

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.07.2019

PRONOUNCED ON : 01.08.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.20991 of 2018 and
W.M.P.Nos.24640 and 24641 of 2018

1.K.P.Velu
2.A.Kasi
3.C.Hari
4.D.Uttirakumar,
5.S.Jayapal
6.S.Kumar
7.Jayanthi

Vs

Petitioners

1.The Election Commissioner,
Tamil Nadu State Co-operative Societies
Election Commission,
Kamadenu Super Market Building,
No.273, Anna Salai,
Teynampet,
Chennai - 600 018.

2.The District Election Officer/
Deputy Registrar of Co-operative Societies,
Vellore Region,
Vellore,
Vellore District.

3.The Election Officer,
TPD 986, Kilkothur Milk Producers
Co-operative Society,
Kilkothur Village, Anaicut Taluk,
Vellore District.

4.The Secretary,
TPD 986, Kilkothur Milk Producers Co-operative Society,
Kilkothur Village,
Anaicut Taluk,
Vellore District.

5.K.C.Sigamani
6.K.P.Jayaraman
7.B.Hari Raman

8.K.C.Vinayagam
9.K.S.Sigamani
10.Dhanalakshmi
11.G.Sulochana
12.M.Annamalai
13.A.Lalli

(R5 to 13 are impleaded vide order
dated 21.01.2019 made in
WMP No.30420 of 2018 in
W.P.No.20991 of 2018 by VBDJ)

... Respondents

Prayer :- This Writ Petition is filed under Article 226 of the Constitution of India for a writ of certiorarified mandamus calling for the records relating to Na.Ka 2696/2018/Ku.Te2 dated 02.07.2018 passed by the first respondent pertaining to cancellation of election held for TPD 986, Kilkothur Milk Producers Co-operative Society on 07.04.2018 as invalid one and to quash the same and consequently to declare the election results announced on 09.04.2018 as valid and that the petitioners herein as elected candidates for TPD 986, Kilkothur Milk Producers Co-operative Society, Kilkothur, Anaicut Taluk, Vellore District.

For petitioners :Ms.S.P.Arthi
For 1st Respondent :Mr.Mr.M.S.Palaniswamy,
Standing Counsel
For 2nd Respondent :Mr.L.P.Shanmuga Sundaram,
Special Government Pleader
For Respondents 3 to 5 :Mr.R.Arun Dattan

ORDER

The petitioners are the candidates declared elected as the members of the Board, in the Co-operative Societies Election held on 07/04/2018 for the TPD 986, Kilkothur Milk Producers Co-operative Society, Kilkothur, Anaicut Taluk, Vellore District. Subsequently, they elected the first petitioner and third petitioner as the President and Vice-President respectively. While so, Mr.M.U.Sigamani one of candidate who lost the election gave a complaint dated 25/04/2018 alleging the ballot paper carried the name of one Annamalai (reserved candidate) who was already declared elected, 'unopposed'. This error has mislead the voters and ended in casting invalid votes. Based on this complaint, the first respondent cancelled the election vide his order Na.Ka.2696/2018/ku.they.2 dated 02/07/2018. A fresh notification dated 10/08/2018 was issued intimating re-polling on 16/08/2018.

2. In this writ petition, the order of the first respondent cancelling the election is challenged on the ground that, no enquiry was conducted before passing the orders impugned. The petitioners who were duly elected were not put to notice about the complaint and no opportunity was afforded to them to explain. The first respondent has no authority to partially cancel the election process and order re-poll nullifying the duly elected Board. By doing so, the democracy voice is muffed by the first respondent.

3. The second respondent, in his counter filed on his behalf and on behalf of the third respondent denying the averments made by the petitioners in their affidavit state that, on expiry of the tenure of the elected Board, on 05.03.2018 the Election Commission (first respondent) notified election for the co-operative societies in Tamil Nadu in phased manner.

4. In respect of TPD 986 Kilkothur Milk Producers Co-operative Society, Kilkothur, Vellore District, the election schedule was fixed as below:-

"Last date of Filing Nomination:	31/03/2018
Date of Polling, if required:	07/04/2018
Date of counting votes:	09/04/2018"

5. On scrutiny of the nomination papers, 19 candidates were found eligible (13 for general, 1 for SC and 5 for women). For two seats earmarked for SC candidates, only one nomination (Annamalai) was found eligible hence, he was declared elected unopposed. The other seat for SC candidate was taken as casual vacancy. Since, there were more eligible candidates than required, polling was conducted on 07/04/2018. As per schedule, counting held on 09/04/2018. However, on the same day, the Madurai Bench of Madras High Court, Madurai, granted interim stay of election process of all co-operative society in the State and the election process got freezed at that stage. Later, based on the direction of the Hon'ble Supreme Court, the Election Commission rescheduled the election dates with condition that result should not be declared until final orders of the Hon'ble Supreme Court. Accordingly, for the election of the President and Vice-President of the above said Society, the last date for nomination was fixed as on 23/04/2018 and polling date was fixed as on 27/04/2018.

6. Meanwhile, the first respondent received the complaint of Mr.M.U.Sigamani alleging that the wrong inclusion of the declared candidate Mr.Annamalai(SC) name in the ballot paper caused confusion in the voters and several votes were invalid. On considering the said complaint, the first respondent enquired

and found that the Election Officer has not followed the procedures under Rule 52 of the Tamil Nadu Co-operative Societies Rules (hereinafter referred to as "the said Rules"). Hence, exercising the power under Rule 52-A (8), cancelled the election proceedings from the stage of polling. After the judgement of the Division Bench of the Hon'ble High Court, permitting the first respondent to proceed with the election process, the first respondent issued order dated 09/08/2018 rescheduling the election for the said society, as below:-

"Date of polling: 16/08/2018

Date of counting: 17/08/2018

Election for President and Vice-President : 21/08/2018."

Accordingly, the election was conducted by the 2nd respondent. The respondents 5 to 13 were declared elected as Board of Directors. They assumed charge on 24/08/2018.

7.The learned Special Government Pleader appearing for the respondents 2 to 4 would contend that, the petitioners were never declared as elected Board of Directors officially, in view of the interim order passed by the High Court passed on 09/04/2018. The polling held on 07/04/2018 is held to be in contrary to Rules. Inclusion of elected candidate name in the ballot paper render the poll invalid. Therefore, the petitioners claim that they were duly elected, as per the process is, incorrect.

8.Heard the learned counsel for the petitioner; learned Standing Counsel for the first respondent; learned Special Government Pleader appearing for the respondents 2 to 4 and the learned counsel for the respondents 5 to 13.

9.The contention of the learned counsel for the petitioners is that, as per the election notification of the first respondent, polling for the Board of their Society took place on 07.04.2018. The votes were counted on 09.04.2018 and they were declared as duly elected candidates, after the counting process completed. While so, the petitioners find fault with the orders passed by the first respondent who has first cancelled their election and latter issued notice for re-polling and declared respondents 5 to 13 as the successful candidates.

10.It is contended by the learned counsel for the petitioners that, the manner in which the first respondent cancelled the earlier election and conducted a fresh poll on 16.08.2018 is contrary to law and procedure. Whereas, the contention of the respondents is that, on 09.04.2018, this Court has passed an order of interim stay of all proceedings. Thereafter, based on the complaint on Mr.M.U.Sigamani, the Election Commission found that the ballot paper was not found in

the prescribed format by including one of the name of the candidate who was elected 'unopposed' has rendered the ballot paper in valid and therefore, polling held on 07.04.2018, has become nonest in the eye of law. Hence, fresh polling was conducted on subsequent date and members were elected in accordance with law and procedure.

11.It is an admitted fact that two seats were reserved for SC candidate and there was only one nomination for that seat. Annamalai who was a SC candidate was the sole candidate and he was declared elected. Therefore, in respect of General Seats and Women seats, election should have been conducted. Unfortunately, in the ballot paper, the name of Annamalai was also included, which has led Mr.M.U.Sigamani to complaint.

12.Rule 52(8) clause 1 of the Tamil Nadu Co-operative Societies Rules,1988 reads as below:-

"(8) (a) No person shall be eligible for being nominated as a candidate for election to the board unless he is qualified for being elected under the provisions of the Act and these rules, and his name is included in the voters' list. The nomination of a candidate for the election shall be in Form no.18 and shall be signed by the candidate. The nomination paper shall be signed by two other members whose names are included in the voters' list, one as the proposer and the other as the seconder for the nomination: Provided that where, excluding the candidate or candidates seeking election, only one member is in the voters' list, the nomination need not be seconded: Provided further that where, excluding the candidate or candidates seeking election, no member is in the voters' list, the nomination need not be proposed or seconded: Provided also that in the case of a central or apex society which has only society member and no individual member, for election to the board of such central or apex society to fill up the 58 seats reserved for Scheduled Castes and Scheduled Tribes or for women, a person whose name is not included in the voters' list, shall also be eligible for being nominated as a candidate, if such person is a member of the board of a society affiliated to such central or apex society and belongs to Scheduled Castes and Scheduled Tribes or a Women, as the case may

be, and whose name is included in the list referred to in sub-rule (7-A): Provided also that if the seat is reserved for Scheduled Castes and Scheduled Tribes, the candidate seeking election to such reserved seat shall furnish a declaration in the nomination form made by him specifying the caste or tribe of which he belongs and the area in relation to which that caste or tribe is notified as a Scheduled Castes or Scheduled Tribes of the State.

(aa)

(b)

(c)

(d)

(e)

(f)

(g)

(h)

(i) The election officer shall prepare in Form No.20 a list of candidates whose nomination papers have been finally accepted as valid and who have not withdrawn their candidature within the time fixed for withdrawal and such list shall be published in the notice board at the office of the society or at such other place as the election officer may specify on the date and time fixed in the election notice.

Rule 52(9) (c) and (d) of the said Rules read as follows:-

(c) If for any constituency there is no contesting candidate, the Election Officer shall immediately send a report to the District Election Officer, the State Election Officer and the Election Commission. In such case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.

(d) In respect of reserved seats, if the number of contesting candidates qualified to be chosen to fill them is not larger than the number of vacancies, the election officer shall declare the candidate or all such candidates, as the case may be, duly elected and the names of such candidate or candidates shall be published in the notice board at the office of the society or at such other place as the election officer may specify. The Election Officer shall immediately send a report to the District Election Officer, the Election Officer and the Election Commission.

13. Form No.20 shall contain only candidates whose nomination paper is finally accepted and valid and contest in the election. Combined reading of Rule 52(8)(i) and 52(9)(c) and (d) of the said Rules extracted above indicates the name of the candidate who has been declared 'unopposed' cannot find place in the ballot paper and it should be in the format prescribed.

14. To ascertain as to 'whether the allegation made by Mr.M.U.Sigamani is correct, this Court called for records and found that, in the election held on 07.04.2018, the name of Annamalai find place in the ballot paper. Since, this is contrary to Rules 52 (8)(i) r/w 52(9)(c) and (d) of the said Rules, the first respondent has interfered with.

15. The contention of the learned counsel for the petitioners is that, the Election Commission has passed the impugned order without affording opportunity to the petitioners. It is claimed by the petitioners that they are duly elected members of the Board and their election cannot be superseded in the way Election Commission has acted.

16. As far as the powers and functions of the Election Commission are concerned, regarding interfering the election process, the following provisions are relevant.

"52. Election of members of the board. —

(1) (a) Every society shall report to the Election Commission, the date of expiry of the term of office of the members of the board for which elections are to be held and the number of members to be elected and the particulars of casual vacancy in the office of the members of the board which may arise and which have to be filled up by election as per the provisions of the Act, within fifteen days of its occurrence.

(b) On receipt, of such report, the Election Commission shall appoint as many officers of the Government or officers subordinate to the Registrar not below the rank of Deputy Registrar of Co-operative Societies in the Co-operative Department or not below such rank in other departments of the Government as may be necessary, as District Election Officers for each district or for a part of a district for conducting the election of members of the board of cooperative societies in the respective district or part of a district. The District Election Officer shall take necessary steps for the conduct of election to the society or societies concerned and the society shall render all necessary assistance to the District Election Officer for the conduct of election to the board.

(c) The District Election Officer shall appoint as many officers of the Government not below the rank of Senior Inspector in the Co-operative Department or not below such rank in other departments as may be necessary as Electoral Officers. The Electoral Officers shall be responsible for preparation and publication of voters list of the society or the societies concerned.

(d) Notwithstanding anything contained in clause (a), the Election Commission may, at any time, arrange for the conduct of election of members of the board of a society to fill up the existing or future vacancies in accordance with the provisions of the Act and Rules."

.....

"(18) (a) 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 his reasons for such action.

(b) The fact that election has been so stopped shall be immediately announced and

reported to the District Election Officer, the State Election Officer and the Election Commission forthwith by the Election Officer. (c) Proceedings with reference to the election so stopped shall be resumed from the stage it was stopped or resumed at an earlier stage as may be decided by the Election Commission.

(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.

.....

(Emphasis added)

(23) Notwithstanding anything contained in the Rules, where the Election Commission suo-motu or on complaint or on the report of the District Election Officer or observer is of the opinion that, it is not possible to hold free and fair election on account of prevailing law and order problem, or riot or open violence, or communal clash or on account of natural calamity or bundh or such other sufficient cause, the Election Commission shall have the power to cancel the elections to co-operative societies, recording the reasons there for. In such a case, the Elections Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies.

.....

"Rule 52-A Powers and functions of the Election Commission. —

(1) (a) The preparation of electoral roll and the conduct of elections to the boards and office bearers of the boards of all co-operative societies shall be held under the superintendence and control of the Election Commission. It shall have power to give such directions as may deem necessary to the District Collector or District Superintendent of Police or any Executive Magistrate or any Police Officer.

.....

53(5) When there is not more than one eligible candidate for any office, the election officer, shall declare such eligible candidate to be duly elected to such office.

17. From the records, it appears that the election for the Society was originally scheduled on 07.04.2018 and the counting was held on 09.04.2018. On the same day, the High Court has granted interim stay of all proceedings connected with the election. Therefore, any further proceeding claimed to have passed by the respondents is nonest in law.

18. The alleged declaration of result and subsequent election of President and Vice President for the poll are in violation to the interim order passed by the High Court. Therefore, the petitioners cannot claim themselves as duly elected members. As pointed out by the learned counsel for the respondents, the first respondent through the respondents 2 and 3 have conducted elections and declared the results only as per the interim order passed by the Division Bench of this Court.

19. Under these circumstances, for the reasons stated, by his proceedings dated 02.07.2018, the first respondent has cancelled the further proceedings and ordered re-polling. Rule 52 (18)(d) of the Rules, gives power for the Election Commission to do so.

20. In addition, there is a clause vesting residuary power with the Election Commission which empowers him to pass orders to remove the difficulty arising in giving effect to provisions of Rules 52, 52A and 53 of the Rules.

21. The said inherent power is vested to the Election Commission vested under Sub Rule (10) of Rule 52-A of the said Rules, which reads as follows:-

"52-A.(10) If any difficulty arises in giving effect to the provisions of rules 52, 52-A and 53 or in holding any election, the Election Commission, as occasion may require, may, by order do anything which appears to it necessary for the purpose of removing the difficulty.

22. Therefore, on a cumulative assessment of powers conferred on Election Commission under Rules 52, 52A and 53 of the Rules and the reasons stated in the impugned order for conducting re-poll from the stage of polling, this Court finds no illegality in the impugned order. The petitioners have never been

officially declared as elected members of the TPD 986, Kilkothur Milk Producers Co-operative Society. Even if they were declared as elected members, such declaration is contrary to law since, the ballot paper of their election bear incurable inherent defect by including the elected candidate name (Annamalai who was declared as elected 'unopposed').

23.For the above said reasons, the writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The Election Commissioner,
Tamil Nadu State Co-operative Societies Election Commission,
Kamadenu Super Market Building, No.273, Anna Salai,
Teynampet, Chennai - 600 018.

2.The District Election Officer/
Deputy Registrar of Co-operative Societies,
Vellore Region, Vellore, Vellore District.

3.The Election Officer,
TPD 986, Kilkothur Milk Producers Co-operative Society, Kilkothur
Village, Anaicut Taluk, Vellore District.

4.The Secretary, TPD 986, Kilkothur Milk Producers Co-operative
Society, Kilkothur Village, Anaicut Taluk,
Vellore District.

+1 cc to M/s.S.P.Arthi, Advocate Sr.No. 66110
+1 cc to M/s.L.P.Shanmugasundaram, Advocate Sr.No. 66186
+1 cc to M/s.R.Arun, Advocate Sr.No. 65693
+1 cc to The Special Government Pleader Sr.No.66302

AKM/06.09.19/11P- 9C /

Order made in
W.P.No.20991 of 2018