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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 15.03.2018
CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.1029 of 2014
and
M.P(MD)Nos.1 & 2 of 2014

K.Kannan ... Appellant/Writ Petitioner

Vs.

1.The Deputy Registrar of Co-operative Societies,
Sivaganga Region,
Sivaganga Post & District.

2.A.Alagu Ramachandran ... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order, dated 06.08.2014 made in W.P(MD)No.19246 of 2013, on the file of this Court.

Prayer in WP(MD). 19246/ 2013 :-

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records in pursuant to the impugned Election Dispute Petition No.2/2013 on the file of the 1st Respondent and Quash the same as illegal and contrary to Tamil Nadu Co-operative Societies Act and Rules.

For Appellant	: Mr.M.Saravana Kumar
For R - 1	: Mr.A.Muthukaruppan, Additional Government Pleader.
For R - 2	: No appearance

JUDGMENT

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(Judgment of the Court was delivered by
M.SATHYANARAYANAN, J.)

The appellant is the writ petitioner and he made a challenge to the filing of the impugned Election Dispute Petition No.2 of 2013 by the second respondent on the file of the first respondent, by filing W.P(MD)No.19246 of 2013 and vide impugned order, dated 06.08.2014, the Writ Petition was dismissed. Challenging the legality of the same, the appellant/writ petitioner has filed the present Writ Appeal.

2.The appellant/writ petitioner has contested the Election to elect Board of Directors of Q145 Primary Agricultural Co-operative Credit Society, Priamanur Village, Thiruppuvanam Taluk, Sivagangai District and he along with other contestants were elected unopposed. The second respondent herein filed W.P(MD)No.5853 of 2013 and it was taken up along with W.P(MD)No.5921 of 2013 and by a common Judgment, dated 10.04.2013, a direction was given to the first respondent herein to consider and dispose of the representations and accordingly, the first respondent has considered the same and rejected the representations on 15.05.2013. The second respondent has also filed one more Election Dispute Petition on 02.08.2013 alleging that the appellant/writ petitioner is a defaulter in respect of a housing loan obtained from another Co-operative Society and it was opposed by the appellant/writ petitioner on the ground that it is barred by limitation in terms of Section 90(9)(a)(iii) of the Tamil Nadu Co-operative Societies Act, 1983, for the reason that the Election Petition is to be presented within two months from the date of election and however, the Election Petition came to be entertained on 02.08.2013.

3.The learned Single Judge found that the first respondent, while disposing of the representation of the second respondent, in Na.Ka.No.1067/2013 dated 15.05.2013, granted liberty to file a Election Dispute Petition under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983, and as such, the present Election Petition cannot be held to be barred by limitation and cited the said reasons has dismissed the Writ Petition and hence, the present Writ Appeal.

4.Mr.M.Saravanakumar, learned counsel appearing for the petitioner, has invited the attention of this Court to the proceedings of the first respondent, dated 15.05.2013 made in Na.Ka.No.1067/2013 Sa.Pa and would submit that while rejecting the representation submitted by the second respondent, liberty was granted to him to raise an Election Dispute by filing an Election Petition and as such, the Election Dispute Petition No.2

of 2013 cannot be considered as a continuation of the earlier representation and though the election results were announced on 05.04.2013, the Election Dispute Petition came to be presented on 02.08.2013 and ought to have been presented on or before 04.06.2013 and admittedly, there was a delay in presenting the petition and without any separate petition praying for condonation of delay, the first respondent ought not to have entertained the Election Dispute Petition and prays for interference.

5.Mr.A.Muthukaruppan, learned Additional Government Pleader, appearing for the first respondent would submit that the first respondent, taking into over all facts and circumstances, has concluded that the Election Dispute Petition has been filed within the time and accordingly, entertained the petition and in the light of the interim orders in operation, no progress is being made in this Writ Petition.

6.Though the second respondent has been served and he is represented by his counsel, there is no representation on his behalf.

7.The first respondent has taken into consideration the representations, dated 08.04.2013 and 22.04.2013 as well as the orders passed by this Court, dated 05.04.2013 in W.P(MD)Nos.5853 and 5921 of 2013, has rejected the representations submitted by the second respondent and however, concluded that he is at liberty to file an Election Dispute Petition.

8.As per Section 90(9) (a) (iii) of the Tamil Nadu Co-operative Societies Act, 1983, "when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election" and sub-Section (b) of the said Act reads that "notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired".

9.Similar issue arose for consideration before the Honourable Supreme Court of India in *N.Balaji Vs. Virendra Singh and others* reported in 2004 (8) SCC 312 and it is relevant to extract paragraph Nos.9 to 11 hereunder:-

"9.Before we consider the respective submissions so made it would be appropriate to re-produce the relevant portion of Section 75(1)(d) and sub-Sections (3) of Section 75 of the Act, which reads as under :-



subject to the specific provisions made in this Act, the period of limitation in the case of a dispute referred to the Central Registrar shall,-

(a)-(c)

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(d) When the dispute is in respect of an election of an officer of a multi-State Co-operative society, be one month from the date of the declaration of the result of the election.

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(3) Notwithstanding anything contained in sub-Sections (1) and (2), the Central Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies the Central Registrar that he had sufficient cause for not referring the dispute within such period".

Relevant provision of Section 74(1) read with Section 74(1)(c) of the Act of 1984 provides that notwithstanding anything contained in any other law for the time being in force, if any dispute arises amongst the members in connection with the election of any officer of the multi-State cooperative society (officer, includes the member of the Board by virtue of definition of Officer in Section 3(o) of the old Act), it shall be referred to the Central Registrar for decision and no Court has jurisdiction to entertain any such or other proceedings in respect of such dispute. Thus, whenever there is a dispute among the members in connection with the election of a member of the Board, it shall be referred to Central Registrar for decision. Clause (d) of Section 75(1) postulates that the election dispute of the member of the Board of a multi-State Co-operative Society is to be raised within one month from the date of declaration of the result of the election. Sub-Section (3) of Section 75 authorizes the Central Registrar for the sufficient cause to admit a dispute after the expiry of the period of limitation if the Central Registrar is satisfied of the sufficiency of the cause of raising the dispute beyond the period of limitation. In the present case it is apparent that the dispute has been raised prior to conduct and declaration of the result of election by the appellant by making representation on 23.07.2002 and 07.08.2002 and on other dates regarding validity of the electoral roll for the conduct of the election and on 21.08.2002 after the election had been held. The appellant approached the Delhi High Court by way of writ petition also. A direction was issued by the Delhi High Court by its order, dated 28.02.2003 in specific terms that the



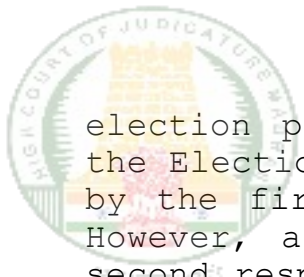
representation of the petitioner raising dispute or any other petition containing the dispute regarding setting aside election of the Board of Directors held on 17th August 2002 be referred to the Central Registrar for adjudication under the Act of 1984. The direction in unequivocal terms directs consideration of all the representations or any other petition containing the dispute regarding the election to be referred to the Central Registrar for adjudication. The dispute or the representation made by the appellant regarding the electoral roll would also be a dispute regarding the election held on 17th August 2002 apart from the dispute to the election raised by the petitioner after the election by his representation dated 21.08.2002 sent to the Minister concerned. The High Court of Delhi directed the Central Registrar to decide the said dispute within a period of four months. Direction of the High Court clearly contemplates decision on all the petitions raising disputes to the election held on 17th August 2002 within a period of four months. The Court has not left open the question of limitation to be considered while giving directions to decide the dispute within four months. Directions issued by the Court do not in any way specify that the question of limitation will be decided by the Central Registrar. It was only the submission made by counsel for the respondent which was noted by the Court and in spite of the submission being noted on the question of limitation, the said objection was not left open for consideration by the Central Registrar. What was filed on 30.04.2003 before the Central Registrar was only a consolidated dispute petition incorporating all the objections to the election raised by him from time to time. The petition dated 30.04.2003 has to be read in continuation of the several representations and objection petitions filed earlier, from time to time and cannot be considered to be a separate and independent petition. The petition dated 30.04.2003 is a consolidated version of various grounds raising dispute to election in required format so as to facilitate the Tribunal to adjudicate and decide all the questions raised after giving adequate opportunity of hearing to all parties. An election dispute raised before or referred to the Central Registrar does not attract application of any rigorous rules of pleadings in a the civil suit under the Civil Procedure Code or the election petition filed under the provisions of the Representation of the People Act, 1951.



10. In the matter of applicability of the procedural rigours the Constitution Bench of this Court in *Sardar Amarjit Singh Kalra and Others Vs. Pramod Gupta and Others* reported in (2003) 3 SCC 272, has observed that laws of procedure are meant to regulate effectively, assist and aid the object of substantial and real justice and not to foreclose even an adjudication on the merits of substantial rights of citizen under personal, property and other laws. With the march and progress of law, the new horizons explored and modalities discerned and the fact that the procedural laws must be liberally construed to really serve as handmaid, make it workable and advance the ends of justice, technical objections which tend to be stumbling blocks to defeat and deny substantial and effective justice should be strictly viewed for being discouraged, except where the mandate of law inevitably necessitates it. It follows from the decision by the Constitution Bench that the procedure would not be used to discourage the substantial and effective justice but would be so construed as to advance the cause of justice. The consolidated petition filed on 30th April, 2003 filed by the petitioner would not be taken to be a new petition presented before the Central Registrar to declare it to be barred by limitation on the basis of its date of presentation; it shall have to be read in continuation of the earlier representations which were referred to the Central Registrar for adjudication under the orders of the Delhi High Court.

11. The matter can be looked from the other angle as well. Sub-Section (3) of Section 75 of the 1984 Act authorizes the Central Registrar to condone the delay in referring the dispute if the Central Registrar is satisfied that there was a sufficient cause for not referring the dispute within the period of limitation. The requirement of sub-Section (3) is the satisfaction of the Central Registrar for the sufficient cause, and is not dependent on moving of an application for condonation of delay by the petitioner. Even without there being any application for condonation of delay, if the facts which emerge in the case are sufficient to satisfy the Central Registrar of the reasonable cause for not referring the dispute within the period of limitation, the Central Registrar can condone the delay in exercise of the powers conferred on him under sub-Section (3) of Section 75 of the Act".

10. In the considered opinion of this Court, no separate application is required for condonation of delay, if the main



election petition contains reasons for non-filing/non-presentation the Election Dispute Petition on time and it can be taken cognizance by the first respondent for the purpose of condonation of delay. However, a perusal of the Election Dispute Petition filed by the second respondent on 02.08.2013 would disclose that no reasons have been given as to the belated filing of the Election Dispute Petition. In the light of the observation made by the Honourable Supreme Court of India in the above cited decision in paragraph No.11, this Court is of the view that the Election Dispute Petition filed by the second respondent, is barred by time.

11.The Division Bench of this Court in the decision in *Saravanan Vs. The Secretary to Government and others* reported in 2014 (1) CTC 143 in paragraph No.42 observed as follows:-

"42.In the light of the above referred decision, the consequential prayer sought for in the writ petitions cannot be maintained. Furthermore, if the petitioners are aggrieved there is an effective alternate remedy by raising a dispute under Section 90(1) of the Act and the proviso provides that no dispute relating to, or in connection with any election shall be referred under sub-Section (1) of Section 90, till the date of declaration of the result of such election. Under sub-Section (9) (a) (iii) of Section 90, when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election. Under sub-Clause (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfied that he had sufficient cause for not referring the dispute within such period."

12.In the light of the same, this Writ Appeal is partly-allowed and the impugned order, dated 06.08.2014 passed by this Court in W.P(MD)No.19246 of 2013 is set aside and it is open to the second respondent to file an application/condonation of delay in filing the Election Dispute Petition, by giving out reasons and it should be done within a period of two weeks from the date of receipt of a copy of this order and the first respondent, upon receipt of the said application, may entertain the same, if the papers are otherwise in order and after putting the writ petitioner herein on notice and thereafter, decide the said application on merits and in accordance with law within a further period of two weeks thereafter and depending upon the result of the same, the first respondent may take a further decision in the main Election Dispute Petition No.2 of 2013. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CSII)



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The Deputy Registrar of Co-operative Societies,
Sivaganga Region,
Sivaganga Post & District.

+One cc to Mr.M.Saravana Kumar, Advocate, SR.No.55455

+One cc to The Special Government Pleader, SR>No.55927

ps

RL/4C/8P/CVC/SAR1/5/4/2018

W.A(MD)No.1029 of 2014

15.03.2018