

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 26.09.2019

Coram::

The Honourable Dr.Justice G.Jayachandran

W.P.No.26547 of 2019
and
W.M.P.Nos.25919 & 28265 of 2019

P.G.Boopathi

... Petitioner

/versus/

1. The 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,
Deputy Registrar of Co-operative Societies,
Tiruppur Region,
Tiruppur.
 3. The Election Officer,
K.No.2092, Chettipalayam Primary Agricultural
Co-operative Credit Society,
Rep. by its Secretary,
Chettipalayam,
Tiruppur.
 4. K.No.2092, Chettipalayam Primary Agricultural
Co-operative Credit Society,
Rep. by its Secretary,
Chettipalayam, Tiruppur District.
- ... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue Writ of Mandamus, directing the 1st & 2nd respondents to take action against the 3rd respondent for arbitrarily rejecting the petitioner nomination and then re-schedule the election of the 4th respondent society by considering the petitioner's representation dated 31.08.2019 and pass orders.

For Petitioner : Mr.G.R.Deepak

For R1 : Mr.S.Palaniswamy, Standing Counsel
For R2 to R4 : Mr.D.Venkatachalam, Standing Counsel

ORDER

Heard the Learned Counsel for the petitioner and the Learned Standing Counsel for the respondents 1 to 4.

2. The case of the petitioner is that, on 16.08.2019, the 1st respondent/Election Commissioner, Tamil Nadu Co-operative Societies Election Commission, Chennai, issued a notification with respect to the election of the 4th respondent/K.No.2092, Chettipalayam Primary Agricultural Co-operative Credit Society, Tiruppur District, to fill the post of Directors. Accordingly, on the date fixed for nomination i.e., 29.08.2019, the petitioner herein filed his nomination papers for the members of Board duly filled with required particulars after obtaining the signature of the proposer and the seconder. The 3rd respondent, who is suppose to issue receipt for the nomination, did not issue any receipt. Later on the next day, when the nomination was scrutinised without assigning any reason, his nomination was rejected and valid nomination were published, in which his name was not found. The petitioner under reasonably believe that his nomination has been rejected without proper reason to accommodate the persons who are close to them.

3. The Learned Counsel appearing for the petitioner submits that, the procedure contemplated under Rule 52 (8) (d) (e) and (f) were not complied by the 3rd respondent. On earlier occasion, when election was scheduled to be conducted during the month of March - 2018, similar rigging took place leading to cancellation of election. The 3rd respondent arbitrarily, irrationally and discriminatively rejected the nomination of the petitioner but accepted nomination of his own 11 members, as per the dicta of Bosses and published the valid nomination list, which is against the Principle of natural justice.

4. This Court, at the time of admission, being prima facie convinced that the petitioner nomination was rejected without adhering any opportunity to him as contemplated under Rule 52 (8)(d)(e) & (f) of the Tamil Nadu Co-operative Societies Rules, 1988 and granted interim stay of all further proceedings. Having come to know that the pursuant to the election process, the 11 members declared elected and assumed Office.

5. After notice, the 3rd respondent has filed counter, wherein, the allegations made by the petitioner are denied and specifically it is stated by the 3rd respondent that the

petitioner was present at the time of scrutiny. The signatures of the proposer found in the nomination paper was different with the signature found in the membership Register. The proposer Mr.Rathinasami has signed in the register in Tamil, whereas, in the nomination paper it was in English. Therefore, the 3rd respondent has entertained some doubt and asked the petitioner to bring the proposer for verification.

6. In the counter affidavit, it is stated that, when the petitioner was asked to bring his proposer, the petitioner left and did not turn up again.

Under Section 52 (8) of the Tamil Nadu Co-operative Society Rules, 1988.

(8) (a) No person shall be eligible for being nominated as a candidate for election to the board unless he is qualified for being elected under the provisions of the Act and these rules, and his name is included in the voters' list. The nomination of a candidate for the election shall be in Form no.18 and shall be signed by the candidate. The nomination paper shall be 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:

7. It is specifically stated that, if the identity of the proposer and the seconder is not in doubt, then variation in signatures need not be considered as improper and reject the nomination. Whereas, in this case, the 3rd respondent, in his counter affidavit, has specifically stated that, he has entertained a reasonable doubt regarding the proposer signature and therefore, to ascertain the identity of the proposer, he has asked the petitioner to produce the proposer which the petitioner has failed to do.

8. The Learned Counsel appearing for the petitioner contrarily would state that the above said averments in the counter affidavits is factually incorrect and now he is ready to prove the signature of Mr.Rathinsami found in his nomination was affixed by the said Rathinasami. This Court, cannot be turn into a fact finding trial Court. The statute provides for appeal remedy, the petitioner if aggrieved by the rejection of the nomination, it can be agitated before the Appeal remedy under Section 90 of the Tamil Nadu Co-operative Societies Act.

9. Therefore, the Writ Petition is disposed of. With liberty to the petitioner to work out his remedy under Section 90 of the Tamil Co-operative Societies Act. Time consumed in pursuing this Writ Petition shall be excluded and if the petitioner prefers appeal before the Authority under Section 90 of the act, within a period of 15 days, from date of receipt of a copy of this order, the same shall be entertained and dispose in accordance with law. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To,

1. The Election Commissioner,
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3. The Election Officer,
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Co-operative Credit Society,
Rep. by its Secretary,
Chettipalayam,
Tiruppur.

+1cc to M/s.G.R.Deepak, Advocate Sr.No.83250
+1cc to The Government Pleader Sr.No.83655
+1cc to Mr.D.Venkatachalam, Advocate Sr.No.83381

AKM/01.11.19 /4P-7C/
AKM/18.11.19

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