

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :06.11.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.31283 of 2019

and

W.M.P.Nos.31430 to 31432 of 2019

1.A.M.Manoharan
2.S.Nithyanandam
3.M.Dhakshinamurthy
4.V.Dharuman
5.A.B.Venkatesan
6.V.Dharmendran

.. Petitioners

/versus/

1.The Secretary,
Committee for the Adjudication of Claims/
Objections relating to Co-operative Elections Cases,
North Zone,
TNSC Bank Buildings,
Chennai 600 001.

2.The Commissioner,
Tamil Nadu State Co-operative Societies
Election Commission,
No.273, Kamadhenu Supermarket,
Chennai 600 018.

3.The District Election Officer and
Deputy Registrar of Co-operative Societies,
Vellore Circle,
Vellore District.

4.The Secretary,
VL.SPL-72, Arapakkam Primary Agricultural
Co-operative Credit Society Ltd.,
Arapakkam & Post,
Wallajah Taluk,
Vellore District.

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the orders of the 1st respondent committee in Complaint No.54 of 2018, dated 12.09.2019 relating to the cancellation of elections to the six Board of Directors of the 4th respondent society in the general category and quash the same and consequently direct the respondents 1 to 3 to permit the petitioners to function as the Board Directors and Office Bearers.

For Petitioner :Mr.S.Kamadevan

For Respondents:Mr.M.S.Palaniswamy,

St.C. for R2

Ms.T.Girija, GA for R3

Mr.L.P.Shanmuga Sundaram

Spl.G.P. for R4

O R D E R

By consent, the writ petition itself is taken up for final disposal at the admission stage itself.

2.Heard Mr.S.Kamadevan, learned counsel appearing for the petitioner and Mr.M.S.Palaniswamy, learned standing counsel, who takes notice for the 2nd respondent and Ms.T.Girija, learned Government Advocate, who takes notice for the 3rd respondent and Mr.L.P.Shanmuga Sundaram, learned Special Government Pleader, who takes notice for the 4th respondent.

3.This writ petition is filed praying to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent Committee in Complaint No.54 of 2018, dated 12.09.2019 relating to the cancellation of election to the six Board of Directors of the 4th respondent Society in the general category and quash the same and consequently direct respondents 1 to 3 to permit the petitioners to function as the Board Directors and Office Bearers.

4.The case of the petitioner is that the election for the Board of Directors of the 4th respondent-Co-operative Society was notified by the 3rd respondent in the month of March, 2018 and filing of the nominations commenced on 26.03.2018. After scrutiny of the nominations, valid nominations were announced on 27.03.2018. For the 11 posts of Board of Directors, 58 valid

nominations were accepted and the same were announced by the Election Officer in the Notice Board on 27.03.2018. On the next day, 47 candidates including the 5th respondent were shown as withdrawn their nominations. After withdrawal, there were only 11 valid nominations for the eleven posts and all those eleven candidates were declared elected by the Returning Officer.

5. While so, the 5th respondent filed W.P.No.9297 of 2018 seeking declaration to declare the elections conducted to the 4th respondent Society as illegal since his nomination was declared as withdrawn by the Election Officer though he has not withdrawn his nomination. This writ petition was considered along with other batch of writ petitions filed by similarly aggrieved persons and the Hon'ble Division Bench of this Court, vide, order dated 03.08.2018 constituted four zonal committees to look into the various complaints regarding improper conduct of the Co-operative Society Election. As a consequence, the representation of the 5th respondent was considered by the Zonal Committee/1st respondent and the order was passed on 12.09.2019 holding that the signature found in the withdrawal Form 19 differs from the signature of the 5th respondent found in the nomination form as well as the signature made by the petitioner before the Committee and hence, set aside the election of the general category alone and ordered the Election Commission to conduct the election within two months from the date of receipt of that order from the stage of scrutinization of the nomination.

6. The said order is impugned in this Writ Petition on the ground that the Zonal Committee has not given them proper opportunity to contest the complaint of the 5th respondent. Further, the 5th respondent if aggrieved by any alleged irregularity or illegality in the election process, he can only approach the appellate authority under Section 90 of the Act raising dispute. Therefore, the order passed by the Zonal Committee setting aside the election of six general category candidates is illegal and liable to be set aside.

7. Further, the learned counsel appearing for the petitioner also submits that the zonal committee ought not to have compared the signature of the 5th respondent and they are not competent to do so. Further, the impugned order directing the Election Commission to conduct the election for the general category alone from the stage of scrutinization of nomination is also bad, since only one candidate has questioned the election process. Whereas the other 46 candidates have withdrawn their valid nominations and have not expressed any objection. If the election officer is directed to scrutinise the nomination of all candidates, it will amount to granting relief to the persons,

who have not agitated their withdrawal of the nominations.

8.The learned counsel would also submit that the scope of the zonal committee, as per the direction of the Division Bench, is very limited. Whereas, in the present case, the Zonal Committee has exceeded the power and direction given by the Division Bench.

9.At the outset, this Court finds that the plea of alternate remedy raised by the petitioner herein is not available to him, in view of the fact that the impugned order was passed pursuant to the direction of the Division Bench.

10.The next contention of the petitioner that the zonal committee ought not to have compared the signature as found in the nomination form as well as in the withdrawal form also lack force of law service, the Zonal Committee headed by a Retired High Court Judge was constituted by this Court, pursuant to serious allegation of fraud and violation committed during the Co-operative Society election process. So, they were empowered to look into the following aspects by the Division Bench:

a.If the nomination of a candidate for the election is in Form No.18 and proposed, seconded by two other members whose names are included in the voters list, and is signed by the candidate, the proposer and the seconder.

b.If the nomination paper has to be rejected on the ground that it is not signed by the candidate for election, or it is not 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. Of course, where there is only one member in the voters list, the nomination need not be seconded, and where excluding the candidate there are no members in the voters' list, the nomination need not be either proposed or seconded.

c.In case of a central or apex society which has only one society member and no individual member, for election to the board of such central or apex society to fill up the seats reserved for Scheduled Castes and Scheduled Tribes or for Women, a person whose name is not included in the voters list, shall also be eligible for being

nominated as a candidate.

d.If the seat is reserved for Scheduled Castes and Scheduled Tribes, whether the candidate seeking election to such reserved seat had furnished a declaration in the nomination form made by him specifying the caste or tribe to which he belongs and the area in relation to which that caste or tribe is notified as a Scheduled Caste or Scheduled Tribes of the State.

e.Whether there is any contravention of the rule that the candidate may be nominated by more than one nomination paper, but not exceeding four nomination papers.

f.Any candidate contesting as a candidate in an election to a single member constituency has signed any nomination papers as a proposer or seconder.

f.The committee may examine if the nomination paper was filed in time or out of time.

11.Having been empowered to look into the above matters, more particularly the nominations submitted by the candidates and the manner in which they have been scrutinised, in this case the zonal committee taking note of the complaint given by the 5th respondent that his nomination has been taken as withdrawn based on the forged signature, the zonal committee has compared the signature found in the nomination paper as well as Form-19 (Withdrawal Form) and to satisfy themselves, they have asked the complainant to affix his signature in their presence. Having compared the signatures admitted and disputed, they have arrived at a conclusion that the signature found in the withdrawal Form-19 does not tally with the signature found in the nomination and the signature affixed by the 5th respondent in their presence. This power of comparing the signature is well inbuilt and the process adopted by the zonal committee cannot be doubted.

12.As far as the partial election for the general category alone, it is pertinent to say when the 5th respondent has filed his nomination under the general category is found to be improperly withdrawn, the zonal committee has rightly directed the election commission to conduct the election from the stage of scrutinisation of the nomination for the general category alone. When there is no dispute regarding the nomination and the election for the reserved category, there is no necessity to interfere with the election of the reserved

candidates. Therefore, the zonal committee has rightly restricted its order of fresh election to the general category alone.

13.The last grievance of the petitioner is that if the Election Commission is going to commence the process from the stage of scrutinisation of the nomination, the other candidates, who have filed their nomination and later withdrawn, may also try to contest the election. If the valid nomination of the candidates has been properly withdrawn by them on their own, there is no question of them re-agitating or questioning their withdrawal. Hence, this apprehension is also very preposterous.

14.In the light of the above discussion, this Court finds that there is no merit in this writ petition to interfere with the order of the Zonal Committee. Hence, this writ petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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Vellore District.

+1 cc to the Special Government Pleader (Co-Oper) sr92449
+1 cc to Mr.L.P.Shanmugasundaram Advocate sr92403
+1 cc to Mr.S.Kamadevan Advocate sr92005

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