



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 15.07.2019

CORAM:

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THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

and

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. (MD) No.4089 of 2019

and

W.M.P. (MD) Nos.3184 to 3186 of 2019

A.V.Senthil Kumar

: Petitioner

Vs.

1.The Tamil Nadu State Co-operative Election

Commission,

Represented by its Commissioner,

No.273, Annasalai, Teynampet,

Chennai - 18.

2.The Registrar/State Election Officer,

Co-operative Societies, Chennai.

3.The District Election Officer/Deputy Registrar,

Co-operative Societies,

Office at MD 104,

Dindigul Central Co-operative Bank Building,

Dindigul.

4.The Managing Director,

MD104, Dindigul Central Co-operative Bank Limited,

Co-operative Nager, Dindigul.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the notification / order in Na.Ka.No.6657 / 2018 / Koo.The 1 of the 1st respondent dated 19/02/2019 and the election notice dated 20/02/2019 on the file of the 3rd respondent in so far as it purports to conduct 3rd phase of election to the office bearers of the MD-104 Dindigul Central Co-Operative Bank and consequently direct the respondents to conduct and complete the election for first and second phases for all the societies, eligible to participate in the third phase of election to the MD104 Dindigul Central Co-operative Bank.

For Petitioner : Mr.H.Lakshmi Shankar

For R-1

: Mr.M.S.Palanisamy

assisted by

Mr.G.Rajendran



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For R-2 to R-4 : Mr.P.H.Aravind Pandian
Additional Advocate General
and
Mr.K.Chellapandian
Additional Advocate General
assisted by
Mr.R.Balaramesh
Special Government Pleader

O R D E R

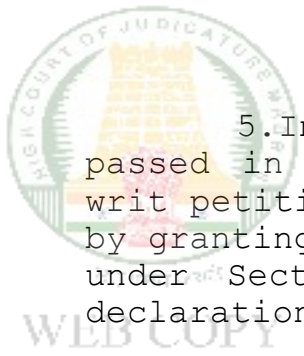
[Order of the Court was made by **K.RAVICHANDRABAABU, J.**]

This writ petition is filed challenging the election notification of the first respondent, dated 19.02.2019 and the election notice, dated 20.02.2019 of the third respondent, pertaining to the conduct of 3rd phase of election to the Office Bearers of the MD-104 Dindigul Central Co-Operative Bank, with a consequential direction to the respondents to conduct and complete the election for the first and second phases for all the societies, eligible to participate in the third phase of election to the MD104 Dindigul Central Co-operative Bank.

2.Heard both sides.

3.The learned counsel for the petitioner vehemently contended that without completing the first and second phases of election for all the Societies, the third phase of election to the District Co-operative Societies, cannot be permitted to be conducted, as it affects the right of particular Society to participate in the election in the third phase by exercising its vote or to stand for any post. He relied on Rule 51-A of the Tamil Nadu Co-operative Societies Rules, 1988, and would contend that every Primary Society are entitled to vote or stand for any election to the Society and therefore, without conducting election to the Primary Societies, the election to the District Co-operative Societies, cannot be conducted. The learned counsel further submitted that in effect, the impugned notification was issued in clear violation of statutory provisions.

4.On the other hand, the learned Additional Advocate General submitted that the very same issue as to whether the election to the District Co-operative Societies, can be conducted when some of the primary societies election were not conducted, has been considered and this Court has observed that election to the District Co-operative Societies cannot be stalled merely because election to some of the primary societies were not conducted. In support of his contention, the learned Additional Advocate General has relied on a recent decision of the Division Bench of this court in W.P.(MD) No.4952 of 2019, dated 10.06.2019.



5. In fact, today, we ourselves, by following the above order passed in W.P.(MD)No.4952 of 2019, dated 10.06.2019, disposed of writ petition in W.P.(MD)No.1223 of 2019, dated 15.07.2019, however, by granting liberty to agitate the matter by way of election dispute under Section 90 of the Co-operative Societies Act, after the declaration of results.

6. The grievance expressed by the petitioner before this Court is that by not conducting election to the primary Co-operative Societies, such of those Societies are prevented from participating in the election of the District Co-operative Societies. This, in our considered view is like, either rejection of nomination or not accepting the nomination in respect of an ineligible voter. Therefore, the issue raised in this writ petition is certainly an election dispute, which can always be agitated, after the declaration of the results by filing appropriate application under Section 90 of the said Act. When such avenue is available, we are not inclined to entertain this writ petition, more particularly, when the recent Judgment of the Division Bench of this Court in W.P. (MD)No.4952 of 2019, dated 10.06.2019, which we followed in our earlier decisions, has observed as follows:-

"13. In the order dated 05.10.2018 made in W.P(MD) No.20384 of 2018 [K.V.Jude Dev v. The Commissioner, Dairy Co-operative Societies Limited, Madhavaram Milk Colony, Chennai - 600 051 and others], the Division Bench of this Court, in paragraph No.24 observed that, "When elections were all conducted in 50 Co-operative Societies, for the sake of holding elections to the petitioner in the first phase of election in respect of two societies, we cannot make the elected Board of Directors in all Primary Milk Producers Co-operative Society to wait. That would also deprive them enjoying full tenure of five years."

14. In the order dated 16.10.2018 made in W.P(MD) No.21633 of 2018 [D.Sathaiya v. The Commissioner, Tamil Nadu Co-operative Societies Election Commission, Chennai - 18 and others], the Division Bench of this Court, in paragraph No.5, observed that" ... Hence, with the office bearers as on date, the election of the sixth respondent can go on. Even otherwise, if for any reason, there was no election to the seventh respondent society, the administration of the sixth respondent society, in accordance with by-laws cannot be stalled."

15. It is also pertinent to point out at this juncture that in the affidavit filed in support of this writ petition, there is no specific averment as to the non-holding of the election in respect of MM-396 Sampattaviduthi Agricultural Co-operative Credit Society, Chennai. Even otherwise, the counter affidavit of the respondents would disclose that the election process took



place and 11 nominations were filed and all the 11 nominations were accepted and final list of contesting candidates were declared and in the light of the order passed in W.P(MD)No.7620 of 2018, result of the election was not declared and the said interim order was put to challenge before the Honourable Supreme Court in S.L.P(C) Nos.10051-10059 of 2018, wherein the Honourable Supreme Court permitted the continuation of the election process with a rider that the results should not be declared and subsequently, it was disposed of by requesting this Court to dispose of W.P(MD)No.7620 of 2018 and accordingly, W.P (MD)No.7620 of 2018, etc., batch of cases, came to be disposed of, which also included the writ petition in W.P (MD)No.10588 of 2018, pertaining to the said Society and pursuant to the said order, four Committees were constituted and before one of the Committees, the said election dispute was raised and not pressed and as such, there cannot be any impediment to continue with the further election process.

16. Whether the election in the eye of law took place, in our considered opinion, revolve around the adjudication on disputed question of facts and as such, this Court in exercise of jurisdiction under Article 226 of the Constitution of India cannot venture into the said exercise for the reason that there is an effective alternative remedy available to the petitioner under the provisions of the Tamil Nadu Co-operative Societies Act, 1983 and the Rules framed thereunder."

7. In such view of the matter, this writ petition is disposed of without going into the merits of the claim made by the petitioner, however, by granting liberty to the petitioner to work out his remedy against the process of election or the declaration of the results, by filing an application under Section 90 of the Tamil Nadu Co-operative Societies Act, after the declaration of the results, as contemplated under the said Provision itself. Interim order granted, if any, stands vacated. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar (CS)

To

1. The Tamil Nadu State Co-operative Election Commission,

Represented by its Commissioner,
No.273, Annasalai, Teynampet,
Chennai - 18.



2. The Registrar/State Election Officer,
Co-operative Societies, Chennai.
3. The District Election Officer/Deputy Registrar,
Co-operative Societies,
Office at MD 104,
Dindigul Central Co-operative Bank Building,
Dindigul.
4. The Managing Director,
MD104, Dindigul Central Co-operative Bank Limited,
Co-operative Nager, Dindigul.

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate (SR-75380[F] dated
16/07/2019)

+1 CC to Mr.G.RAJENDRAN, Advocate (SR-75360[F] dated 16/07/2019)

+1 CC to Mr.H.LAKSHMI SHANKAR, Advocate (SR-75810[F] dated
17/07/2019)

W.P. (MD) No.4089 of 2019
15.07.2019

RJ2

MK (31.07.2019) 5P 8C