



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 20.11.2019

CORAM:

**THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS.JUSTICE R.THARANI**

**W.P. (MD) No.24372 of 2019
and W.M.P. (MD) Nos.21003 and 21004 of 2019**

1.Nesaraj
2.M.Sundaraj
3.S.Padmabhai
4.L.Babu
5.M.Krishnadhas
6.G.Rajamoni
7.C.Devarajan
8.H.Reg
9.Suja
10.S.Prabha
11.T.G.Kumar Pencilal

... Petitioners

-vs-

- 1.The Chairperson,
Committee on Co-operative Societies Election Cases,
(South Zone), 3rd Floor,
187, North Veli Street, M.D.C.C.B. Building,
Madurai - 1.
- 2.The Election Commissioner,
Tamil Nadu State Co-operative Societies
Election Commission,
No.273, Annasalai, Thenampet,
Chennai - 18.
- 3.The Joint Registrar of Cooperative Societies,
Kanyakumari Region,
2nd Floor, Collector Office New Building,
Nagercoil - 629 001,
Kanyakumari District.
- 4.The Deputy Registrar of Cooperative Societies,
Palace Road, Thuckalay & Post - 629 175,
Kanyakumari District.



5.The Election Officer,
Y-70, Charappazhanji Athencode Primary
Agricultural Cooperative Society,
Methukummal Post,
Kanyakumari District.

6.Field Officer/C.S.R. (Munchirai),
Y-70, Charappazhanji Athencode Primary
Agricultural Cooperative Society,
Methukummal Post,
Kanyakumari District.

7.R.Bakthavathsalam

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari, calling for records relating to the impugned proceedings in Proc.No.001/SJC/H/2012(212) dated 24.07.2019 passed by the 1st respondent and the consequential impugned order passed by the 3rd respondent in Na.Ka.1073/2018/Sa Pa dated 23.10.2019 and quash the same as illegal.

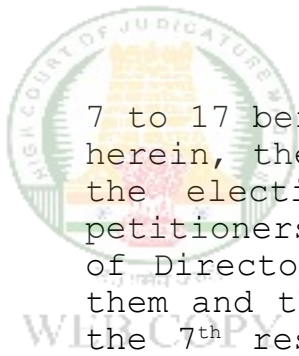
For petitioners	:	Mr.M.Jerin Mathew
For Respondents 1, 3 to 6	:	Mr.A.K.Baskarapandian Special Government Pleader
For 2 nd Respondent	:	Mr.G.Rajendran
For 7 th Respondent	:	Mr.G.Prabhu Rajadurai for Mr.M.P.Senthil

O R D E R

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

This Writ Petition has been filed by eleven persons, who were all elected as Board of Directors to the 5th respondent Society. The challenge in the present Writ Petition is to an order passed by the Committee on Co-operative Societies Election Cases, South Zone, Madurai dated 24.07.2019.

2.A Writ Petition was filed by the 7th respondent in W.P.(MD) No.17869 of 2018, challenging the rejection of his nomination and other matters. In terms of the directions issued by the Hon'ble Division Bench, the matter was referred to the Hon'ble Committee, which had taken up the matter and from the impugned order we find that the first petitioner, who is the President of the Society was present and represented the petitioners herein, who are respondents

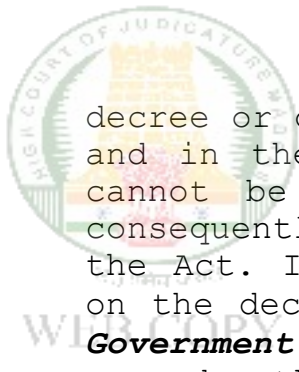


7 to 17 before the Hon'ble Committee. According to the 7th respondent herein, the election was not conducted in a proper manner and hence, the election has to be set aside. It was contended that the petitioners before us have no qualification to be elected as Board of Directors as proceedings under Section 87 was initiated against them and the same is pending. There were two other grounds urged by the 7th respondent viz., exclusion of about 1000 members from the voter list and with regard to the number of votes which has to be assigned to group member of the Society. So far as these two grounds are concerned, the petitioner R.Bakthavathsalam filed W.P.(MD) No.24307 of 2019 and we have considered the same and the Writ Petition was dismissed by order dated 20.11.2019.

3.The contention advanced by the 7th respondent alleging disqualification of the petitioners was considered by the Hon'ble Committee and it has held that the petitioners suffered disqualification. Consequently, their elections were set aside and therefore, the elections were directed to be held in terms of the election schedule and elections have to be held in a couple of days.

4.Mr.M.Jerin Mathew, learned counsel appearing for the petitioners contended that the petitioners had been elected to the post of Board of Directors by way of election and the finality of the elections should not be disturbed and to buttress the said submission, the learned counsel appearing for the petitioners relied on the decision of the Hon'ble Supreme Court in **Raviyashwant Bhoir v. Collector (2012) 4 SCC 407**. It is submitted that the removal of the elected persons cannot be done without adhering to the provisions and in the instant case the petitioners have been removed from the Office without even giving any notice and without furnishing copy of the petition filed by the 7th respondent and without following any procedure, more particularly the procedure contemplated under Rule 107 of the Tamil Nadu Cooperative Societies Rules, 1988. Therefore, it is submitted that the entire order passed by the Hon'ble Committee is vitiated.

5.On merits, the learned counsel would submit that the petitioners could not be said to have suffered any disqualification to bring their case under Section 34(5)(b) of the Act as the proceedings initiated under Section 87 of the Act has terminated in an order under Section 87. No doubt, against such an order the petitioners have preferred appeal before the Cooperative Societies Tribunal in C.M.A.(CS).No.11 of 2017 and the appeal is pending and there is an order of stay granted by the appellate Tribunal. Therefore, it is submitted that the case of the petitioners cannot be brought under the ambit of Section 34(5)(b) of the Act. Further, it is submitted that in terms of Section 34(1)(iii) of the Act, the disqualification for being eligible to be elected or nominated as a member of a board of any registered society will be attracted when a decree or decision or award has been obtained and for enforcing such



decree or decision or award obtained, the same has to be live decree and in the light of the order granting interim stay, the decree cannot be considered as a live decree and cannot be executed, consequently, the case has to be brought within Section 34(1)(b) of the Act. In support of his contention reliance was placed on the decision of this Court in ***P.Soundararajan and Others v. The Government of Tamil Nadu and others [(1998) 2 MLJ 485]***. On the above grounds, the learned counsel appearing for the petitioners prays for setting aside the impugned order.

6.The learned Special Government Pleader appearing for the State submitted that before the Hon'ble Committee, the respondent took a stand that because of the order of stay obtained by the petitioners their names can be accepted. Further, it is submitted that elections have already been notified and the process is going on.

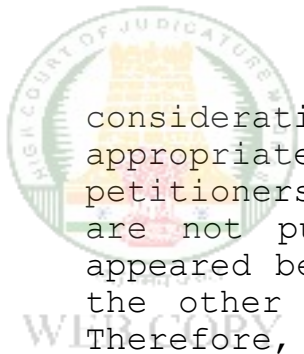
7.Mr.G.Prabhu Rajadurai, learned counsel appearing for the 7th respondent submitted that the interpretation given by the petitioners that since order of stay has been passed by the Tribunal the order passed under Sub Section (1) of Section 87 stands terminated. Further, there is a separate mechanism for recovery of amount under sub-section (2) and unless and until the entire amount is recovered the proceedings will not be terminated. Further, it is contended that since the appeal is pending, the order under appeal is continuing.

8.We have heard the learned counsel on either side and perused the materials available on record.

9.The Hon'ble Committee on Cooperative Societies Election Cases was vested with jurisdiction on account of the order passed by the Hon'ble Division Bench referring such matters to the Hon'ble Committee. The reason for making such exercise was on account of several disputes having been raised with regard to the Cooperative elections which ultimately resulted in derailing the entire election process in the State.

10.The first issue to be considered is as to whether the order passed by the Hon'ble Committee is vitiated on account of violation of principles of natural justice.

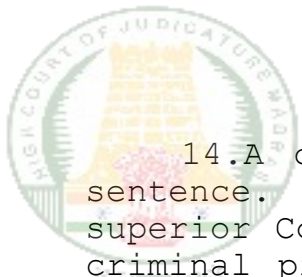
11.The 7th respondent herein filed W.P.(MD) No.17869 of 2018, in which all the petitioners herein were impleaded respondents viz., respondents 7 to 17. The Hon'ble Division Bench by common order dated 10.08.2018 disposed of all the Writ Petitions including W.P. (MD) No.17869 of 2018 and with regard to the notice to be issued to the elected candidates, the Division Bench specifically ordered in paragraph 8 of the order that the question of invoking equity and putting the elected candidates on notice would not arise for



consideration. Therefore, unless and until the petitioners move appropriate application for modification of such direction, the petitioners cannot be permitted to raise the contention that they are not put on notice. However, on notice the first respondent appeared before the Committee not only represented himself but also the other respondents, who are petitioners in the Writ Petition. Therefore, at this juncture, it is too late to contend that there has been violation of Principles of natural justice by the Committee while proceeding with the matter.

12.The second aspect is whether election of the petitioners is arbitrarily set at naught and whether the procedure has been followed for cancelling the elections. In fact the procedure regarding challenge of cooperative election has already been streamlined and in order to give quick remedy, the Hon'ble First Bench permitted the matters to be referred to the Hon'ble Committee. Therefore, the petitioner cannot said that the procedure has not been followed and this procedure has been evolved by the Hon'ble First Bench and the order has become final and there is no challenge to the order passed by the Hon'ble First Bench. Therefore, the procedure regarding referring the matter to the Hon'ble Committee cannot be question at this distance point of time. For such reasons, the reliance placed by the learned counsel appearing for the petitioners on Rule 107 of the Tamil Nadu Cooperative Societies Rules, 1988 is of little avail to the case of the petitioners.

13.The next aspect of the matter is as to whether the interpretation given by the learned counsel appearing for the petitioners with regard to the effect of surcharge proceedings are correct or not. Surcharge is contemplated under Section 87 of the Act. For initiation of surcharge proceedings there is an audit under Section 80 or an inquiry under Section 81 or an inspection or investigation under Section 82 or inspection of books under Section 83 or the winding-up of a Society. This is the starting point. After it order of surcharge is passed under Section 87 after following the procedure laid down therein. Sub-Section (2) of Section 87 of the Act speaks about the mode of recovery, which has to be taken note of for recovering the amount ordered under Section 87. Sub-section 2 also empowers recovery by proceeding under the Tamil Nadu Revenue Recovery Act, 1864. Admittedly the order of surcharge has been passed under Section 87(1) against the petitioners. This order has been put to challenge by appeal before the Tribunal in C.M.A. (CS). No.11 of 2017. The order of surcharge has not been set aside, but it has been stayed by the Tribunal. We know what would be effect of stay. In our considered view, the order of stay only hold that steps cannot be taken by the Society under Sub-Section (2) of Section 87 to recover the amount of surcharge ordered to be paid. Therefore, the order of surcharge passed under Section 87(1) would stand as on date, but the recovery of the amount alone is stayed. Therefore, the argument of the learned counsel appearing for the petitioners



14.A clarity can be obtained from the order of suspension of sentence. When order of suspension of sentence is granted by a superior Court in appeal filed against the order of conviction in a criminal proceedings, the order of suspension of sentence will not amount to order of stay of the conviction as the sentence alone is suspended. On adhering the same interpretation to the instant case, in fact we go one step to mean that going by the information of Section 34 of the Act, as long as order of surcharge has been passed and surcharge amount not been recovered, irrespective of grant of stay by the tribunal, disqualification will stand.

15.The interpretation given by the petitioner that it is not a live decree and therefore, it cannot be put against the petitioner by relying on the decision in **P.Soundarajan** (supra) is not a tenable argument. We say so because the fact of said case is entirely different. In fact the Tribunal granted stay of recovering the amount as per surcharge, but not stayed the surcharge itself. In such circumstances, if we apply Section 34(1)(3), the petitioner would come within the ambit of a person against whom a decision has been obtained.

16.It may be true that the recovery pursuant to such decision was stayed and that would not nullify the decision itself. That apart, a person who offer himself as a candidate in the election for Cooperative Society should have clean hands and the interpretation sought to be given would be a clear attempt to wriggle out of the obligation and duty on the candidate who contests the election.

17.The learned counsel appearing for the petitioner vehemently contended that the allegations based on which surcharge proceedings were initiated are absolutely frivolous and the Board of Directors have only engaged people on daily wage basis in fair price shops. However, these issues have to be canvassed in the pending appeal before the Tribunal and in this Writ Petition we cannot take note of the same.

18.The learned counsel appearing for the petitioner would submit that though there is no surcharge proceedings against the petitioners 8 to 10 the Hon'ble Committee has set aside the elections in respect of them also. In our considered view, the elections have to be conducted to the Society in a democratic manner so that people's voice is taken note of. Now, the Hon'ble Committee, which has been specially constituted to conduct cooperative election cases bearing in mind the period of election has exercised its discretion and set aside the election in its entirety. We do not find any error in such discretion exercised by the Hon'ble Committee, which has been done bearing in mind the object for which election has been notified.

<https://hcservices.courts.gov.in/> For all the above reasons, we find that the



petitioners have not made out any case for us to interfere with the order of the Hon'ble Committee. For such reason, the Writ Petition is dismissed. Consequently, connected W.M.Ps. are closed. No costs.

Sd/-

Assistant Registrar (Writs)

// True Copy //

Sub Assistant Registrar(CS)

sj

To

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Committee on Co-operative Societies Election Cases,
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+1 CC to M/s.M.P. SENTHIL, Advocate (SR-100140[F] dated 21/11/2019)
+1 CC to M/s.SPL GP (SR-100378[F] dated 21/11/2019)

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