



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 11.11.2019	Pronounced on: 15.11.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.18374 of 2019

1. Elayappan,
S/o.P.Kailasam,
No.1/195, Main Road,
Tho.Jaderpalayam,
Rasipuram Taluk,
Namakkal District.
 2. S.Ravikumar,
S/o.Sengoda Gounder,
No.1/42, Elumalaiyan Street,
O.Jaderpalayam, Rasipuram Taluk,
Namakkal District.
- ... Petitioners

/versus/

1. The Deputy Registrar of Co-operative Societies,
No.1/1, Periyannan Street, Near Jothi Theater,
Namakkal.
2. The Secretary,
S.414, R.Jaderpalayam Co-operative Society,
R.Jaderpalayam,
Rasipuram Taluk, Namakkal District.
3. The Election Officer,
S.414, R.Jaderpalayam Co-operative Society,
R.Jaderpalayam,
Rasipuram Taluk, Namakkal District.
4. Shanmuga Sundaram,
S/o. Palanivel,
Thokkavadiyar Thottam, O.Jaderpalayam,
Rasipuram Taluk, Namakkal District.

5. Kannan,
S/o.Palanimuthu,
Perumagoundampalayam,
Rasipuram Taluk,
Namakkal District.

.... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent dated 22.05.2019 in his proceedings in Election Petition No.1/2018-19/Sa.Pa and quash the same and consequently declare the proceedings of the 3rd respondent herein dated 11.08.2018 with respect of the election to the 2nd respondent society for the post of President and Vice President as null and void.

For Petitioner : Mr.R.Nalliyappan
For R1 to R3 : Mr.D.Venkatachalam
Additional Government Pleader
For R4 & R5 : Mr.A.Balamurugan

O R D E R

Heard the Learned Counsel for the Petitioners and the Learned Counsel for the Respondents.

2. These two petitioners are the elected members of the 2nd respondent/S.414, R.Jaderpalayam Co-operative Society. They were elected as Directors of the Board for the said society in the election held on 07.08.2018. In the said election, the petitioners along with nine others were declared elected as unopposed. Following the election of Directors of Board, the election for the President and Vice President was held on 11.08.2018.

3. The allegation of the petitioners 1 & 2 in this Writ Petition is that, though they presented nomination for the post of President and Vice President respectively which has to be from the Board of Directors, the 3rd respondent/Election Officer, did not give them any receipt for their nomination but declared 4th & 5th respondents as President and Vice President elected unopposed. The petitioners, immediately made objection regarding the illegal procedure adopted by the 3rd respondent and same was not considered. Hence, the 1st petitioner has filed Writ Petition in W.P.No.21601 of 2018, to declare the election of President and Vice President as null and void, without

considering the nomination made by the 1st petitioner. The said Writ Petition was withdrawn with liberty to file appeal under Section 90 of the Tamil Nadu Co-operative Societies Act.

4. Thereafter, the petitioners filed appeal before the 1st respondent on 18.09.2018 which was rejected by the 1st respondent vide order dated 22.05.2019 holding that there is no material evidence to show that the petitioners have filed nomination for the post of President and Vice President.

5. The petitioners states that, they have Photographs and CD's in support of their claim and same was produced before the 1st respondent. However, the 1st respondent has rejected the same stating that they were all morphed photographs. Hence, the present Writ Petition.

6. The 1st respondent whose order is under challenge has filed counter affidavit denying the averments made in the affidavit regarding the alleged nomination filed by the petitioners for the post of President and Vice President respectively. According to the 2nd respondent/Society, 11 members were elected as Directors without contest on 07.08.2018. On the same day, the 3rd respondent announced the last date for submitting application for the post of President and Vice President as 11.08.2018. The 4th and 5th respondents alone filed nomination for the post of President and Vice President respectively. So, they were elected for the post of President and Vice President as unopposed.

7. The Learned Additional Government Pleader states that the photographs relied by the petitioners were taken on the date when they filed nomination for the post of Directors. The petitioners are conveniently alleging that the 3rd respondent did not give receipt of their nomination so as to cover up their falsehood regarding the submission of nomination. Only after considering the facts and evidence available on record, the order was passed in the appeal under Section 90 of the Tamil Nadu Co-operative Societies Act. The petitioners has not placed any evidence to show that, they really submitted the nomination for the election of President and Vice President. In his order, he has mentioned that there is a possibility of morphing in the photographs produced but at the face of the photographs, it is clear that they were not taken at the time of nomination for the Post of President and Vice President.

8. The Learned Counsel appearing for the 1st respondent would submit that, the photographs taken during the nomination for the post of Directors has been now produced as if it was

taken while submitting nomination for the Post of President and Vice President. When there is no nomination receipt from the petitioners, necessity to issue receipt for the same does not arise.

9. The 4th respondent has filed counter on his behalf and behalf of the 5th respondent. These respondents also contended that the petitioners did not file any nomination and the photographs relied by them were really taken when they file nomination for the post of Directors. The 1st respondent, while hearing the dispute under Section 90 of the Tamil Nadu Co-operative Act, as taken into consideration of the material placed before him and had rightly dismissed the dispute. In addition, it is also contended by this respondents that the photographs and CD's produced by the petitioners are inadmissible evidence in view of Section 65-B of the Tamil Nadu Co-operative Societies Act.

10. On hearing the rival submissions and perusing the records particularly the impugned order passed by the 1st respondent on 22.05.2019, this Court finds that after detailed discussion about the facts of the case and the contention of the petitioners, the 1st respondent has doubted about the photographs and CD's produced by the petitioners. The allegation of refusal to accept the nomination is vague without any foundation.

11. As far as the alleged nomination at the time of election is concerned, the photographs and CD's relied by the petitioners cannot be a conclusive proof or substantial evidence for their alleged submission of nomination, more particularly when the petitioners who are elected for the post of Directors have filed nominations during the same time, preceding to the election of President and Vice President of the Society. Unless there is a concrete and strong evidence to establish that the petitioners have submitted nomination but not accepted by the 3rd respondent, by surmise their allegations cannot be accepted.

12. This will not leave the petitioners without remedy, peculiarly, in this case, it is an unanimous election of the 4th & 5th respondents as President and Vice President of the Society is challenged by the petitioners herein. These petitioners are members of the Board of Governors. The President and Vice President of the Society are elected by the Board of Directors. If really, the petitioners have enough majority in the Board of Directors, the Co-operative Societies Act provides for removal of elected President and Vice President by majority of Board of Directors and go for fresh election. The petitioners herein can very well resort to that provisions.

13. As a result, the order of the 1st respondent, dated 22.05.2019 is upheld. Accordingly, the Writ Petition is dismissed. No costs.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To,

1. The Deputy Registrar of Co-operative Societies,
No.1/1, Periyannan Street, Near Jothi Theater,
Namakkal.
2. The Secretary,
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3. The Election Officer,
S.414, R.Jaderpalayam Co-operative Society,
R.Jaderpalayam,
Rasipuram Taluk, Namakkal District.

+1cc to Mr.R.Nalliyappan Advocate Sr.No.95208
+1cc to The Government Pleader Sr.No.95619

AKM/16.12.19 /5p-6c/

order in
Writ Petition No.18374 of 2019

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