

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.A.No.3356 of 2019
and
C.M.P.No.21543 of 2019

M.Chennakesavan,
S/o.Manickam,
Mollpennai Village,
Kovilur Post,
Kanimangalam Taluk,
Dharmapuri District.

... Appellant

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 : Appeal against the order passed in W.P.No.17613 of
2019 dated 11.07.2019 by this Court.

Prayer in W.P.No.17613 of 2019:

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 Appellant :Mr.S.Kamadevan

For Respondents:Mr.M.S.Planisamy (for R1)

Mr.L.P.Shanmugasundaram (for R2 & R3)
Special Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J)

The appellant is one of the contestants in the election conducted for the 3rd respondent Co-operative Society which was originally fixed on 09.04.2018. After an interim order of status quo passed by this Court, the date of election was re-scheduled. As per the new schedule, filing of nominations commenced on 23.04.2018 and election was fixed on 27.04.2018. While scrutinising the nominations, the Election Officer found that 33 candidates were found to be eligible. However, on 25.04.2018, the 3rd respondent cancelled the election due to possibility of riot and violence and there was no conducive atmosphere to conduct the election and postponed the election which was scheduled to be held on 27.04.2018.

2.Aggrrieved by the postponement of election, the petitioner filed W.P.No.12454 of 2018. Meanwhile, the 1st respondent passed an order, cancelling the entire election due to change in circumstances. Therefore, the petitioner amended the prayer and challenged the order of the first respondent, cancelling the entire election. The learned single Judge after hearing the parties, remanded the matter for passing fresh orders by the first respondent. The first respondent passed a cryptic order without assigning any valid reason for cancelling the election. The said order was again challenged by the petitioner in W.P.No.1799 of 2019 and the said petition was allowed on 04.02.2019, by setting aside the impugned order dated 18.12.2018 passed by the first respondent and the first respondent has been directed to pass a detailed order afresh after giving reasons for the proceedings dated 09.08.2018 within a period of four weeks. Thereafter, the first respondent passed an order on 04.06.2019, reiterating his earlier order of cancellation of the entire election process. The said order was again challenged by the petitioner by filing Writ Petition No.17613 of 2019 before the learned single Judge. The learned single Judge after hearing the parties dismissed the same. The said order is being challenged before this Court.

3.Heard the parties.

4.Mr.Kamadevan, learned counsel appearing for the appellant would submit that the election process has to be started from the stage it was cancelled and the election officer has got no power under Rule 52 (23) of the Tamil Nadu

Co-operative Societies Rules. In this regard, he relied upon Division Bench judgment of this Court delivered in W.P.Nos.7256 of 2018 and batch, dated 03.08.2018. He would strenuously submit that the first respondent has got no power to cancel the election proceedings and he cannot act as an Election Tribunal deciding about the merits of the rejection of nomination. However, the learned single Judge while dismissing the Writ Petition observed that while cancelling the election, the first respondent has assigned reasons as to why the election was cancelled under Rule 52(23) of Tamil Nadu Co-operative Societies Rules and the first respondent found that nearly 33 nominations were rejected which was contrary to law and that rejection led to apprehension of violence. The first respondent found that the election could not be conducted in a fair and free manner and therefore, ordered the election to be started afresh.

5. Even though the learned counsel appearing on behalf of the appellant would submit that the reasons given by the first respondent for cancelling the election is contrary to rule 52 (23) of Tamil Nadu Co-operative Rules, it is usefully extracted as follows:

"(23) Notwithstanding anything contained in the Rules, where the Election Commission suo-motu or on complaint or on the report of the District Election Officer or observer is of the opinion that, it is not possible to hold free and fair election on account of the prevailing law and order problem, or riot or open violence, or communal clash or on account of natural calamity or bundh or such other sufficient cause, the Election Commission shall have the power to cancel the elections to co-operative societies, recording the reasons there for. In such a case, the Election Commission may start election proceedings afresh in all respects as if for a new election to fill up the vacancy or vacancies."

On perusal of the above it is very clear that free and fair election is not possible due to law and order problem or riot or open violence, or communal clash or on account of natural calamity or bundh or such other sufficient cause. Therefore it is not confined to riot or violence alone. If there is sufficient cause found, the election can be cancelled. The rejection of 33 nominations is an extraordinary situation and there is sufficient cause for cancelling the election and ordering to start election process afresh. Therefore, the plea of the appellant has rightly been rejected by the learned single Judge. Since on account of apprehension of violence only, the election has been cancelled, it is appropriate for the authorities including revenue authorities and police authorities to give assistance to the Election Commissioner to provide appropriate support for conducting free and fair election.

6. Accordingly, the appeal fails and the same is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

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.

4. Mr. L. P. Shanmugasundaram,
Special Government Pleader,
High Court, Madras.

(for Communication to the Revenue Authorities and Police
authorities)

+1cc to Mr. S. Kamadevan, Advocate Sr.84987
+1cc to Mr. L. P. Shanmugasundaram, Advocate Sr.85772
+1cc to the Special Government Pleader Sr.85750

W.A.No.3356 of 2019

spd[col]
srg 15/11/2019