



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21.11.2019

CORAM:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.32474 of 2019
and
W.M.P.Nos.32797 and 32799 of 2019

K.Selvakumar

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Petitioner

Versus

1. The Commissioner,
Tamil Nadu State Cooperative Election Commission,
No.273, Kamadhenu Supermarket,
Anna Salai, Chennai.
2. The Deputy Registrar/District Election Officer,
B-83, Alagesa Nagar,
Chengalpattu - 603 001.
3. The Returning Officer,
JJ-221, Medavakkam Urban Co-operative Credit Society,
Medavakkam,
Chennai - 600 100.
4. Sampath @ Thiruneelakandan ... Respondents

PRAYER:-Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records on the file of the 3rd respondent in his proceedings dated 14.11.2019 and quash the same in respect of accepting nomination of the 4th respondent in serial No.24 consequentially direct the respondents 1 to 3 to conduct the election for the post of Directors for JJ-221, Medavakkam Urban Co-operative Credit Society.

For Petitioner ..	Mr.K.S.Guruprasadh
For R1 ..	Mr.M.S.Palaniswamy,
	Standing Counsel
For R2 and R3 ..	Mr.L.P.Shanmugasundaram,
	Special Government Pleader
For R4 ..	Mr.S.Kamadevan



O R D E R

This Writ Petition is filed, to call for the records on the file of the 3rd respondent in his proceedings dated 14.11.2019 and quash the same in respect of accepting nomination of the 4th respondent in serial No.24 consequentially direct the respondents 1 to 3 to conduct the election for the post of Directors for JJ-221, Medavakkam Urban Co-operative Credit Society.

2. Heard the learned counsel appearing for the petitioner and the learned counsels appearing for the respondents.

3. The case of the petitioner herein is that the fourth respondent herein is disqualified to hold the post in the third respondent Society, because, he has availed loan from the Society and defaulted in payment. Section 3A of the Co-operative Societies Act enlist disqualification for membership of the Board and the said Section squarely attracts the fourth respondent herein. The petitioner herein objected receipt of the nomination of the fourth respondent. However, the third respondent herein rejected the same and passed orders on 14.11.2019, declaring the fourth respondent as a eligible candidate to contest. Hence, the present Writ Petition is filed.

4. The learned counsel for second respondent states that the Election schedule for the third respondent Society commenced with scrutiny of nomination on 14.11.2019 and declaring the validity nomination on the same day by 5.00 p.m. Time for withdrawal was fixed between 10.00 A.M to 4.00 P.M on 15.11.2019 casting of vote fixed on 19.11.2019 and declaration of result on 20.11.2019.

5. The specific case of the petitioner herein is that under Section 34 of the Co-operative Society Act, no person shall be eligible for being elected or nominated as member of the Board, if he is in default to such registered Society or any other registered Society in respect of any loan or advance taken by him or dues under credit purchases made by him for a period exceeding 3 months.

6. According to the petitioner, the fourth respondent suffers disqualification in view of default in payment of the loan availed by him.

7. After notice, the learned standing counsel for the Co-operative Department representing the respondents 2&3 has produced the ledger of Medavakkam Primary Agricultural Co-operative Society wherein the credit account of T.Lokesh and M.Sampath alias Thiruneelakandan (the fourth respondent) is



reflected.

8. The account ledger indicates that the fourth respondent along with his son has borrowed a sum of Rs.5 lakhs towards house mortgage loan on 18.06.2015 repayable within 60 months from the date of loan.

9. This Court finds that the petitioner on 03.04.2018 has remitted a sum of Rs.2,14,547/- towards the loan due and on 14.11.2019 and he has paid the balance of Rs.2,61,365/- and foreclosed the loan.

10. As per the election schedule, the nomination was received from the candidates on 16.04.2018 and thereafter, due to intervention of Court orders, the election was postponed. Fresh notification for scrutiny of nomination and other further process was notified as per the schedule mentioned earlier.

11. The Section 34 of the Act debars, a member from the contesting election if he has defaulted any loan or advance taken by him. The mid term loan advanced to the fourth respondent was for 5 years. The fourth respondent has remitted almost 40% of the loan he availed by 03.04.2018. He have nearly 26 months more to repay the balance loan amount. Therefore, neither on the date of his nomination i.e.,16.04.2018 nor on the date of scrutiny of the nomination on 14.11.2019, he could be termed as defaulter.

12. The learned counsel for the petitioner would submit that even if the petitioner has clear all these loans, on the date of nomination he had not cleared his dues, therefore, on the date of scrutiny on the nomination, the petitioner suffered disqualification. This contention cannot be accepted and taken against the fourth respondent, since, the spirit of Section 34 is to prevent defaulter to hold office of the Board. On the date of scrutiny of the nomination the petitioner was not even a loanee from the Society. The question of considering the fourth respondent as defaulted does not arise by no structure of imagination disqualification under Section 34 of the Act will apply to him.

13. Hence, this Writ Petition is dismissed. No costs. Consequently, connected W.M.Ps are closed.

Sd/-

Assistant Registrar(CJ conf)

//True Copy//

Sub Assistant Registrar



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To

1. The Commissioner,
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JJ-221, Medavakkam Urban Co-operative Credit Society,
Medavakkam,
Chennai - 600 100.

+1cc to Mr.L.P.Shanmugasundaram, Advocate SR.97961

+1cc to Mr.S.Kamadevan, Advocate SR.97261

+1cc to Spl Government Pleader(CO-OP), SR.97542

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RSV(CO)
CB(19/12/2019)