Rules.]

(2) The election of the members of the board of every society shall be conducted in the manner specified in this rule.

[(3)(a) The District Election Officer appointed for a district or a part of a district by the Election Commission shall appoint as many officers of the government or officers subordinate to him or officers and employees of co-operative societies or local authorities or undertakings owned by the state or central government or educational institutions as may be necessary as Election Officers for conducting the election of members of the board of co-operative societies in the district or a part of the district. The

District Election Officer may also appoint alternative election officer or officers.]

(b) Where the Election Officer appointed under clause (a) is unable to attend any stage of the election owing to illness or other unavoidable reason, the alternative Election Officer, if any, appointed for the purpose shall proceed to conduct the election from the stage at which the Election Officer had left and in such cases every reference to the Election Officer in this Rule shall be construed as a reference to the alternative Election Officer.

[(c) Subject to the superintendence, direction and control of the Election Commission, and under the supervision and guidance of the State Election Officer, and the District Election Officer, the Election Officer shall be responsible for the proper conduct of the elections in the manner provided in the Act, the Rules, and any other orders or guidelines issued by the Election Commission from time to time.]

[(4) (a) The Election Officer may appoint one or more persons, as may be necessary, as Polling Officers to assist him in the conduct of the election.

(b) Subject to the provisions of the Rules, it shall be the general duty of the Election Officer and the Polling Officers at a polling station, to keep order thereat and to ensure that the poll is freely and fairly conducted.]

[(5) (a) The Election Commission shall fix the date of election and draw up a programme for the conduct of election to the society or group of societies and send a copy of the programme so drawn to the State Election Officer and the District Election Officer concerned at least twenty-one days prior to the date of poll and also to the society or group of societies:

Provided that the date of poll shall not be fixed on any date earlier than sixty days prior to the date of expiry of the term of office of the members of the board.

(b) The programme for conduct of election shall contain information regarding,-

(i) the date on which,-

(A) the society shall prepare and furnish the member's list to the Electoral Officer appointed by the District Election Officer under sub-rule (1) and shall publish the member's list in the notice board at the office of the society;

(B) the Electoral Officer shall prepare and publish the voters' list in the notice board at the office of the society;

(C) the members shall make claims or raise objections to the voters list; and

(D) the decision of the Electoral Officer on the claims made or objections raised to the voters' list shall be published;

(ii) where the society fails to prepare and furnish the member's list within the time specified in item (i) (A), the date on which,-

(A) the Electoral Officer shall prepare and publish the voters' list in the notice board at the office of the society.

(B) the members shall make claims or raise objections to the voters' list; and

(C) the decision of the Electoral Officer on the claims made or objections raised to the voters' list shall be published.;

(iii) the date on which, the place at which and the time during which,-

(A) the nomination papers shall be filed;

(B) the nomination papers shall be scrutinized and list of valid nominations shall be published;

(C) the nominations may be withdrawn;

(D) final list of contesting candidates shall be published; and

(E) polling, if required, will take place:

Provided that there shall be an interval of not less than three clear days between the date fixed for filing of nomination and the date of poll:

Provided further that different timings can be fixed for different constituencies on the same date and that more than one date may be fixed for polling, where polling cannot be held on the same date in the same place or different places.

[(6) (a) The District Election Officer or the Election Officer shall send notice of election to the members who, on the date thirty days prior to the date of poll, were the members of the society. The notice shall contain information regarding-

(i) the total number of vacancies to be filled up by election and of which the number of seats reserved under the Act or Rules for Scheduled Castes and Scheduled Tribes and Women, if any and the number of unreserved seats to be filled up by election;

(ii) constituency, if any from which the members are to be elected;

(iii) the date, place and time fixed for filing, scrutiny, withdrawal and publication of valid list of nominations;

(iv) the date, place and time specified for polling; and

(v) the time, date and place in which counting of votes shall take place:

Provided that the withdrawal and publication of valid list of nominations shall be on the next day after the date fixed for scrutiny of nominations;

(b) The election notice shall be sent at least fifteen days prior to the date of the poll by one or more of the following modes, namely:-

(i) by giving or tendering it to such member and if he is not found, by giving or tendering it to some adult member of Iris family under iris acknowledgement; or

(ii) by e-post; or

(iii) by publication in one or more local newspapers having circulation in the area of operation of the society and approved by the Government for the issue of Government advertisements:

Provided that where the District Election Officer or the Election Officer considers it necessary, the election notice may be displayed in one or more prominent public places within the area of operation of the society, in addition to being sent in one of the modes aforesaid.

(c) The election notice shall also be published,-

(i) in the notice board at the office of the society; and

(ii) in cases where the elections are held in a place outside the headquarters of the society -

(A) in the notice board at the branch of the society in that place; or

(B) in such other place as the District Election Officer or the Election Officer may specify in this behalf.

(d) Where the District Election Officer or the Election Officer so directs, the Chief Executive or where there is no such Chief Executive, the President or Chairperson of the society shall arrange to serve the notice of election on the members.

(e) The expenditure if any, in sending or publishing such notice shall be borne by the society.]

[(7) (a) On receipt of the election programme, the Society shall immediately prepare a list of members who, on the date thirty days prior to the date of poll, were qualified in accordance with the provisions of the Act and Rules to vote at the election.

If different constituencies are provided in the rules or by-laws, such member's list shall be prepared constituency wise. The list shall be prepared in Vernacular. The names of the members in each part of the member's list shall be arranged according to member's admission numbers as entered in the admission book.

(b) The member's list shall contain, -

(i) in the case of an individual member, the name, the surname (if any), the admission number, father's or husband's name and address of the member as entered and available in the admission register and the name of the constituency, if any, to which he belongs; and

(ii) in the case of an affiliated society, the name of the society, its registration number, address and admission number, together with the name of the delegate and the date of expiry of the current term of the delegate.

(c) The society shall send three copies of the member's list to the Electoral Officer at

least fifteen clear days prior to the date of poll.

(d) The Electoral Officer shall verify the member's list sent by the society with reference to the available records and prepare a list of members who on the date thirty days prior to the date of poll were qualified in accordance with the provisions of the Act and Rules to vote at election (herein after called the voters' list). Entire voters' list shall be prepared in Vernacular. The names of the members in each part of the voters' list shall be arranged according to member's admission number as entered in the admission book.

(e) Tire voters' list shall contain-

(i) in the case of an individual member, the name, the surname (if any) the admission number, father's or husband's name and address of the member as entered and available in the admission register and the name of the constituency, if any, to which he belongs; and

(ii) in the case of an affiliated society, the name of the society, its registration number, address and admission number, together with the name of the delegate and the date of expiry of the current term of the delegate.

(f) The Electoral Officer shall publish the voters list on the notice board at the office of the society not less than ten clear days prior lo the date of poll requiring the members to make their claims or raise their objections, if any, by a petition setting out the grounds on which the claim is based or the objection is raised, as the case may be, and present it to the Electoral Officer within two days of such publication.

(g) The Electoral Officer shall decide in writing the claims made or objections raised, if any, to the voters' list, after making such enquiry as he considers necessary and make such corrections as may be deemed necessary and shall publish in the notice board at the office of the society or at such other places as he may consider necessary such corrections at least two days prior to the date fixed for filing of nomination. For the purpose of deciding the claims or objection, the Electoral Officer shall have free access to verify the accounts, books, records and documents belonging to or in the custody of the society.

(h) If any society fails to prepare and send the member's list within the time specified in clause(c), the Electoral Officer shall himself or through any person, authorised by him in this behalf, prepare the voters' list and the society shall pay the expenses therefor. In such cases, the Electoral Officer shall also publish the voters list in the notice board at the office of the society at least seven clear days prior to the date of poll requiring the members to make their claims or raise their objections, if any, by a petition setting' out the grounds on which the claim is based or the objection is raised, as the case may be, presented to the Electoral Officer within one day of such publication. The provisions in clause (g) shall apply with the modification that the correction so made shall be published in the notice board at the office of the society or at such other place as he may specify, at least on the date prior to the date fixed for filling of nomination.]

[(7-A) Notwithstanding anything contained in the Rules or the by-laws, in the case of a Central Society or an apex society where there is only society member and no individual member, for the election of members of the board to fill up the seats reserved for Scheduled Castes and Scheduled Tribes or Women, the central society or the apex society concerned shall prepare a list of members of the boards of societies affiliated to it and belonging to Scheduled Castes and Scheduled Tribes or Women respectively and who were qualified in accordance with the provisions of the Act and the Rules for being elected as a member of the board of such central or apex society, as the case may be, and send three copies of such lists to the Election Officer concerned at least ten days prior to the date of poll.]

(8) [(a) No person shall be eligible for being nominated as a candidate for election to the board unless he is qualified for being elected under the provisions of the Act and these Rules, and his name is included in the voters' list. The nomination of a candidate for the election shall be in Form No.18 and shall be signed by the candidate. The nomination paper shall be 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:

Provided that where, excluding the candidate or candidates seeking election, only one member is in the voters' list, the nomination need not be seconded:

Provided further that where, excluding the candidate or candidates seeking election, no member is in the voters' list, the nomination need not be proposed or seconded; and

[Provided also that in the case of a central or apex society which has only 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, if such person is a member of the board of a society affiliated to such central or apex society and belongs to Scheduled Castes and Scheduled Tribes or a women, as the case may be, and whose name is included in the list referred to in sub-rule (7-A).

Provided also that if the seat is reserved for Scheduled Castes and Scheduled Tribes, the candidate seeking election to such reserved seat shall furnish a declaration in the nomination form made by him specifying the caste or tribe of which he belongs and the area in relation to which that caste or tribe is notified as a Scheduled Castes or Scheduled Tribes of the State.]

[(aa) Nothing contained in this sub-rule shall prevent any candidate from being nominated by more than one nomination paper for any one election:

Provided that not more than four nomination papers shall be presented by or on behalf of any candidate for any one election.

Provided further that a person who wishes to stand as a candidate in an election to a single member constituency shall not sign any nomination as a proposer or seconder:

Provided also that the maximum number of nomination papers signed by a person who wishes to stand as a candidate in a multi-member constituency as a proposer or seconder shall be one less than the number of members to be elected to that constituency.]

(b) Every nomination paper shall be presented in person to the Election Officer by the candidate himself or by his proposer or seconder on the date and time specified in the notice of election.

(c) The Election Officer receiving the nomination paper 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 and also immediately acknowledge receipt of the nomination paper.

(d) 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 may, either on such objection or on his own motion, after making such summary enquiry, as he considers necessary, reject any nomination on any of the following grounds:-

(i) that on the date fixed for filing of nomination papers, the candidate either was not qualified or was disqualified for being elected to fill the vacancy under any of the provisions of the Act or the Rules; or

(ii) that there has been a failure to comply with any of the provisions in clause(a) or clause (aa) or this rule; or

(iii) that the signature of the candidate or the proposer or seconder on the nomination paper is not genuine; or

(iv) that where the election is solely for a seat or for seat is reserved for Scheduled Castes and Scheduled Tribes or Women, the candidate does not belong to such reserved category:

Provided that the nominations of a candidate shall not be rejected only on the ground of an incorrect description of his name or of the name of his proposer or seconder or of any other particulars relating to the candidate or his proposer or seconder as entered in the voters' list, if the identity of the candidate or proposer or seconder, as the case may be, is established beyond reasonable doubt.]

(e) The Election Officer shall give all reasonable facilities to the candidates or the persons duly authorised by the candidates as their

representatives in this behalf to examine all the nomination papers and satisfy themselves that the inclusion of the candidates is valid.

(f) The Election Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper has been rejected, he shall record in writing a brief statement of grounds for such rejection.

(g) After all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Election Officer shall prepare a list of candidates whose nominations have been accepted as valid and such list shall be published in the notice board at the office of the society or at such other place as the Election Officer may specify on the date and time fixed in the election notice for such publication.

(h) Any candidate may, before the date and time fixed in the election notice, withdraw his candidature by notice in Form No. 19 signed by him and delivered to the Election Officer either by such candidate in person or by his proposer or seconder who has been duly authorised in this behalf in writing by the candidate. The notice of withdrawal of candidature once given shall be final.

(i) The Election Officer shall prepare in Form No. 20 a list of candidates whose nomination papers have been finally accepted as valid and who have not withdrawn their candidature within the time fixed for withdrawal and such list shall be published in the notice board at the office of the society or at such other place as the Election Officer may specify on the date and time fixed in the election notice.

(9) [(a) If for any constituency for which the election is to be held, the number of candidates in respect of whom valid nominations have been filed but have not been withdrawn does not exceed the number of candidates to be elected for that constituency, such candidates shall be deemed to have been duly elected for the constituency and the names of such candidates shall be published in the notice board at the office of the society or at such other place as the Election Officer may specify, after a declaration by the Election Officer to the effect

that they have been duly elected. The Election Officer shall immediately send a report to the District Election Officer, the State Election Officer and the Election Commission;]

(b) If the number of candidates for any constituency exceeds the number of members to be elected, the Election Officer shall allot a serial number to each candidate according to their names in the alphabetical order in English language and arrange for taking a poll on the date fixed for the purpose.

[(c) If for any constituency there is no contesting candidate, the Election Officer shall immediately send a report to the District Election Officer, the State Election Officer and the Election Commission. In such case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.

(d) In respect of reserved seats, if the number of contesting candidates qualified to be chosen to fill them is not larger than the number of vacancies, the election officer shall declare the candidate or all such candidates, as the case may be, duly elected and the names of such candidate or candidates shall be published in the notice board at the office of the society or at such other place as the election officer may specify. The Election Officer shall immediately send a report to the District Election Officer, the Election Officer and the Election Commission.

(e) If the number of contesting candidates qualified to be chosen for the reserved seats exceeds the number of seats reserved, while the total number of all contesting candidates for election is less than or equal to the total number of seats to be filled at the election, the election officer shall, after notice to the candidates concerned, decide by drawing lots, which of the candidates so qualified to fill the reserved seats shall be declared elected to the reserved seats and which of them to the non-reserved seats. Thereafter, he shall cause a copy of the list of contesting candidates in Form No. 20 to be affixed in the notice board at the office of the society and shall then declare all such candidates duly elected, 'the Election Officer shall immediately send a report to the District

Election Officer, the State Election Officer and the Election Commission.

(f) If all the vacancies in the reserved seats to be filled at the election have been filled under clause (d) or (e) and if the number of contesting candidates remaining after the exclusion of the candidates so declared elected under the said clauses is not larger than the number of non-reserved seats to be filled at the election, the Election Officer shall cause a copy of the list of contesting candidates in Form No. 20 to be affixed in the notice board at the office of the society and after such affixation shall declare them duly elected to the non-reserved seats. The Election Officer shall immediately send a report to the District Election Officer, the State Election Officer and the Election Commission.

(g) If there are any seats remaining to be filled after following the procedure prescribed in clauses (a), (d), (e) and (f), the Election Officer shall send a report to the District Election Officer, the State Election Officer and the Election Commission. In such case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.

(h) In respect of vacancies not filled under clauses (d), (e) and (f) or where the number of contesting candidates is more than the number of seats to be filled, a poll shall be held for election from among the candidates remaining after excluding those declared elected under the said clauses.]

(10) (a) At every election where a poll is taken, the society shall provide each Election Officer with sufficient number of ballot boxes, ballot papers, copies of the voters' list in respect of the polling area, instruments for stamping the distinguishing mark x or + on ballot papers and other articles as may be necessary for taking the poll.

[(b) The ballot box shall be so constructed that ballot papers can be introduced therein but cannot be taken out there from without the box being unlocked. Every ballot box used at a polling station shall bear labels and address tags both inside and outside marked with-

(i) name of the society and the name of the constituency, if any, for which the election relates;

(ii) the name of the polling station;

(iii) the serial number of the ballot box (to be filled in, at the end of the poll on the label and addressed tag outside the ballot box only) and

(iv) the date of poll.;

(c) A candidate contesting the election may appoint an election agent to represent him at every booth where polling is held and shall give notice of such appointment to the Election Officer by delivering or forwarding the letter of appointment. Such letter of appointment shall be in Form No. 21.

(d) Immediately before the commencement of the poll, the Election Officer or the Polling Officer shall show the empty ballot box to the candidates or their election agents as may be present at the time and shall then lock it up and place his seal upon it in such a manner that after the box has been closed, it is not possible to open it without breaking the seal. Any candidate or his agent may also affix his own seal, if he so desires.

(e) The serial numbers allotted together with the names of the candidates shall be displayed prominently at the polling station and at each polling booth. Each polling booth shall contain one or more separate voting compartments in which the voters can record their votes screened from observation.

[(f) Each ballot paper shall contain the serial numbers allotted to the candidates together with their names, the reserved / unreserved seat to which he is contesting and sufficient space for making the mark x or + on the ballot paper by the voter. The ballot paper shall also contain on the top of it the name and address of the society and the constituency, if any, for which the election is held and the seal and signature of the Election Officer on the reverse of it. Serial number of each ballot paper shall also appear at the top or the reverse of it.]

(11) (a) The Election Officer may employ at the polling station such number of officers or

employees of the society as he considers necessary to help in the identification of voters. He may also make such other arrangements as he may deem necessary to ensure identification of voters and to prevent impersonation.

[(b) The Election Officer or the Polling Officer shall regulate the number of voters to be admitted at any one time inside the polling station and shall exclude therefrom all persons other than-

(i) persons- appointed by the Election Officer to assist him in the conduct of election,

(ii) each candidate and one election agent of each candidate,

(iii) a child in arm accompanying a voter,

(iv) a person accompanying a blind or infirm voter who cannot move without help, and

(v) officers or employees of the society appointed under clause (a)

Provided that where a polling station is for both men and women voters, the Election Officer may direct that they shall be admitted into the polling station in separate batches.]

(c) No person including the candidate and his election agent shall canvass any vote, within the polling station in any manner.

[(cc) At every election, where a poll is taken, votes shall be given by ballot and all voters voting at an election shall do so in person at the polling station and no votes shall be received by proxy.]

(d) As each voter enters the polling station, the Election Officer or the Polling Officer, as the case may be, shall issue a ballot paper to him. No ballot paper shall be issued, if the Election Officer or the Polling Officer, as the case may be, is not satisfied that the voter concerned is the same person as noted in the voters' list furnished to him.

(e) In deciding the right of a person to obtain a ballot paper, the Election Officer or the Polling Officer, as the case may be, shall overlook any clerical or printing or typographical error in any entry in the voters' list, if he is

satisfied that such person is identical with the voter to whom such entry relates.

(f) The Election Officer shall decide, in writing, the objections, if any, which may be made by a candidate or his election agent as to the right of any person to vote at the election after making such summary enquiry as he considers necessary.

(g) Each voter shall be given only one ballot paper for each election. On receiving the ballot paper, the voter shall forthwith proceed in to one of the voting compartment, make the mark x or + on the ballot paper against the name or names of the candidate or candidates whom he desires to vote, fold the ballot paper so as to conceal his vote and put the ballot paper in the ballot box with utmost secrecy. No voter shall enter a voting compartment when another voter is inside it.

(h) If owing to blindness or other physical infirmity or illiteracy a voter is unable to mark the ballot paper, the Election Officer or the Polling Officer shall ascertain from him the candidate or candidates in whose favour he desires to vote, make the mark on his behalf and put the ballot paper in the ballot box.

(12) Every voter shall be entitled to as many votes as there are vacancies relating to the constituency to which he belongs, but no voter shall give more than one vote to any candidate.

(13) (a) The Election Officer shall close the polling station at the hour fixed for the closure of polling and shall not thereafter admit any voter into the polling station:

Provided that all the voters present at the polling station before it is closed shall be allowed to record their votes.

(b) If any question arises whether a voter was present at the polling station before it was closed, it shall be decided by the Election Officer or the Polling Officer, as the case may be, and his decision shall be final.

(c) As soon as the voters present at the time fixed for the closure of voting have recorded their votes, the Election Officer or the Polling Officer, as the case may be, shall close the slit of the ballot box or shall seal up the slit and

also allow any candidate or his election agent to affix his own seal, if he so desires.

(14) [(a) The counting of votes shall take place on the day and at the place and hour specified in the election notice.]

(b) Each candidate, one election agent of each candidate and as many counting agents of each candidate as the Election Officer specify shall have a right to be present at the time of counting. No other person shall be allowed to be present, except such other person appointed by the Election Officer to assist him in counting the votes and the persons already on duty in connection with the election.

(c) The Election Officer shall open the ballot box in the presence of the candidates and their election and counting agents present and the votes shall be counted by or under the supervision of the Election Officer.

- (15) (a) A ballot paper shall be rejected,-
- (i) if it bears any mark or writing by which the voter can be identified, or
 - (ii) if no vote is recorded thereon, or
 - (iii) if votes are given on it in favour of more candidates than the number of members to be elected, or
 - (iv) if ballot paper is not the one issued by the Election Officer or the Polling Officer, as the case may be, or
 - (v) if the mark indicating the vote thereon is placed in such manner as to make it doubtful to which candidate the vote has been cast, or
 - (vi) if it does not bear the seal and signature of the Election Officer, or
 - (vii) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established, or
 - (viii) if it is not the relevant ballot paper:

Provided that where the Election Officer is satisfied that any such defect as is mentioned in sub-clause (vi) has been caused by any mistake or failure on the part of the Election Officer, or the Polling Officer, the ballot paper shall not be rejected only on the ground of such defect:

Provided further that a ballot paper shall not be rejected only on the ground that the mark indicating the voter is indistinct or made more than once, if the intention that the vote shall be for a particular candidate clearly appears from the way the paper is marked.

(b) The authority competent to reject the ballot paper shall be the Election Officer.

(c) All ballot papers taken out of ballot box used at a polling station and rejected under this rule shall be made into a separate bundle.

[(16) The votes recorded in every ballot paper other than those rejected under sub-rule (15) shall be counted. The Election Officer shall as far as practicable proceed continuously with the counting and shall during any interval when the counting has to be suspended, keep the ballot papers, packets and all other papers relating to elections sealed with his own seal and the sea Is of such candidates or election agents as may desire to affix their seals and take sufficient precaution for their safe custody during such interval. As soon as the counting of the votes is completed, the Election Officer shall announce the number of valid votes secured by each candidate and declare the candidate who has secured the largest number of valid votes as elected. In the case of equality of votes, the results of the election shall be decided by casting lots by the Election Officer.]

(17) (a) The results of the election shall be recorded in a register opened by the Election Officer for this purpose and attested by him.

(b) The names of the duly elected candidates shall be published in the notice board of the office of the society or at such other place as the Election Officer may specify.

[(c) As soon as the election is over, the Election Officer shall intimate the results of the election in Form No.22 to the society, the Election Commission, the District Election

Officer, the State Election Officer and the Election Officer, if any appointed under sub-rule (1) of rule 53 for conducting the election of the office-bearers of the board.]

[(d)***]

(18)(a) If at any stage of the election, the proceedings are interrupted or obstructed by any riot or open violence or if it is not possible to proceed with the election on account of any natural calamity, the Election Officer shall have power to stop the election, recording his reasons for such action.

[(b) The fact that election has been so stopped shall be immediately announced and reported to the District Election Officer, the State Election Officer and the Election Commission forthwith by the Election Officer.]

(c) Proceedings with reference to the election so stopped shall be resumed from the stage it was stopped or resumed at an earlier stage as may be decided by the [the Election Commission].

[(d) Notwithstanding anything contained in sub-rules (a) to (c), the Election Commission may, for special reasons, empower the District Election Officer to fix dates and periods, other than those notified earlier under the Rules, for all or any of the stages of any election under the Rules.]

(19) The board and every officer of the society concerned shall be bound to render every assistance to the Election Officer in the conduct of elections and shall make available every record that may be required by him for this purpose.

[(20) Any casual vacancy in the office of an elected member of the board has arisen if the remaining term of office of the board is not less than half of its original term, the vacancy shall be filled up in the same manner as specified in this rule.]

(21) [(a)] Every election under this rule shall be held at the premises where the office of the society is located or in any other public place at the headquarters of the society, to which all the voters shall have access:

Provided that where a member of the board is to be elected by the members of the society within a specified constituency outside the headquarters

of the society, the election may be held at any public place in such constituency to which all the voters shall have access:

[Provided further that where the [Election Commission] or the Election Officer considers necessary, polling may be held in different public places within the area of operation of the society to which all the voters have access:

Provided also that where polling is held in different public places, the members allotted to each place of polling shall be specified in the notice of the election and the members so allotted shall cast their votes only at the respective place of polling so specified.]

[Provided also that notwithstanding anything contained in this sub-rule, in any election under this Rule in respect of any Primary Co-operative Society, if the [Election Commission] so decides, filing, scrutiny and withdrawal of nominations of candidates and publication of valid nominations or counting of votes polled and declaration of election results may be held in any public place within the area of operation of the society or in any public place within the limits of the revenue taluk within which the headquarters of the society is located to which all the voters shall have access.]

(22) (a) The records relating to the election shall be secured in a container which shall be affixed with the seal of the Election Officer and of the candidates or their election agents, who desire to affix their seals.

[(b) After the election is over, the election officer shall hand over the election records to the District Election Officer or to any person authorised by him in this behalf under acknowledgement who shall preserve the same for a period of one year from the date of election in the event of there being no election dispute or if an election dispute is referred to the Registrar till the date of final disposal of the said dispute, whichever is later.]

(c) They shall be destroyed after the said period of one year if no dispute relating to, or in connection with the election is referred to the Registrar or in the event of an election dispute, after the final disposal of the dispute, whichever is later.

[(23) Notwithstanding anything contained in the Rules, where the Election Commission suo motu or on complaint or on the report of the District Election Officer or observer is of the opinion that, it is not possible to hold free and fair election on account of the prevailing law and order problem, or riot or open violence, or communal clash or on account of natural calamity or bundh or such other sufficient cause, the Election Commission shall have the power to cancel the elections to co-operative societies, recording the reasons there for. In such a case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.]

10. Section 34 of the Tamil Nadu Co-operative Societies Act, 1983, speaks about the disqualifications for membership of a board, for being elected or nominated to a society. As per Section 34 b(i) of the Act, he shall not be eligible for being elected or nominated as a member of any registered society, if he is in default of such society or any other registered society in respect of any loan or advance taken by him or dues under credit purchases made by him for a period exceeding three months. Reading of Section 34 makes it clear that the default is for a period exceeding three months, then he is disqualified from being elected or nominated.

11. Rule 38 of the Tamil Nadu Co-operative Societies Rules, 1988, speaks about Restrictions on a defaulting member to vote at election to represent a Society in any other Society.- No Member shall be entitled to vote at any election in the Society of which he is a Member or be entitled to be elected or nominated to represent the Society in any other Society or to vote at any election in the other Society if on thirty days prior to the date of election,

(a)(i) he was in default to the Society of which he is a Member or any other Society, for a period exceeding three months.

12. While section 34 of the Act speaks about the disqualification for being elected or nominated as a member of the board, Rule 38, speaks about the restrictions on the defaulting member to vote in any election in the society of which he is a member or be elected or nominated to represent the society in any other society or to vote in any election in other society, if an thirty days prior to the date of election, if he was in default to the society of which he is a member or any other society for a period exceeding three months.

13. As per Rule 51 A of the rules, Notwithstanding anything contained in the Bylaws of a primary society, the member who are not otherwise disqualified to vote at, or stand for, any election in accordance with the provisions of the Act, or these rules, shall be eligible to vote at, or stand for, any election to the society.

14. Rule 52 of the Rules, deals with the election of members of the board. As per Sub-Rule 7 of Rule 52, (a) On receipt of the election programme, the Society shall immediately prepare a list of members who, on the date thirty days prior to the date of poll, were qualified in accordance with the provisions of the Act and Rules to vote at the election.

If different constituencies are provided in the rules or by-laws, such member's list shall be prepared constituency wise. The list shall be prepared in Vernacular. The names of the members in each part of the member's list shall be arranged according to member's admission numbers as entered in the admission book.

(b) The member's list shall contain, -

(i) in the case of an individual member, the name, the surname (if any), the admission number, father's or husband's name and address of the member as entered and available in the admission register and the name of the constituency, if any, to which he belongs; and

(ii) in the case of an affiliated society, the name of the society, its registration number, address and admission number, together with the name of the delegate and the date of expiry of the current term of the delegate.

(c) The society shall send three copies of the member's list to the Electoral Officer at least fifteen clear days prior to the date of poll.

(d) The Electoral Officer shall verify the member's list sent by the society with reference to the available records and prepare a list of members who on the date thirty days prior to the date of poll were qualified in accordance with the provisions of the Act and Rules to vote at election (herein after called the voters' list). Entire voters' list shall be prepared in Vernacular. The names of the members in each part of the voters' list shall be arranged according to member's admission number as entered in the admission book.

15. Thus reading of Section 34 of the Tamil Nadu Co-operative Societies Act, 1983, read with rules makes it clear that on the date 30 days prior to the date of poll, a

member of the society should be qualified in accordance with the provisions of the Act and the rules, to vote in the election.

16. While Section 34 of the Act, states that the period of default should not exceed three months, Rule 38, only prescribes the date from which three months to be reckoned, i.e, if 30 days prior to the date of election, if he was in default to the society of which he is a member or any other society, for a period exceeding three months, then there is a restriction to vote in the election in the society or to represent a society in any other society. Rule 38 of the Tamil Nadu Co-operative Societies Rules, 1988, has been framed in accordance with the scheme of the Act, and we do not see any over reaching effect. Contention of the petitioner that, Section 34 of the Tamil Nadu Co-operative Societies Act, 1983, provides a person to contest the election with default to the society for 3 months, and whereas Rule 38, restricts the person in default, and that he should have cleared the dues 30 days prior to the date of election, the rule has a overreaching effect, and thus violative of the Act, cannot be accepted.

17. In the light of the discussion, Rule 38 of the Tamil Nadu Co-operative Societies Rules, 1988, rules is sustained. Writ petition is dismissed. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

skm/dm

To

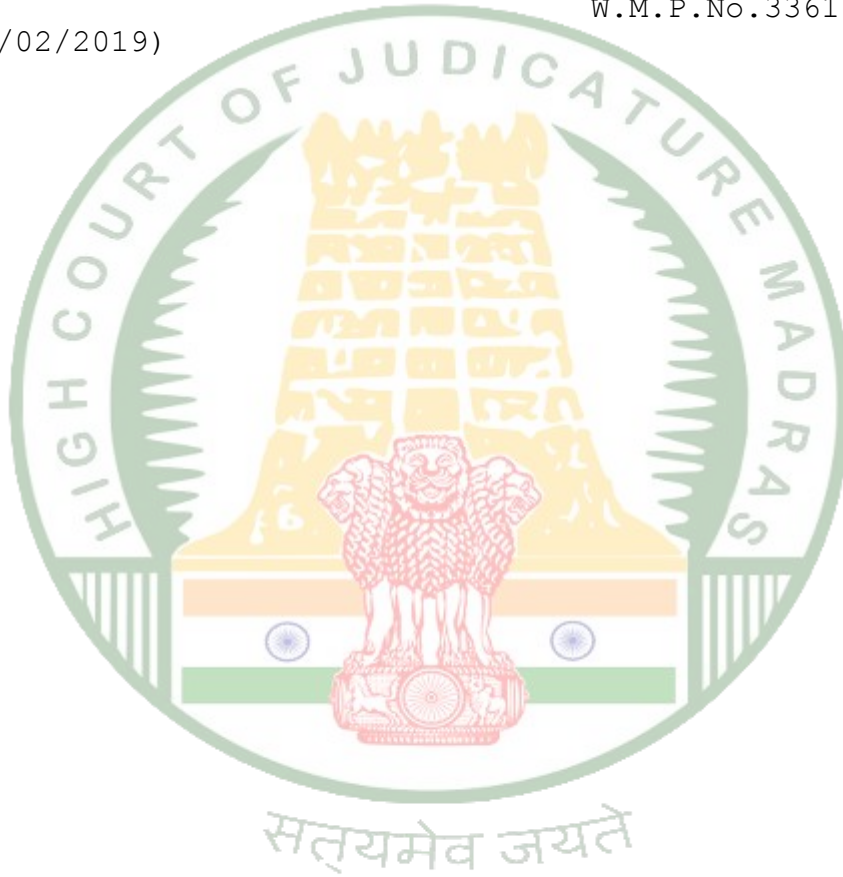
1. The Secretary to Government,
Co-operation, Food and Consumer Protection Department,
Fort St. George, Chennai 600 009.
2. The Election Officer,
G-1254, Saidapet Agricultural Co-operative
Tradesmen Society,
Chenkundram, Chennai 600 052.
3. The Secretary,
G-1254, Saidapet Agricultural Co-operative
Marketing Society,
Chenkundram, Chennai 600 052.

4. The Commissioner,
Tamil Nadu State Co-operative
Societies Election Commission,
No.273, I Floor, Kamadenu Building,
Teynampet, Chennai 600 018.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.No. 82373
+1cc to Mr.P.Raja , Advocate SR.No. 81608
+1 CC TO GOVERNMENT PLEADER SR.NO. 81758

Writ Petition No.28817 of 2018
W.M.P.No.33617 of 2018

A.SK(05/02/2019)



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