



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.09.2018

CORAM :

THE HONOURABLE MR.JUSTICE T.RAJA

AND

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P(MD)Nos.19655 and 19795 of 2018
and W.M.P.Nos.17436 & 17437 and 17588 of 2018

W.P. (MD) NO.19655/2018

K.Dhandapani

... Petitioner

vs.

1. The Election Commissioner,
Tamil Nadu State Cooperative Societies,
Election commission
No.273 Anna Salai
Teynampet, Chennai.
2. The District Election Officer/
Deputy Registrar of Cooperative Societies,
Dindigul District.
3. The Superintendent of Police,
Dindigul District.
4. The Deputy Superintendent of Police,
Palani Range,
Dindigul District.
5. The Election Officer/Cooperative Sub Registrar
DD-518 Thumbalapatti Primary Agriculture
Credit Society,
Palani Taluk,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to direct 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.



For Petitioner : Mr.Veera Kathiravan
Senior counsel for M/s.Veera Associates
For Respondents :Mr.U.Karunakaran for R1
Mr.V.R.Shanmuganathan for R2 to R5
Special Government Pleader

W.P. (MD) NO.19795/2018

N.Nattudurai

... Petitioner

vs.

1. The Commissioner,
Election commission for Tamil Nadu
State Cooperative Societies,
No.273 Anna Salai
Teynampet, Chennai.
2. The District Election Officer/Deputy Registrar
O/o The Deputy Registrar of Cooperative Societies,
Lakshmipuram, Palani
Dindigul District.
3. The Election Officer
DD-518 Thumbalapatti Primary Agricultural
Cooperative Credit Society,
Thumbalapatti Post, Thumbalapatti
Palani Circle,
Dindigul District.
4. Selvaraj
The Election Officer
DD-518 Thumbalapatti Primary Agricultural
Cooperative Credit Society,
Thumbalapatti Post, Thumbalapatti
Palani Circle,
Dindigul District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of Mandamus to direct the respondents to proceed with the election of Board of Directors in respect of DD518 Thumbalapatti Primary Agricultural Cooperative Credit Society afresh under CCTV surveillance in a free and transparent manner by appointing the new election officer and by considering the petitioner's representation dated 04.09.2018.

For Petitioner : Mr.H.Mohammed Imran
for M/s.Ajmal Associates
For Respondents :Mr.U.Karunakaran for R1
Mr.V.R.Shanmuganathan for R2 to R4
Special Government Pleader

**COMMON ORDER**

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

W.P. (MD) No.19655 of 2018 has been filed by one Mr.K.Dhandapani, who claims to be one of the members of the respondent Cooperative Society for a direction to 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 videographing entire counting process and to declare the election in accordance with law.

2. W.P.(MD) No.19795 of 2018 has been filed by one Mr.N.Nattudurai, who also claims to be a member of the respondent Cooperative Society, for a direction to the respondents to proceed with the election of Board of Directors in respect of DD518 Thumbalapatti Primary Agricultural Cooperative Credit Society afresh under CCTV surveillance in a free and transparent manner by appointing the new election officer and by considering the petitioner's representation dated 04.09.2018.

3. Learned senior counsel for the petitioner in W.P.(MD) No.19655/2018 would submit that the first respondent Election Commission scheduled the election on 01.09.2018 and fixed the date for counting of votes on 03.09.2018. He would further submit that the petitioner participated as one of the contesting candidates to the Board of Directors of the Society, where 22 members were found eligible candidates for the said election. He further submitted that when 11 Directors are to be elected among the general body members of more than 1817 members, 886 have exercised their franchise in the election held on 01.09.2018 and finally, out of 11 Directors, six were elected by the general members, three from women and two from Scheduled Caste and Scheduled Tribes. When the counting process commenced on 03.09.2018, even from the first round of counting, some of the candidates including the petitioner secured more votes than the other candidates. Noticing that the petitioner and his groups are getting more votes, at about 5 p.m., after counting 861 votes, a member by name C.Nattudurai, S/o.Chinnasamy suddenly made a wordy altercation between the Society and other agents and thereafter, the said C.Nattudurai gave a complaint before the Inspector of Police, Keeranur, making certain allegations against the Election Officer of the Society stating that he was assaulted by the Society and others. Pursuant to the said complaint, a case in Crime No.183/2018 for offences under Sections 147, 148, 294(b), 324 and 506(ii) IPC has been registered on 03.09.2018. In view of the above melee created by both parties by the untoward incident, counting was stopped. The Election Officer also, appraising of the aforementioned incident that took place, has written a letter to the Sub Collector, Palani to continue the counting process either from 07.09.2018 or after one week with sufficient police protection and he has also made a request to



provide sufficient police protection for resuming the counting process. The said communication to the Sub Collector, Palani, clearly shows that the counting process disturbed by the aforementioned incident could be recommenced, but, till date, the respondents have not come forward to commence or resume the counting process. As a result, the contesting candidates are put to grave prejudice, he contended.

4. Learned senior counsel would further submit that some calculated drama has been made by Mr.C.Nattudurai, and his groups and this has been properly gone into by the Inspector of Police and a case in Crime No.183/2018 for alleged offences as mentioned supra has been registered, and finally, the complaint has been closed as 'Mistake of Fact'. That also shows that in an effort to stop the entire election process and to go for fresh election, the other candidates, who are anticipating their future have successfully attempted to stall the counting process. Therefore, as requested by the fifth respondent Society, counting process should be directed to be resumed, so that the successful candidates for the post of Board of Directors can be elected by the fifth respondent and the Society can be properly administered, he pleaded.

5. Learned counsel for the petitioner in W.P.(MD) No.19795 of 2018, would submit that the petitioner has also filed his nomination paper to be elected as one of the Board of Directors of the Society and his nomination was also accepted and he was also issued with acknowledgment therefor. Finally, election was conducted on 01.09.2018 and counting of votes was also commenced on 03.09.2018. After the counting process was commenced, Election Officer has acted in a high handed manner making the other counting agents in a pitiable situation. Moreover, the Election Officer and the staff are counting in a contradictory manner. When the votes were polled in favour of N.Nattudurai, the Election Officer unfairly counted the votes, as though they were polled in favour of other persons and hence, the petitioner raised objections. He would further submit that without considering the objections, they have started to physically assault the petitioner. Moreover, the counting agent also suffered injuries on his forehead and he was taken to the hospital. In the meanwhile, 112 votes remained to be counted. Subsequently, accepting the complaint given by the petitioner, a case has been registered as stated supra. Curiously, on the very same day, when the complaint was given on 03.09.2018, citing mistake of fact, the complaint has been closed, he contended.

6. He further submitted that the said action shows that the election officer joining hands with other people, had shown his unreasonable approach. Therefore, a representation dated 04.09.2018 has been given by the petitioner, narrating all the incidents that took place to the extent of stalling the counting process and hence, fresh election should be ordered, so that the democratic process can be restored and the free and fair election also can be held for electing the Board of Directors of the Society. However, the said



representation has not been considered so far, hence, the present writ petition has been filed.

7. Mr.U.Karunakaran, learned counsel for the first respondent Election Commission, submitted that when the election notification was issued fixing various dates, from filing of the nomination till declaration of the results, everything was going smoothly till 03.09.2018, on the date when the counting process started. After the counting of votes, out of 886 total votes polled, when the fifth respondent and other officers counted 774 votes, some of the candidates, who were facing the verge of defeat, started creating problem and they went to the extent of giving complaint against the fifth respondent Society, without there being any justification whatsoever. Finally, when the fifth respondent was unable to proceed to continue the counting at about 5.00 p.m. on 03.09.2018, the counting process was stopped by the fifth respondent and he has also immediately sent a letter dated 03.09.2018 requesting the Sub Collector to defer the further counting of the votes on 07.09.2018 or after one week, so that in the meanwhile, the normalcy would be restored, which is conducive for resuming the counting process with police protection. Taking support from Rule 52 (18)(a) of the Cooperative Societies Rules, 1980 (hereinafter referred to as 'the Rules'), he has submitted that the first respondent has been empowered sufficiently by the said Rule to resume the counting process.

8. As per the said Rule, if at any stage of the election, the proceedings are interrupted or obstructed by any riot or open violence or if it is not possible to proceed with the election on account of any natural calamity, the election officer shall have power to stop the election, recording reasons for such action.

9. In the present case, as per the reason given by the fifth respondent Society to stop the election and then to resume the counting process, he supported with reasons. Therefore, the first respondent has accepted the same. Moreover, by virtue of Rule 52(18)(d) of the Rules, the Election Commission also can empower the District Election Officer to fix dates other than those notified earlier under the Rules for all or any stage of election. In the case in hand, the counting process was stopped on 03.09.2018. From that stage, recounting process can be resumed with sufficient police protection, so that the elected candidates can be declared, he submitted.

10. We fully agree with the submission made by the learned counsel for the first respondent to resume the counting process. At this stage, it is useful to extract Rule 52(18)(a) and 18(d) of the Rules, as under:-

"52.(18)(a) if at any state of the election, the proceedings are interrupted or obstructed by any riot or open violence or if it is not possible to proceed with the election on account of any natural calamity, the



election officer shall have power to stop the election, recording reasons for such action.

...

(d) Notwithstanding anything contained in sub-rules (a) to (c), the Election Commission may, for special reasons, empower the District Election Officer to fix dates and periods, other than those notified earlier under the Rules, for all or any of the stages of any election under the Rules."

11. A perusal of the above read with the letter issued by the fifth respondent Society, requesting the Sub Collector, Palani clearly shows that the respondents 1 and 5 are entitled to resume the counting process for the simple reason that out of 886 votes polled, when they have already counted 774 votes. At this juncture, the learned counsel for the first respondent submitted that to get rid of any more doubt and future complaint, recounting from the first vote can be ordered by this Court and the respondents will recount and declare the elected candidates.

12. Learned senior counsel for the petitioner in W.P.(MD) No.19655 of 2018 has also agreed for recounting the entire votes again with necessary police protection.

13. In view of the above, the respondents 1 and 5 are hereby directed to start fresh counting of votes in the presence of sufficient police personnel, who will be deputed by the Superintendent of Police, Dindigul and Deputy Superintendent of Police, Palani, along with CCTV cameras for recording the counting of votes. The Superintendent of Police, Dindigul and Deputy Superintendent of Police, Palani are directed to provide sufficient police protection. Such exercise shall be done on 24.09.2018 and results can be declared within five days thereafter. Needless to mention that if any one is found repeating the same melee, the respondents are given liberty to prosecute them by giving suitable criminal complaint against all those who involve in disturbing the election process.

14. With the above directions, the writ petitions are disposed of. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar (CS-II)



To

1. The District Election Officer/
Deputy Registrar of Cooperative Societies,
Dindigul District.
2. The Superintendent of Police,
Dindigul District.
3. The Deputy Superintendent of Police,
Palani Range,
Dindigul District.
4. The Election Officer/Cooperative Sub Registrar
DD-518 Thumbalapatti Primary Agriculture
Credit Society,
Palani Taluk,
Dindigul District.

+1CC TO M/s.AJMAL ASSOCIATES IN S.R.NO.85702.

+2CCs TO MR.U.KARUNAKARAN, ADVOCATE IN S.R.NO.85227,85228.

+1CC SPECIAL GOVERNMENT PLEADER IN S.R.NO.85626.

RR

DS SKN SAR-2:25.09.2018: 7P/9C

W.P(MD)Nos.19655 and 19795 of 2018
and W.M.P.Nos.17436 & 17437 and 17588 of 2018
19.09.2018