

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.1487 of 2019
and
W.M.P.No.1657 of 2019

K.Radhakrishnan

.. Petitioner

Vs.

1.The Secretary to Government,
Cooperation, Food and Consumer Protection
Department, Fort St. George,
Chennai - 600 009.

2.The Joint Registrar of Cooperative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.

3.The Deputy Registrar of Cooperative Societies,
Chidambaram Circle, Chidambaram - 608 001,
Cuddalore District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the
Constitution of India, issuance of a Writ of Declaration,
declaring the provisions of Tamil Nadu Cooperative Societies Act
U/s.34(1)(c)(ii) of Tamil Nadu Cooperative Societies Act as
null and void and ultra vires of the Constitution of India.

For Petitioner: Mr.C.Prakasam

For Respondents : Mr.L.P.Shanmugasundaram
Special Government Pleader

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioner has filed the instant writ petition for a
Declaration, declaring the provisions of Tamil Nadu Cooperative
Societies Act U/s.34(1)(c)(ii) of Tamil Nadu Cooperative
Societies Act as null and void and ultra vires of the
Constitution of India.

2. Supporting the prayer sought for, petitioner has contended that he was working as a Manager in Villupuram Cuddalore Districts Cooperative Milk Producers Union, Villupuram and then, he was allowed to retire from service on 31.08.2016. Thereafter being one of the members in the above said Keerapalayam PACCS, he decided to contest in the Board of Directors election. For the said Cooperative Society election, nominations were received by the Election Officer on 09.04.2018. But pursuant to the order of this Court, election was not conducted in Tamil Nadu including the abovesaid society, and as per directions of this Court, the above said society elections were rescheduled. Accordingly on 07.08.2018, election was conducted and he was elected, as one of the Directors for the above said society, and subsequently on 11.08.2018, he was elected as President of the said society.

3. He further contended that one of the elected candidates Mr.Saravanan, who has not assumed the office as Director in the said society, made representations before the Joint Registrar of Cooperative Societies, Cuddalore District and the Deputy Registrar of Cooperative Societies, Chidambaram Circle, Cuddalore District/respondent Nos.2 and 3 herein, stating that the petitioner was disqualified from contesting in the above said Cooperative Election, since the petitioner was working in the abovesaid Cooperative Society, and retired from service on 31.08.2016, and as per Section 34(1)(c)(ii) of Tamil Nadu Cooperative Societies Act, 1983, the petitioner was not eligible to contest the election, since two years period from date of retirement in the cooperative society has not expired. Petitioner had worked as a Manager in Milk Producers Cooperative Union, but the said Saravanan has made representation on 09.08.2018 for disqualifying the petitioner as Director and also filed Writ Petition in W.P.No. 20967 of 2018, for disqualification. On 10.09.2018, this Court disposed of the said writ petition, giving directions to the Deputy Registrar of Cooperative Societies, Chidambaram Circle, Cuddalore District/3rd respondent herein, to consider Saravanan's representation dated 09.08.2018 and pass orders on merits within a period of six weeks and now the enquiry is conducted by the 3rd respondent herein.

4. He further contended that Section 34(1)(c)(ii) of Tamil Nadu Cooperative Societies Act is against the Constitution of India, as it curtails the fundamental right of the petitioner to contest the elections in Cooperative Society. The Peoples Representatives Act 1951, does not prevent any person from contesting MLAs and MPs elections, even if a government servant, either State or Central resigns his job, on the very next day he can file his nomination. So also a government servant can contest MLAs and MPs elections immediately after their retirement from service but Tamil Nadu Cooperative Societies Act

1983 alone prohibits a government servant or employee of the Society, not to contest for two years from date of retirement, which is unconstitutional. Hence, the petitioner has filed the instant writ petition, for the prayer stated supra.

5. Opposing the prayer sought for by the petitioner, the Secretary to Government, Co-operation, Food and Consumer Protection Department, Chennai/first respondent herein, has filed a counter affidavit dated 25.02.2019, which reads as under:-

"3. It is submitted that, the election of members of the board of the E-2592 Keerapalayam Primary Agricultural Co-operative Credit Society Ltd., was conducted on 07.08.2018 and the election of office bearers namely the President and Vice President of the board was conducted on 11.08.2018. The petitioner was elected as a member of the board at the election held on 07.08.2018 and thereafter as the President of the board at the election held on 11.08.2018. It is submitted that one Thiru. S. Saravanan, who was also elected as a member of the board of the said society, made a representation on 09.08.2018 to the third respondent herein, to disqualify the petitioner to contest the election to the board of the above said society, as he has incurred the disqualification, specified in section 34 (1) (c) (ii) of the Tamil Nadu Co-operative Societies Act, 1983, since he was employed in a co-operative society and retired from service on 31.08.2016 and the period of two years has not elapsed from the date of his ceasing to be such employee. The said S. Saravanan also filed the Writ Petition No. 20967 of 2018 and WMP No.24615 of 2018 before this Hon'ble Court praying to issue a writ of MANDAMUS directing the respondents 1 and 2 to disqualify the 3rd respondent, therein (In the Writ Petition, the Joint Registrar of Co-operative Societies, Cuddalore Region, the Deputy Registrar of Co-operative Societies, Chidambaram Circle and K. Radhakrishnan (the petitioner herein) were impleaded as respondents 1, 2 and 3 respectively) from continuing as member of the board and consequently as elected president of E-2592 Keerapalayam Primary Agricultural Co-operative Credit Society Ltd., Keerapalayam Village, under section 34 (1) (c) (ii) of the Tamil Nadu Co-operative Societies Act, 1983.

It is further submitted that on 10.09.2018 this Hon'ble Court has passed the following order in the said WP No.20967 of 2018 and WMP No.24615 of 2018:-

"It is not in dispute that the 3rd respondent filed his nomination papers for the election which was

originally scheduled to be held on 10.04.2018 and subsequently rescheduled to be held on 07.08.2018. The nomination papers were filed by the petitioner within the period of two years from the date of his retirement. However, as rightly pointed out by the 3rd respondent, the petitioner filed his objection in this regard only after the process of scrutiny of nomination was over for the election which was originally scheduled on 10.04.2018 was over. Subsequent to the filing of nominations, the election was rescheduled and the election was held to be held on 10.08.2018. It is pertinent to note that objection dated 23.04.2018 filed by the petitioner in this regard to the election officer concerned was not considered. However, the petitioner has already approached the 2nd respondent, who is competent to consider the issue in respect of disqualification, by way of objection dated 11.08.2018 and no order has been passed on the same till date. In the said circumstances, this court is of the view that no positive direction could be issued as prayed for in this writ petition. This court is, however, inclined to direct the 2nd respondent to consider the objection filed by the petitioner on 09.08.2018 in accordance with law.

In the result, the writ petition is disposed of with a direction to the 2nd respondent to consider the objection of the petitioner dated 09.08.2018 and pass suitable orders on merits and in accordance with law within a period of six weeks from the date of receipt of a copy of this order. No costs. Consequently, connected WMP is closed."

In the pursuance of this above said order the third respondent herein, after due enquiry, in his proceedings RC/2147/2018/SF, dated 7.1.2019, has passed orders setting aside the election of the petitioner as member of the board, and consequently as the President of the board of the E-2592 Keerapalayam Primary Agricultural Co-operative Credit Society Ltd., as he has incurred the disqualification specified in section 34 (1) (c) (ii) of the Tamil Nadu Co-operative Societies Act, 1983, since the petitioner was employed in the Villupuram Cuddalore District Milk Producers Union and retired from service on 31.08.2016, and a period of 2 years from the date of his retirement has not elapsed on 09.04.2018 i.e., the date on which he has filed nomination for election to the board of the said society. It is submitted that the petitioner has acknowledged the receipt of the above said order on

16.01.2019.

4. It is submitted that as per sub-clause (ii) of Clause (c) of sub section (1) of section 34 of the Tamil Nadu Co-operative Societies Act, 1983, "no person shall be eligible for being elected or nominated as a member of a board of any registered society, if he was employed in any co-operative society or was working as Government servant engaged in administration or audit of co-operative societies and a period of two years has not elapsed from the date of his ceasing to be such employee or Government servant".

It is further submitted that by the Constitution (Ninety Seventh) Amendment Act, 2011 a separate "Part IX B - The Co-operative Societies has been inserted in the Constitution. In the said Part - IX B, new Articles 243 ZH to 243 ZT have been inserted. None of the Articles deals with Disqualifications for membership of board of a co-operative society. It is submitted that sub clause (ii) of clause (c) of sub-section (1) of section 34 is not in contravention of any of the provisions of the Constitution.

5. It is submitted that none of the grounds put forth by the petitioner merits consideration.

6. It is submitted that, a Co-operative Society is an entity registered under the Tamil Nadu Co-operative Societies Act, 1983. It is respectively submitted that the Peoples Representations Act and the Tamil Nadu Co-operative Societies Act, 1983 are entirely in different domain. It is submitted that, sub clause (ii) of clause (c) of sub section (1) of section 34 does not curtail the democratic functioning of Co-operative Societies.

7. It is submitted that, a perusal of the Preamble to the Tamil Nadu Co-operative Societies Act, 1983 reveals that, it is an Act to consolidate the law relating to and to make better provision for, the organization management and supervision of Co-operative Societies in the State of Tamil Nadu.

The Statement of Objects and Reasons for the enactment of Tamil Nadu Co-operative Societies Act, 1983 are given below:

"The Tamil Nadu Co-operative Societies Act 1961 (Tamil Nadu Act 53 of 1961) has been amended several times extensively, among others, giving scope for enlargement of the electorate of the Board of Directors

of certain categories of Co-operative Societies, which had proved not conducive to proper functioning of the said societies Further, since the year 1961, there had been vast progress in the Co-operative movement calling for suitable modification of the existing legislation to achieve the objects of the aforesaid Co-operative movement.

(2). The Santhanam Committee on Co-operative, the Administrative Reforms Commission on Co-operation and the Government of India guidelines on Co-operative laws have made various recommendations for improving the State Co-operative laws.

(3). Taking all these into consideration and also some of the good features of the Co-operative laws of other States, it is proposed to bring in a comprehensive legislation to repeal and re-enact the Tamil Nadu Co-operative Societies Act, 1961 (Tamil Nadu Act 53 of 1961) and the Tamil Nadu Co-operative Land Development Bank Act, 1934 (Tamil Nadu Act X of 1934) with suitable modifications.

It is submitted that the Hon'ble Supreme Court in the case of Jyothi Basu and others vs Debi Ghosal and others 1982 1 SCC - 691 (SCC P 696 - Para 8) has held as follows:-

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation".

Therefore it is submitted that, the restriction in sub-clause (ii) of clause (c) of sub-section (1) of section 34 of the Tamil Nadu Co-operative Societies Act, 1983, for a member of a Co-operative Society to contest in the election to a Co-operative Society is legally valid and binding.

8. It is submitted that, as already submitted above, the third respondent herein, has passed orders in his proceedings Rc.No.2147 of 2018 SF dated: 07.01.2019 setting aside the election of the petitioner as the member of the board and consequently as the President of the board of the E-2592 Keerapalayam Primary Agricultural Co-operative Credit Society Ltd., as he has incurred the disqualification, specified in section 34 (1) (c) (ii) of the Tamil Nadu Co-operative

Societies Act, 1983.

9. With regard to the first prayer (prayer A) of the petitioner, it is submitted that the 3rd respondent herein, after due enquiry, in his proceedings RC/2147/2018/SF dated 7.1.2019 has passed orders setting aside the election of the petitioner as member of the board, and consequently as the President of the board of the E2592 Keerapalayam Primary Agricultural Co-operative Credit Society Ltd., as he has incurred the disqualifications specified in section 34(1)(c)(ii) of the Tamil Nadu Co-operative Societies Act, 1983, since the petitioner was employed in the Villupuram Cuddalore District Milk Producers Union and retired from service on 31.08.2016 and a period of two years from the date of his retirement has not lapsed on 09.04.2018 i.e., the date on which he has filed nomination seeking election to the board of the said society. It is submitted that the petitioner has acknowledged the receipt of the above said order on 16.01.2019. Therefore the above prayer of the Petitioner became infructuous.

10. It is submitted that the petitioner has filed this Writ Petition challenging the provision in sub-clause (ii) of clause (c) of sub-section (1) of section 34 of the Tamil Nadu Co-operative Societies Act, 1983 with malafide intention to nullify the order dated 7.1.2019 of the 3rd respondent herein which is legally valid.

11. It is submitted that Co-operative Societies is included in item No. 32 in List II - STATE LIST in the SEVENTH SCHEDULE of the Constitution. As such the Tamil Nadu State Legislature is competent to pass its own enactment on Co-operative Societies not in-consistent with any of the provisions of the Constitution.

12. It is submitted that the L.A Bill No. 45 of 1980, namely, the Tamil Nadu Co-operative Societies Bill, 1980 introduced in the Legislative Assembly of the State on 6th August 1980, was published for the general information.

The Tamil Nadu Co-operative Societies Bill 1980 was referred to the Select Committee. Sub-clause (1) (c) of clause 34 of the said Bill read as follows:-

"(1) (c) is employed as legal Practitioner on

behalf of the registered society or against it or on behalf of or against any other registered society which is a member of the first mentioned registered society, or"

When Clause 34 of the Tamil Nadu Co-operative Societies Bill, 1980 was discussed in the meeting of the Select committee held on 02.03,1982 decided to renumber sub-clause () item (c) as item (c) (i) and after the item (c)(i) so renumbered, the Committee decided to added the following as item (ii) namely

"(ii) was employed in any co-operative society or was working as Government servant engaged in administration or audit of co-operative societies and a period of two years has not elapsed from the date of his ceasing to be such employee or Government servant; or";

Accordingly sub-clause (ii) in clause (c) of sub-section (1) of section 34 was enacted. It is the wisdom of the Tamil Nadu State Legislature.

13. It is also submitted that the provision in sub-clause (ii) of clause (c) of sub-section (1) of section 34 of Tamil Nadu Co-operative Societies Act, 1983 has been in force with effect from 13.04.1988 and has been followed in all the elections to Co-operative societies held in 1990, 1996, 1998, 2013 and 2018. Hitherto no one except the petitioner has challenged the above said provision. The petitioner has filed this Writ Petition challenging the said sub-clause after a lapse of 30 years. Therefore it is submitted that this writ petition is liable to be dismissed on the sole ground of delay and laches.

14. It is submitted further that the restriction imposed in the said sub-clause (ii) of clause(c) of sub-section (1) of section 34 is a reasonable restriction founded on an intelligible differentia and it is operative only for two years from the date of ceasing to be such employee or Government servant. Therefore the said restriction is legally valid it cannot be stated to be contrary to any of the provisions of the Constitution."

6. Heard the learned counsel for the parties and perused the materials available on record.

7. Petitioner has contended that he has a fundamental right

to contest in the Cooperative Society election. Law is well settled that there is no fundamental right to contest any election and it is only statutory. Reference can be made to few decisions:-

(i) In N.P.Ponnuswami v. Returning Officer, Namakkal Constituency reported in 1952 SCR 218, the Hon'ble Supreme Court, while considering the decision of Privy Council in Joseph The berge & Anr. v. Phillippe Laundry [(1876) 2 AC 102], held that the right to stand as a candidate for election is not a civil right, but is a creation of statute or special law and must be subject to the limitations imposed by it. At Paragraph 19 of the Judgment, the Hon'ble Supreme Court held as follows:-

"The points which emerge from this decision may be stated as follows:

"(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

(ii) In Jammu Prasad v. Lachhi Ram reported in AIR 1954 SC 686, the Hon'ble Supreme Court held as follows:

"(5) The right to stand as a candidate and contest an election is not a common law right. It is a special right created by the statute and can only be exercised on the conditions laid down by the statute. The Fundamental Rights Chapter has no bearing on a right like this created by statute. The appellants have no fundamental right to be elected members of Parliament."

(iii) A Constitution Bench of the Hon'ble Supreme Court in Hari Prasad Mulshanker Trivedi v. V.B.Raju reported in 1974 (3) SCC 415, it was reiterated that:-

"The right to stand for election is a statutory right and the statute can therefore regulate the manner in which the right has to be enforced or the remedy for enforcing it."

(iv) The Hon'ble Supreme Court in Jyoti Basu v. Debi Ghosal reported in (1982) 1 SCC 691, held as follows:

"A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure

and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation. An election petition is not an action at common law, nor in equity. It is a statutory proceeding to which neither the common law nor the principles of equity apply but only those rules which the statute makes and applies. It is a special jurisdiction, and a special jurisdiction has always to be exercised in accordance with the statute creating it. Concepts familiar to common law and equity must remain strangers to election law unless statutorily embodied. A court has no right to resort to them on considerations of alleged policy because policy in such matters as those, relating to the trial of election disputes, is what the statute lays down. In the trial of election disputes, court is put in a strait-jacket. Thus the entire election process commencing from the issuance of the notification calling upon a constituency to elect a member or members right up to the final resolution of the dispute, if any, concerning the election is regulated by the Representation of the People Act, 1951, different stages of the process being dealt with by different provisions of the Act. There can be no election to Parliament or the State Legislature except as provided by the Representation of the People Act, 1951 and again, no such election may be questioned except in the manner provided by the Representation of the People Act. So Representation of the People Act has been held to be a complete and self-contained code within which must be found any rights claimed in relation to an election or an election dispute."

(v) In *Javed v. State of Haryana* reported in (2003) 8 SCC 369, the Hon'ble Supreme Court held that,

"Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right – a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to

provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

Reiterating the law laid down in *N.P. Ponnuswami v. Returning Officer, Namakkal Constituency* [AIR 1952 SC 64] and *Jagan Nath v. Jaswant Singh* [AIR 1954 SC 210] this Court held in *Jyoti Basu v. Debi Ghosal* [(1982) 1 SCC 691]:

"8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation."

(vi) In *Krishnamoorthy v. Sivakumar & Others*, reported in (2015) 3 SCC 467, the Hon'ble Supreme Court observed that the right to contest an election is a plain and simple statutory right."

8. As regards the petitioner's contention that under the Peoples Representation Act, 1951, a government servant who resigns or retires from the government job can immediately contest MLA and MP election and whereas, Tamil Nadu Cooperative Societies Act, 1983, imposes a restriction, and thus there is a violation of Article 14 of the Constitution of India, first of all, it should be noted that Peoples Representations Act, 1951 and Tamil Nadu Co-operative Societies Act, 1983, are entirely in different domain.

9. As stated supra, right to contest an election is not a fundamental right. While Peoples Representatives Act 1951, is enacted for the purpose of conduct of elections of the Houses of Parliament and to the House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

10. Tamil Nadu Cooperative Societies Act, 1983 is an act enacted to amend and consolidate the law relating to and to make better provision for, the organization, management and supervision of Co-operative Societies in the State of Tamil Nadu and whereas it is expedient to promote voluntary formation,

autonomous functioning, democratic control and professional management of co-operative societies in the State of Tamil Nadu and Whereas it is expedient further to provide for an orderly development of the co-operative movement in accordance with co-operative principles such as open membership, democratic management limited interest on capital, distribution of surplus based on patronage, provision for co-operative education and co-operation among co-operatives, for the promotion of thrift, self-help and mutual aid among persons with common socio-economic needs so as to bring about improvement in agriculture and industry, better methods of production, better business and better living and for that purpose to amend and consolidate the law relating to cooperative societies in the State of Tamil Nadu. Both cannot be equated. Comparison made invoking Article 14 of the Constitution of India, is not tenable.

11. Let us first consider as to whether the State Government is competent to legislate a law on Co-operative Societies in Tamilnadu. Co-operative Societies is included in item No.32 in List II - STATE LIST in the SEVENTH SCHEDULE of the Constitution. As such, Tamil Nadu State Legislature is competent to pass its own enactment on Co-operative Societies not inconsistent with any of the provisions of the Constitution. and that by the Constitution (Ninety Seventh) Amendment Act, 2011 a separate "Part IX - B - The Co-operative Societies has been inserted in the Constitution. In the said Part - IX B, new Articles 243 ZH to 243 ZT have been inserted. None of the Articles deal with Disqualifications for membership of board of a co-operative society. It is submitted that sub clause (ii) of clause (c) of sub-section (1) of section 34 is not in contravention of any of the provisions of the Constitution. Thus competence of the State Government to enact Tamil Nadu Co-operative Societies Act, 1983, much less Section 34(ii) cannot be questioned.

12. Section 34(1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983, reads as follows:-

"Section 34(1)(c)(ii): was employed in any co-operative society or was working as Government servant engaged in administration or audit of co-operative societies and a period of two years has not elapsed from the date of his ceasing to be such employee or Government servant."

13. The second issue is whether Section 34(1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983, is ultra vires of the Constitution of India. From the materials produced before this Court, it could be deduced that the Government of Tamil Nadu have constituted a Select Committee when Tamil Nadu Cooperative Societies Bill, 1980 (L.A.Bill No.45 of 1980) was

introduced in the Legislative Assembly with the Hon'ble Minister for Cooperation - Law, as Chairman and many Members.

14. The Select Committee has submitted its report on 12.03.1981, in two parts, to the Legislative Assembly for enacting of the Tamil Nadu Cooperative Societies Act. As per the select committee, a person who was employed in any Co-operative Society or was working as a government servant engaged in administration or audit of Cooperative Societies and a period of two years has not elapsed from the date of his ceasing to be such employee or government servant, then he should be disqualified from the Membership of a board, because no vested interest should be there.

15. Thus, the select committee, while considering Clause 34 in L.A.Bill No.43 of 1980, which subsequently became Section 34 of the Tamil Nadu Cooperative Societies Act, 1983, has recommended that a person who was employed in any cooperative society or was working as Government servant engaged in administration or audit of Cooperative Societies, is not qualified to become a member of the board until the expiry a period of two years from the date of ceasing to be such employee or government servant.

16. Object of the legislation is that vested interest of a person who had been a employee of a Society or government servant engaged in audit or administration of the Society, should not be there and therefore, he should be disqualified from being a member of the board, until a period of two years has lapsed from the date of ceasing to be such employee or government servant as the case may be. Restriction imposed in the said sub-clause (ii) of clause(c) of sub-section (1) of section 34 is a reasonable restriction founded on an intelligible differentia and it is operative only for two years from the date of ceasing to be such employee or Government servant. The said restriction is legally valid, it cannot be said to be contrary to any of the provisions of the Constitution.

17. Contention of the petitioner, is that he was working as a Manager in Villupuram Cuddalore Districts Cooperative Milk Producers Union, Villupuram and he was allowed to retire from service on 31.08.2016. As one of the members in Keerapalayam Primary Agricultural Co-operative Credit Society Limited, Cuddalore District, he decided to contest in the Board of Directors election, he was elected as one of the Directors and subsequently on 11.08.2018, as President of the said society.

18. On the representation of one of the elected candidates, Mr.Saravanan, that as per Section 34 (1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983, the petitioner was

disqualified from contesting a Cooperative Society election, since the petitioner had worked in the Cooperative Society and retired from service on 31.08.2016, vide order dated 10.09.2018, in W.P.No.20967 of 2018, this Court has directed the Deputy Registrar of Cooperative Societies, Cuddalore District/third respondent herein, to consider the representation dated 09.08.2018 of the said Saravanan. Based on which, an enquiry has been conducted by the Deputy Registrar of Cooperative Societies, Cuddalore District/third respondent, and that a final order dated 07.01.2019, has been passed by the said authority, disqualifying the petitioner from the membership of the Board, and the petitioner has also acknowledged the order on 16.01.2019. After the receipt of the order dated 07.01.2019, instant writ petition has been filed.

19. Though Mr.C.Prakasam, learned counsel for the petitioner, submitted that the restriction imposed in Section 34 (1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983, is permanent, we are unable to accept the said contention for the reason that period has been prescribed in Section 34(1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983.

20. Contention of the petitioner is that he was not in audit or administration of the society in which, he had worked, cannot be gone into in this writ petition, because on enquiry, the Deputy Registrar of Cooperative Societies, Cuddalore District in his order dated 07.01.2019, has already disqualified the petitioner. If the petitioner is aggrieved, he can only challenge the said order and cannot seek for an order in this writ petition, wherein, Vires of Section 34(1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983 alone is tested.

21. In the light of the above decisions and discussion, challenge to the Vires of Section 34(1)(c)(ii) of the Tamil Nadu Cooperative Societies Act, 1983 fails and accordingly the writ petition is dismissed. No Costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-VIII)

//True copy//

Sub Assistant Registrar

dm

To

1.The Secretary to Government,
Cooperation, Food and Consumer Protection
Department, Fort St. George,
Chennai - 600 009.

2.The Joint Registrar of Cooperative Societies,
Cuddalore Region, Cuddalore,
Cuddalore District.

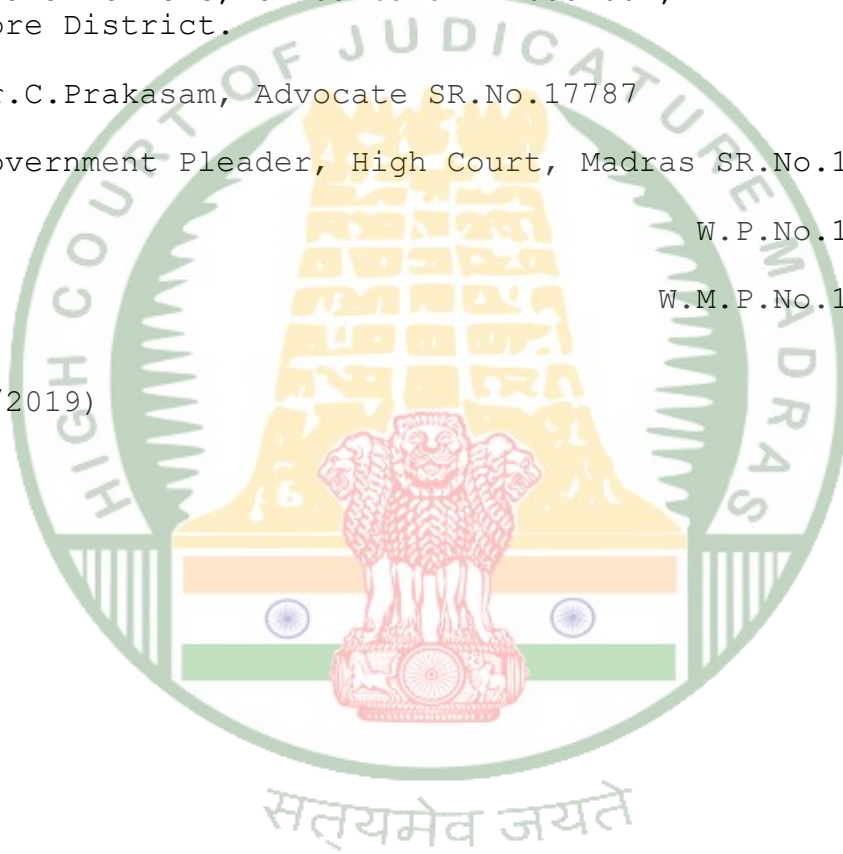
3.The Deputy Registrar of Cooperative Societies,
Chidambaram Circle, Chidambaram - 608 001,
Cuddalore District.

+1cc to Mr.C.Prakasam, Advocate SR.No.17787

+1cc to Government Pleader, High Court, Madras SR.No.17639

W.P.No.1487 of 2019
and
W.M.P.No.1657 of 2019

SJ(CO)
GMY(30/04/2019)



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