



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 10.09.2018

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.19416 of 2018
and
W.M.P. (MD) .Nos.17259 and 17260 of 2018

K.Ganesan ... Petitioner
Vs.

1. The Election Commissioner,
Tamil Nadu State Co-operative Societies,
Election Commission,
No.273, Anna Salai,
Teynampet, Chennai 600 018.
2. The District Election Officer /
Deputy Registrar of Co-operative Societies,
Dindigul District.
3. The Superintendent of Police,
Dindigul District.
4. The Deputy Superintendent of Police,
Batlagundu Range,
Dindigul District.
5. The Election Officer / Co-operative Sub Registrar,
A.723 Batlagundu Co-operative Urban Bank,
Batlagundu,
Dindigul District.

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the respondents 1 to 5 herein to give adequate police protection for counting of votes for election to the Board of Directors of 5th respondent Bank for fair and free counting process and also to provide adequate facilities for videograph of entire counting process and to declare the election in accordance with law.



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For Petitioner : Mr.Veera Kathiravan
Senior counsel for Veera Associates

For R1 : Mr.V.Karunakaran

For R2 to R5 : Mr.K.Chellapandian
Additional Advocate General
assisted by Mr.VR.Shanmuganathan,
Special Government Pleader

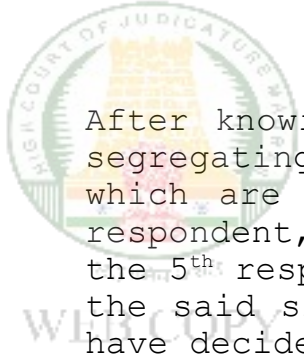
ORDER

[Order of the Court was made by T.RAJA,J.]

Mr.K.Ganesan claiming to be one of the Members of the 5th respondent Co-operative Society viz., A.723 Batlagundu Co-operative Urban Bank, Batlagundu, Dindigul District, has come to this Court seeking direction against the respondents 1 to 5 to give adequate police protection for counting of votes for election to the Board of Directors of 5th respondent Co-operative Society and also to provide adequate facilities for videograph of entire counting process and then to declare the election in accordance with law.

2. Mr.Veera Kathiravan, learned Senior counsel appearing for the petitioner submitted that the State Government issued Election Notification to the Co-operative Societies through the first respondent / Election Commission. The election was scheduled to be held on 01.09.2018 and the counting of votes was also fixed on 03.09.2018. Accordingly, the petitioner has participated in the election process as he is also one of the candidates for the Board of Directors of the 5th respondent Society. When 11 Directors are to be elected among the General Body Members of more than 11,000 Members, as per the Election Notification, only 2149 Members have exercised their right to vote in the election held on 01.09.2018. Out of 11 Directors, 6 were elected by the General Members, 3 from the women and 2 from Scheduled Castes. After the polling process was over, the counting process has commenced at 10.00 a.m. on 03.09.2018. Consequently, the ballot papers were also brought in the single pool, when counting process commenced. After counting 1157 votes, in the third round, one person suddenly trespassed into the counting station and as a result, there was a chaos created. He also suddenly poured blue colour ink on the table. In view thereof, some of the votes cast by other Members got tainted.

3. Adding further, it is stated that the Deputy Superintendent of Police, Batlagundu Range, Dindigul District, who was present inside the polling and counting station in collusion with the other Members and other counting agents, a stranger, who is not even Member and not having any vote was permitted to come inside. As a result, the free and fair election process got completely vitiated. In the said process, 25 to 50 votes appear to have been damaged.



After knowing the same, the 5th respondent / Election Officer after segregating the tainted votes started counting the remaining votes which are about 991 votes. However, in collusion with the second respondent, the fourth respondent also suddenly gave instruction to the 5th respondent to stop the counting of votes. Taking advantage of the said situation, the accused as well as the respondents 3 and 4 have decided to stall the counting of votes in the election process. When a detailed communication has been sent by the Election Officer Mr.K.Manoharan, on 03.09.2018, to proceed with the counting of votes with the police protection along with the video coverage of the entire incident relating to the counting of votes, overlooking the same, the respondents 1 and 2 are proceeding with the counting of votes. Therefore, direction be issued to the respondents 1 to 5 to proceed with the counting of votes with adequate police protection along with ordering the video coverage of the entire counting process, so that the declaration itself can take place freely and transparently. Concluding his argument, the learned Senior counsel appearing for the petitioner submitted that one of the persons, who has created the entire chaos inside the counting station, was booked under Sections 466, 353 and 171 (F) of I.P.C. Although Section 353 of I.P.C., deals with non-bailable and non-compoundable offence, the police officers have wrongly enlarged him on bail, which is wholly unjustifiable and unfair. Therefore, liberty be given to the petitioner to work out his remedy.

4. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 2 to 5 by taking notice submitted that as there has been a recommendation by the Election Officer / the fifth respondent Co-operative Society, let the first respondent be directed to consider the representation made by the Members of the fifth respondent Society and take final decision. Whatever the decision going to be taken by the first respondent will be accepted by all the respondents.

5. The learned counsel appearing for the Election Commission also submitted that in view of pouring of the blue ink on some of the votes kept on the tables, it is difficult to identify which are the votes to be counted. In that view of the matter, it is always better and fair on the part of the first respondent to hold a fresh election from the stage where the fifth respondent has already released the final list.

6. As there has been various claim made by the petitioner and counter claim also made by the respondents 2 to 5 and taking note of the direction issued by the Division Bench of this Court in a batch of writ petitions in W.P.Nos.7526 batch etc., dated 03.08.2018, appointing Justice R.S.RAMANATHAN (Retd.) as a Chairperson for the committee for South Zone and since the 5th respondent Society also falls within the South Zone, we hereby direct the Chairperson of the Committee for South Zone to take stock of the entire circumstances and proceed with the matter forthwith. The respondents 2 to 5 are directed to co-operate with the Committee. The Election Officer /



Co-operative Sub Registrar of A.723 Batlagundu Co-operative Urban Bank / 5th respondent is hereby directed to hand over the key of the room, wherein all the records are kept including the vote and other things. On receipt of the same, Mr. Justice R.S. RAMANATHAN (Retd.) is given liberty to decide whether they can proceed from the stage of counting the votes or fresh election to be held from the stage of releasing the final list of candidates.

7. With the above direction, the writ petition stands disposed of. No costs. Consequently, the connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar (P&A)

/True Copy/

Sub Assistant Registrar (CS-II)

To

1. The Election Commissioner,
Tamil Nadu State Co-operative Societies,
Election Commission,
No.273, Anna Salai,
Teynampet, Chennai 600 018.
2. The District Election Officer /
Deputy Registrar of Co-operative Societies,
Dindigul District.
3. The Superintendent of Police, Dindigul District.
4. The Deputy Superintendent of Police,
Batlagundu Range, Dindigul District.
5. The Election Officer / Co-operative Sub Registrar,
A.723 Batlagundu Co-operative Urban Bank,
Batlagundu, Dindigul District.
6. Hon'ble Mr. Justice. R.S. RAMANATHAN (Retd.)
Chairperson for the committee
South Zone, Head quarters, Madurai.

Copy To:

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

+1CC to M/s. Veera Associates, Advocate, SR.No.83636

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