



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2018

CORAM:

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THE HONOURABLE MS.INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HONOURABLE MRS.JUSTICE J.NISHA BANU

W.P.[MD].No.7405 of 2018
and
W.M.P(MD).Nos.7083 and 7084 of 2018

A.Arumugam : Petitioner

Vs.

- 1.The District Election Officer for Co-operative Societies,
Madurai District, Madurai.
 - 2.The Co-operative Sub-Registrar/Election Voters List Officer,
A-619, Madurai Postman Co-operative Credit
and Thrift Societies Ltd., Madurai.
 - 3.Mr.Palanisamy,
Secretary,
Therku Theru Primary Agricultural Co-operative Credit Society,
Electoral Officer for A-619, Madurai Postman,
Co-operative Credit and Thrift Societies Ltd.,
Madurai.
 - 4.A-619 Madurai Postman,
Co-operative Credit and Thrift Societies Ltd.,
Rep by its President,
9/5, North Tower Street,
Madurai - 1.
- : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari to call for the records of the second respondent relating to the impugned voters list dated Nil and that of the impugned rejection dated 27.03.2018 and quash the same.

For Petitioner : Mr.D.Srinivasaragavan

For Respondents : Mr.K.Chellapandian,
Additional Advocate General
Assisted by Mr.A.K.Baskara Pandian
Special Government Pleader



O R D E R

[Order of the Court was made by The Hon'ble Chief Justice]

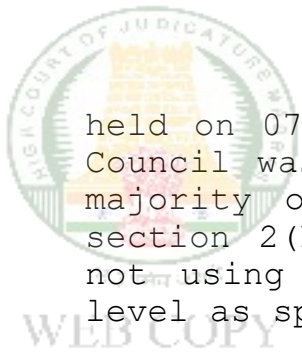
This Writ Petition, by way of Public Interest Litigation, has been filed by the petitioner, challenging the voters list published by the respondents for the election to A-619 - Madurai Postman Co-operative Credit and Thrift Society Limited [hereinafter referred to as 'Co-operative Society'] and also the order dated 27th March 2018, rejecting the objection of the petitioner to the publication of the voters list.

2. The Co-operative Society is for employees of the Postal Department. Apart from the Postmen working in the Postal Department, persons working in the Gramin Dak Sevak are also admitted as members of the Co-operative Society. The petitioner is a Postman in the Madurai Head Post Office. This is not in dispute.

3. It appears that the elections to the Co-operative Society are scheduled to be held on 7th April 2018. The election schedule has been announced. As per the schedule, the list of members of the Co-operative Societies were to be furnished to the Election Voters List Officer by the Co-operative Society within 22nd March 2018. On 24th March 2018, the Election Voters List Officer was to publish the list of voters. Objections and claims to the voters list, if any, were to be submitted on 26th March 2018 between 10.00 a.m., and 05.00 p.m. On 27th March 2018, the Election Voters List Officer was to decide objections and claims and then, the final voters list was to be published on 28th March 2018. As per the schedule, nominations were to be filed between 10.00 a.m., and 05.00 p.m., on 31st March 2018. Nominations were to be scrutinised between 11.00 a.m., and 04.00 p.m., on 2nd April 2018. Valid nominations were to be published on 2nd April 2018 at 05.00 p.m. Withdrawal of nominations was to be permitted between 10.00 a.m., and 05.00 p.m., on 3rd April 2018. The final list of contesting candidates was to be published at 05.00 p.m., on 3rd April 2018 and elections were to be held from 08.00 a.m., to 05.00 p.m., on 7th April 2018. Counting of votes was to commence on 9th April 2018 from 10.00 a.m., onwards after which, results were to be declared by the Election Officer.

4. According to the petitioner, the petitioner and several other members, who are entitled to cast their votes, have wrongfully been excluded from the voters list and objection of the petitioner on his own behalf and on behalf of others has been rejected, upon reference to sub-section 2(h) of Section 23 of the Tamil Nadu Co-operative Societies Act, 1983, [hereinafter referred to as the "Co-operative Societies Act"], which reads that "a member of a registered society shall cease to be a member of the society, if he - has not used the services of the society upto the minimum level, as specified in its by-laws".

5. On behalf of the Co-operative Society, it is submitted that a meeting of the Executive Council of the Co-operative Society was



held on 07th October 2016 and a meeting of the General Body of the Council was held on 19th October 2016. A decision was taken by the majority of the members to disqualify the petitioner under sub-section 2(h) of Section 23 of the Co-operative Societies Act, for not using the services of Co-operative Society upto the minimum level as specified in its by-laws.

6. Sub-section 4 of Section 23 of the Co-operative Societies Act provides that any question as to whether an applicant for admission as a member of a society is or a member of a registered society was, or has become, subject to any of the disqualifications mentioned in Section 23 of the Co-operative Societies Act is to be decided by the Registrar. Reference may, in this context, also be made to Rule 35 of the Tamil Nadu Co-operative Societies Rules, 1988, [hereinafter referred to as the "Co-operative Societies Rules"], which provides as follows:-

"35. Removal of a member of a society.- (1) The Registrar may of his own motion or on application, by an order in writing, direct the removal of a member of a society from such membership, if in the opinion of the Registrar, such member was, or has become, subject to any of the disqualification mentioned in Section 23:

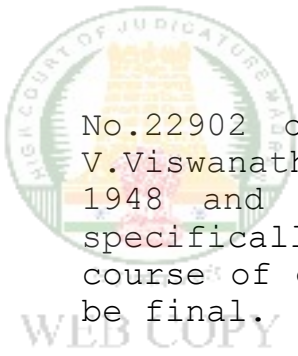
Provided that no member of a society shall be removed from such membership under this sub-rule without such member being given an opportunity of making his representations.

(2) Upon the issue of an order under sub-rule (1), the member concerned shall cease to be a member of the society".

7. Section 24(4) of the Co-operative Societies Act read with Rule 35 of the Co-operative Societies Rules, makes it amply clear that the ultimate decision with regard to the membership is to be taken by the Registrar and no member of a society is to be removed, even on the ground of disqualification, without being given an opportunity of representation. Admittedly, in the instant case, no decision has been taken by the Registrar of Co-operative Societies.

8. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents/Co-operative Society, has cited the Constitution Bench Judgment of the Supreme Court in N.P.Ponnuswami Vs. Returning Officer, reported in AIR 1952 SC 64. The issue in the aforesaid case centered around the meaning of the words, "No election shall be called in question, except by an election petition". The Supreme Court held that the High Court would have no jurisdiction under Article 226 of the Constitution of India to entertain petitions regarding improper rejection of nomination papers.

9. The learned Additional Advocate General next relied on the Judgment and Order in C.A.No.1629 of 2016, arising out of S.L.P.(C).



No.22902 of 2011, dated 22nd February 2016, [Shaji K.Joseph Vs. V.Viswanath and others], which was rendered under the Dentists Act, 1948 and the Dental Council [Election] Regulation, 1952, which specifically provided for reference of any dispute arising in the course of election to the Central Government, whose decision was to be final.

10. The order dated 16th July 2013 of a Division Bench of this Court, comprising Hon'ble Mrs.Justice R.Banumathi and Hon'ble Mr.Justice T.S.Sivagnanam, dismissing the Writ Petition, was rendered after the election was over. The Division Bench held that it is well settled that after the election is over and the results are declared, the parties cannot take recourse to the jurisdiction of this Court under Article 226 of the Constitution of India, challenging the election process. The Judgment is squarely distinguishable on facts.

11. A Judgment is a precedent for the issue of law, which is raised and decided. Words and sentences in a Judgment are to be construed in the context in which they have been pronounced. They cannot be read in isolation. It is equally well settled that a Judgment of Court cannot be read and interpreted in the manner that a statutory provision is read and interpreted. None of the Judgments cited on behalf of the respondents have any manner of application in the facts and circumstances of the case.

12. It is not in dispute that no decision has been taken by the Registrar of Co-operative Societies with regard to the membership of the petitioner and other similarly circumstanced persons. We are not, however, inclined to interfere with the elections. The elections may continue, but, those members, who are deemed to have been disqualified not in a meeting of Executive Council and General Body, shall be allowed to vote in the election, if no decision has been taken by the Registrar of Co-operative Societies with regard to their disqualification. Needless to mention that they shall be allowed to vote on establishing their identity and proof of membership.

13. The Writ Petition is disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

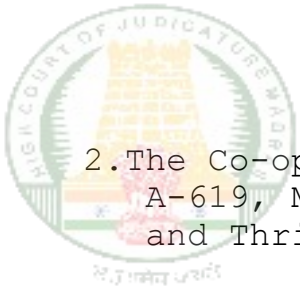
Sd/-
Assistant Registrar (AS)

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Sub Assistant Registrar

To

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Madurai District, Madurai.



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4.A-619 Madurai Postman,
Co-operative Credit and Thrift Societies Ltd.,
Rep by its President,
9/5, North Tower Street,
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+1cc to M/S.D.Srinivasaragavan, Advocate SR.No. 59912

+1cc to Special Government Pleader, SR.No. 60222

ORDER MADE IN
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JM/SV MMS/SAR 4/06.04.2018/5P/7C