

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 23.11.2018
CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.A.No.2587 of 2018
and CMP.Nos.21046 and 21049 of 2018

K.Thulasidoss .. Appellant/3rd party

Vs.

- 1.Government of Tamil Nadu,
Rep. By its Secretary,
Co-operative, Food and Consumer
Protection Department,
Fort St.George, Chennai-9.
- 2.Government of Tamil Nadu,
Rep. By its Secretary,
Co-operative, Food and Consumer
Protection Department,
Fort St.George, Chennai-9.
- 3.Tamil Nadu Co-operative Societies
Election Commission, Rep. By
Tamil Nadu Cooperative Societies
Election Commissioner,
Kamadenu Co-op. Super Market Building,
273, Scheme Road, Subbarayan Nagar,
Teynampet, Chennai-18.
- 4.Registrar of Co-operative Societies,
170, N.V.Natarajan Maaligai,
E.V.R.High Road, Kilpauk,
Chennai-10.
- 5.The Deputy Registrar of Co-operative
Societies (Credit),
District Election Officer,
Kuralagam, Chennai-108.
- 6.Transport Corporation,
Employees Co-operative Thrift and
Credit Society Ltd., X367,
Rep. by its Secretary,
Rathna Nagar, Teynampet, Chennai-18.

7.The Returning Officer,
for Transport Corporation Employees
Cooperative Thrift and Credit Society Ltd.,
X367, Rathna Nagar, Teynampet,
Chennai-18.

8.R.Durai,

9.Elangovan

10.S.Mayakannan

11.K.Subramanian

...

Respondents 8 to 11 /
Petitioner 1 to 4

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 13.11.2018 made in W.P.No.29844 of 2018.

Prayer in W.P.No.29844 of 2018:

Petition filed under Article 226 of the Constitution of India praying to issue an appropriate writs, orders and directions and in particular issue a Writ in the nature of Certiorarified mandamus, after calling for the records pertaining to the notification dated 02.11.2018 issued by the 4th Respondent in Se.Ma.Tho.E/Varakalai/2018, notifying the election schedule for holding election to the 5th Respondent Society, quash the same in so far as issuing the notification from the initial stage and in so far as not confining the election schedule from the date of polling/voting and in so far as the schedule of dates earlier to the date fixed for polling/voting in the impugned notification and for a consequential direction to hold election to the 5th respondent society from the stage of polling/voting which is schedule to be held on 22.11.2018 as per the impugned notification or by issuing a fresh notification, in a fair and free manner and with sufficient police protection, Award costs.

For Appellant : Mr.R.Thiagarajan, Senior Counsel,
for M/s.R.N.Amarnath

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader (Co. Op.)
for R1, R2, R4 to R7

Mr.Ajay Ghose for R8 and R9

Mr.M.S.Palaniswamy for R3

JUDGMENT

(Judgement of the Court was made by M.SATHYANARAYANAN, J.)

The appellant/third party, after obtaining Leave, has filed this Writ Appeal, challenging the order dated 13.11.2018 made in W.P.No.29844 of 2018.

2. The respondents 8 to 11 had filed the said writ petition praying for a Writ of Certiorarified Mandamus calling for the records relating to the Notification dated 02.11.2018 issued by the fourth respondent in Se.Ma.Tho.E/Varakala, notifying the election schedule for holding election to the fifth respondent society and to quash the same insofar as it relates to the conclusion of election from the initial state and insofar as not confining the election schedule from the date of polling/voting in the impugned notification and for a consequential direction to hold election to the fifth respondent society from the stage of polling/voting, which is scheduled to be held on 22.11.2018, as per the impugned notification or by issuing a fresh notification in a fair and free manner with sufficient police protection.

3. A perusal of the materials would indicate that election to the Board of Directors of the sixth respondent Society was sought to be held during the month of April, 2018 and on account of alleged irregularities in the election process, it was cancelled and a fresh notification, rescheduling the election, came to be issued and as per the same, polling was scheduled to be held on 16.08.2018 and on account of the fact that there was likelihood of law and order problem, it was postponed and challenging the same, the petitioners/respondents 8 to 11 herein filed W.P.No.21350 of 2018 and this Court, vide order dated 31.08.2018 has directed the Election Commissioner to issue a fresh schedule of election within a period of two weeks from the date of receipt of a copy of the order and if there is any law and order problem, the Election Officer was granted liberty to get adequate protection from the police. In pursuant to the same, a fresh notification dated 02.11.2018 has been issued by the District Election Officer / Deputy Registrar (Debt), Chennai-600 008, wherein the election schedule was fixed between 03.11.2018 and 27.11.2018.

4. When the writ petition came up for admission, Mr.M.S.Palaniswamy, learned Standing Counsel for the second respondent/Election Commission, on instructions, made a submission that since election was stopped at the time of polling, this Court may direct the third respondent to resume the election from the stage of polling by issuing fresh election schedule for conducting poll and the learned

Judge, recording the said submission, has passed the said order, directing the third respondent herein to resume election in respect of the fifth respondent society in the said writ petition from the stage of polling and issue an appropriate direction fixing the date for conducting poll, within a period of one week from the date of receipt of the order. The appellant herein, who is a third party, after obtaining Leave of the Court, had filed this Writ appeal, challenging the said order.

5. Mr.R.Thiagarajan, learned Senior Counsel assisted by Mr.R.N.Amarnath, learned counsel appearing for the appellant has drawn the attention of this Court to the communication of the third respondent dated 30.10.2018 in Na.Ka.8184/2018/Ko.tha.5 and would submit that as per the contents of the said communication, election to the sixth respondent society is to be conducted afresh and without making a challenge to the said notification, the notification dated 02.11.2018 issued by the District Election Officer is sought to be challenged and would further urge that in the light of the said communication, fresh election process to be put on place and election cannot be resumed as ordered by the learned Judge and therefore, prays for interference.

6. Mr.L.P.Shanmugasundaram, learned Special Government Pleader accepts notice on behalf of the respondents 1, 2, 4, 5 and 7 and Mr.Ajay Ghose, learned counsel accepts notice on behalf of the respondents 8 and 9 and Mr.M.S.Palaniswamy, learned counsel accepted notice on behalf of the third respondent.

7. The learned Standing Counsel appearing for the third respondent would submit that very many writ petitions have been filed challenging the conduct of elections to various Cooperative Societies and in the light of the same, instructions have been given, based on which a submission was made to the learned Judge to direct to resume election from the stage of polling by issuing fresh notification and further pointed out that as per the communication of the third respondent dated 30.10.2018, fresh election schedule is to be put on place.

8. Mr.Ajay Ghose, learned counsel appearing for the respondents 8 and 9 would submit that in the light of Rule 52(6) of the Tamil Nadu Cooperative Society Rules, instructions given to the learned counsel appearing for the third respondent and the order passed by the learned Judge are perfectly in order.

9. This Court has considered the rival submissions and also perused the materials placed before it.

10. In the light of the submission made by the learned counsel for the third respondent in the writ petition, the learned Judge has directed the third respondent to resume the election process in respect of the sixth respondent society viz., Transport Corporation Employees Cooperative Thrift and Credit Society Limited, Chennai-18, from the stage of polling by issuing appropriate notification within a period of one week from the date of receipt of a copy of the order. The learned Judge did not go into the merits of the submission made, especially relating to the legal issue. In the considered opinion of the Court, in the light of the stand taken by the third respondent, on instructions, this Court is unable to come to the aid of the appellant herein and the remedy open to the third respondent is to approach the learned Judge by filing appropriate application. It is also open to the appellant/third party to do so in accordance with law before the learned Single Judge.

11. In the result, this Writ Appeal is dismissed, confirming the order dated 13.11.2018 made in W.P.No.29844 of 2018, subject to the above observations. No costs. Consequently, connected miscellaneous petitions are dismissed.

Sd/-/-

Assistant Registrar(Ccc)

//True Copy//

Sub Assistant Registrar

jvm

1.The Secretary, Government of Tamil Nadu,
Co-operative, Food and Consumer
Protection Department,
Fort St.George, Chennai-9.

2.The Secretary, Government of Tamil Nadu,
Co-operative, Food and Consumer
Protection Department, Fort St.George, Chennai-9.

3.The Tamil Nadu Cooperative Societies
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Tamil Nadu Co-operative Societies
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Teynampet, Chennai-18.

4.Registrar of Co-operative Societies,
170, N.V.Natarajan Maaligai,
E.V.R.High Road, Kilpauk, Chennai-10.

5.The Deputy Registrar of Co-operative Societies (Credit),
District Election Officer, Kuralagam, Chennai-108.

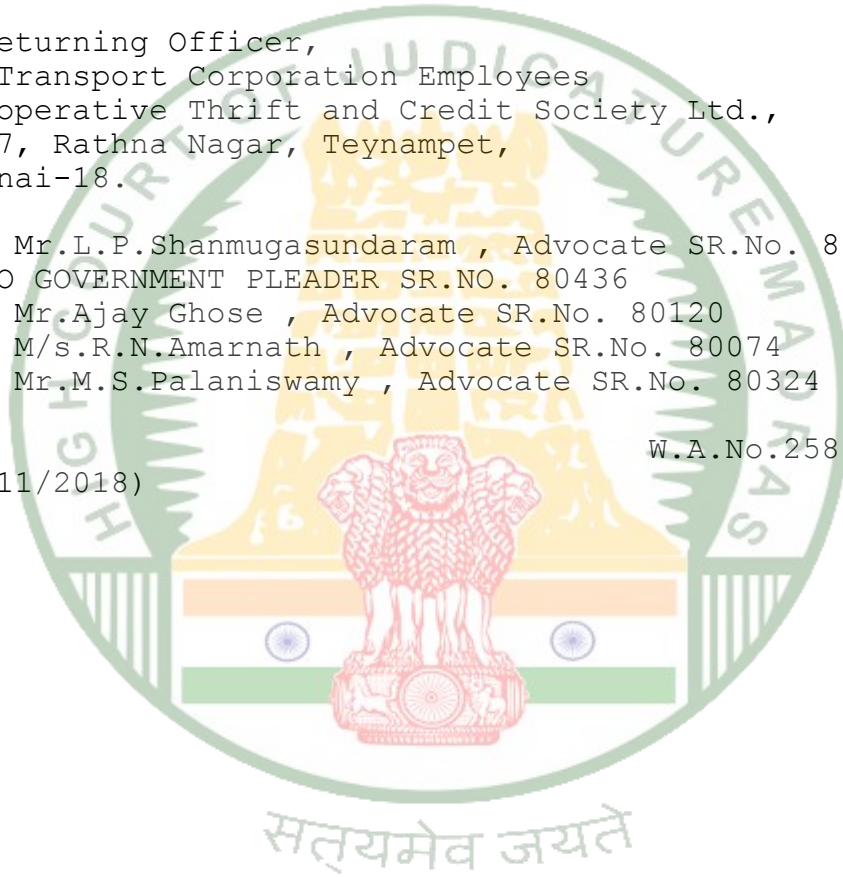
6.The Secretary,
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Rathna Nagar, Teynampet, Chennai-18.

7.The Returning Officer,
for Transport Corporation Employees
Cooperative Thrift and Credit Society Ltd.,
X367, Rathna Nagar, Teynampet,
Chennai-18.

+1cc to Mr.L.P.Shanmugasundaram , Advocate SR.No. 80366
+1 CC TO GOVERNMENT PLEADER SR.NO. 80436
+1cc to Mr.Ajay Ghose , Advocate SR.No. 80120
+1cc to M/s.R.N.Amarnath , Advocate SR.No. 80074
+1cc to Mr.M.S.Palaniswamy , Advocate SR.No. 80324

W.A.No.2587 of 2018

ASK(26/11/2018)



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