

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 18.09.2019

PRONOUNCED ON: 26.09.2019

CORAM::

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Writ Petition Nos.18552, 19308 & 19712 of 2019
and

W.M.P.Nos.17864, 17865, 17867, 18767, 18769, 18771, 25570 of 2019

1. P.Renu Kumar,
S/o.Periya Desapan,
No.5, 5th M.G.R.Street,
Panaiyur Kuppam,
Sholinganallur,
Kancheepuram District.

2. Rajkumar,
S/o.Dharani,
No.91, Mettu Street,
Uyyalikuppam, Kalpakkam,
Kancheepuram District.

.... Petitioners
in W.P.Nos.18552 & 19308 of 2019

1. T.Murugan
S/o.Thirumal,
No.3/226, South Street,
Naripaiyur, Kadaladi Taluk,
Ramanathapuram District.

2. M.Muniyasamy
S/o.Muniyandi,
No.3/117, Pudhu Kizhaku Street,
Keezhakkarai, Ramanathapuram District.

3. R.Pandi,
S/o.Ratha,
No.3/62, Kalimangundu - 623 523,
Ramanathapuram District.

4. M.Mahalingam
S/o.Muthu,
No.3/33, Koravalli, Pudhumadam,
Vellariodai, Ramanathapuram District.

5. Abdul Hameed
S/o.Ebran Shah,
No.6/52, Wet Street Mandapam,
Ramanathapuram District.
6. R.Muthuraman
S/o.Ramasamy,
No.3/46, Bethri Street,
Keezhkharai, Ramanathapuram District.
7. Jesudoss Jeyakumar
S/o.Sesaiah,
No.13/12, Pannattar Street,
Keezhakarai, Ramanathapuram District
8. Ponnusamy
S/o.Paraman,
No.4/2241, Therku Vadi, Pamban,
Ramanathapuram District
9. Seeni Syed,
W/o.Seeni Maraikayar,
No.2-1201, Pakir Ravuthar Street,
Pamban, Ramanathapuram District.
10. Ulagammal
W/o.Ayyasamy,
No.5-3402, Kundhukkal, Pamban,
Akkal Madam, Ramanathapuram District
11. Sakthivel
S/o.Subramanian,
No.1/56, Alakathavalasai,
Pirappan Valasai, Irumeni, Ramanathapuram District.
12. Pakkiavathi
W/o.Muthurkaruppan,
No.3/168, Thoppu Valasai,
Kalimannundu, Ramanathapuram District.
13. Valarmathi
W.o.Arputharaj,
No.3-2077, Meenavar Colony,
Akkal Madam, Pamban, Ramanathapuram District.
14. Syed Karunai
S/o.Kabul,
No.A/95-A, Sangulikkara Theru,
Keezhakkarai, Ramanathapuram District.

15. M.Thangaraj
S/o.Muthu,
No.4/16A, Kamarajapuram,
Naripayanur Post, Ramanathapuram District.

16. M.Isakkimuthu
S/o.Muthuraj,
No.288, Threspuram Keezhur,
Thoothukudi District.

17. M.Mariappan
S/o.Muniyasamy,
No.87, Tsunami Nagar,
Thoothukudi Harbour Estate, Thoothukudi.

18. S.Malliga
W/o.Selastin,
No.281/206C/1, Threspuram,
Thoothukudi.

19. M.Durai
S/o.Mookkuperi,
No.3/7 Mariamman Koil Street,
Vembar, Thoothukudi.

...Petitioners
in W.P.No.19712 of 2019

/Versus/

1. The State of Tamil Nadu,
Rep. by its State Election Commissioner,
Tamil Nadu Co-operative Societies,
Kamadenu Co-operative Super Market building,
Teynampet, Chennai - 18.

2. The Director,
Fisherman Co-operative Society,
No.485, V-Floor, MTB Buildings,
Anna Salai, Nandanam, Chennai - 35.

3. The Joint Director of Fisheries,
DMS Complex, Teynampet, Chennai - 18.

4. The Deputy Director of Fisheries,
No.485, V-Floor, Anna Salai, Nandanam,
Chennai - 35.

5. The Assistant Director of Fisheries,
Kancheepuram District at Neelankarai,
Chennai.

6. The Assistant Director of Fisheries,
Royapuram,
Chennai.
 7. Xavier Manoharan,
Pozhikarai Fisherman Co-operative Society,
Kanyakumari District.
 8. Arumugam,
Kanathur Reddy Kuppam Fisherman Co-operative
Society,
Kancheepuram District.
- ... Respondents
in W.P.No.18552 of 2019
1. The State of Tamil Nadu,
Rep by its State Election Commissioner,
Tamil Nadu Co-operative Societies,
Kamadenu Co-operative Super Market building,
Teynampet, Chennai - 18.
 2. The Director,
Fisherman Co-operative Society,
No.485, V-Floor, MTB Buildings,
Anna Salai, Nandanam, Chennai - 35.
 3. The Joint Director of Fisheries,
DMS Complex, Teynampet, Chennai - 18.
 4. The Deputy Director of Fisheries,
No.485, V-Floor, Anna Salai, Nandanam,
Chennai - 35.
 5. The Assistant Director of Fisheries,
Kancheepuram District at Neelankarai,
Chennai.
 6. The Assistant Director of Fisheries,
Royapuram,
Chennai.
 7. Xavier Manoharan,
Pozhikarai Fisherman Co-operative Society,
Kanyakumari District.
 8. Arumugam,
Kanathur Reddy Kuppam Fisherman Co-operative
Society,
Kancheepuram District.

9. The Election Officer,
Tamil Nadu State Apex Co-operative Federation Ltd.,
Chennai.
10. S.Vasugi,
Annai Sathya Women Fisherman Coop. Society
No.38/3, Vannar Street, Royapuram,
Chennai- 13.
11. A.Gowri,
Indira Nagar Women Fisherman Coop. Society
No.34 A.J.Colony 3rd Street Royapuram,
Chennai-13.
12. A.Abisekar,
Sigabadhulla Manai Fisherman Coop. Society
No.9 New Kamaraj Nagar, 2nd Street, Royapuram,
Chennai-13.
13. Srinivasan,
Light House (A) Kalankarai Vilakam Society
Light House Kuppam Policate Post Ponneri
Tiruvallur District-601 205.
14. Guhapriya,
Idhaya Deivam Doctor Puratchi Thalaivi
Fisher Women Coop. Society SN Chetty Street
Royapuram Chennai-600013.
15. Chitra,
Ariyalur Taluk IFCS, Keelakavanthankurichi,
Ariyalur-621704.
16. Anandan,
Arani Fishermen Coop. Society,
Arani-632301.
17. Velusamy,
Panaikulam Fishermen Coop. Society,
Ramnad- 623 522.
18. Kaleeswaran,
Sivagangai Inland Fishermen Coop. Society,
No.57, Kamarajar Road, Budhar Street,
Sivagangai-630 561.
19. Clammans,
Nochikuppam Fishermen Coop. Society
Triplicane 600004.

20. Kumar,
Namblar Nagar Sea Fishermen Coop. Society
Nagapattinam Taluk,
Nagapattinam Dist.-611 001.

21. Udayanan,
Kankollanpattinam Fishermen Coop. Society
Kankollanpattinam Pudupattinam Post
Thiruvadanai Taluk,
Ramnad Dist - 623 403.

22. Chitra,
Trichy Pudukottai Fisherman Coop. Federation,
TAFCOFED Pudukottai District Office,
No.22, Lakshmipuram 1st Street,
Pudukottai-622001.

23. B.Raja
Pazhangudiyinar Fish Vendor Coop. Society
No.11th Street, Nethaji Nagar,
Urapakkam, Kancheepuram District - 603 210.

24. Kandan
Nochikuppam Fisherman Coop. Society
Triplicane-600 004.

... Respondents
in W.P.No.19308 of 2019

(R10 to R24 are impleaded vide
order dated 22.07.2019 made
in W.M.P.No.20820 of 2019 in WP.No.19308)

1. TheTamil Nadu State Co-operative,
Election Commissioner,
No.273, Kamadhenu Super Market I Floor,
Anna Salai, Chennai - 600 018.

2. The Director of Fisheries
P.Box No.24320199, 24320197 and 24336311
DMS Complex Teynampet Chennai - 6.

3. The Assistant Director of Fisheries/Election Officer,
Teynampet,
Chennai - 600 006.

4. Kaleeswaran
S/o.Veeramani ,
Sivagangai Inland Fishermen Co-operative Society,
No.57 Kamarajar Road,Buddhar Street,
Sivagangai-630 561.

5. Clammans,
S/o.Thipuruchiyan,
Thoothukudi Fishermen Co-operative Society,
Thoothukudi - 628 001.
6. Kandan,
S/o. Perumal, Nochikuppam Fishermen Co-operative Society,
Triplicane, Chennai - 600 004.
7. Kumar,
S/o. Sarathumannan, Nambiar Nagar Sea
Fishermen Coop. Society, Nambiar Nagar,
Nagapattinam Taluk,
Nagapattinam District - 611 001.
8. Udayanan,
S/o. Ulagusamy,
Kankollanpattinam Fishermen Cooperative Society,
Pudhupattinam Post, Thiruvadanai Taluk,
Ramanathapuram District - 623 403.
9. Srinivasan,
S/o.Ramachandran,
Light House @ Kalankaraivilakkam Society,
Light House Kuppam Pulicat Post, Ponneri,
Thiruvallur District - 601 205.
10. Vasuki,
W/o. Sundarraj,
Annai Sathya Fishermen Cooperative Society,
SN Chetty Street, Royapuram,
Chennai-600 013.
11. Guhapriya,
W/o.Kalaisekar,
Idhaya Deivam,
Dr.Puratchi Thalaivi Fishermen Coop. Society,
SN Chetty Street, Royapuram,
Chennai - 600 013.
12. Chitra,
W/o. Nagarajan,
Ariyalur Taluk Fishermen Cooperative Society,
Keelakavatankurichi,
Ariyalur - 621 704.
13. Anandan,
S/o. Sivagnanam,
Arani Fishermen Cooperative Society, Arani - 632 301.

14. Velusamy,
S/o. Aandi,
Pandikulam Fishermen Cooperative Society,
Ramnad - 623 522.
15. S.Thulasi,
W/o. Sundarraaj,
Annai Sathiya Fisherwomen Cooperative Society,
No.38/3, Vannara Street, Royapuram,
Chennai - 600 013.
16. Ramani,
W/o.R.Sreedhar,
Arinjar Anna Fisherwomen Cooperative Society,
No.2/2 East Madhakoil Street,
Royapuram, Chennai - 600 013.
17. A.Gowri,
W/o. Anandakumar,
Indira Nagar Fisherwomen Cooperative Society,
No.34, A.J.Colony, 3rd Street,
Royapuram Chennai - 600 013.
18. A.Abishekar,
S/o. Arumugam,
Fishermen Cooperative Society,
No.9, Pudhu Kamaraj Nagar, 2nd Street,
Royapuram Chennai - 600 013.
19. B.Raja,
S/o.Pazhangudi Balu,
Pazhangudiyinar Fish Vendor Cooperative Society,
No.70, 11th Street,
Nethaji Nagar, Urapakkam,
Kancheepuram District.
20. M.Arumugam,
S/o.Madurai,
Kanathur Reddykuppam Fisherman Co-operative Society,
kancheepuram.
21. M.Xavier Manoharan,
S/o.Mariyan Pozhikkarai,
Fishermen Cooperative Society,
Agastheeswaram Taluk,
Kanniyakumari District.

(R4 to R21 are impleaded as per the order made in W.M.P.No.22088 of 2019 by GJJ dated 21.08.2019).

22. Mr.P.Kandan,
S/o.Perumal,
Nochikuppam Fishermen Cooperative Society,
Kanyakumari District.

... Respondents
W.P.No.19712 of 2019

R22 are impleaded as per the order made in W.M.P.No.23467 of 2019 by GJJ dated 21.08.2019.

Prayer in W.P.No.18552 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, to forbear the respondents from conducting the Election for the Board of Directors for Tamil Nadu State Fisherman Co-operative Federation without our nominations and pass orders.

Prayer in W.P.No.19308 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Certiorarified Mandamus, to call for the records on the file of the 9th respondent made in Form No.22, dated 26.06.2019 and quash the same and consequently direct the respondents 1 to 6 and 9 to conduct the Election for the Board of Directors for Tamil Nadu State Fisherman Co-operative Federation, which is the Apex Body in a fair, proper and democratic manner and pass orders.

Prayer in W.P.No.19712 of 2019: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 1st respondent to set aside the election conducted by the 3rd respondent pursuant to the notification dated 12.06.2019 for the post of Executive Committee Members in the Tamil Nadu Apex Fisheries Co-operative Federation and take appropriate to conduct fresh elections for the said post in a free and fair manner in accordance with law.

W.P.Nos.18552 & 19308 of 2019
For Petitioners : Mrs.Selvi George

W.P.No.19712 of 2019
For Petitioners : Mr.P.Manoj Kumar

W.P.Nos.18552, 19308 & 19712 of 2019

For R1 : Mr.S.Palaniswamy,
Standing Counsel,

W.P.No.18552, 19308 of 2019

For R4 to R6 : Mr.N.Inbanathan,
Additional Government Pleader

W.P.Nos.18552 & 19308 of 2019

For R2 : Mr.A.Kumar, AAG,
Asst. by
Mr.L.P.Shanmugasundaram,
Special Government Pleader

W.P.No.19712 of 2019

For R2 : Mr.N.Inbanathan,
Additional Government Pleader

For R4 to R22 : Mr.N.R.Chandran, Senior Counsel
for Jayanth Pratap

C O M M O N O R D E R

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

W.P.Nos.18552 & 19308 of 2019

2. The petitioners in W.P.Nos.18552 & 19308 of 2019 are the members of the Tamil Nadu Fisherman Welfare Board. The 1st petitioner/Renu Kumar was elected as one of the Director for the Panayurkuppam Fisherman Co-operative Society (J.J.155) for the year 2018 - 2023 and subsequently, he was elected as President of the said Society. Likewise, the 2nd petitioner/Rajkumar, was elected as Director of Uyalikuppam Fisherman Co-operative Society (G-1574) and subsequently, he was elected as a President of the said Society for the period 2018-2023. Being the elected President of Fisherman Co-operative Societies, the petitioners are eligible to contest the election for the Tamil Nadu State Fisherman Co-operative Federation, which was scheduled to be held on 01.07.2019, as per the notification issued by the Election Officer under Rule 52(5) of the Tamil Nadu Co-operative Rules, 1998. For the said federation, 17 administrative members has to be elected from among the elected Directors of Primary Co-operative Society. As per the notification of the 1st respondent, the dates for receiving nomination and finalisation of nomination was fixed as below:-

24.06.2019	From 10.00 a.m to 5.00 p.m - Submission of nomination
25.06.2019	From 11.00 am to 4.00 p.m - Scrutiny of nomination at 5.00 p.m publication of list of eligible candidates.
26.06.2019	From 10.00 am to 4.00 p.m - Withdrawal of nomination and at 5.00 P.M release of Final list of contesting candidates

3. The eligible criteria for contesting the election :-

(i). Should be an Eligible member of Fisherman Co-operative Society.

(ii). Should be an elected Director of Primary Fisherman Co-operative Society.

(iii). The candidate should be a full time fisherman and no one from the fisherman family should be a Government servant (Central or State).

(iv). Should reside within the territorial jurisdiction of the Primary Co-operative Fisherman Co-operative Society.

(v). Only one member can be nominated to contest from the Primary Fisherman Co-operative Society.

4. The petitioners claiming to be eligible to contest the election when went to the Office of the Joint Director of Fishers/3rd respondent on 24.06.2019, to get the nomination form they were not permitted to meet the Election Officer. Group of people about 100 in number claiming themselves as men of Respondents 7 and 8, threatened them not to file any nomination and forced them out from the Joint Director Office. The 3rd respondent, failed to take any action against them. In order to accommodate the men of respondents 7 & 8, the 3rd respondent refused to give nomination form to the petitioners. Contrarily he accepted the nomination of ineligible candidates who were not qualified for contesting the election.

5. Earlier when the election was notified during the month of February - 2019 due to law and order problem, that election was cancelled and fresh election was notified inviting nomination on 24.06.2019. Being prevented from filing the nomination Form personally the petitioners have sent their nomination through e-mail on 24.06.2019, whereas, the 3rd respondent has not considered their nomination. Personal allegations against the respondents 7 & 8 also made in the affidavit.

6. The sum and substance of the allegation is that, by denying the petitioners from contesting the election at the instance of respondents 7 & 8, the other respondents are trying to proceed with the election in spite of complaint regarding non-receipt of nomination. Hence, the petitioners pray to issue Mandamus seeking direction from this Court to the 3rd respondent permit them to contest the election scheduled to be held on 01.07.2019. Pending Writ Petition, injunction restraining the respondents from conducting election for the post of Board of Directors/members for the Tamil Nadu State Fishers Co-operative Federation. This Writ Petition was filed on 27.06.2019. It came up for hearing on 01.07.2019. The Learned Counsel for the respondents 1 & 2 took notice and the matter was adjourned to 05.07.2019.

7. Pending above Writ Petition, these two petitioners have filed another petition in W.P.No.19308 of 2019 seeking Writ of Certiorarified Mandamus, to call for the records on the file of 9th respondent/Election Officer made in Form-22 dated 22.06.2019, which is the list of candidates declared elected unopposed for the post of Directors in Tamil Nadu State Fishermen Co-operative Federation.

8. In W.P.No.19308 of 2019, the petitioners alleges that the men and agent of the respondents 7 & 8 prevented them from filing nomination on the date of nomination. Same was brought to the notice of the Election Commission and Election Officer. In spite of complaint, the Election Officer has accepted only 19 nominations which were already pre-decided. He rejected two invalid nominations and declared the remaining 17 nominees as elected unopposed. Most of the members who have been declared elected are not qualified to contest the election since, the Rule mandates candidates should not be above the age of 60, they should be whole time fisherman and should not be a Government Servant. Whereas, out of 17 members declared elected unopposed, many do not satisfy the above conditions.

W.P.No.19712 of 2019

This Writ Petition is filed by one T.Murugasean, seeking direction of the 1st respondent to set aside the election conducted by the 3rd respondent pursuant to the notification dated 12.06.2019 for the post of Executive Committee Members in the Tamil Nadu Apex Fisheries Co-operative Federation.

9. The election process for the post of Directors in Tamil Nadu State Fisherman Co-operative Federation is challenged on the ground that the nominations of the petitioners were illegally rejected by the Election Officer, without any valid reason and the representation given to the Election Commission regarding the illegal rejection of the nomination not been considered by the Election Commission.

10. The sum and substance of the averments made in this Writ Petitions is that, the Assistant Director of Fisheries/Election Officer, Teynampet, Chennai, published notification on 12.06.2019 to conduct election for the post Executive Committee Members in the Tamil Nadu Apex Fishers Co-operative Federation (TAFCOFED). The petitioners herein (19 in numbers) decided to contest in the said election and therefore, went to the Office of the 3rd respondent to collect the nomination Form and filed their nomination. But, they were not allow to enter the Office and were prevented by police from entering the 3rd respondent Office. Selected few persons alone were allowed to collect the nomination papers. In spite of severe protest by them, the 3rd respondent prevented them from entering the Office with the help of police and undemocratically denied the right of filing nomination. Immediately, complaint was given to the Assistant Commissioner of Police. The said complaint was not entertained. Hence, a compliant through e-mail was sent to the Commissioner of Police. Later, on 25.06.2019, a written complaint was sent to Assistant Director of Fishers/Election Officer through RPAD. Without considering their complaint of grave violation of the right to contest, the Election Officer has published final list of candidates whose nomination were accepted and affixed the same on 26.06.2019. On 26.06.2019, a detail representation was sent by the registered post to the respondents to intervene the undemocratic activity of the Election Officer/3rd respondent and pass appropriate order and to conduct election after receiving nomination of the petitioners and conduct the election in a free and fair manner. Since, there was no response to any of the representations given by the petitioners, they have approached this Court seeking remedy under Article 226 of the Constitution.

11. The contention of the petitioners in these three Writ petitions are of two folds: First, the petitioners were prevented from filing the nomination. When reported about this to the 3rd respondent, he did not consider their complaint regarding the non-acceptance of their nomination. Second, the nomination accepted and members declared were not qualified to hold the post.

12. The 3rd respondent/Assistant Director of Fisheries, has filed counter in W.P.No.19712 of 2019, in the said counter, the 3rd respondent has denied the allegation of the petitioner that they were prevented from contesting the election scheduled vide notification dated 12.06.2019. The allegation of the petitioners that 3rd respondent in connivance with Police Officer prevented the petitioners from filing nomination is denied as false. According to the 3rd respondent, the averments contained in the complaint, dated 24.06.2019 lodged by the 1st petitioner is not in consonance with the averments made in the writ affidavit. The allegations are cooked up allegations with

malafide ulterior intention to cancel the election, which was arranged and scheduled in a democratic way.

13. Pointing out the admission of the petitioners that, their nomination were accepted in the earlier election process held during the month of February which was later cancelled pleads that there is no reason to refuse receiving nomination. According to the 3rd respondent counter, they were totally 21 nominations received by them, out of which two were rejected and two nominations were withdrawn, leaving 17 valid nomination, for the 17 post. It is also contended that having made allegation against the police, the petitioners should have impleaded the police as a respondent. It is also alleged in the counter that the petitioners have not given any complaint to the authority concerned during the course of election about non-receipt of their nomination. The Writ Petition is filed, after the declaration of President and Vice President election on 06.07.2019, so the Writ Petition is not maintainable. Once the process of election is over, any aggrieved party shall only raise a dispute under Section 90 of the Tamil Nadu Co-operative Societies Rule, 1988, before the Tribunal. Without availing the said opportunity, the petitioners have moved this Court under Article 226 of the Indian Constitution, which is not maintainable.

14. The Learned Senior Counsel appearing for the respondents 4 to 22 would point out that there are catena judgments of this Court and Hon'ble Supreme Court, which has categorically held that, the Court cannot interfere the election process when alternate remedy is available and after the commencement of election process. Since, the petitioners have alternate remedy under Section 90 of the Tamil Nadu Co-operative Societies Rule, 1988, the election of the respondents 4 to 22 cannot be subject matter of the Writ Petitions.

15. According to the learned Senior Counsel for the respondents 4 to 22 in W.P.No.19712 of 2019 the Tamil Nadu State Election Commission notified re-election for the Apex body vide notification, dated 07.06.2019. On 26.06.2019, the election for the Executive Members was conducted. After the last date for withdrawal of valid nomination, only 17 candidates were in fray for 17 seats. Hence, they were all declared elected unopposed.

16. Further the learned Counsel for the respondents submit that the petition in W.P.No.19712 of 2019 was filed after declaring the election since the respondents 4 to 22 were declared elected and assumed office before granting of interim order on 09.07.2019, the Writ Petition is liable to be dismissed holding that the petitioners has to work out the remedy by preferring petition under Section 90 of the Tamil Nadu Co-operative Societies Act.

17. To buttress his arguments, the Learned Senior Counsel appearing for the respondents has cited the following judgments.

(i). Shaji K. Joseph Vs. V.Viswanath and others reported in 2016 (4) L.W.154.

(ii). A.P.Gowdhamasidharthan Vs. Government of Tamil, Chief Secretary and others in W.P.No.6516 of 2013.

(iii). R.Annamalai Vs. Election Commissioner in W.P.No.11751 of 2015.

(iv). R.Kalaiarasan and others Vs. the Registrar of Co-operative Societies in W.A.No.1348 of 2013.

(v). K.J.Churian Vs. The State of Tamil Nadu, Secretary to the Government and others in W.P.No.12915 of 2013.

(vi). Mr.R.Kumar Vs. Tamil Nadu State Co-operative Societies in W.P.(MD).No.7060 of 2018.

18. This Court is not oblivious of the facts that, the scope of interfering an election process through Article 226 of the Constitution is very limited and only in exceptional case such interference warrants.

19. As far as election for the Co-operative Society is concerned, unlike the Representation of the Peoples Act, 1951, there is no statutory prohibition for Courts to interfere election process after notification. Furthermore, if there is grave infraction of fundamental rights and the alternate remedy is not efficacious, Court can exercise its jurisdiction and power under Article 226 of the Constitution. Alternate remedy in the statute shall not stand against redressing injustice.

20. Earlier Division Bench of this Court in the batch of Writ Petitions R.Sakkarapani and others Vs. State of Tamil Nadu in W.P.(MD).No.7620 of 2018, while considering challenge to the election process particularly refusal to receive nomination and rejection of valid nomination has discussed at length the submissions made in support of maintainability of Writ Petition and points against it. After considering the legal propositions propounded it concluded that Court cannot be a mute spectator when the election process itself is a farce exercise to accommodate persons of their choice under the guise of Election.

21. Therefore the objections pointed by the respondent counsel is no more res integra. It is suffice to point out the following two judgments of the Hon'ble Supreme Court, to test whether the present Writ Petitions are maintainability and worth interfering.

(i). In the City of Industrial Development Corporation Vs. Dosu Aardeshir Bhiwandiwalla, reported in (2009) 1 SCC 168, the Supreme Court held that the Court, while exercising its jurisdiction under Article 226 of the Constitution of India is duty bound to consider whether (a) adjudication of writ petition involves any complex and disputed questions of facts and whether they can be satisfactorily resolved; (b) the petition reveals all material facts; (c) the petitioner has any alternative or effective remedy for the resolution of the dispute; (d) person invoking the jurisdiction is guilty of unexplained delay and laches; (e) ex facie barred by any laws of limitation; (f) grant of relief is against public policy or barred by any valid law; and host of other factors.

(ii). In Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai and others, reported in (1998) 8 SCC 1, the Supreme Court held, the existence of an alternative 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.

22. The Division Bench of this Court in R.Sakkarapani and others Vs. State of Tamil Nadu in W.P.(MD).No.7620 of 2018, after referring the above judgments and similar other judgment has observed as below:

"106. The aim of the Constitution of India, as stated in its preamble is to constitute India into a Sovereign Socialist Secular Democratic Republic and to secure to all its citizens; Justice, Social, Economic and Political; Liberty of thought, Expression, Belief, Faith and worship; Equality of status and of opportunity and to promote among them all; Fraternity assuring the dignity of the individual and the unity and integrity of the Nation.

107. The fundamental right to equality under Part III of the Constitution of India includes in its fold, the right to equality of opportunity to contest elections. Large scale rejection of nominations which lead to uncontested walkover in elections is discriminatory and contravenes the right to equality.(Emphasis added)

108. Article 43B incorporated in the Constitution of India with effect from 15.2.2012 by the 97th Constitution Amendment Act casts an obligation on the State to endeavour to promote

voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies. Democratic control contemplates control by an elected body chosen pursuant to free and fair election. (Emphasis added)

109. Part IX-B of the Constitution inserted with effect from 15.2.2012 by the Constitution 97th Amendment Act, 2011 empowers the State by law to make provisions to incorporate, regulate and wind up co-operative societies based inter alia on the democratic member control. As rightly argued the learned Advocate General, elections are to be conducted before the expiry of the term of elected members of the Board. However, elections have to be free and fair."

23. Nearly 20 members are before this Court alleging that on 20.04.2019, when they went to the 3rd respondent/Election Office, to file nomination, they were prevented from filing nomination.

24. From the typed set of paper filed by T.Murugan and others (in W.P.No.19712 of 2019), this Court finds that through e-mail, dated 24.06.2019 at 3.50 p.m, the petitioner has informed the Assistant Commissioner of Chennai City that Inspector of Police, E3 Teynampet, not allowing them to go inside the Office of the Director of Fisheries to file their nomination. On 25.06.2019, by registered post, he has reiterated the same complaint and forwarded it to Assistant Director of Fisheries, copy marked to Director of Fisheries and Commissioner of Police. On 26.06.2019, again he has sent a complaint through registered post to Election Commissioner and Director of Fisheries stating that as per notification, he came to Chennai along with 18 others to file nomination on 24.06.2019. However, they were not allowed to enter the Office of the Assistant Director of Fisheries, Teyampet. Whereas few selected persons were allowed to enter the Office. When they protested for not allowing them to enter the Office to file nomination, the Police Official threaten them and sent them out. Pointing out that, the way in which the election process is carried is mockery of democracy process and sought for interference.

25. It is pertinent to point out that, in spite of written complaint, making certain specific allegations of undemocratic conduct of few, which has lead to subverting the election process neither the Police nor the Election Officer nor the Election Commission has shown any attention to consider the

complaint.

26. The 3rd respondent/Election Officer, has declared the respondents 4 to 22 elected unopposed on 20.06.2019. By that time, the petitioners have already given a complaint to the Election Officer as well as the Election Commission. In fact, Renu Kumar and an other Writ Petitioners in W.P.No.18552 of 2019 even rushed to this Court by filing Writ Petition on 27.06.2019 with very same grievance.

27. This Court, after considering the grave allegations made directed the Learned Counsel appearing for the respondents 1 to 3 to produce documents to show what action they have taken on receipt of the complaints given by the petitioners. The respondents counsel were not able to show a piece of documents that they have acted upon the complaint given by the petitioners. Constitutional Authority like 1st respondent cannot refrain from discharging their duty and claim that they have become functus officio, after declaration of the Election. It is their primary duty to see that the elections are conducted in free and fair manner. Immediately when mass scale rigging in the election process brought to the notice of the respondents 1 to 3, they should have acted upon the complaint. The Tamil Nadu Co-operative Society Rules, empowers the election Commission to stop the election process either on complaint or suo motu, if any law and order issue which will be hindrance to conduct free and fair manner is brought to his notice. Law and Order problem does not necessarily mean violence and bloodshed. As pointed out by the Division Bench of this Court, when constitutional envisages an obligation on the state to endeavour democratic control and professional management of the Co-operative Society, the election for the Board of Management should necessarily be in democratic manner. Preventing prospective candidates from contesting by force and threat is not sign of fair and free election.

28. The Learned Senior Counsel appearing for the respondents 4 to 22 would make a fervent submission that the election process having been completed culminating in election of respondents 4 to 22 as a member and subsequently selection of President and Vice President also completed on 06.07.2019, the Writ Petitions filed in the course of election process, are not maintainable and the remedy for these petitioners is only to raise disputes under Section 90 of the Tamil Nadu Co-operative Societies Act.

29. In the course of election process, there is no appeal provision as such under the Act or Rules in cases of refusal to receive nomination or rejection of nomination. In such cases normally Courts have held that these matters to be agitated only under Section 90 of the Act, as a election

dispute, after the completion of the election. At the same time, in exceptional cases as pointed out by the Division Bench in R.Sakkarapani case, when the conduct rather misconduct of the Election Officer and the Election Commission amounts to undermining the democratic process and shocks the conscious of the Court, nothing prohibits the Court exercising its jurisdiction under Article 226 of the Constitution.

30. For a State Level Apex body, it is hard to believe that for 17 posts, only 21 filed nomination. Out of which 2 were invalid and 2 others withdrew the nomination, leaving 17 persons in the fray for 17 post. More so, when almost equal number of eligible candidates have given complaints to the Authorities alleging they were prevented from filing nomination. The complaints are not an afterthought or belated. They were given immediately after refusal to receive nomination Forms. The complaints have reached the Authorities before the 3rd respondent could declare the election of respondents 4 to 22 in W.P.No.19712 of 2019.

31. The respondents 1 to 3 have miserably failed in discharging their duty by not considering the complaints sent to them regarding refusal of receiving nomination. The omission to discharge their duty has lead to a farce election so it is liable to be set aside.

32. Hence, the Writ Petition No.19712 of 2019 is Allowed. The declaration of respondents 4 to 22 as elected Directors of the Society is declared as null and void. The 1st respondent/Tamil Nadu State Co-operative Election Commissioner, is directed to notify fresh election, in accordance with law, within a period of one month, from the date of receipt of a copy of this order, and ensure free and fair election.

33. In view of the above order, the eligibility of elected members challenged is needless to be probed. Accordingly, the W.P.Nos.18552 & 19308 of 2019 are disposed of. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The State Election Commissioner,
The State of Tamil Nadu,
Tamil Nadu Co-operative Societies,
Kamadenu Co-operative Super Market building,
Teynampet, Chennai - 18.

2. The Director,
Fisherman Co-operative Society,
No.485, V-Floor, MTB Buildings,
Anna Salai, Nandanam, Chennai - 35.
3. The Joint Director of Fisheries,
DMS Complex, Teynampet,
Chennai - 18.
4. The Deputy Director of Fisheries,
No.485, V-Floor, Anna Salai, Nandanam,
Chennai - 35.
5. The Assistant Director of Fisheries,
Kancheepuram District at Neelankarai, Chennai.
6. The Assistant Director of Fisheries,
Royapuram,
Chennai.
7. The Election Officer,
Tamil Nadu State Apex Co-operative Federation Ltd.,
Chennai.
8. The Director of Fisheries,
P.O.Box # 24320193, 24320197, 2433631
DMS Complex, Teyanmpet, Chennai.
9. The Assistant Director of Fisheries,
Election Officer, Teynamet,
Chennai - 600 005.

+1cc to M/S.S.YOGALAKSHMI, Advocate, SR.No.82668
+1cc to M/S.A.MANOJ KUMAR, Advocate, SR.No.82907
+1cc to the Govt.Pleader, Vide Sr.No.83211, 83212 & 18552
+1cc to Special Govt.Pleader (Co-op), Sr.No.83166,83167,83169
+1cc to Mrs.Selvi George, Advocate, SR.No.82882

Writ Petition Nos.18552, 19308 & 19712 of 2019

Kak(12/11/2019)

WEB COPY