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W.P.(MD) No.19221 of 2019:

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

and

THE HONOURABLE MRS.JUSTICE R.THARANI

W.P. (MD) Nos.19221 and 20010 of 2019
and W.M.P. (MD) Nos.15600 and 16533 of 2019

W.P. (MD) No.19221 of 2019:

A.Mithun Chakravarthi

... Petitioner

-vs-

- 1.The Registrar cum Director,
Milk Production and Dairy Development Department,
Madhavaram Milk Colony,
Chennai - 51.
- 2.The Election Commissioner,
Tamil Nadu Co-operative Societies Election Commission,
No.273, Kamathenu Super Market Building,
Teynampet,
Chennai - 18.
- 3.The Deputy Registrar,
Milk Production and Dairy Development Department,
Madurai - 20.
- 4.A1301, Madurai District Milk Producers Cooperative Union,
Represented by
The General Manager,
Sathamangalam,
Madurai - 20.
- 5.K.Tamilarasan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Quo Warranto, to show cause under what authority the 5th Respondent herein holding the post of Chairman to the 4th Respondent Union.

For petitioner

: Mr.Veera Kathirvan
Senior Counsel
for M/s.J.Anandhan

For Respondents 1, 3 & 4

: Mr.Aairam K.Selvakumar
Additional Government Pleader

For 2nd Respondent

: Mr.G.Rajendran



For 5th Respondent

: Mr.Issac Mohanlal,
Senior Counsel
for Mr.K.Ragatheesh Kumar

W.P. (MD) No.20010 of 2019:

- 1.P.Periya Karuppan
2.V.Palaniappan
3.S.Sadayandi
4.C.Indurani
5.M.Murugan
6.S.Annamalai

... Petitioners

-vs-

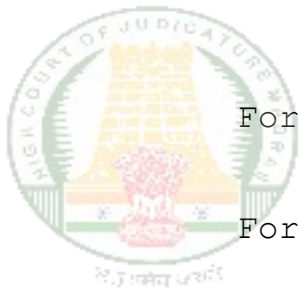
- 1.State of Tamil Nadu,
Rep. by its Principal Secretary,
Department of Animal Husbandry, Dairying and Fisheries,
Chennai - 9.
2.The Election Commissioner,
State Co-operative Election Commission,
Chennai.
3.The District Election Officer cum the Deputy Registrar (Dairying),
O/o.The District Election Officer cum the Deputy Registrar,
Aavin Complex,
Sathamangalam,
Sivagangai Road,
Madurai District.
4.A1301, Madurai District Milk Producers Cooperative Union,
Represented by the General Manager,
Sathamangalam,
Sivagangai Road,
Madurai District.
5.K.Tamil Arasan

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Declaration, declaring the selection of the Respondent No.5 as President of the A 1301 Madurai District Cooperative Milk Producers Cooperative Union as illegal and consequently, directing the Respondent No.2 and 3 to conduct a proper election for the post of President for the A1301, Madurai District Cooperative Milk Producers Cooperative Union within the time period stipulated by this Hon'ble Court.

For petitioners

: Mr.T.Lajapathiroy



For 1st Respondent : Mr.A.K.Baskara Pandian
Special Government Pleader
For 2nd Respondent : Mr.G.Rajendran
For Respondents 3 & 4 : Mr.E.Marreeskumar
For 5th Respondent : Mr.Issac Mohanlal,
Senior Counsel
for Mr.K.Ragatheesh Kumar

COMMON ORDER

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

Since the prayer sought for in both the Writ Petitions are more or less similar and the same issue viz., administration of Madurai District Cooperative Milk Producers Cooperative Union is involved, both the Writ Petitions are heard together and disposed of by this common order.

2.W.P.(MD) No.19221 of 2019 was heard by us on 04.09.2019 and having prima-facie satisfied that the procedure adopted in selecting the Chairman is wholly illegal and against law, we have granted interim order. For better appreciation, the order is quoted below:

"Heard Mr.Veera Kathiravan, learned Senior Counsel appearing for Mr.J.Anandhan, learned counsel appearing for the petitioner.

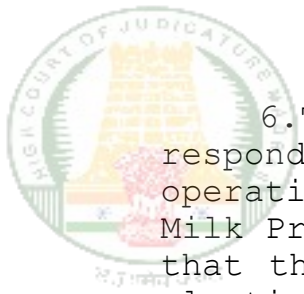
2.This Writ Petition has been filed for the issuance of a Writ of Quo Warranto to show cause under what authority the 5th respondent holding the post of Chairman to the 4th respondent Union.

3.It is not in dispute that the 4th respondent viz., Madurai District Milk Producers Co-operative Union has undergone a change in its identity, in the sence, the Union has been bifurcated by the State Government in G.O.(2D) No.22, Animal Husbandry Dairying and Fisheries Department, dated 22.08.2019.

4.The question arises for consideration is what is required to be done subsequent to the bifurcation of Madurai District Milk Producers Co-operative Union and as to how the Chairman should be elected.

5.Mr.Aairam K.Selvakumar, learned Additional Government Pleader, who accepts notice on behalf of the respondents 1, 3 and 4 submitted that the 5th respondent has been nominated by the Government as a Director and subsequently, as an interim measure, he was nominated as Chairman of Madurai District Milk Producers Co-operative Union. In this regard, the learned Additional Government Pleader referred to the power to constitute an interim board in accordance with Section 33

<https://hcservices.ecourts.gov.in/hcservices/> (17/09/2019) second proviso under explanation II.



6.The allegation of the petitioner is that the 5th respondent is not a member of any of the Milk Producers Co-operative Society, which are affiliated to Madurai District Milk Producers Co-operative Union. Therefore, it is contended that the 5th respondent is ineligible to contest even in the election. Further more, as on date, the electorate, which has to elect the Chairman, is reduced to 11 and it has to be adequately redressed by addition of few other Societies and unless a valid election is conducted, no person could be appointed as Chairman. It is further pointed out that the second proviso under the explanation II in Section 33(i)(a) of the Act would be applicable only in respect of the application received to register the Society after commencement of this Act, wherein the interim board could be formed to conduct the affairs of the Society.

7.The learned Senior Counsel appearing for the petitioner further referred to Section 33(11)(c) first proviso and submit that the casual vacancy in the office of the member of the board shall be filled up by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the remaining term of office of the board is less than half of its original term. It is submitted that the remaining term of elected board is more than 4 years. Therefore, the question of nominating the interim board is without jurisdiction.

8.On a prima-facie reading of the provisions placed before this Court, we are of the view that first priority should be given to reconstitute the electorate, after which, election should be conducted by drawing the schedule as provided under the Act and Rules and the question of nomination of a member to the board cannot be resorted as it is not a casual vacancy which has arisen but on account of the decision taken by the Government to bifurcate Madurai District Milk Producers Co-operative Union into two.

9.For the above reasons, we are of the view that the petitioner has made out a case for entertaining this Writ Petition. Admit.

10.Considering the reasons assigned by us above, we direct that until further orders the 5th respondent shall not function as Chairman of the Madurai District Milk Producers Co-operative Union and the existing directors shall continue and the day-to-day affairs of the Union shall be managed by the General Manager of Madurai District Milk Producers Co-operative Union.

11.Mr.Aairam K.Selvakumar, learned Additional Government Pleader, accepts notice on behalf of the respondents 1, 3 and 4 and Mr.G.Rajendran, learned Standing counsel accepts notice on behalf of the 2nd respondent. Notice to the 5th respondent through Court as well as privately returnable by 14.10.2019."



same relief and following the interim order granted in W.P.(MD) No.19221 of 2019, we granted interim order in W.P.(MD) No.20010 of 2019 as well. Now, both the Writ Petitions are before us. The prayer sought for in both the Writ Petitions though may be slightly differently worded and they seek for two different writs of public issue, essentially the challenge is to the authority of the 5th respondent.

4. One more aspect also to be considered is the Office of the Chairman of the 4th respondent Milk Producers Cooperative Union. As pointed out by us earlier, we had passed orders in W.P.(MD) No.19221 of 2019, in which we posed a question to ourselves as to what would be required to be done subsequent to the bifurcation of the Milk Producers Cooperative Union and how the Chairman should be elected. By assigning reasons, we held that the procedure adopted by the respondents to make the 5th respondent as Chairman as illegal. Even at the stage we passed interim order we heard the official respondents, who had been duly instructed by a team of officers, who were present before us. The respondents sought to justify the action by referring to Section 33(i) (a) of Tamil Nadu Cooperative Societies Act. The said provision could have no application to the facts of the present case as the said provision is applicable only to casual vacancy occurs in the office of the Member of the Board and only in such circumstances provision of nominations could be referred to.

5. In the instant case, it cannot be disputed by the respondents that the originally constituted electorate has not been bifurcated into two, pursuant to the policy decision taken by the Government in G.O.M.S. (2D) No.22, Animal Husbandry Dairying and Fisheries Department dated 22.08.2019. Thus, the present Madurai District Milk Producers Cooperative Union though carries the same name, it is distinct and a new entity as the combined Society, which formed the Union is reduced as part of the Society, which was formerly Madurai Union, now fall within the jurisdiction of Theni District Milk Producers Cooperative Union. Therefore, we have no hesitation to hold that the procedure adopted by the respondent in selecting the 5th respondent as the Chairman is wholly illegal and un-sustainable.

6. For the reasons stated above, we hold that the 6th respondent cannot function as a Chairman/inducted Chairman of the fourth respondent Union. Accordingly, these Writ Petitions are allowed. The petitioner in W.P.(MD) No.20010 of 2019 has sought for a consequential direction upon the officials to conduct election. In a democratic set up, the respondents are bound to conduct election to elect Office bearers of the Union. Therefore, we issue directions to the second respondent in both the Writ Petitions to take appropriate action for notifying election at the earliest and till then, the direction issued by us in our interim order dated 04.09.2019 shall continue and the General Manager of the Madurai District Milk Co-operative Union shall be the administrative head of the Madurai District Milk Producers Co-operative Union and take all decisions connected with the function of the Union. Consequently, connected



Miscellaneous Petitions are closed. No costs.

Sd/-

Assistant Registrar (CO)

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Sub Assistant Registrar(CS)

sj

To

- 1.Principal Secretary,
Department of Animal Husbandry, Dairying and Fisheries,
State of Tamil Nadu,
Rep. by its
Chennai - 9.
 - 2.The Election Commissioner,
Tamil Nadu Co-operative Societies Election Commission,
No.273, Kamathenu Super Market Building,
Teynampet,
Chennai - 18.
 - 3.The Registrar cum Director,
Milk Production and Dairy Development Department,
Madhavaram Milk Colony,
Chennai - 51.
 - 4.The Deputy Registrar,
Milk Production and Dairy Development Department,
Madurai - 20.
 - 5.The General Manager,
A1301, Madurai District Milk Producers Cooperative Union,
Sathamangalam,
Madurai - 20.
- +1 cc Mr.E.MAREESKUMAR ,Advocate, SR.No.95986
+1 cc Mr.T.LAJAPATHI ROY ,Advocate, SR.No. 96260
+1 cc Mr.G.RAJENDRAN ,Advocate, SR.No.96037
+2 cc Mr.ISAAC CHAMBERS ,Advocate, SR.No.96006,96007
+2 cc Mr.AAYIRAM K.SELVAKUMAR ,Advocate, SR.No.96124,96125
+1 cc Mr.J.ANANDAN ,Advocate, SR.No. 96308

W.P. (MD) Nos.19221 and 20010 of 2019

04.11.2019

KK/SAR/11.11.2019/6P-14C/

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