



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 11.07.2019

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CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition No.17613 of 2019
and W.M.P.No.17074 of 2019

M.Chennakesavan

...Petitioner

Vs

1.The Commissioner,
Tamil Nadu State Co-operative Societies Election Commission,
No.273, Kamadhenu Supermarket,
Chennai-600 018.

2.The District Election Officer and
Deputy Registrar of Co-operative Societies,
Dharmapuri,
Dharmapuri District.

3.The Election Officer,
S.8633, Periannahalli Primary Agricultural
Co-operative Credit Society Ltd.,
Periannahalli & Post,
Dharmapuri Taluk,
Dharmapuri District.

... Respondents

Prayer: Writ Petitions are filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records of the first respondent in his proceedings Na.Ka.8604/2018 Koo.The5 dated 04.06.2019 and quash the same and consequently direct the respondents to complete the election process for the post of Board of Directors of the third respondent society from the stage where it was stopped by the election officer.

For petitioner : Mr.Kamadevan.S

For R1 : Mr.M.S.Palanichamy,
Standing Counsel

For R2 & R3 : Mr.L.P.Shanmughasundaram
Special Government Pleader



ORDER

Heard the learned counsel for the petitioner.

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2. The petitioner is one of the contestants in the election for the Board of Directors in the third respondent Co-operative Society, which was scheduled to be held on 09.04.2018. Due to interim order passed by the Hon'ble High Court at Madurai Bench, the election notification was re-scheduled and scrutiny of nomination commenced on 23.04.2018. The election date was fixed on 27.04.2018. Accordingly the Election Officer on 23.04.2018 received and scrutinized the nomination. He found 33 candidates eligible and announced the valid nomination on the same day. However, on 25.04.2018, it was announced by the third respondent that due to possibility of riot and violence, there is no conducive atmosphere to conduct fair election and postponed the election, scheduled to be held on 27.04.2018. The petitioner herein aggrieved by the postpone of the election has filed W.P.No.12454 of 2018, challenging the action of the third respondent. Meanwhile, the first respondent passed an order cancelling the entire election due to change in circumstances. The petitioner amended his prayer in the writ petition challenging the order of the first respondent.

3.This Court after considering the submissions made by the petitioner and the respondent, the matter was remanded back for passing fresh order by the first respondent. The first respondent passed a cryptic order without assigning any valid reason for cancelling the election. Challenging the order passed by the first respondent, the petitioner has filed the writ petition in W.P.No.1799/2019. This Court allowed the writ petition on 04.02.2019, passing the following order:-

"7.In the light of the above submissions and that this Court is not satisfied with the manner in which the impugned order is passed by the first respondent, dated 18.12.2018, that too, when this Court has earlier specifically directed the first respondent to pass a detailed order and even thereafter, the same cryptic order has been passed by the first respondent, and this Court wanted to pass a stringent order, considering the submission made by the learned Standing counsel for Election Commission, that the Election Commissioner would not commit such mistake again, this Court has no hesitation to quash the impugned order. Accordingly, the impugned order dated 18.12.2018 passed by the 1st respondent is set aside. The 1st respondent is directed to pass a detailed fresh order after giving reasons for the proceedings dated 09.08.2018, within a period of four



weeks from the date of receipt of a copy of this order."

4. Pursuant to the direction given by this Court, the first respondent has now passed the order dated 04.06.2019, reiterating his earlier order of cancellation of the entire election process. The said order is challenged by the petitioner herein. He seeks Certiorari and Mandamus to quash the order passed by the first respondent dated 04.02.2019 and consequentially to direct the respondent to conduct the election for the post of Board of Directors of the Society from the stage where it was stopped by the Election Officer. In this writ petition, the petitioner actually wants to continue the election process by conducting the election with the available nomination, which was scrutinized and finalized by the Election Officer on 24.04.2018. The main contention of the petitioner herein is that while the Election Officer exercising his power under Rule 52(23) had stopped the election apprehending free and fair election. The Election Commissioner has no right to cancel the election by exercising his power under Rule 52(23).

5. The learned counsel appearing for the first respondent would submit that the order of the Commissioner is a self explanatory. As per the direction of this Court passed in W.P.No.1799 of 2019 dated 04.02.2019, has considered the representation given by the petitioner herein and the order of the Election Officer who stopped the election apprehending riot and violence. While considering the representation, the first respondent has also assigned the reason why he is forced to resort under Section 52(23) particularly the first respondent has found that nearly 33 nominations rejected contra to law which has led to apprehension of violence. Therefore, he has considered that the conduct of the Election Officer being totally contrary to law and bias for fair and free election. The election process has to be started afresh in all respects.

6. The reason given by the first respondent and the decision of the first respondent is in consonance with Rule 52 (23), which gives power to the Election Commissioner to order fresh election in all respects, if in his opinion that the election cannot be held free and fair on account of the prevailing law and order problem, or riot or open violence, or communal clash or on account of natural calamity or bandh or such other sufficient cause. The impugned order in the writ petition, the first respondent has given adequate cause vide in his opinion, fresh election should be conducted more particularly when the Election Commissioner has found that 33 valid nomination has been rejected illegally. Except ordering fresh election by no other means free and fair election could be conducted. Therefore, the contention of the writ petitioner that the first respondent ought not to have cancelled the election



and he should have ordered to continue the election is contrary to the facts and law.

7. Hence, the writ petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

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Sd/-
Assistant Registrar (CS VI)

//True Copy//

Sub Assistant Registrar

rpl

To

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3. The Election Officer,
S.8633, Periannahalli Primary Agricultural
Co-operative Credit Society Ltd.,
Periannahalli & Post,
Dharmapuri Taluk,
Dharmapuri District.

+1cc to Mr.LP.Shanmugasundaram, Advocate, S.R.No.58967
+1cc to the Government Pleader, S.R.No.58862
+1cc to Mr.S.Kamadevan, Advocate, S.R.No.58810

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NMI (CO)

RRS (09/08/2019)