

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.03.2019

CORAM

THE HONOURABLE MR. JUSTICE R. SUBBIAH
AND
THE HONOURABLE MR. JUSTICE KRISHNAN RAMASAMY

WRIT PETITION NO. 4968 OF 2019

M. Kanagaraj

.. Petitioner

Versus

1. Government of Tamil Nadu
rep. by its Secretary
Co-operative, Food and Consumer
Protection Department
Fort St. George, Chennai - 600 009
2. Tamil Nadu Cooperative Societies Election Commission
rep. by its Tamil Nadu Cooperative Societies
Election Commissioner
Kamadenu Co-op Super Market Building
273, Scheme Road, Subbarayan Nagar
Teynampet, Chennai - 600 018
3. Registrar of Co-operative Societies (Housing)/
State Election Officer for Co-operative Housing Societies
No.22, 4th Main Road, Gandhi Nagar
Adyar, Chennai - 600 022
4. The Deputy Registrar of Co-operative Societies (Housing)
Chennai Region/District Election Officer for
Co-operative Housing Societies
Ramanathan Street, T. Nagar
Chennai - 600 017
5. The Returning Officer
for Thiruvallur Transport Corporation
Employees Co-operative Housing Society Ltd
MDS/HSG/139
Pallavan Illam
Pallavan Salai, Chennai - 600 002
6. Thiruvalluvar Transport Corporation Employees
Co-operative Housing Society Ltd., MDS/HSG/139
rep. by its Managing Director
Pallavan Salai

Chennai - 600 002

7. Thiru. C.M. Velmurugan
Assistant Manager
Chennai Metropolitan Co-operative Housing Society Ltd.,
Returning Officer for Thiruvalluvar Transport Corporation
Employees

Co-operative Housing Society Ltd., MDS/HSG/139
Pallavan Salai
Chennai - 600 002

8. Thiru. V. Shankar
Superintendent
Metropolitan Co-operative Housing Society Ltd.,
The person who claimed and acted as Returning Officer
Returning Officer for Thiruvalluvar Transport Corporation
Employees

Co-operative Housing Society Ltd., MDS/HSG/139
Pallavan Salai
Chennai - 600 002

9. V.T. Minnalvasan @ T. Ravi

10. S. Vedhachalam

11. G. Prasanna

12. C. Megala

13. K. Amutha

14. K. Karuppiah

15. M. Sekar

16. M. Duraisamy

17. D. Mohammed Abdul Malik

18. R. Nagarajan

19. N. Chandramohan

.. Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the election notification dated 04.02.2019 issued by the second respondent in Na.Ka.No.8631/2018/Koo.The.2(3); the election notification dated 08.02.2019 in Na.Ka.No.286/2018/E and the advertisement given in Maalai Malar Daily dated 08.02.2019 in Se.Ma.Tho.E/149/Varalkalai/2019 issued by the fourth respondent in so far as the election to the sixth respondent society from the stage of scrutiny of nomination and the lists dated 12.02.2019 and 13.02.2019 issued by the eighth respondent in Annexure-9 and under rule 52 (9) (d) and (f) publishing the valid and eligible list of nominations and final list of contesting candidates respectively and declaring that the respondents 9 to 19 have been elected unopposed, quash the same and consequently direct the second and fourth respondents to issue a fresh election notification for holding election for the sixth respondent society from the stage of scrutiny of

nominations, by allowing all the candidates who have filed nominations to contest the election and after allowing the candidates who want to withdraw the nominations, in a fair, free and transparent manner, strictly as per law and in accordance with rules and to take action against the eighth respondent for committing illegality and violation of the Rules in collusion with the respondents 9 to 19.

For Petitioner :Mr. N.G.R. Prasad

For Respondents :Mr. Aravindh Pandian
Additional Advocate General
assisted by Mr. L.P. Shanmuga Sundaram
for RR1, 3 to 5
Mr. M.S. Palanisamy for R2
Mr. P.L. Narayanan
for Mr. D. Gopal for RR9 to 15

ORDER

(Order of the Court was made by R. SUBBIAH, J)

This writ petition is filed by the petitioner praying to call for the records of the the election notification dated 04.02.2019 issued by the second respondent and the consequential notification dated 08.02.2019 and the advertisement given in Maalai Malar Daily dated 08.02.2019 by the fourth respondent in so far it relates to the election to the sixth respondent society from the stage of scrutiny of nomination and the lists dated 12.02.2019 and 13.02.2019 issued by the eighth respondent in Annexure-9 and under rule 52 (9) (d) and (f) publishing the valid and eligible list of nominations and final list of contesting candidates respectively and declaring that the respondents 9 to 19 have been elected unopposed, quash the same and consequently direct the second and fourth respondents to issue a fresh election notification for holding election for the sixth respondent society from the stage of scrutiny of nominations, by allowing all the candidates who have filed nominations to contest the election after allowing the candidates who want to withdraw the nominations, in a fair, free and transparent manner, strictly as per law and in accordance with rules and to take action against the eighth respondent for committing illegality and violation of Rules in collusion with the respondents 9 to 19.

2. The petitioner is working as a Technical Staff in the cadre of Senior Tradesman in State Express Transport Corporation, Chennai. According to the petitioner, earlier, he was elected as General Secretary of the State Express Transport Employees Union, which is affiliated to CITU. It is contended that out of the 5660 employees working in the State Transport

Corporation, 2407 employees are members of the State Express Transport Employees Union, to which the petitioner was the General Secretary. Further, around 3000 employees of the State Express Transport Corporation are members of the sixth respondent society which is managed and administered by a Board of Directors consisting of 11 members and two of such elected members of the Board will be elected as President and Vice-President. According to the petitioner, the term of office of the 11 elected Board of Directors of the sixth respondent society expired even on 30.03.2018. Therefore, on 05.03.2018, an election notification was issued to conduct election for various societies, including the sixth respondent society, but it was cancelled. Subsequently, the fourth respondent issued a fresh election notification on 21.04.2018 to hold election to the Board of Directors of various Housing Cooperative Societies including the sixth respondent society. As per the notification, the date and time for filing of nomination, scrutiny of nomination and withdrawal of nomination was fixed and the election was slated to take place on 07.05.2018. Pursuant to the notification, on 30.04.2018, the petitioner was waiting in the office of the sixth respondent to get nomination forms from the fifth respondent, who is the Returning Officer. However, the fifth respondent, who came to the office of the sixth respondent at 11.30 am, left the office within 30 minutes without issuing nomination forms to the intending candidates, including the petitioner, who was standing in the queue. Even though the petitioner waited for the fifth respondent to return back, he did not turn down till the end of the day. Since the date fixed for submission of the nomination form is to expire on 30.04.2018, but the fifth respondent did not issue the nomination form, the petitioner has given a complaint to the Inspector of Police, D-1, Triplicane Police Station on that date namely 30.04.2018 at 1.30 pm. A copy of the complaint was also submitted to the second respondent/Election Commissioner in person and requested to take action against the fifth respondent. The petitioner, along with other supporters also held a demonstration condemning the act of the fifth respondent/Returning Officer in leaving the office of the sixth respondent without issuing nomination forms. In order to defuse the simmering tension, the second respondent called the fifth respondent over phone and enquired about his absence, however, the fifth respondent falsely replied as if he was available in the office and distributed 24 nomination forms to the intending candidates. Thus, according to the petitioner, the fifth respondent, conveniently issued the nomination forms only to the members of the Union purportedly with an instruction to submit only 11 nomination forms for getting elected to the 11 posts. In the above circumstances, the petitioner filed WP No. 11799 of 2018 praying to declare the notification dated 21.04.2018 issued by the fourth respondent for conducting election to the sixth respondent society as void and for a direction to the

respondents 1 to 4 herein to conduct the election to the sixth respondent society in a free and fair manner by allowing the petitioner and other intending candidates to file nominations and to contest the election. Further, a Public Interest Litigation was filed before the Madurai Bench of this Court in which interim order was granted restraining the election commission from declaring the election conducted to various co-operative societies since there were large scale irregularities in holding elections. Ultimately, the said Writ Petition No. 11799 of 2018 filed by the petitioner was heard along with the batch of writ petitions and disposed of on 03.08.2018. By the said order dated 03.08.2018, the Division Bench of this Court constituted a committee headed by the Retired Judge of this Court for four regions in Tamil Nadu and directed the Committee to enquire into the complaints and grievance of the petitioners therein, including the complaint, if any, given by the candidates or voters.

3. According to the petitioner, as per the directions issued by this Court in the order dated 03.08.2018, the petitioner has filed a petition before the Honourable Committee for Chennai Region on 30.09.2018 and it was taken on file as Complaint No. 49 of 2018. The Committee, after hearing the parties and on the basis of the statement made by the Returning Officer, passed an order dated 30.10.2018, setting aside the election conducted to the sixth respondent and ordered for fresh election to be conducted from the stage of filing the nomination and to conduct the election freely and fairly. Challenging the order dated 30.10.2018 passed by the Committee, the respondents 2 to 4 therein filed WP No. 32373 of 2018 and sought for an interim direction to allow them to function as Board of Directors of the sixth respondent society. During the pendency of WP No. 32373 of 2018, as per the direction of the Committee, the second respondent ordered for fresh election to the sixth respondent society from the stage of filing nominations. Subsequently, on 08.02.2019, the election schedule was notified by the fourth respondent as per which the date of election was notified as 18.02.2019. Further, as per the order dated 08.02.2019, the fourth respondent appointed the seventh respondent as Returning Officer for the sixth respondent society. In response to the notification, 11 candidates belonging to the State Express Transport Employees Union (CITU) filed their nominations on 11.02.2019. According to the petitioner, totally 45 persons, including 12 nominations filed by him and the erstwhile directors of the sixth respondent society were submitted for scrutiny and all such nominations have been filed before the last date notified for submission of nomination viz., 12.02.2019. However, the nominations filed by the petitioner and others were not scrutinised by the seventh respondent until 2 p.m on 12.02.2019. Therefore, the petitioner sent an e-mail to the second respondent requesting him to take

action. The nominations were supposed to be scrutinised between 10 am and 4 pm on 12.02.2019 but the office of the Returning Officer in the sixth respondent society was kept locked. However, at about 4.30 pm, the eighth respondent suddenly came to the society premises along with the police force and declared himself to be the new election/Returning Officer for the sixth respondent society. When the petitioner demanded to show the appointing order, he did not produce the same. The eighth respondent also put up a list in the notice board of the society at 6 pm by including the names of only 14 candidates who belong to the ATP Union and the names of the candidates belonged to the Petitioner Union were omitted. Though the eighth respondent came to the premises of the sixth respondent society at about 4.30 pm on 12.02.2019 after the time fixed for scrutiny of nomination, he did not call the petitioner and other candidates inside the office of the sixth respondent for scrutiny also did not allow the petitioner to enter into the office. In the above circumstances, a complaint was given by the trade union to the second respondent on 13.02.2019 and requested to stop the scheduled proceedings for withdrawal of nomination on 13.02.2019 purportedly on the ground that the members of ATP Union are attempting to get the 11 candidates belonging to their union get elected unopposed. Further, the petitioner also sought for information as to whether the appointment of the seventh respondent as Returning Officer was revoked and in his place the eighth respondent was appointed as Returning Officer, but he was not furnished with any information. In the above circumstances, the petitioner has filed the present writ petition for the relief as stated supra.

4. When the writ petition was listed before the learned single Judge of this Court on 21.02.2019, the learned single Judge orally observed that the elected office bearers shall not assume office until further orders. To this effect, the election officer has also passed an order dated 23.02.2019 stating that the elected office bearers shall not assume office until 26.02.2019. Subsequently, on 22.02.2019 when the writ petition was taken up for hearing, the learned single Judge passed an order directing the Registry to post the writ petition before the appropriate Division Bench after obtaining orders from the Honourable Chief Justice. Thereafter, the present writ petition was directed to be posted before this Court and accordingly, this writ petition is taken up for hearing today.

5. In the meantime, the respondents 9 to 19 have filed a counter affidavit contending that even though the seventh respondent was appointed as Returning Officer, as he was not well, in order to scrutinise the nominations as per the schedule fixed in the election notification, the eighth respondent was appointed as Returning Officer, who, upon scrutiny of the nominations, declared that 14 nominations are valid and rejected

the other nominations. Subsequently, three candidates have withdrawn their nominations and this is how the respondents 9 to 14 were appointed to the posts unopposed. Even for rejection of the nominations, valid reason was assigned by the Returning Officer. As per the Rules, in case the number of nominations which are accepted are equal or less than the number of vacancies, the Election Officer has to declare the candidate as elected unopposed. Even otherwise, the dispute of this nature cannot be adjudicated by this Court in exercise of power under Article 226 of The Constitution of India. If the petitioner is aggrieved he has to only approach the competent authority by raising a dispute under Section 90 of The Tamil Nadu Cooperative Societies Act. Thus, the respondents 9 to 19 prayed for dismissal of this writ petition.

6. Today, when the writ petition is taken up for hearing at 10.30 am, the learned counsel for the petitioner insisted for an interim order to restrain the respondents 9 to 19 from assuming office to the posts to which they were elected unopposed. However, this Court directed the counsel for the petitioner and also the learned Additional Advocate General to ascertain and inform this Court as to whether the elected office bearers have assumed office or not. At 11.00 am, the counsel for the petitioner informed this Court that the respondents 9 to 19 herein have hurriedly taken oath of office and taken charge of the posts to which they were appointed at 10.30 am today.

7. The haste with which the respondents 9 to 19 have taken oath of office and taken charge of the posts to which they were elected unopposed, cannot be appreciated. When the matter is subjudice and the petitioner questions the manner in which the nominations were scrutinised as also the conduct of the election in this writ petition, especially when the respondents 9 to 19 have been elected unopposed inspite of the nominations said to have been filed by the petitioner and others, we can only observe that the respondents 9 to 19 have hastily taken oath of office in order to circumvent the legal process and it has to be deprecated.

8. At the same time, this Court is of the view that having regard to the nature of allegations raised by the petitioner with respect to the manner in which the election was allegedly conducted, the declaration of the respondents 9 to 19 as unopposed to various posts and the haste with which they have taken charge of the posts today, instead of keeping the writ petition, this Court is of the view that the matter shall be referred to the Committee constituted by the Division Bench, which is presided by the Honourable Mr. Justice K. Venkataraman, a retired Judge of this Court. The committee shall decide the validity or otherwise of the election process including the election of the respondents 9 to 19 unopposed. Such an

exercise shall be completed by the committee after affording an opportunity of hearing to all the parties and an order shall be passed within a period of four weeks from the date of receipt of a copy of this order. It is made clear that till such time, the respondents 9 to 19, who were elected as Office Bearers of the sixth respondent society, are directed not to take any major decision touching the affairs of the sixth respondent society, including signing of cheques, except signing of cheque (s) for drawing salary to the staff.

9. With the above observation, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CO)

True Copy

Sub-Assistant Registrar

To

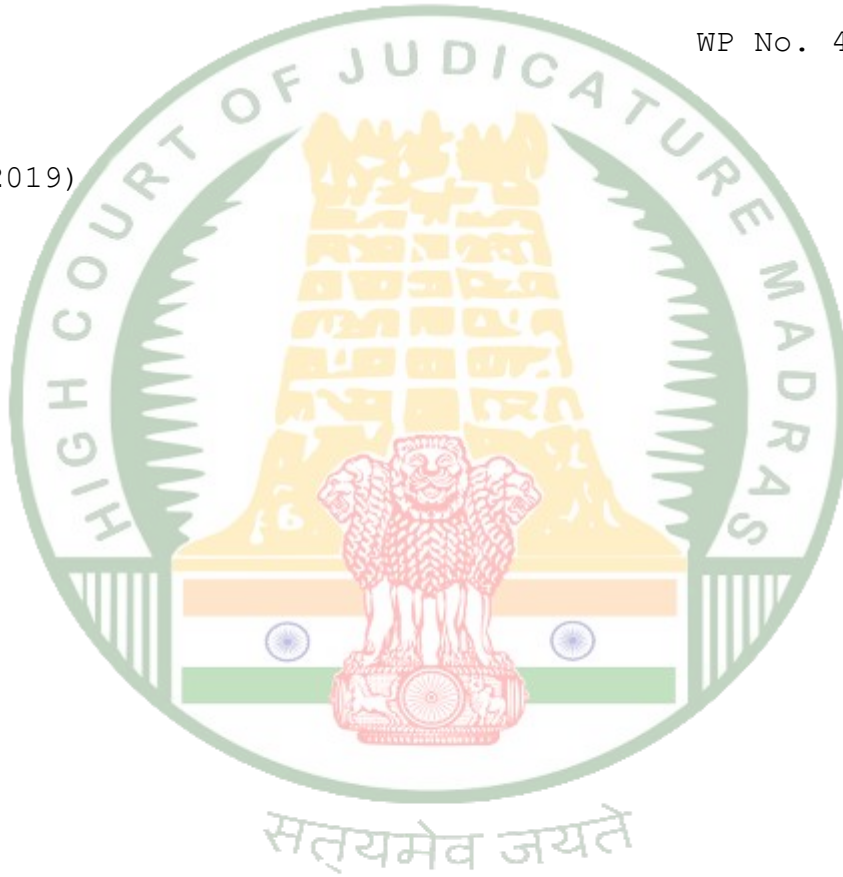
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rep. by its Managing Director
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+1 CC to Govt. Pleader sr 21540.
+1 CC to Mr.D.Gopal , Advocate sr 21397.
+1 CC to Mr.V.Ajay Khose, Advocate sr 21207.
+1 CC to Mr.L.P.Shanmugasundaram, Advocate sr 21163

WP No. 4968 of 2019

RJI (CO)
SP(19/03/2019)



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