

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.10.2019

CORAM

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

W.P.No.26617 of 2019
and W.M.P.Nos.25990 & 25989 of 2019

N.Ramalingam

.. Petitioner

/versus/

- 1.The Tamil Nadu State Co-operative Societies Election Commission,
Rep.by its Commissioner,
Kamadhenu Super Market Buildings, 1st Floor,
No.273, Anna Salai, Teynampet, Chennai-18.
- 2.The Registrar of Co-operative Societies,
No.170, EVR Road,
Dr.Radhakrishnan Nagar,
Razaak Garden, SBI Officers Colony,
Arumbakkam, Chennai-600 106.
- 3.The Election Officer,
Naduveerampattu Primary Agriculture Co-operative Credit Society-E 2577,
Cuddalore Main Road,
Cuddalore-607 001.
- 4.Mrs.K.Maheshwari
- 5.Mrs.A.Valermathi
- 6.Mrs.M.Palaiammal
- 7.Mr.K.Kumar
- 8.Mr.K.M.Ramadas
- 9.Mr.M.Dhanasekaran
- 10.Mr.K.Gurunathan
- 11.Mr.N.Mahaligam
- 12.Mr.R.Palanisamy
- 13.Mr.R.Sigamanani
- 14.Mr.A.Vaitheiyaligam

.. Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issue of Writ of Certiorarified Mandamus, to call for the records of the impugned declaration issued by the 3rd respondent dated 29.08.2019 and to quash the same consequently directing the 1st respondent to issue a programmed for conduct re-election for Naduveerampattu Primary Agriculture Co-operative Credit Society-E 2577, after scrutinizing the nomination dated 30.04.2018 filed by the petitioner in accordance with the provisions of Tamil Nadu Co-operative Societies Act, 1983.

For Petitioner : Mr.S.A.Shanmugam

For Respondents: Mr.M.S.Palanichamy, St.c for R1

Ms.T.Girija for R2

Mr.L.P.Shanmugasundaram

Spl.Govt.Pleader for R3

Mr.R.Selvakodi for R4

Mr.K.Kanagendran for R12

No appearance

for R6 to R11, R13 & R14

O R D E R

Heard the learned counsel for the petitioner.

2. The grievance of the petitioner herein is that he filed his nomination to contest the election of the Naduveerampattu Primary Agriculture Co-operative Credit Society, Cuddalore District. While nearly 40 persons filed their nomination, surprisingly only nomination of 11 persons were declared valid for the 11 posts. This has prompted the petitioner herein to file a writ petition questioning the conduct of the Election Officer choosing 11 nominations of his choice as valid and declared them as elected unopposed for the Naduveerampattu Primary Agriculture Co-operative Credit Society.

3. The 3rd respondent has filed counter wherein it is stated that the reason for rejecting the nomination of the petitioner is recorded in the nomination paper itself. Since many of the columns of the nomination paper were left unfilled and the signature of the proposer as well as the seconder varies from the signature found in the admission register. The nomination of the petitioner was rejected on the date of scrutiny.

4. The learned counsel appearing for the 11th respondent who is one of the members elected submit that the nomination paper of the petitioner was not only defective but also he has not disclosed the category under which he intended to contest. The election for the society earlier was scheduled through notification dated 21.06.2018 but the 12th respondent submitted a complaint of improper rejection of his nomination and also approached this Court pursuant to that the Zonal Committee which was constituted by the direction of this Court gone into the complaint of the 12th respondent herein and directing the election commission to conduct fresh election from the stage of scrutinizing the nomination forms.

5. The contention of the 12th respondent is that pursuant to the direction of the Zonal Committee, the nomination forms were scrutinized and invalid nominations were rejected. Those who have submitted the valid nominations, were elected as per the election rules. If at all the petitioner has any grievance, he should have raised the election dispute under Section 90. Citing judgments of this Court as well as the Kerala High Court and the Allahabad High Court following the decision of the Supreme Court the learned counsel for the 11th respondent submitted that normally election result shall not be interfered by the Courts and the remedy for the aggrieved person is to raise election dispute as per law principles laid down by the Hon'ble Supreme Court shall also apply to the election of the Co-operative Society even though no statutory bar as found in Representative of People's Act is available in Co-operative Societies Election Rules. The free flow of the election scheduled cannot be interfered by way of writ petitions.

6. These issues have been time and again considered by this Court on various occasions and when there is a palpable effect to undermine democracy process, the Court cannot be a mute spectator and force the aggrieved party to exercise the remedy available in the statute, which is not efficacious. Knowing well that the alternate remedy is not efficacious at times. Persons who are in charge of the election and their masters try to undermine the democracy and by rejecting valid nominations and prevent them from participating in the election process and farce election being conducted. Earlier when such attempt was made there was flood of writ petitions before this Court and the Division Bench of this Court has gone into the irregularity in the election process for conducting the election for Co-operative Societies of the State, has pointed out that nomination cannot be rejected on flimsy grounds and an opportunity must be given to the contested parties to submit

their explanation clarifying the defects at the time of scrutinizing their nominations. The Division Bench of this Court also constituted Zonal Committees to look into the various complaints raised by the aggrieved persons. The 12th respondent who is now declared as elected member was one of the persons aggrieved and approached the Zonal Committee. The Zonal Committee has specifically directed the returning officer to properly scrutinized the nomination papers and proceed with the election process. Despite such directions, the 3rd respondent again has not properly considered the nominations and the reasons for rejecting the nomination of the petitioner herein are as below:-

(i) The petitioner has not filled column 4, 5 and 6 he has only put up dash

(ii) In column 6(3) and 8(3) he should have answer Yes or No. But he has put dash. The signature of the proposer differs with the signature found in the admission register and the seconder signature differs from the signature found in the admission register.

(iii) Column 2(a) left blank

7. According to the 3rd respondent the scrutiny of nomination was done on 21.08.2018 from 11.00 a.m to 4.00 p.m., As per the election schedule, 29 nominations were rejected for the reasons that signature in the nomination paper were not genuine. As far as proviso to Rule 52(8) (d) of the Tamil Nadu Co-operative Societies Rules it mandates that nomination of the candidates shall not be rejected only on the ground that the name of the proposer or the seconder or any other particulars are not entered in the voters list, if the identity of the person otherwise be established beyond reasonable doubt.

8. The case of the petitioner herein is that the nomination of the petitioner was rejected for the reasons untenable. It does not indicate that the identity of the proposer and the seconder or the candidates are doubtful. If so, variation of the signature is no reason for the 3rd respondent to reject the nomination of the petitioner. Some of the other reasons for rejecting the petitioner's nomination also appears to be very much irrelevant. For example, column 2(a) was left blank. Whereas column (a) is pertaining to information regarding the constituency of the candidate. In the said column 2(a). It is also specifically mentioned that unless and until there is any information to be furnished, this column need not be filled up. As far as Naduveerampattu Primary Agriculture Co-operative Credit Society is concerned, there is no information to be furnished under column 2(a) and therefore the petitioner has left the column left blank. The seconders member name along with

their membership number and signature are available in the nomination paper. At the time of scrutiny even if there was any clarifications required, the 3rd respondent ought to have given some opportunity under proviso of Rule 52(8)(d) before rejection. Such opportunity not afford to the petitioner.

9. Much more disturbing factor in this case is that even after the interference of the Division Bench of this Court and the direction of the Zonal Committee constituted pursuant to the direction of this Court the 3rd respondent has again bend up to accept only 11 nominations for the 11 posts and has invented variety of reasons to reject the other 21 nominations.

10. This prompts this Court to interfere the process though there is an alternate remedy under Rule 90 of the Co-operative Societies Act. When the manner in which the election being conducted rejecting nominations, which are otherwise valid and declaring 11 persons as chosen unopposed on the face of record is not done in the manner known to law. This Court on earlier occasion in similar facts after relying the Hon'ble Supreme Court dictum in Whirlpool Corporation Vs. Registrar of Trademarks, Mumbai and others reported in (1998) 8 SCC 1 has observed as follows:-

"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."

11. The facts of the case in hand is not different from the case cited above. The 3rd respondent has tried to find some reason to reject the nomination of the petitioner. The 3rd respondent has not conducted the election fairly to facilitate the chosen 11 members to declare as unopposed, the valid nominations of the petitioner and 28 others have been rejected.

12. Hence, this Court allowed the writ petition holding that the election of the Naduveerampattu Primary Agriculture Co-operative Credit Society declared on 29.08.2019 as null and void. The 1st respondent is directed to conduct fresh election as per the direction of the Zonal Committee order dated 29.03.2019 within a period of eight weeks from today. Consequently, the connected miscellaneous petitions are also closed. No costs.

Sd/-
Assistant Registrar(Insp.Cell)

//True Copy//

Sub Assistant Registrar

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To

- 1.The Commissioner,
The Tamil Nadu State Co-operative Societies Election
Commission,
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 - 3.The Election Officer,
Naduveerampattu Primary Agriculture Co-operative Credit
Society-E 2577,
Cuddalore Main Road,
Cuddalore-607 001.
- +1cc to M/s.Rajamohan, Advocate sr.88637
+1cc to M/s.Krishna latha, Advocate sr.88623
+1cc to Government Pleader sr.88206
+1cc to M/s.L.P.Shanmuga Sundaram, Advocate sr.88104
+1cc to M/s.S.A.Shanmugam, Advocate sr.88008

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