



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P. (MD) No.8468 of 2019
and
W.M.P. (MD) No.6632 of 2019

R.Subbaiah

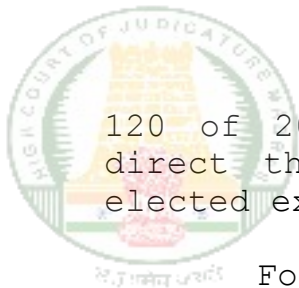
... Petitioner

-vs-

- 1.The Committee on Co-operative
Election Cases,
East Central Zone,
Trichy.
- 2.The State Election Commissioner,
Tamil Nadu State Co-operative Societies,
Election Commission,
Chennai - 600 018.
- 3.The District Election Officer/Deputy
Registrar of Co-operative Societies,
Aranthangi Circle,
Pudukkottai District,
Madurai District.
- 4.The Election Officer,
Y.P.603 Mathakam Primary Agricultural
Co-operative Society,
Avudayarkovil Taluk,
Pudukkottai District.
- 5.Mathakam Primary Agricultural
Co-operative Society,
through its Secretary,
Avudayarkovil Taluk,
Pudukkottai District.
- 6.S.Muthaiya
- 7.M.Periyathambi

... Respondents

PRAYER: Petition is are filed under Article 226 of the Constitution
of India, to issue a writ of Certiorari Mandamus, calling for
the records pertaining to the impugned order passed by the 1st
respondent committee, dated 25.01.2019 made in Petition No.79 and



120 of 2018 and quash the same as illegal and consequently to direct the 5th respondent to proceed further with the 11 newly elected executive members in the 5th respondent society.

For Petitioner: Mr.D.Rajagopal

For Respondents: Mr.K.Chellapandian, AAG assist by

Mr.A.K.Baskarapandian, Spl.G.P. for RR1,3&4

Mr.G.Rajendran for R2

Mr.S.Dhayalan, for R5

O R D E R

[Order of the Court was made by S.S.SUNDAR, J.]

This writ petition is filed challenging the order of the first respondent Committee, viz., Committee on Co-operative Election Cases, East Central Zone, Trichy dated 25.01.2019 in Petition Nos.79 and 120 of 2018.

2.The writ petitioner is a member of Y.P.603 Mathakam Primary Agricultural Co-operative Society, which is one of the largest Co-operative Society in Pudukkottai District. It is stated that there are more than 4000 members enrolled in the Co-operative Society and that all the members are agriculturists. As a member of the Co-operative Society, the petitioner has participated in the election for the post of Executive Member. The 2nd respondent in the writ petition commenced the process of election to the co-operative Societies throughout the State and for the 5th respondent Society, filing of nomination was fixed on 30.04.2018. Though it is stated that 16 members have filed their nominations and out of 16, after rejecting 5 nominations submitted by 5 members, remaining 11 members were shown as elected members, (as the Society has to elect only 11 Executive Members), it appears serious allegation was made regarding improper rejection of nomination as in several other cases.

3.The seventh respondent in this writ petition filed W.P.(MD) No.11719 of 2018 before this Court, challenging the election in the 5th respondent Society. This Court, by a common order dated 03.08.2018, appointed four Committees to the four zones of the State, headed by Hon'ble High Court Judges (Rtd.) to deal with the election matter in free and fair manner. Pursuant to which, the petitions filed by the 7th respondent were also entertained by the Committee as Petition No.79 of 2018. Apart from that, the complaint of one Muthiah, the 6th respondent herein was also entertained as Petition No.120 of 2018 as he also filed a complaint, which was pending on the date when the common order was passed by this Court in W.P.(MD) No.7620 of 2018 and other batch of cases.

4.The Committee relied upon the representation dated 02.05.2018 submitted by the 6th respondent and the said



representation was also supported by an acknowledgment dated 03.05.2018. Since the Committee was of the view that there was a representation by the 6th respondent before 03.08.2018, the complaint of the 6th respondent was also entertained. Similarly, the representation of the 7th respondent, who was also the petitioner in the writ petition filed before this Court, which was disposed of along with the batch of cases, the Committee entertained the complaint of the 7th respondent in petition No.120 of 2018.

5.The case of the 7th respondent is that several nominations nearing 45 in number were issued by the Election Officer and that the nominations were accepted. Though acknowledgment was issued by the Election Officer only for few, it is the specific case of the 7th respondent that his nomination was also accepted by the Election Officer, but, unfortunately, there was no acknowledgment. It is also pleaded by the 7th respondent that at the time of receiving nominations, Election Officer was forced not to give any acknowledgment to many persons, who filed nominations. Above all, the videograph of the incident that took place on the day on which nominations were received by the Election Officer was also produced before the Hon'ble Committee by way of C.D. Though an objection was raised before the Committee as to the admissibility of the CD by referring to Section 65(4) of the Indian Evidence Act, the Hon'ble Committee relied upon the judgment of Hon'ble Supreme Court reported in **SCALE 2018(2) Shafhi Mohammad Vs. The State of Himachal Pradesh** and held that the said judgment regarding admissibility of a CD without a certificate can be followed and the requirement of certificate being procedural can be relaxed by Court wherever interest of justice so justifies especially when the Election Officer himself has not chosen to dispute the genuineness of the C.D.

6.It is in the said context, the Hon'ble Committee after thoroughly examining of entire materials found that there were several irregularities and illegalities at the time of receiving nominations because of the problems created by an unruly mob. The Hon'ble Committee observed that the Election Officer did not take care to protect his own table and conduct the election process properly by allowing the relevant papers to be carried away by some one forcibly.

7.The Hon'ble Committee also found as a matter of fact that the nomination of one Subbiah, who had submitted nomination before the Election Officer, which was recorded in the CD was not found with the Election Officer. The Election Officer had no explanation for not having the nomination of the candidate even though receipt of such nomination is properly recorded in the CD.



8.It is in the background of the entire case and relying upon the materials that were produced before the Hon'ble Committee, the Committee has come to a conclusion that the process of election, particularly, the receipt of nomination was not fair and there were several irregularities in the conduct of the Election Officer as well as some of the contesting candidates, who made an attempt to prevent the eligible candidates from submitting their nominations and removed the nomination from the very table of Election Officer. Since the Committee has taken a decision supported by materials and there is no infirmity or perversity in the approach of the Hon'ble Committee, this Court is unable to interfere with the order of the Committee.

9.In view of the above discussion, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (T & P)

// True Copy //

Sub Assistant Registrar (CS)

Arul

To

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Co-operative Society,
Avudayarkovil Taluk,
Pudukkottai District.

+1CC TO MR.D.RAJAGOPAL, Advocate Sr. No.60067
+1CC TO MR.G.RAJENDRAN, Advocate Sr. No. 60157
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 60596

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and
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TR (27.04.2019) 5P 8C