

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM

THE HON'BLE DR.JUSTICE VINEET KOTHARI
AND
THE HON'BLE MR.JUSTICE C.V.KARTHIKEYAN

W.A.No. 1861 of 2019
And
C.M.P.No. 12586 of 2019

1. M.N.Rajaram
2. J.Mohamed Iqbal
3. C.Chinnasamy
4. K.Mani
5. P.Muthusamy
6. C.Murugesan
7. M.Jagadeesan
8. K.Sekar
9. Tmt. M.Selvi
10. Tmt. M.Manjula
11. Tmt. G.Subbulakshmi ... Petitioners/Appellants

Vs.

1. The Secretary
Committee on Co-operative Elections Cases
East Central Zone
Trichy Central Co-operative Building
Trichy-1.
2. The Commissioner
Tamilnadu State Co-operative
Societies Election Commission
No.273, Kamadhenu Supermarket
Chennai - 600 018.

3. The District Election Officer and
Deputy Registrar of Co-operative Societies
Perambalur Circle
Perambalur District.
4. The Election Officer
R 1144, Perambalur Primary Agricultural
Co-operative Credit Society
Perambalur & Post
Perambalur District.
5. The Secretary
R 1144, Perambalur Primary Agricultural
Co-operative Credit Society
Perambalur & Post
Perambalur District.
6. Thiru.S.Dhanaraj

... Respondents / Respondents

Prayer: Writ Appeal filed under Clause 15 of Letters Patent against the orders in W.P.No. 15261 of 2019 dated 07.06.2019.

W.P.No.15621/2019:

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari calling for records pertaining to the order of the first respondent committee in Petition No. 167/2018 dated 04.05.2019 and quash the same.

For Appellants : Mr.S.Kamadevan
For 2nd Respondent : M/s. M.S.Palanisamy
For RR 3 & 4 : M/s. D.Venkatachalam

J U D G M E N T
(Delivered by DR.VINEET KOTHARI, J)

This Appeal has been filed by the persons elected in the Election of Perambalur Primary Agricultural Co-operative Credit Society aggrieved by the Order dated 07.06.2019 of the learned Single Judge, who dismissed the Writ Petition filed by the present appellants and set aside their elections on the ground that the sixth respondent Mr.S.Dhanaraj was not heard by the concerned Committee constituted by the Division Bench of this Court on 07.08.2018 regarding his objections of his nomination having been wrongly rejected by the Returning Officer.

2. The Division Bench of this Court had constituted the said Committee in a Judgment on 03.08.2018 rendered in a batch of Writ Petitions, led by W.P.Nos. 7526 of 2018 [R.Sakkarapani, Member of the Legislative Assembly, Oddanchathiram Constituency Vs. State of Tamil Nadu and others. The Division Bench of this Court in the said Judgment had given the following guidelines, while constituting the said Committee for examining the disputes raised regarding the elections of such Co-operative Society within the State of Tamilnadu. We extract below the portion of the Order of the Co-ordinate Division Bench of this Court:-

"142. The Committees will look into the complaints of wrongful inclusions and omissions in the voters' list, if such disputes have been raised prior to the holding of elections, but not decided and/or wrongfully decided by the Election Officer concerned. Finding of wrongful omission from or inclusion in the voters' list if not material will not affect the election. To cite an example, if one candidate has been excluded, but successful candidates have won with margin exceeding one, the election will not be affected.

143. Only objections and/or complaints with regard to voters' lists and nominations already made by approaching this Court or alternatively by approaching the Election Commission and/or Registrar and/or any other appropriate authority shall be entertained and no new complainants and/or objectors who never raised any objection till the date of this judgment shall be entertained by the Committee. The Committee shall check if the nomination papers comply with the requisites of Rule 52 read with Circular No. Na.Ka.321/2018/Co.EI.1, dated 19.7.2018 of the Election Commission. In particular, the Committee should look into the following aspects:

(a) if the nomination of a candidate for the election is in Form No.18, and proposed, seconded by two

other members whose names are included in the voters list, and is signed by the candidate, the proposer and the seconder.

(b) If the nomination paper has to be rejected on the ground that it is not signed by the candidate for election, or it is not 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. Of course, where there is only one member in the voters list, the nomination need not be seconded, and where excluding the candidate there are no members in the voters' list, the nomination need not be either proposed or seconded.

(c) In case of a central or apex society which has only one society member and no individual member, for election to the board of such central or apex society to fill up the 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.

(d) If the seat is reserved for Scheduled Castes and Scheduled Tribes, whether the candidate seeking election to such reserved seat had furnished a declaration in the nomination form made by him specifying the caste or tribe to which he belongs and the area in relation to which that caste or tribe is notified as a Scheduled Caste or Scheduled Tribes of the State.

(e) Whether there is any contravention of the rule that the candidate may be nominated by more than one nomination paper, but not exceeding four nomination papers.

(f) Any candidate contesting as a candidate in an election to a single member constituency has signed any nomination papers as a proposer or seconder:

(g) The Committee may examine if the nomination paper was filed in time or out of time.

144. Objections with regard to voters lists may only be raised by an aggrieved voter, whose name has been excluded, or by a contestant. Similarly, objections with regard to acceptance, non acceptance, withdrawal or rejection of nomination papers may only be raised by aggrieved contestants, who have filed and/or intended to file nomination papers.

145. Similarly, the Committees will go into the complaints of wrongful acceptance, non-acceptance or rejection of nomination papers only in cases where such complaints have already been made either before this Court or before the Election Commission or any other authority. The Committees will look into whether nomination papers were filed within the date stipulated in the election notification, whether the nomination forms were duly signed by the candidate and by the proposer and the seconder and whether the nomination form was complete in all respects. The Committees shall verify the nominations having regard to the requisites of Rule 52 of the Rules read with Circular No. Na.Ka.321/2018/Co.EI.1, dated 19.7.2018 of the Election Commission. Nomination papers are not to be rejected for frivolous reasons such as discrepancies in signature, if the signatures are identifiable, affixing of signature at the wrong place, etc."

[Emphasis Supplied]

3. The sixth respondent S.Dhanaraj made a complaint to the said Committee after the said cut off date of 03.08.2018. The Committee examined the merits of the complaint and set aside the elections of the present writ petitioners - appellants, who aggrieved by the same, had filed the writ petition and having lost filed the present Writ Appeal.

4. The learned Single Judge set aside the elections of the present appellants giving the following reasons:-

"9.The main contention of the learned counsel for the petitioners is that the complaint filed is barred by limitation. The fact remains that the nominations were made on 30.04.2018, however the results were announced only after the judgment of the Division Bench of this Court on 07.08.2018. Only after the judgment was pronounced, the 6th respondent came to know about the election result. The fact remains that the 6th respondent had been interested to contest in the Co-operative Society Election. His nomination was rejected on earlier occasion and he has also filed his objection before the Election Officer. However, the Election Officer had not entertained his objection. After coming to know about the order of the Division Bench of this Court, the petitioner had filed the written complaint before the committee. Though the representation of the petitioner is belated, that itself does not invalid the complaint filed by the petitioner and this Court also perused the nomination papers and noted that the same were filled by different persons and signed by the candidates and it appears that the petitioners were elected as un-opposed. When some of the persons really wanted to contest in the election, without giving them an opportunity, declaring the petitioners as un- opposed is against democratic principles. Therefore, the argument that the petition filed before the committee is barred by limitation is liable to be rejected.

10. Accordingly, this Writ Petition is dismissed. No costs. Consequently,

connection miscellaneous petitions are closed."

[Emphasis Supplied]

5. The learned counsel for the appellant has submitted before us that the Co-operative Societies Act 1983 contains a remedial mechanism under the Act itself. Disputes including the disputes relating to elections are dealt with under Section 90 of the said Act. We quote below Section 90 of the Tamilnadu Co-operative Societies Act:-

"SETTLEMENT OF DISPUTES.

90. Disputes. __ (1) If any dispute touching the constitution of the board or the management or the business of a registered society (other than a dispute regarding disciplinary action taken by the competent authority constituted under sub section (3) of section 75 or the Registrar or the society, or its board against a paid servant of the society) arises__

(a) among members, past members and persons claiming through members, past members and deceased members, or

(b) between a member, past member or person claiming through a member , past member or deceased member and the society, its board or any officer, agent or servant of the society, or

(c) between the society or its board and any past board, any officer, agent or servant, or any past officer, past agent or past servant, or the nominee, heirs of legal representative of any deceased officer, deceased agent, or deceased servant of the society, or

(d) between the society and any other registered society, such dispute shall be referred to the Registrar for decision.

Explanation. __ for the purposes of this section, a dispute shall include --

(i) a claim by a registered society for any debt or demand due to it from a member, past member or the nominee, heir or legal representative of a deceased member whether such debt or demand be admitted or not;

(ii) a claim by a registered society against a member, past member or the nominee, heir or legal representative of a deceased member for the delivery of possession to the society of land or other immovable property resumed by it for breach of the conditions to assignment or allotment of such land or other immovable property; and

(iii) a decision by the board under sub-section (3) of section 34 :

Provided that no dispute relating to, or in connections with any election shall be referred under this sub - section till the date of the declaration of the result of such election .

(2) The Registrar may, on receipt of such reference,-

(a) decide the dispute himself or transfer it for disposal to any person subordinate to and empowered by him; or

(b) subject to such rules as may be prescribed, refer it for disposal to an arbitrator or arbitrators.

(3) Subject to such rules as may be prescribed, the Registrar may withdraw any dispute referred under sub-section (1) to any person subordinate to him or transferred under clause

(a) or referred under clause (b) of sub-section (2) by the Registrar or any person subordinate to him and -

(a) decide the dispute himself; or

(b) transfer it for disposal to any person subordinate to, and empowered by him; or

(c) refer it for disposal to an arbitrator or arbitrators; or

(d) re-transfer the same for disposal to the person from whom it was withdrawn; or

(e) refer it for disposal to the arbitrator or arbitrators from whom it was withdrawn.

(4) If a question arises, whether for the purposes of this section any person is or was a member of a registered society, or whether the dispute referred for decision is a dispute touching the constitution of the board, or the management or the business of the society, such question shall be decided by the Registrar.

(5) Where any dispute referred to the Registrar under sub-section (1) or withdrawn by him under sub-section(3) relates to immovable property, the Registrar or the person or the arbitrator or arbitrators to whom it is transferred, referred or retransferred under sub-section (2) or sub-section (3) may, on the application of a party to the dispute direct that any person who is interested in such property, whether such person be a member or not, be included as a party to the dispute and any decision that may be passed on the reference, by the Registrar, the person, the arbitrator or arbitrators afore said, as the case may be, shall be binding on the party so included, provided that he shall be liable only to the extent of such property.

(6) The Registrar may pass such interlocutory orders as he may deem fit in the interests of justice.

(7) Nothing contained in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to any arbitration under this section.

(8) Nothing contained in section 34 of the Code of Civil Procedure 1908 (Central Act V of 1908) shall apply to any decision

passed or award made under this section.

(9) (a) The period of limitation for referring a dispute under this section shall be regulated by the provisions of the Limitation Act, 1963 (Central Act 36 of 1963) as if the disputes were a suit and the Registrar, a Civil Court, subject to the following modifications, namely:___

(i) when the dispute relates to a society in respect of which a special officer has been appointed under section 88 or to a society which has been ordered to be wound up under section 137, the period of limitation shall be six years, from the date of the order issued under section 88 or section 137, as the case may be;

(ii) save as otherwise provided in clause (i), when the dispute relates to any act or omission on the part of any of the parties referred to in clause (b) or clause (c) of subsection (1), the period of limitation shall be six years from the date on which the act or omission with reference to which the dispute arose, took place;

(iii) when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election.

(b) Notwithstanding anything contained in clause (a), the Registrar may admit a dispute after the expiry of the period of limitation if the applicant satisfies the Registrar that he had sufficient cause for not referring the dispute within such period and the dispute so admitted shall be a dispute which shall not be barred on the ground that the period of limitation has expired. "

6. A counter affidavit has been filed by the sixth respondent. Even though an Appeal against the order passed by the Registrar under Section 90 of the Tamilnadu Co-operative Societies Act does not lie under Section 152, a Revision lies under Section 153 of the Act and a Review thereof is also

provided under Section 154 of the Act. The provisions of Sections 152, 153 and 154 of the Act are also stated herein below:-

"152. Appeals._ (1) Any person aggrieved by-

(a) any decision or award passed or order made or proceedings taken under sub-section (1) of section 87, sub-section (2), sub-section (3) or sub-section (4) of section 90, section 118, section 119, section 143, section 144 or section 167; or

(b) any award of an arbitrator or arbitrators under sub-section (2) or sub-section (3) of section 90;

(c) any award of an arbitrator under section 100, May appeal shall to the Tribunal;

Provided that nothing contained in clause (a) or clause (b) of this sub-section shall apply to_

(i) any decision, order or award under sub-section (2), sub-section (3), or sub-section (4) of section 90 in respect of any matter relating to, or in connection with, the constitution of a board including any election thereto; or

(ii) any decision, order or award under sub-section (2), sub-section (3) or sub-section (4) of section 90 in respect of any matter relating to, or in connection, with, any matter not being a money claim;

(iii) any order of transfer, reference, withdrawal or re-transfer of a dispute under sub-section (2) or sub-section (3) of section 90.

(2) (a) Any person aggrieved by any-

(i) decision under section 7, sub-section (4) of section 23, sub-section

(6) of section 34; or

(ii) refusal to register the society under section 9 or the amendment of the by-laws under section 11; or

(iii) registration of amendment of the by-laws under sub-section (2) of section 12; or

(iv) approval of or refusal to approve the expulsion of a member under sub-section (2) of section 25, the proposal to take loan under clause (c) of sub-section (1) of section 105, the decision of the board under clause (ii) of sub-section (i) of section 106, the regulations under section 108 or the removal of a member under the proviso to section 109; or

(v) order under section 14, clause (ii) of sub-section (2) of section 21, section 36, sub-section (1) of section 88, sub-section (1) of section 89, section 137 or section 181, May appeal if such decision, refusal, registration, approval or refusal to approve or order is that of-

(A) the Registrar for the State, to the Government; or

(B) any other person, to the Registrar.

Explanation._ For the purposes of this clause, "person aggrieved" means in relation to section 11 or section 12, the registered society.

(b) Any person, who is refused admission to a registered society under sub-section (2) of section 21 or who is aggrieved by any order of the liquidator under section 139, may appeal to the Registrar.

(3) Any appeal under sub-section (1) or sub-section (2) shall, subject to the other provisions of the Act, be preferred within sixty days from the date of communication of the decision, order, award, refusal, registration or approval complained of, but the appellate authority may admit an appeal preferred after the said period of sixty days if it is satisfied that the appellant had sufficient cause for not preferring the appeal within the said period.

(4) In disposing of an appeal under this section, the appellate authority may, after giving the parties an opportunity of making their representations, pass such order thereon as the appellate authority may deem fit.

(5) Subject to the provisions of section 153 and 154, the decision or order of the appellate authority on appeal shall be final.

(6) The appellate authority may pass such interlocutory order pending the decision on the appeal as the appellate authority may deem fit,

(7) The appellate authority may award costs in any proceedings before the appellate authority to be paid either out of the funds of the registered society or by such party to the appeal as the appellate authority may deem fit.

153. Revision .— (1) The Registrar may of his own motion or on application, call for and examine the record of any officer subordinate to him or of the board or any officer of a registered society or of the competent authority constituted under sub-section (3) of section 75 and the Government may, of their own motion or on application, call for and examine the record of the Registrar, in respect of any proceedings under this Act or the rules or the by-laws not being a

proceedings in respect of which an appeal to the Tribunal is provided by sub-section (1) of section 152 to satisfy himself or themselves as to the regularity of such proceedings, or the correctness, legality or propriety of any decision passed or order made therein; and, if, in any case., it appears to the Registrar or the Government that any such decision or order should be modified, annulled, reversed or remitted for reconsideration, he or they may pass orders accordingly.

Provided that every application to the Registrar or the Government for the exercise of the powers under this section be preferred within ninety days from the date on which the proceedings, decision or order to which the application relates was communicated to the applicant.

(2) No order prejudicial to any person shall be passed under sub-section (1) unless such person has been given an opportunity of making his representation.

(3) The Registrar or the Government, as the case may be, may suspend the execution of the decision or order pending the exercise of his or their power under sub-section (1) in respect thereof.

(4) The Registrar or the Government may award costs in any proceedings under this section to be paid either out of the funds of the society or by such part to the application for revision as the Registrar or the Government may deem fit.

154. Review_ (1) The appellant or the applicant for revision or the respondent may apply for the review of any order passed under section 152 or section 153 on the basis of the discovery of new and important facts, which after the exercise of due diligence, were not then within his knowledge or could not be produced by him when the order was made or on the basis of some mistake or error apparent on the face of the record or for any other sufficient reason. Provided

that no application for review shall be preferred more than once in respect of the same order.

(2) Every application for review shall be preferred within such time and in such manner as may be prescribed.

(3) The decision or order passed on the application in review shall be final.

(4) The authority competent to pass orders on an application for review may pass such interlocutory orders pending the decision on the application for review as that authority may deem fit.

(5) The authority referred to in sub-section (4) may award costs in any proceedings for review to be paid either out of the funds of the registered society or by such party to the application for review as it may deem fit."

7. Thus a complete mechanism for redressal of disputes under the Act including election disputes is provided for in the Act itself.

8. In view of the effective alternative remedy being available to the aggrieved party, we are of the clear opinion that the writ jurisdiction could not have been invoked in the present case by the sixth respondent S.Dhanaraj particularly after having approaching the Committee constituted by the Division Bench of this Court even though belatedly contrary to the terms of the said Judgment itself. Therefore we allow the present Appeal and set aside the order of the learned Single Judge dated 07.06.2019 leaving it free for the sixth respondent to avail the appropriate remedy before the concerned authority as per Section 90 of the Act and then the further remedies provided under the Act itself.

9. The Writ Appeal is therefore allowed. No costs. Consequently, connected Miscellaneous Petition is closed.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

vsg
To

1. The Secretary
Committee on Co-operative Elections Cases
East Central Zone
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2. The Commissioner
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+1 CC to Mr.M. Kamadhevan, Advocate sr 70305.
+1 CC to Mr.D. Venkatachalam, Advocate sr 71485.

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MR(CO)
SP(17/09/2019)