



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 19.09.2019	Pronounced on: 24.09.2019
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Coram::

The Honourable Dr.Justice G.Jayachandran

Writ Petition No.18086 of 2019
& W.M.P.Nos.17468 & 26176 of 2019

A.Senthil Murugan,
S/o.Ayyannan,
Vowval Thoppur Village,
Kullamudaiyanur Post,
Mettur Taluk, Salem District. ... Petitioner

/versus/

1. The State Election Commissioner,
Tamil Nadu Co-operative Societies Election Commission,
No.273, Kamathenu Co-operative Stores,
Anna Salai, Chennai - 600 018.
2. The District Election Officer (Co-operative Elections),
Salem District, Salem.
3. The Election Officer,
K.K.142, Pottaneri Primary Agricultural Co-operative Credit
Society Ltd.,
Pottaneri, Mettur Taluk, Salem District.
4. R.Vasanthi,
President,
K.K.142, Pottaneri Primary Agricultural Co-operative Credit
Society Ltd.,
Pottaneri, Mettur Taluk, Salem District. ... Respondents

R4- Impleaded as per order dated 02.08.2019 by GJJ in W.M.P.No.21840 of 2019 in W.P.No.18086 of 2019
Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 1st respondent herein to cancel the Election to the Board of Management of K.K.142, Pottaneri Primary Agricultural Co-operative Credit Society Ltd., Mettur Taluk, Salem District namely 3rd respondent Society commenced on 14.06.2019 and on subsequent dates and further direct the respondents herein to hold the fresh election to the above said Society Strictly in

accordance with law by considering the petitioner's representation dated 16.06.2019 and 19.06.2019 and pass order on merits.

For Petitioner : Mr.R.Thamari Selvan

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

For R2 : Mrs.T.Girija,
Government Advocate

For R3 : Mr.L.P.Shanmugasundaram,
Special Government Pleader

O R D E R

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

2. The petitioner herein is member of Pothaneri Primary Agricultural Co-operative Credit Society. On expiry of the Board turn in the month of April - 2018, Election for the new board of Management for the said Society was notified by the 1st respondent/State Election Commissioner, to fill up 11 post of Board of Directors. As per the notification fixed, the schedule of election as below:-

14.06.2019	From 10.00 A.M to 5.00 P.M - Filing of nomination for the post of Member/Director of the Board
15.06.2019	From 11.00 A.M to 5.00P.M - Scrutinization of the nomination and announcement of valid nomination
17.06.2019	From 10.00 AM to 5.00P.M - Withdrawal of nomination and final notification of eligible contesting candidates
21.06.2019	Polling and counting & Declaration of election results
24.06.2019	1 st Meeting of the Board to elected President and Vice President

3. The petitioner filed nomination for the post of Board of Directors on 14.06.2019 and it was duly acknowledged by the Election Officer. 64 nomination were filed and on the next day the nomination were taken up for scrutiny. Without giving

any opportunity to the petitioner, on 15.06.2019 at about 5.30 p.m, 20 nominations alone were accepted out of 64 and list of valid nomination was affixed in the notice Board of the Society.

Out of 11 post, 2 candidates from S.C woman category and 3 candidates from General women category were declared elected as unopposed and election was to be conducted for the remaining 6 Directors on 21.06.2019.

4. The averment of the petitioner in his affidavit is that, the 3rd respondent/Society, ought not to have rejected his nomination even if there was any defect found in his nomination. Before rejection, he should have been given an opportunity. He and other members whose nomination has been rejected were deprived of the right of hearing. Hence, he gave representation on 16.06.2019 to the 2nd respondent/District Election Officer and to the Joint Registrar of Co-operative Societies, Salem, in person pointing out the irregularities committed by the 3rd respondent. Since, there was response from them, he sent another representation on 19.06.2019 to the 1st and 2nd respondents, reiterating the complaint of irregularity in rejecting the valid nomination without affording opportunity and sought for fresh election strictly in accordance with law.

5. The case of the petitioner is that, as per Rule 52 (8) (d) of the Tamil Nadu Co-operative Society Rules, 1989, the Election Officer to decide the objections if any, made regarding the rejection of nominations. He should have conducted enquiry after affording opportunity to the nominee before rejection of the nomination. Without following the mandatory procedures, the 3rd respondent, rejected the nominations filed by the members who were not candidates of the Ruling party.

6. In response to the affidavit, the 3rd respondent has filed detailed counter, wherein, the reason for rejecting the nomination of 39 candidates has been extracted. According to the 3rd respondent, he has conducted the election as per the Rules and procedure. Admitting the receipt of the 64 nominations on 14.06.2019, he contents that the nomination were scrutinized on 15.06.2019 and found 39 nominations defective and same was rejected in the presence of the candidates assigning reason. On completion of scrutiny of nomination on 15.06.2019, the list of valid nomination was finalized and published in the Notice Board. Out of 25 candidates found eligible to contest the election, 5 were elected as unopposed (3 persons under women category and 2 persons under S.C/S.T category). Since, there was no contest for those reserved seats, for the remaining 6 post of Directors, 20 candidates were contested and election was held on

21.06.2019. Based on the vote they secured, result was declared on 22.06.2019. The entire election process has been photographed and police protection was provided on the date of polling. Hence, there is no illegality or irregularity in the election held on 21.06.2019.

7. After the election of Board of members, as per Rule 53 (1)(a), election for the Office bearers was conducted on 26.06.2019. Tmt.S.Vasanthi Adaalarasan and Thiru.A.Selvaraj were elected as President and Vice President respectively. The Board of Directors have also assumed charge on 26.06.2019. The election process has come to end. The Election Commission has become functus officio. If there is any grievance, the petitioner can file arbitration before the Deputy Registrar of Co-operatives under Section 90 of the Tamil Nadu Co-operative Societies Act.

8. Relying upon the observation made by this Court in S.L.Kanniappan Vs. Election Commissioner and others, Annamalai Vs. District Election Officer, Krishnagiri. The respondents contend that since the election process has completed, the only remedy is to raise dispute under Section 90 of the Tamil Nadu Co-operative Societies Act.

9. In response to the counter, the petitioner has filed reply affidavit, wherein, reiterating his claim that the nominations cannot be rejected on the ground of minor errors. His nomination has been rejected on the ground that, seconder signature is not found in the Admission Register and proposer signature varies from the signature found in the Admission Register. These are minor errors and for that, his nomination cannot be rejected. The variation in the signature in view of passage of time more than 15 years cannot be a reason to reject the nomination, when the identity of the candidate could be established.

10. The modus operandi of certain vested interest to subvert the democratic process of election has been dealt by this Court in the batch of Writ Petitions disposed on 03.08.2018 by the Division Bench consisting of Hon'ble Chief Justice and Justice P.T.Asha.

11. Pursuant to the constitution mandate, after 97th amendment Act, 2011, states are bound to conduct the Co-operative Society Election in a democratic manner once in every five years. For the 1st time, after the 97th amendment, election for the Co-operative Societies was held in this state in the year 2013. Thereafter, on expiry of five years tenure, the

election was notified for all the Co-operative Societies in the State by the Election Commission vide notification during the month of March - 2018. Allegations similar to the allegation made in this Writ Petition came up for consideration before this Court through Writ Petitions filed by several aggrieved persons.

12. A similar defence was taken by the respondents citing alternate remedy, however, this Court found that there was rampant violation of Section 52(8)(d) and the guidelines issued by the Election Commission vide circular in Na.Ka.No.321/2018/Co.EI.1, dated 19.07.2018 based on the manual, sub-manual and the earlier circulars. Therefore, constituted committees chaired by retired Hon'ble Judges to decide petitions of objection, petition of complaints and pass appropriate order. While so, in the case of the 3rd respondent, yet again the very same modus operandi has been adopted to throw away the valid nomination of candidates of rival group by assigning frivolous reasons. On scrutiny of reasons stated by the 3rd respondent for rejected the 39 nominations clearly indicates that most of them are minor in nature, which would have been rectified on the date of scrutiny, if really proper opportunity given to nominees. This Court, called for records to verify whether the reasons stated for rejecting the nomination of the petitioner is sustainable. This Court, found out that in the admission register, most of the members have not signed or affixed their thumb impression at the time of admission. While so, for that reason applications ought not to have rejected.

13. It is contended by the Learned Counsel for the respondents that, the signature of the proposer for the petitioner varies. When there is no doubt that both the proposer and seconder of the petitioner are members of the 3rd respondent, and when Rule 52 directs the Election Officer to accept such nomination, when there is no doubt in the identity of the members. This Court finds no justification on the action of 3rd respondent for rejecting the nomination of the petitioner.

14. The Division Bench of this Court in the above cited judgment has categorically stated that the Court cannot turn a blind eye to instance of rejection of nomination on frivolous ground. Further, the Division Bench has also laid down the procedure during Co-operative Societies election to safe guard the spirit of democracy and ensure free and fair election with following guidelines:-

(i) Compulsory presence of the Election Officer during the process of scrutiny of nominations and rejection and withdrawal of nominations on

the announced date and time.

(ii) Police protection.

(iii) No scope to anyone to handle or damage nominations and connected documents.

(iv) Supply of nomination form to be provided to all intending candidates. However, nomination form can be typed or in photo copy or in written or downloaded, but only in Form-18.

(v) Errors and omissions allowed to be rectified in relation to the Membership Number, category of constitution, signature, place of affixation of signature, omission of details in the nomination form.

(vi) Nominations are not to be rejected on the ground of minor errors.

(vii) If the Election Officer is satisfied on enquiry that the person who files the nomination is the same person in the voters list, then the nomination is not to be rejected.

(viii) Declaration in Form 18 is sufficient to contest from seats reserved for Scheduled Caste/Scheduled Tribe.

(ix) Nominations are not to be rejected for not filling up Columns 5 and 6 in Serial No.3, which Columns are only to be filled by candidates belonging to the Scheduled Caste/Scheduled Tribe.

(x) Nomination is not to be rejected only on the ground of omission to strike out the declaration by the candidates who do not belong to Scheduled Caste/Scheduled Tribe.

(xi) While receiving nomination, the Election Officer has to put his initial with date by mentioning the Serial Number of the nomination, date and time.

(xii) Acknowledgements are to be issued to candidates who filed nomination.

(xiii) There should not be crowd during the filling up of nominations and not more than five persons including the candidate are to be allowed.

(xiv) Reasons for accepting the nomination in case of acceptance and reasons for rejecting the nomination in case of rejection shall be recorded briefly and clearly in the nomination Form.

(xv) A candidate can be a proposer or seconder for candidates in constituencies other than the constituency in which he himself is contesting. For example, in a Society, if there are 11 members of the Board to be elected, a candidate can be a proposer or seconder for 10 constituencies except the one to which he is contesting.

(xvi) Rule 52(8) is strictly followed during filling up of nomination, receipt of nomination and scrutiny in the nomination for election as member of the Board.

(xvii) There shall be no correction in the nomination form by the Election Officer under any circumstances.

(xviii) The District Election Officers are to ensure that all Election Officers adopt the Rules and the instructions issued by the Commission without giving room for any complaints in respect of filing of nomination,

scrutiny, publication of valid nominations, withdrawal of nomination and publication of final list of contesting candidates.

15. In this case, the petitioner herein, immediately after the illegal rejection of his nomination, has sent a letter on 16.06.2019 to the Election Commissioner. Further, on 19.06.2019, after affixture of valid nomination, again a representation has been given by him through e-mail and registered post. The Election Commissioner has not considered those representation and no enquiry has been done on his representation. The authorities have waited for the farce election to get completed and to plead that it has become functus officio.

16. As stated by the Division Bench, Court cannot turn a blind eye when there is dereliction of responsibility by a Constitutional authority entertaining farce election.

17. This Court, rely upon the Whirlpool Corporation Vs. Registrar of Trademarks, Mumabi and others reported in (1998) 8 SCC 1, which has concluded that, the existence of an alternate remedy does not operate as a bar in at least three contingencies, i.e., where the writ petition has been filed for the enforcement of any of the fundamental rights or where there has been a violation of the principles of natural justice or where the order and/or proceedings is without jurisdiction or the vires of an Act is challenged.

18. In spite of specific direction given by this Court in the earlier round of litigation, the respondents have failed to adhere to the Rules and Regulations while conducting the election. They are suppose to be conducted the election in a fair and free manner. Unfortunately they have succumbed to the pressure of some vested interest. This has lead to improper rejection of the nomination of the petitioner's and few others. The reasons for rejecting many of the nominations including the petitioner nominations are very frivolous, insignificant and minor which could have been easily rectified, if really opportunity had been given to the members during scrutiny. In spite of specific provision under the Rule and the guidelines issued by the Election Commissioner, the 3rd respondent has rejected the nomination though there is every evidence to show that the persons who has filed the nomination, proposer and seconder are all eligible persons to vote. The petitioner herein, in the nomination Form-18 has specifically stated that,

he is contesting for the General Seat while so, there is no necessity for him to fill the column meant for S.C/S.T candidates. This is one of the reasons stated by the respondents for rejecting the petitioner's nomination.

19. To say the least, the 3rd respondent has tried to find some reason to reject the valid nomination so that, it will be a hassle free election for chosen few. Taking advantage of certain judgments of this Court, which are all based on the facts of those case were courts have declined to entertain Writ Petition, the respondents cannot presume that their illegal and unconstitutional Acts will be condoned by the Courts and force the aggrieved persons to resort to inefficacious alternate remedy of raising dispute under Section 90 of the Tamil Nadu Co-operative Society Act. The manner in which the petitioner's nomination and the flimsy reason stated out for rejection of nomination enmasse shocks the conscience of the Court.

20. For the reason stated above, the Writ Petition is Allowed. The election of the six members for General constituency of the 3rd respondent/Society is declared as void. The 1st respondent is directed to issue fresh notification calling for nomination and conduct the election in accordance with law, within a period of one month, from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

bsm

To,

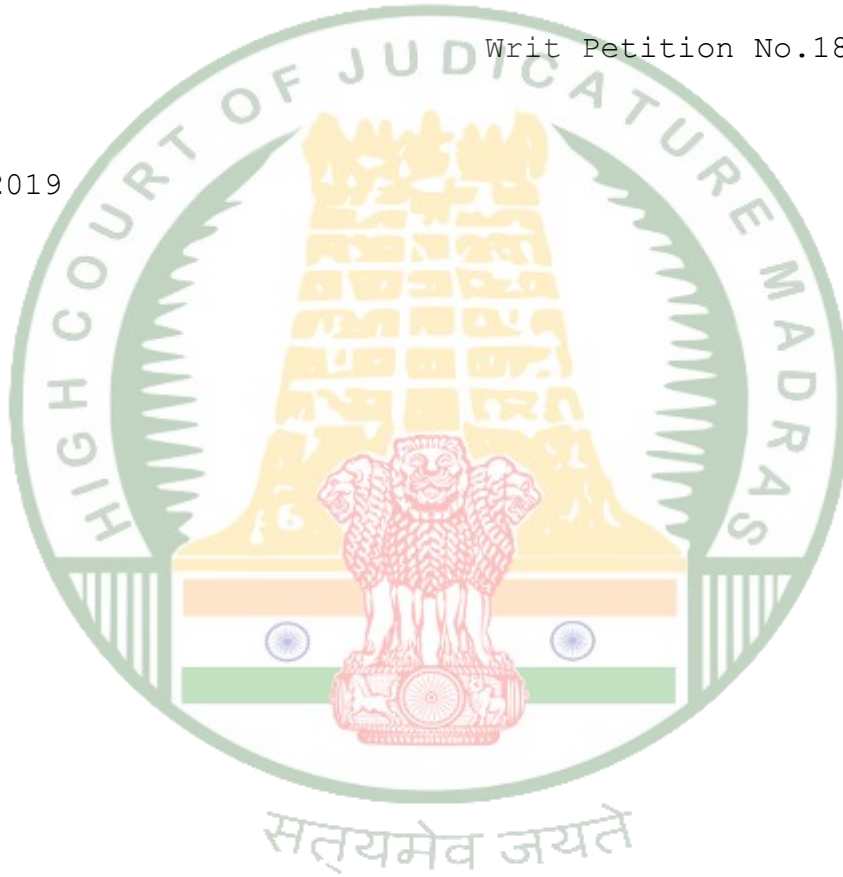
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+1cc to M/s.M.R.Jothimanian, Advocate sr.81842
+1cc to Mr.R.Thamari Selvan, Advocate sr.81893
+1cc to M/s.L.S.Shanmuga Sundaram, Advocate sr.82120
+1cc to Special Government Pleader sr.82263

order in
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