



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.09.2018

CORAM:

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)No.19116 of 2018

and

W.M.P (MD) Nos.16971, 16972 and 18000 of 2018

AND

W.P(MD)No.19875 of 2018

and

W.M.P (MD) Nos.17663 to 17665 and 18026 of 2018

AND

W.P(MD)No.19881 of 2018

and

W.M.P (MD) Nos.17668 to 17670 and 18025 of 2018

W.P(MD)No.19116 of 2018:

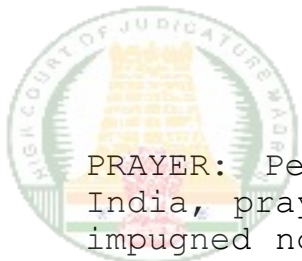
C.Dhanabal

... Petitioner

Vs.

- 1.The Central Registrar of Co-operative Societies,
Department of Co-operation,
Ministry of Food, Agriculture, CD and Co-operation,
Room No.115, Krishi Bhavan,
New Delhi - 110 001.
- 2.The Registrar of Multi-State Co-operative Societies,
45/B, Hasanpur,
LP Extension,
Delhi - 110 092.
- 3.Southern Railway Employees' Co-operative Credit Society Ltd.,
represented by its
Managing Director,
Dindigul Road,
Trichy - 620 001.
- 4.Padmashri Mr.V.Baskaran (Returning Officer),
Former Olympian & Retired,
Sr. Personnel Officer/Southern Railway,
No.T 76 A, 29th Cross Street,
Kalakshetra Colony,
Besant Nagar,
Chennai - 600 090.

... Respondents



PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Declaration, declaring the impugned notice dated 20.08.2018 calling for election for the Board of Directors and RGB members for the third respondent Society, as illegal and consequently, direct the respondents 1 to 3 to issue a fresh notice for the said election strictly in accordance with the by-laws of the third respondent Society, Multi-State Co-operative Societies Act, 2002 and the Rules framed thereunder and also by a retired High Court Judge as Returning Officer for conducting election to the third respondent Society to ensure the election is conducted in free and fair manner.

For Petitioner : Mr.Veera.Kathiravan
Senior Counsel for
M/s.Veera Associates

For Respondents : Mr.D.Saravanan for R.1
No appearance for R.2
Mr.B.Saravanan for R.3
Mr.Isaac Mohanlal
Senior Counsel for
M/s.Isaac Chambers for R.4

* * * * *

W.P(MD)No.19875 of 2018:

S.Sankar ... Petitioner

Vs.

- 1.The Central Registrar of Co-operative Societies,
Department of Co-operation,
Ministry of Food, Agriculture, CD and Co-operation,
Room No.115, Krishi Bhavan,
New Delhi - 110 001.
- 2.The Registrar of Multi-State Co-operative Societies,
45/B, Hasanpur,
LP Extension,
Delhi - 110 092.
- 3.Southern Railway Employees' Co-operative Credit Society Ltd.,
represented by its
Managing Director,
Dindigul Road,
Trichy - 620 001.
- 4.Padmashri Mr.V.Baskaran (Returning Officer),
Former Olympian & Retired,
<https://hcservices.ecourts.gov.in/hcservices/>
Sr. Personnel Officer/Southern Railway,
No.T 76 A, 29th Cross Street,



Kalakshetra Colony,
Besant Nagar,
Chennai - 600 090.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Declaration, declaring the impugned notice dated 20.08.2018 calling for election for the Board of Directors and RGB members for the third respondent Society, as illegal and consequently, direct the respondents 1 to 3 to issue a fresh notice for the said election strictly in accordance with the by-laws of the third respondent Society, Multi-State Co-operative Societies Act, 2002 and the Rules framed thereunder and also by a retired High Court Judge as Returning Officer for conducting election to the third respondent Society to ensure the election is conducted in free and fair manner.

For Petitioner : Mr.Veera.Kathiravan
Senior Counsel for
M/s.Veera Associates

For Respondents : Mr.R.Senthilkumar
for R.1 & R.2
Mr.C.K.Chandrasekaran for R.3
Mr.Isaac Mohanlal
Senior Counsel for
M/s.Isaac Chambers for R.4

* * * * *

W.P(MD)No.19881 of 2018:

D.Joseph Manoharan

... Petitioner

Vs.

- 1.The Central Registrar of Co-operative Societies,
Department of Co-operation,
Ministry of Food, Agriculture, CD and Co-operation,
Room No.115, Krishi Bhavan,
New Delhi - 110 001.
- 2.The Registrar of Multi-State Co-operative Societies,
45/B, Hasanpur,
LP Extension,
Delhi - 110 092.
- 3.Southern Railway Employees' Co-operative Credit Society Ltd.,
represented by its
Managing Director,
Dindigul Road,
Trichy - 620 001.



4. Padmashri Mr.V.Baskaran (Returning Officer),
Former Olympian & Retired,
Sr. Personnel Officer/Southern Railway,
No.T 76 A, 29th Cross Street,
Kalakshetra Colony,
Besant Nagar,
Chennai - 600 090.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a writ of Certiorarified Mandamus calling for the records relating to the impugned election notice dated 20.08.2018, issued by the fourth respondent on behalf of the third respondent Society and quash the same as illegal and consequently, direct the respondents 1 to 3 to issue a fresh notice for the said election strictly in accordance with the by-laws of the third respondent Society, Multi-State Co-operative Societies Act, 2002 and the Rules framed thereunder and also by appointing a retired High Court Judge as Returning Officer for conducting election to the third respondent Society to ensure that the election is conducted in free and fair manner.

For Petitioner : Mr.VR.Shanmuganathan

For Respondents : No appearance for R.1 & R.2
Mr.M.Ajmal Khan
Senior Counsel for
M/s.Ajmal Associates for R.3
Mr.Isaac Mohanlal
Senior Counsel for
M/s.Isaac Chambers for R.4

* * * *

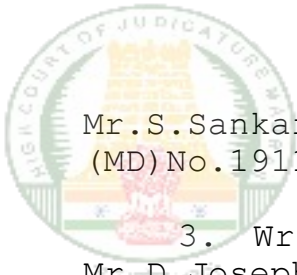
COMMON ORDER

(Order of the Court was made by T.RAJA,J.)

Writ Petition(MD)No.19116 of 2018 has been filed by one Mr.C.Dhanabal, seeking a writ of Declaration, declaring the impugned notice dated 20.08.2018 calling for election for the Board of Directors and RGB members for the third respondent Society, as illegal and consequently, direct the respondents 1 to 3 to issue a fresh notice for the said election strictly in accordance with the bye-laws of the third respondent Society, Multi-State Co-operative Societies Act, 2002 and the Rules framed thereunder and also by a retired High Court Judge as Returning Officer for conducting election to the third respondent Society to ensure the election is conducted in free and fair manner.

<https://hcservices.ecourts.gov.in/hcservices/>

2. Writ Petition(MD)No.19875 of 2018 has also been filed by one



Mr.S.Sankar seeking the same relief as sought for in Writ Petition (MD)No.19116 of 2018.

3. Writ Petition(MD)No.19881 of 2018 has been filed by one Mr.D.Joseph Manoharan, seeking a writ of Certiorarified Mandamus to call for the records relating to the impugned election notice dated 20.08.2018, issued by the fourth respondent on behalf of the third respondent Society and quash the same, on the ground that the final voters list is carrying the names of dead persons and without scrutinising the proper names of the voters, the impugned election notice has been issued hurriedly and therefore, the impugned notice is liable to be quashed as it would not pave way for a free and fair election.

4. By consent, these writ petitions are taken up final disposal.

5. Mr.Veera Kathiravan, learned Senior Counsel appearing for the petitioners in Writ Petition(MD)Nos.19116 and 19875 of 2018 and Mr.VR.Shanmuganathan, learned Counsel for the petitioner in Writ Petition(MD)No.19881 of 2018, assailing the impugned election notice dated 20.08.2018, submitted that Padmashri Mr.V.Baskaran - the fourth respondent herein has been appointed as Returning Officer repeatedly by the Board of Directors in spite of the fact that he has been facing a criminal complaint in C.C.No.2298 of 2016 on the file of the XIV Metropolitan Magistrate Court, Egmore, alleging serious complaint against him that he is biased towards the elected Board of Directors who have appointed him as Returning Officer repeatedly.

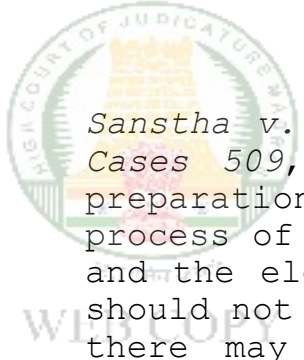
6. Referring to Section 44(2) of the Multi-State Co-operative Societies Act, 2002, Mr.Veera Kathiravan, learned Senior Counsel submitted that as per Section 44(2) of the Act, no member of a board shall be eligible to be elected as the chairperson or president of a Multi-State co-operative society, after he has held the office, as such during two consecutive terms, whether full or part. While this being the legal position, one Mr.N.Kannaiah was repeatedly allowed to file his nomination in Employees Co-operative Credit Society, Chennai and after his election, before he demits his office, again he along with other Board Members, appointed him as Returing Officer. This exercise has been continued and the same has been objected to by the petitioners and others, but surprisingly, no notice is taken. Secondly, the Returning Officer has also given instruction in the notice calling upon the voters to come to the polling station carrying only the share certificate and without even insisting upon the voters to come with any proper identity card issued by the Railway Department. If any voter is permitted to enter into the polling station carrying only the share certificate, that would only pave way for various irregularities and that might vitiate the entire free and fair election. Therefore, if the fourth respondent is replaced with suitable Returning Officer, there will not be any prejudice to anyone.



7. Adopting the same arguments and demonstrating further allegation that the final voters list has been issued containing the names of various dead persons also, Mr.VR.Shanmuganathan, learned Counsel for the petitioner in Writ Petition(MD)No.19881 of 2018, submitted that when the members, namely, G.Santhanam and M.Murugesan died and their death certificates also would clearly indicate that they are no more voters, their names are also shown in the final voters list, which cannot be permitted to take place. Therefore, when the Returning Officer is in-charge of holding a free and fair election, he should carefully and seriously ensure that the voters list is not containing any defects, but, on the other hand, the names of several dead persons are shown and this has not been rectified so far. He further submitted that if a retired Judge of this Court is appointed, no prejudice could be caused and the fourth respondent also can continue with the Retired Judge as an Observer.

8. Objecting to the above prayer, Mr.Isaac Mohanlal, learned Senior Counsel appearing for the fourth respondent - Returning Officer submitted that bald and frivolous allegations made against the fourth respondent are wholly untenable since he has been awarded with Padmashri honour. Referring to the award dated 26.01.2018 passed in Arbitration Case Nos.1 and 2 of 2016 by the Arbitral Tribunal, the learned Senior Counsel submitted that the learned Sole Arbitrator, after going into the similar allegations, has given a finding that the dispute raised in respect of election to Board of Directors of the 2nd respondent Society is barred by limitation under Section 85(1)(c) of MSCS Act, 2002. The election to Board of Directors is validly held in accordance with the procedure laid down under the Act, Rules and Bye-laws and no ground is made out by both the Claimants to declare the same as illegal and null and void. Therefore, the appointment of Padmashri Mr.V.Baskaran as Returning Officer cannot be found fault with. Yet another finding given by the learned Sole Arbitrator shows that the documents produced on the side of the 2nd Respondent Society above referred to would show that the then existing Board of Directors, as per 20(1)(a), conducted meeting and decided to conduct RGB meeting and election to successor board and its Officer bearers between 01.02.2013 and 03.02.2013 at WUS Centre, Chetpet and it has been clearly held that the Returning Officer complied with the formalities with regard to communication and display of election meeting notice and election programme. When there is a clear finding in favour of the Returning Officer and no contra finding has been given by the learned Sole Arbitrator, it is too late on the part of the petitioners to complain against the appointment of the fourth respondent as the Returning Officer.

9. Mr.M.Ajmal Khan, learned Senior Counsel appearing for the third respondent Society, urging this Court to dismiss the writ petitions as they have been belatedly filed after the election process are almost going to be completed, further, he taking a support from the decision of the Honourable Apex Court in *Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak*



Sanstha v. State of Maharashtra reported in (2001) 8 Supreme Court Cases 509, wherein it is held that in view of the finding that preparation of the electoral roll being an intermediate stage in the process of election of the Managing Committee of a specified society and the election process having been set in motion, the High Court should not stay the continuation of the election process even though there may be some alleged illegality or breach of rules while preparing the electoral roll, prayed for the dismissal of the writ petitions.

10. Referring to the impugned election notice, the learned Senior Counsel appearing for the third respondent Society submitted that when various dates have been specified for filing of the nominations on 06.09.2018; scrutiny of nomination forms on 07.09.2018 and 08.09.2018; withdrawal of nominations on 12.09.2018 and the elections are to be held between 01.10.2018 and 09.10.2018, the present writ petitions filed after the half of the election process was over, clearly shows that the petitioners are not interested in holding a free and fair election. Therefore, without interfering with the election process, all the writ petitions are liable to be dismissed.

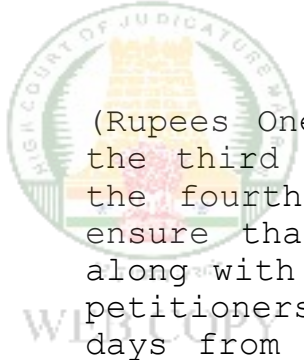
11. Further, Mr.C.K.Chandrasekaran, learned Counsel for the third respondent in Writ Petition(MD)No.19875 of 2018, replying to the arguments advanced by the learned Senior Counsel as well as the learned Counsel for petitioners in all the writ petitions, submitted that the condition mentioned in the impugned election notice calling upon the voters to enter into the polling station with share certificate cannot be found fault with. Even as per Paragraph 5(g) of the Schedule to the Multi-State Co-operative Societies Rules, 2002, every member who desires to exercise his votes shall enter the polling station with an identity card, given to him by the Society. The polling officer shall identify the member by putting questions to him with reference to the list of members or delegates eligible to vote in the polling station, furnished to him and therefore, the petitioners have wrongly come to this Court as though without carrying the identity card, no voter is permitted to cast their vote.

12. However, the respective learned Senior Counsel as well as the learned Counsel for the petitioners in all the writ petitions expressing their willingness to appoint one more person as an Observer, requested this Court not to stall the election process.

13. We also agree to the request made by the learned Counsel for the parties.

14. Accordingly, we appoint Mr.V.Sivasubramanian, Retired District Judge, No.1/349, Judges Avenue, Y.Pudupatti, Arumbanoor Post, Madurai - 625 104 [Mobile No.94430 15316] as Observer. The initial remuneration for the Observer is fixed as Rs.1,50,000/-

<https://hcservices.ecourts.gov.in/hcservices/>



(Rupees One Lakh and Fifty Thousand only) and the same be paid by the third respondent Society within a week. Both the Observer and the fourth respondent - Returning Officer are hereby directed to ensure that all the voters are carrying their share certificates along with the identity cards issued by the Railway Department. The petitioners shall also issue a fresh list of dead persons within two days from today. On receipt of the same, the fourth respondent - Returning Officer shall release a corrigendum to the final voters list. The fourth respondent and the Observer can decide whether they require to go for videographing the entire polling and also as to the police protection by sufficient personnel from the Railway Protection Force, if necessary. The third respondent Society will provide suitable staff including attenders, accommodation and vehicles to the Observer, as required by him.

15. With these observations and directions, all the writ petitions are disposed of. No costs. Consequently, all the connected writ miscellaneous petitions are closed.

Sd/

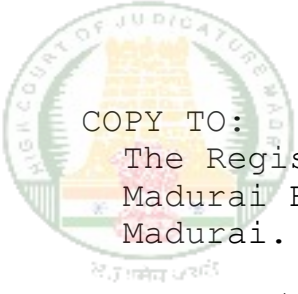
Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar (CS-IV)

To

- 1.The Central Registrar of Co-operative Societies,
Department of Co-operation,
Ministry of Food, Agriculture, CD and Co-operation,
Room No.115, Krishi Bhavan,
New Delhi - 110 001.
- 2.The Registrar of Multi-State Co-operative Societies,
45/B, Hasanpur,
LP Extension,
Delhi - 110 092.
- 3.The Managing Director,
Southern Railway Employees' Co-operative Credit Society Ltd.,
Dindigul Road,
Trichy - 620 001.
- 4.Mr.V.Sivasubramanian (Retired District Judge),
No.1/349, Judges Avenue,
Y.Pudupatti,
Arumbanoor Post,
Madurai - 625 104.
[Mobile No.94430 15316]



COPY TO:

The Registrar (Judicial),
Madurai Bench of Madras High Court,
Madurai.

+3cc to M/S.ISAAC CHAMBERS, Advocate, SR.No. 86719,86717,86718
+1cc to Mr.D.SARAVANAN, Advocate, SR.No. 86823,86788
+1cc to M/S.AJMAL ASSOCIATES, Advocate, SR.No. 86802
+1cc to M/S.VEERA ASSOCIATES, Advocate, SR.No. 86866
+2cc to Mr.B.Saravanan, Advocate, SR.No. 86788

W.P (MD) No.19116 of 2018
and
W.M.P (MD) Nos.16971, 16972 and 18000 of 2018
AND
W.P (MD) No.19875 of 2018
and
W.M.P (MD) Nos.17663 to 17665 and 18026 of 2018
AND
W.P (MD) No.19881 of 2018
and
W.M.P (MD) Nos.17668 to 17670 and 18025 of 2018
25.09.2018

RSB

KK/RP/SAR-4/26.09.2018/9P-14C