

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order reserved on : 17.10.2019

Order pronounced on : 24.10.2019

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THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

Rev. Applns. 197 of 2018 & 3 of 2019
in
W.P. No. 29844 of 2018

Tamil Nadu Cooperative Societies
Election Commission,
rep. by its Secretary,
Kamadhenu Cooperative Super
Market Building,
273, Scheme Road, Subbarayan Nagar,
Teynampet, Chennai-18.

... Review Applicant in
Rev.Appln.197 of 2018

K.Thulasidoss

.. Review Applicant in
Rev.Appln. 3 of 2019

Vs

1. Government of Tamil Nadu,
rep. by its Secretary,
Cooperative, Food and Consumer
Protection Department,
Fort St. George,
Chennai-600 009.

2. Registrar of Cooperative Societies,
170, N.V.Natarajan Maaligai,
E.V.R. High Road, Kilpauk,
Chennai-108.

3. The Deputy Registrar of Cooperative Societies (Credit),
District Election Officer,
Kuralagam,
Chennai-108.

4. Transport Corporation Employees Cooperative Thrift and Credit Society Ltd., X367,
rep. by its Secretary,
Rathna Nagar,
Teynampet, Chennai-18.

5. The Returning Officer
for Transport Corporation,
Employees Cooperative Thrift and Credit Society Ltd., X 367,
Rathna Nagar, Teynampet,
Chennai-600 018.

6. R.Durai,
10, Karthick Nagar,
Madambakkam,
Guduvancheri,
Kancheepuram District-603 202.

7. S.Elangovan,
No.2/2111, Madha Koil Street,
Mugalivakkam,
Chennai-600 125.

8. S.Mayakannan,
124, Malligai Pu Colony,
Vyasarpadi,
Chennai-39.

9. K.Subramanian,
3, Appadurai 2nd Street,
Ayanavaram,
Chennai-23.

... Respondents

COMMON PRAYER: The above Review Applications have been filed under Order 47 Rule 1 r/w Sec.114 of Civil Procedure Code, praying to review the order passed in W.P.No.29844 of 2018, dated 13.11.2018.

For Review Applicants : Mr.M.S.Palaniswamy
in Rev. Appln. No.197 of 2018

Mr.R.N.Amarnath
in Rev. Appln. No.3 of 2019

For Respondents : Mr.Ajoy Khose for R6 to R9

COMMON ORDER

These Review Applications have been filed to review the order passed in W.P.No.29844 of 2018 dated 13.11.2018.

2. The brief facts leading to the filing of Review Applications are as follows :-

The dispute is relating to the conduct of election to the Transport Corporation Employees Cooperative Thrift and Credit Society Limited. Earlier, the election was scheduled to be conducted in the month of April 2018. After various litigations, finally, the election was scheduled to be held on 16.08.2018. After finalising the list of candidates, the polling was scheduled to be

held on the above said date. Since there was likelihood of law and order problem in conducting the polling, the Tamil Nadu Cooperative Societies Election Commission has cancelled the polling by an order dated 15.08.2018. The said order was put to challenge in W.P.No.21350 of 2018, and this Court by an order dated 31.08.2018 disposed of the Writ Petition with a direction to the Election Commission to issue a fresh schedule of election, and the Election Officer is directed to seek police protection for conducting the election peacefully. The Election Commission is also directed to issue a fresh schedule of election within a period of two weeks from the date of receipt of the copy of the order. Thereafter, the Election Commission by an order dated 30.10.2018 ordered fresh election to the society instead of issuing a schedule for conducting polling. Following the above said order, the Deputy Registrar of Cooperative Societies has also issued a election schedule dated 02.11.2018 fixing the date for filing nominations and for all other formalities. The order passed by the Deputy Registrar dated 02.11.2018, was again put to challenge in W.P.No.29844 of 2018 on the ground that, in the earlier order passed in W.P.No. 21350 of 2018, this Court has only directed the

Election Commission to issue election schedule for polling alone, instead of that, a fresh election has been ordered by the Election Commission, which is absolutely not necessary as there is no allegation regarding irregularities in respect of other proceedings.

3. When the Writ Petition taken up for hearing, the learned counsel appearing for the 2nd respondent, on instructions, submitted that the order passed by this Court has been misconstrued, and the election may be resumed from the stage of polling for conducting the election. Considering the above submissions, the Writ Petition has been disposed of with a direction to the Election Commission to resume the election from the stage of polling. The above said order was challenged by a third party in Writ Appeal No.2581 of 2018 mainly on the ground that a fresh election was ordered by the Election Commission by an order dated 30.10.2018, without challenging that order, the petitioner only challenged the consequential order passed by the Deputy Registrar dated 02.11.2018, and the Writ Petition is not maintainable, wherein, the standing counsel appearing for the Election Commission has submitted that due to oversight, the order passed by the Election Commission dated 30.10.2018 was not

brought to the notice of this Court. Considering the rival submissions, the Division Bench has dismissed the appeal holding that the order has been passed by this Court on the submissions made by the learned standing counsel appearing for Election Commission, and the Writ Petition was not decided on merits. It has further held that the remedy is open to the aggrieved persons to approach this Court by filing appropriate application. The relevant portion of the order passed by the Division Bench of this Court reads as follows :-

“10. In the light of the submission made by the learned counsel for the 3rd respondent in the writ petition, the learned Judge has directed the third respondent to resume the election process in respect of the sixth respondent society viz., Transport Corporation Employees Cooperative Thrift and Credit Society Limited, Chennai-18, from the stage of polling by issuing appropriate notification within a period of one week from the date of receipt of a copy of the order. The learned Judge did not go into the merits of the submission made, especially relating to the legal

issue. In the considered opinion of the Court, in the light of the stand taken by the third respondent, on instructions, this Court is unable to come to the aid of the appellant herein and the remedy open to the third respondent is to approach the learned Judge by filing appropriate application. It is also open to the appellant/third party to do so in accordance with law before the learned Single Judge.”

Pursuant to the above direction, the Review Application No.3 of 2019 has been filed by the appellant in the Writ Appeal, and the other Review Application in Rev.Appln. 197 of 2018 has been filed by the Election Commission.

5. Mr.R.N.Amarnath, learned counsel appearing for the review applicant in Rev. Appln. No.3 of 2019 has vehemently contended that, earlier, this Court in W.P. No.21350 of 2018 dated 31.08.2018 directed the Election Commission to issue a fresh schedule of election, and there is no specific direction to issue election schedule from the stage, where it was stopped. In pursuant to the same, the Election Commission has also issued fresh election schedule on 30.10.2018 and consequently, the

Deputy Registrar has fixed the date for filing nominations and to complete other formalities by an order dated 03.11.2018. But, without challenging the order passed by the Election Commission dated 30.10.2018, the Writ Petition has been filed challenging the consequential order passed by the Deputy Registrar. Hence, the Writ Petition itself is not maintainable. That apart, as per the order passed by this Court dated 31.08.2018, fresh election should be conducted, but without considering the same, the present order has been passed. Hence, the order is necessarily be reviewed.

6. Mr.M.S.Palaniswamy, learned counsel appearing for the Review Applicant in Rev. Appln. No.197 of 2018 submitted that as per the earlier order passed by this Court dated 31.08.2018, directing the 2nd respondent Election Commission to issue a fresh schedule of election, the Election Commission has also issued a fresh election schedule by an order dated 30.10.2018. Consequently, the Deputy Registrar has also issued another notification fixing the date for conducting the election at the polling stage. But, due to oversight, it was not brought to the notice of this Court about the order passed by the Election Commission dated 30.10.2018. In the above circumstances, the

present order is required to be reviewed by this Court. That apart, the order passed by the Election Commission dated 30.10.2018 was also not challenged by the Writ Petitioner. Therefore, the above order is necessarily be reviewed.

7. Per contra, the learned counsel appearing for the Writ Petitioner in W.P. No.29844 of 2018 contended that the election has been stopped at the time of polling due to some law and order problem in two polling booths. Considering the fact that the problem is only in respect of two polling booths, this Court directed the Election Officer to seek necessary police protection, and also directed the Election Commission to conduct polling alone, there is no direction for the 2nd respondent to issue a fresh election schedule. By misconstruing the order, the fresh election schedule has been issued and that order was challenged. This Court has also rightly directed the 2nd respondent to issue a fresh schedule for conducting polling alone. In pursuant to the same, the election has already been conducted and the elected board has also taken charge, and at this stage, the elected board need not be disturbed. There is no illegality in the order passed by this Court, which does not warrant review of the order.

8. I have considered rival submissions and perused the records carefully.

9. Admittedly, the election was stopped at the time of polling due to law and order problem in two polling booths. Considering the above fact, this Court by an order dated 31.08.2018 directed the 2nd respondent Election Commission to issue a election schedule to conduct the polling after getting necessary police protection. This Court did not direct the Election Commission to issue fresh election notification. However, the Election Commission as well as the Deputy Registrar has issued a fresh election notification and also the election schedule. When that order was put to challenge, this Court after considering the entire materials, has only directed the Election Commission to issue a schedule for conducting the polling, and to resume the election from the stage of polling by issuing appropriate notification. As rightly contended by Mr.Ajoy Khosh, learned counsel appearing for the respondents 6 to 9, absolutely there is no allegation against the voters list issued by the election officer and the acceptance of nominations. The problem arose only at the time of polling that too in respect of two polling booths, for which, the election was stopped. Considering

those facts, this Court has directed the Election Commission to issue a fresh schedule for resuming the election from the stage of polling. But, the order has been misconstrued by the authorities and a fresh election was ordered. This Court after considering all those facts directed the Election Commission to resume the election from the stage of polling. Therefore, this Court has not found any error apparent on the face of record warranting to review the said order. Now, at this stage, the order passed by this Court need not be reviewed on the ground that the order passed by the Election Commission was not challenged in the Writ Petition. That apart, it is stated that the election was already over and the elected board has also taken charge and functioning. In the said circumstances, I find there is no reason to review the order passed by this Court, and both the review applications are liable to be dismissed. Accordingly, the Review Applications are dismissed. No costs.

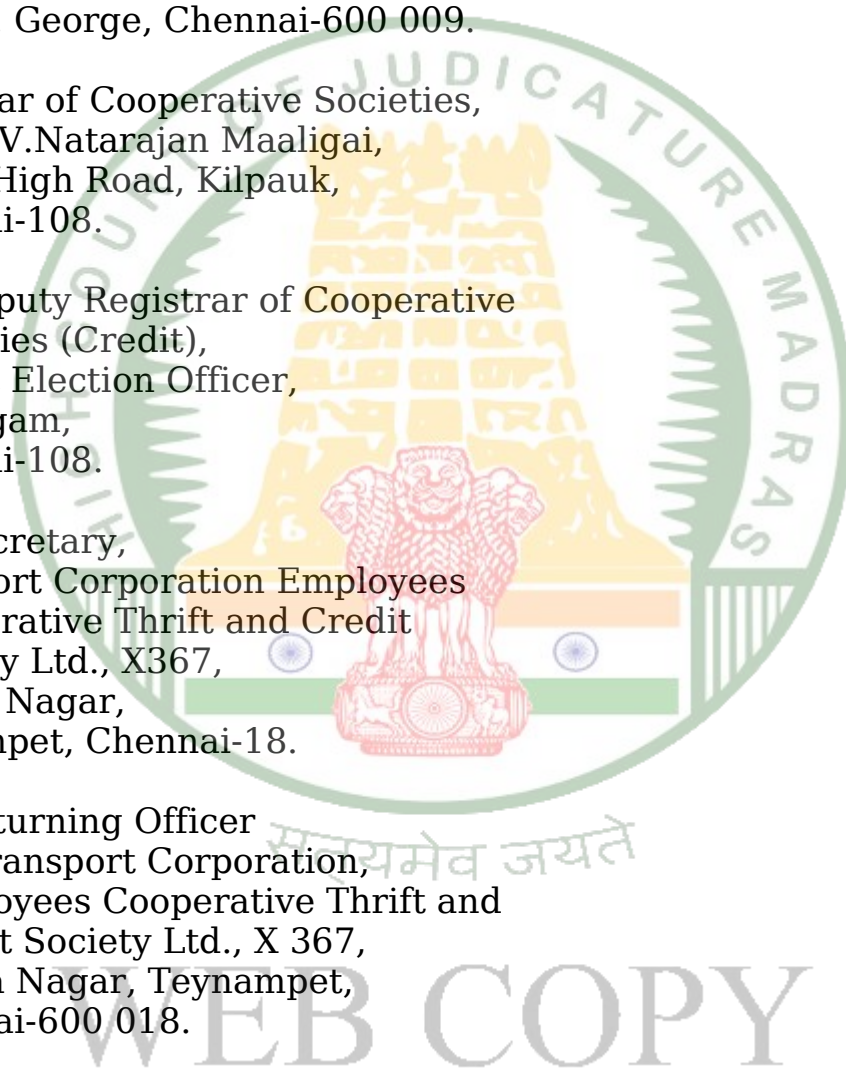
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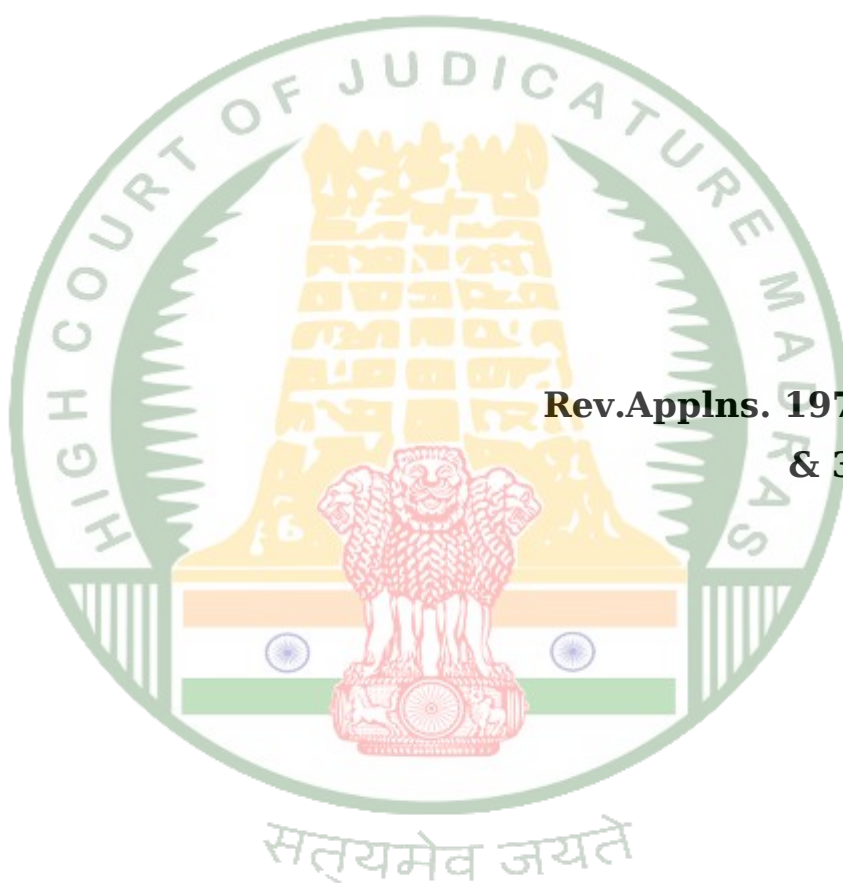
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V.BHARATHIDASAN,J.

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