

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 20.12.2018

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN  
AND  
THE HONOURABLE MR. JUSTICE P.RAJAMANICKAM

WA.No.2799/2018 & CMP.No.23147/2018

1 Tmt.S.Baby  
2 Tmt.Kamala  
3 Tmt.Thulasiammal  
4 Tmt.M.Marammal  
5 Tmt.K.latha  
6 L.Paunraj  
7 M.Munusamy  
8 M.Purushappan  
9 M.Shanthakumar  
10 M.Kanakaraj

.. Appellants / RR 3 to  
7 & 9 to 13 in WP

Versus

1 Krishnamurthy  
2 Tmt.Lakshmi

.. Respondents / Writ  
Petitioners

3 The Election Officer  
S-836, Royakkottai Primary  
Agricultural Cooperative Credit  
Society, Royakkottai & Post  
Sulagiri Taluk, Krishnagiri District.

4 S-836, Royakkottai Primary  
Agricultural Cooperative Credit  
Society, Royakkottai & Post  
Sulagiri Taluk, Krishnagiri District.

5 K.Subramani

6 The Election Commissioner for  
Cooperative Societies,  
Raja Annamalaipuram  
Chennai-18.

.. Respondents 3  
to 6 / RR 1, 2, 8 & 14 in WP

Prayer:- Writ Appeal filed under Clause 15 of the Letter Patent  
against the order in WP.No.21440/2018 dated 24.10.2018.

Prayer in W.P.No.21440 of 2018:

To call for the records of the 1st respondent dated 7.8.2018 and quash the same and consequently direct the 1st respondent to conduct the election in a free and fair and impartial manner.

For Appellants : Mr.S.Kamadevan  
For RR 1 & 2 : Mr.N.Umapathi

#### JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J.,]

By consent, the writ appeal is taken up for final disposal and is disposed of by this judgment. Mr.N.Umapathi, learned counsel appears on behalf of the respondents 1 and 2.

2 The respondents 3 to 7 and 9 to 13 in the writ petition in WP.No.21440/2018 are the appellants herein.

3 The respondents 1 and 2 in the writ appeal had filed WP.No.21440/2018 praying for issuance of a writ of certiorarified mandamus calling for the records of the 3<sup>rd</sup> respondent dated 07.08.2018 and to quash the same with a consequential direction, directing the said official to conduct the election in a free, fair and impartial manner.

4 The writ petition, after contest, came to be allowed on 24.10.2018 with a consequential direction, directing the 14<sup>th</sup> respondent in the writ petition to issue a fresh election schedule for the election to the 2<sup>nd</sup> respondent-Society and aggrieved by the same, the respondents 3 to 7 and 9 to 13 had filed this writ appeal.

5 The 3<sup>rd</sup> respondent - Election Officer, was to conduct the election to the Board of Directors of 5-836 Royakkottai Primary Agricultural Cooperative Credit Society, Royakkottai, Sulagiri Taluk, Krishnagiri District and also announced the election schedule. In response to the Election Notification, nominations were received on 30.04.2018 from 41 Members including the writ petitioners and the Election Officer has scrutinised the nominations and 28 nominations were rejected for various reasons leaving 23 valid nominations and the list of valid nominations was published on 02.05.2018 at 5.00 p.m. The date was fixed for withdrawal of nomination on 03.05.2018 and 12 nominations were withdrawn, leaving behind 11 eligible contesting candidates. The 3<sup>rd</sup> respondent, accordingly prepared the rough list of candidates as elected unopposed.

6 It is the case of the writ petitioners/respondents 1 and 2 herein that in the Cooperative Society Elections, large scale irregularities have been committed by the officials and the Election Officers are in collusion with the ruling party members, which is against the Cooperative Rules itself and which also enabled the candidates fielded by the ruling party to get elected unopposed and being declared as winners.

7 The writ petitioners also expressed further grievance that in the Release List of 11 candidates said to have been elected unopposed, their names have been found missing and instead, name of two other persons have been inserted as against their names.

8 The Election Officer has filed the counter affidavit dated August 2018 and it is relevant to extract paragraph Nos.3 and 4, which reads as follows:-

''....

3 Now, consequent upon the pronouncement of the judgment by the Hon'ble First Bench of the Hon'ble Court dated 03.08.2018 in WP. [MD] No.7620/2018 etc., batch, as per the revised schedule of election mentioned in paragraph 2 above, I went to the above society on 07.08.2018 at 10.00 A.M. and declared the result of election. At that time, about 9 persons gathered around me and threatened me and taken me to an isolated place and coerced me to remove the following four persons from the list prepared by me on 03.05.2018 and to include the other four persons mentioned below in the said list.

| Names of persons forced to be removed |            |                                 | Names of persons forced to be included |            |                            |
|---------------------------------------|------------|---------------------------------|----------------------------------------|------------|----------------------------|
| Sl.No                                 | Member No. | Name                            | Sl.No.                                 | Member No. | Name                       |
| 2                                     | 4235       | Lakshmi, Edavana Halli          | 2                                      | 6942       | Kamala, Rayakottai         |
| 4                                     | 5043       | K.Munirathinam, Royakottai      | 4                                      | 6942       | M.Marammal, Echanahalli    |
| 7                                     | 1639       | V.Krishnamoorthy, Odayandahalli | 7                                      | 3858       | Paunraj Kanjan, Royakottai |
| 11                                    | 3429       | M.Thippan Kurumpatti            | 11                                     | 7043       | M.Kanagaraaj, Sajjalapatti |

4 It is submitted that after getting the list as above, the list was got typed and they obtained my signature forcibly. I submit that

the above things were done by coercion and intimidation and I have done everything and affixed my signature in the above list, out of fear for my life and I have not done anything willingly. I have reported all the above things orally to the Deputy Registrar and the Joint Registrar. However, I have not given any written report either to the Deputy Registrar or to the Joint Registrar or to any out of fear that I will be taken to task. It is because of fear for my life, I humbly submit that I am at the verge of my retirement and I am having only 8 months left for my retirement. I humbly submit that I have done all the above things out of fear for life and coercion and I have not done anything with my full heart and conscience. I was under undue threat by certain member and these things were not done with my conscience. I submit that the results of election declared on 07.08.2018 declaring 11 persons elected unopposed is wrong and the same is not sustainable and valid in law.'

9 The learned Judge has taken note of the Sworn Affidavit of the Election Officer/3<sup>rd</sup> respondent and arrived at a finding that the impugned election declaration dated 07.08.2018 issued by the said official was vitiated by fraud and that the elected candidates have not been elected in accordance with law and citing the said reason, has set aside the impugned election declaration published on 07.08.2018 with a consequential direction, directing the 14<sup>th</sup> respondent in the writ petition to issue a fresh election schedule for election to the said Society.

10 Mr.S.Kamadevan, learned counsel for the appellants / respondents 3 to 7 and 9 to 13 would submit that assuming without admitting that the contents of the Election Officer dated August 2018, are true and correct one, admittedly, he did not name anybody and nothing has been stated in the said affidavit as to whether he has lodged a compliant as to the criminal intimidation and the other illegal act perpetrated by the alleged unknown persons and would further point out that the learned Judge ought to have ignored the said affidavit and sustained the election results.

11 Per contra, Mr.N.Umapathi, learned counsel appearing for the respondents 1 and 2 / writ petitioners would submit that the contents of the Sworn Affidavit filed by the Election Officer, cannot be doubted and the learned Judge has rightly taken note of the same and set aside the election with a further direction to publish a fresh election schedule and if the

appellants are sure of their success, they can participate in the election process and hence, prays for dismissal of the writ appeal.

12 This Court paid its anxious consideration and best attention to the rival submissions and also perused the materials placed before it.

13 A perusal of the affidavit of the Election Officer dated August 2018, face a grim, grave and sorry picture and the manner in which, the election process is going on in respect of elections for the Cooperative Societies. It is the categorical stand of the Election Officer that he was criminally intimidated and forcefully made to affix his signature in the above list and out of fear for his life, he had done the same. It is also the stand of the Enquiry Officer that he was aged about 57 years and he was on the verge of retirement and what are all the things he had done was out of fear for his life and coercion and he has not done so with his full heart and conscience. This Court is unable to doubt the contents of the sworn affidavit filed by the Election Officer. Even in the Memorandum of Grounds of appeal, there is no serious dispute as to the contents of the said affidavit.

14 The purity of the election process would be based on the fair and proper manner in which the election process is conducted and the learned Judge has rightly taken note of the fact that the results of the said election was unfairly declared by intimidating the said Election Officer and had rightly disposed of the writ petition with a consequential direction. In the light of the apprehension expressed by the Election Officer, some other Officer may be appointed and the said official is expected to conduct the election in a free, fair and transparent manner. This Court, on an independent application of mind to the entire materials, is of the view that there is no error apparent on the face of the record or infirmity in the reasons assigned by the learned Judge in disposing of the writ petition and finds no merits in the writ appeal.

15 In the result, the writ appeal is dismissed, confirming the order dated 24.10.2018 made in WP.No.21440/2018. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

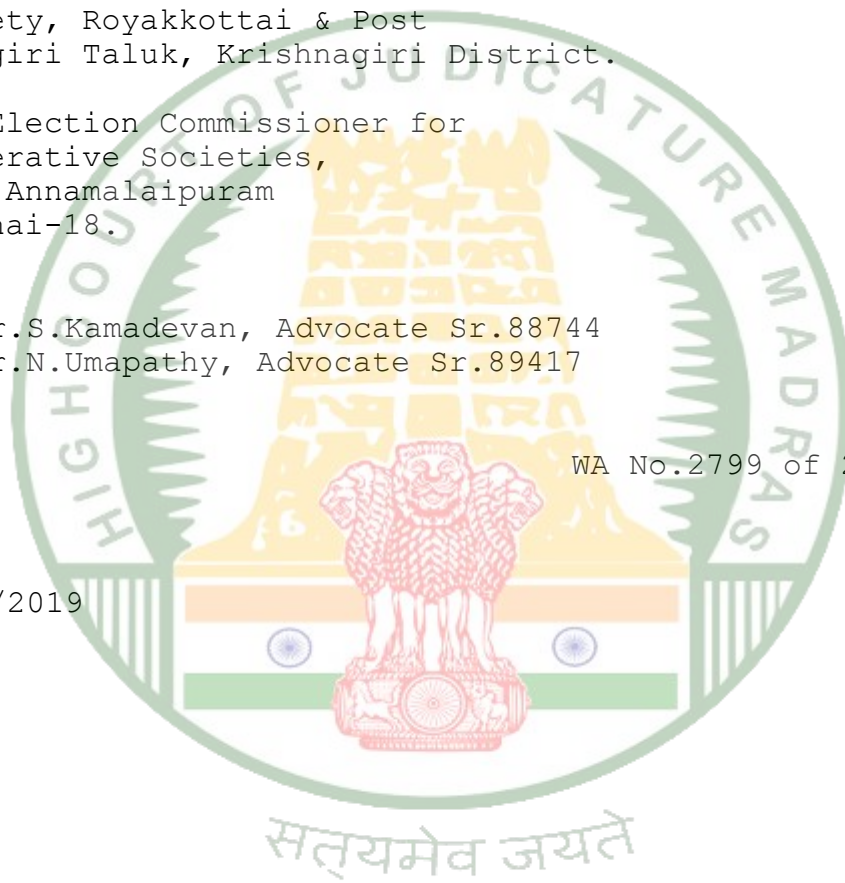
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Chennai-18.

+1cc to Mr.S.Kamadevan, Advocate Sr.88744

+1cc to Mr.N.Umapathy, Advocate Sr.89417

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