



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.10.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA
and

THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

W.P. (MD) No.20959 of 2018

and

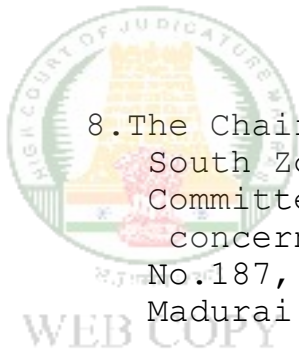
W.M.P. (MD) Nos.18738 to 18740 of 2018

S.Raja Sivaprakash

... Petitioner

Vs.

- 1.The Election Commission,
Tamil Nadu State Cooperative Societies,
Rep. by Election Commissioner,
No.273, Kamadenu Super Market,
I-Floor, Anna Salai,
Chennai - 600 018.
- 2.The Registrar of Cooperative Societies,
Kilpauk, Chennai - 600 010.
- 3.The Joint Registrar of Cooperative Societies,
Chinna Chokkikulam,
Madurai - 625 020.
- 4.The Deputy Registrar/District Election Officer,
Office of Deputy Registrar,
Usilampatti at Thirumangalam,
Madurai District.
- 5.The Election Officer,
M.U.8, Usilampatti Taluk Agricultural Producers
Cooperative Marketing Society Ltd.,
Usilampatti,
Madurai District.
- 6.The Electoral Officer,
M.U.8, Usilampatti Taluk Agricultural Producers
Cooperative Marketing Society Ltd.,
Usilampatti,
Madurai District.
- 7.The Managing Director,
M.U.8, Usilampatti Taluk Agricultural Producers
Cooperative Marketing Society Ltd.,
Usilampatti,
Madurai District.



8.The Chairman,
South Zone,
Committee for Enquiring Complaints
concerning Cooperative Elections,
No.187, North Veli Street,
Madurai - 625 001.

... Respondents

PRAYER: The writ petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, to direct the respondents 1 to 6 herein to conduct free and fair election to the 7th respondent under the supervision of the 8th respondent with adequate police force under video coverage of each and every election process of the 7th respondent and also to publish all stages of election through online in the official website.

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

For Respondent 1 : Mr.K.Palanisamy

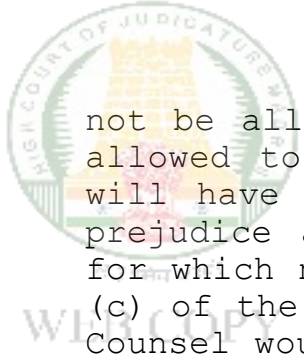
For Respondents : Mr.K.Chellapandian,
2 to 8 Additional Advocate General
assisted by Mr.A.K.Bhaskara Pandian,
Special Government Pleader

ORDER

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

This Writ Petition has been filed seeking issuance of a Writ of Mandamus, to direct the respondents 1 to 6 herein to conduct free and fair election to the 7th respondent under the supervision of the 8th respondent with adequate police force under video coverage of each and every election process of the 7th respondent and also to publish all stages of election through online in the official website.

2.Mr.Veera Kathiravan, learned Senior Counsel appearing for the petitioner heavily submitted that the petitioner is a member of seventh respondent society, namely, M.U.8. Usilampatti Taluk Agricultural Producers Cooperative Marketing Society Ltd., Usilampatti, Madurai District, willing to contest in the election notified to the 7th respondent society. The seventh respondent society has 24 primary agricultural cooperative societies under its control. The first phase of elections were held only for 18 cooperative societies. However, the elections were postponed for six cooperative societies at the primary level. Now 18 voters are unable to elect their representatives. When the composition of the Board should have 3 Directors from general members, 3 Directors from women members and 2 from SC/ST members, without holding election to six cooperative societies in the primary level the respondent should



not be allowed to hold election in the second phase. If they are allowed to hold election to the second phase, 25% of the society will have no representation and that would definitely cause grave prejudice and grievance and harm to the six cooperative societies for which no elections were conducted. Referring to Section 26 (1) (c) of the Tamil Nadu Cooperative Societies Act, the learned Senior Counsel would further submit that when the mandate of Section 26(1) (C) makes it clear that no member of a registered society shall be deprived of his rights to vote in the election of the members of the board of such society, the arrangements made by the second respondent to hold election to the second phase of election is not in accordance with Section 26(1) (C) of the Act. It is pertinent to extract Section 26 (1) (C) which reads as under:

"26. Votes of members.- (1) (a) No member of a registered society shall have more than one vote in the affairs of the society. (b) Every question which may come before a meeting of a registered society or of the board shall save as otherwise provided, be decided by a majority of the members present and voting at the meeting and in every case equality of votes the president shall have a casting vote. (c) Save as otherwise provided under this Act and the rules, no member of a registered society shall be deprived of his rights to vote in the election of the members of the board of such society:

Provided that- (i) In the case of an equality of votes at an election or in a meeting called under clause (a) of sub-section (4) of section 32 or item (ii) of clause (e) of sub-section (2) of section 81, the choice or the decision, as the case may be, shall be, by casting lots;

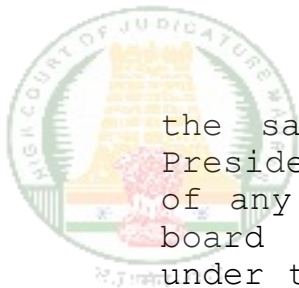
(ii) the Government may make rules restricting the right of a member to vote in any specified matter in specified circumstances;

(iii) every person nominated to the board of a society by the Government or the Registrar or the prescribed authority or the financing bank, or the board of another registered society or other interests (such as the Tamil Nadu State Agricultural Marketing Board), as the case may be, or an ex-officio member of the board, shall have one vote;

(iv) an associate member shall not be entitled to vote, except as otherwise provided in the rules;

(v) save as otherwise provided in the by-laws, a member who is a minor or of unsound mind shall not be entitled to vote.

1. Substituted by T.N.Act. 36 of 1989 [(2) Where a registered society has invested any part of its funds in the shares of or is a member of, another registered society (which latter society hereafter in this sub-section referred to as such other society) - (a) in the case of a registered society of



the same class or category, of such other society, the President of the first mentioned society, and (b) in the case of any other registered society, one of the members of the board of that society not disqualified for such election under the rules or the by-laws of such other society elected from among themselves in such manner as may be prescribed, Shall be the delegate of such registered society entitled to vote in the affairs of such other society. (2-A) Where the Government are, or any body of persons referred to in item (iv) of clause (a) of sub-section (1) of section 21 is, a member of any registered society, the Government or, as the case may be, that body of persons may appoint a person to represent them or it on the general body or in a meeting thereof and to vote in the affairs, of such society]. (3) Save as provided Substituted by T.N.Act. 36 of 1989 [in the foregoing sub-section] no member of a registered society shall vote by proxy. (4) Notwithstanding anything contained in this section, the nominee of the Government or of the Registrar or of the prescribed authority, if he is a Government servant, or the nominee of the financing bank or of the board of another registered society or of other interests (such as the Tamil Nadu State Agricultural Marketing Board), as the case may be, or the ex-officio member of the board shall not be entitled to vote at elections."

3.A careful reading of sub clause (C) of Section 26(1) of the Act clearly shows that no member of a registered society shall be deprived of his rights to vote in the election of the members of the board of society clearly goes to show that if that ratio is applied, the elected office bearers and Board of Directors in all the 18 cooperative societies would be unnecessarily made to loose their chance to get elected in the second phase of election and their five years tenure also would be unnecessarily jeopardised.

4.In that view of the matter, the Writ Petition fails and the same is dismissed. No costs. Consequently, the connected writ miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar(RTI)

/True Copy/

Sub Assistant Registrar(CS-III)

To

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The Election Commission,
Tamil Nadu State Cooperative Societies,
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1st Floor, Anna Salai,
Chennai - 600 018.



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+1CC to the Special Government Pleader SR.No. 89186

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SRM
ES/SKN/RSK/SAR 3/05.12.2018/5P/10C