

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.02.2020

CORAM

THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 3950 of 2020

and

W.M.P. Nos. 4685 and 4687 of 2020

J. Kumari

... Petitioner

Vs.

1. Justice K.Venkataraman Judicial Enquiry Committee
For Northern Zone
Rep by its Secretary
Tiruvallur Camp, Tiruvallur District Collectorate
Tiruvallur.
2. Tamil Nadu State Co-operative Societies
Election Commissioner
No.273, Kamadhenu Supermarket, I Floor
Anna Salai, Chennai - 600 018.
3. District Election Officer (Co-operative Societies)
Tiruvannamalai District.
4. Election Officer
H.H.518, Padavedu Primary Agricultural
Co-operative Credit Society
Padavedu, Polur Taluk
Tiruvannamalai District.

... Respondents

Petition filed under Article 226 of the Constitution of India, for issue of Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order dated 05.10.2019 passed in Complaint No.127/2018 on the file of the First Respondent and quash the same, consequently, direct the First Respondent to conduct the said election afresh, by strictly following the provisions of Law within a reasonable period.

For Petitioner : Mr. R. Neelakandan

For Respondents : Mr. M.S. Palanisamy (For R2)
Mr. L.P. Shanmugasundaram
(For R3 & R4)
Special Government Pleader

O R D E R

Heard Mr. R.Neelakandan, Learned Counsel for the Petitioner, Mr. M.S.Palanisamy, Learned Counsel who takes notice for the Second Respondent and Mr. L.P.Shanmugasundaram, Learned Special Government Pleader who takes notice for the Third and Fourth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner wanted to contest in the election held to the Board of Directors of H.H. 518, Padavedu Primary Agricultural Co-operative Credit Society in Tiruvannamalai District pursuant to the notification 12.03.2018, but her nomination was rejected. The dispute raised by her in that regard was referred for decision before the First Respondent and by order dated 05.10.2019, the same was decided against her and the relevant portions are reproduced below:-

"4. The only reason for rejection of the nomination of the Complainant is that she has not mentioned in the nomination form and found that she has not mentioned the category for which she is contesting which is essential. However, the Learned Counsel appeared for the Government submitted that instructions were issued to the Government wherein such rejection is not contemplated. But we are not able to accept the said contention since instructions will not override the provisions of the Tamil Nadu Co-operative Society Act and Rules. Therefore we are of the view that the rejection of the nomination of the Complainant has been rightly rejected.

5. Yet another contention that was raised on behalf of the Complainant by the Counsel is that the nominations of some contestants have been rejected holding that they have withdrawn from contesting the election. Factually, according to the Counsel they have not withdrawn the nomination. Even this ground, we are not able to accept for the simple reason that those persons are not before us. They have neither file the Writ Petition nor approached us before 03.08.2018, the cut-off date fixed by the Division Bench of the Hon'ble High Court of Madras.

6. Therefore, we are constrained to hold that the complainant has not made out any case and hence the complaint stands rejected.

7. Election Commission has to declare result for the

Board of Director and further election to the office bearers be conducted within one month from the date of receipt of this order."

The Petitioner has filed this Writ Petition, challenging the aforesaid order passed by the First Respondent.

3. The Hon'ble Supreme Court of India in General Manager, Electrical Rengali Hydro Electric Project, Orissa -vs- Sri Giridhari Sahu [(2019) 10 SCC 695] has succinctly explained the scope of the certiorari jurisdiction of the High Courts as follows:-

"29. On the conspectus of the decisions and material, we would hold as follows:

The jurisdiction to issue writ of certiorari is supervisory and not appellate. The Court considering a writ application of Certiorari will not don the cap of an Appellate Court. It will not re-appreciate evidence. The Writ of Certiorari is intended to correct jurisdictional excesses. A writ of prohibition would issue when a Tribunal or authority has not yet concluded its proceedings. Once a decision is rendered by a body amenable to Certiorari jurisdiction, certiorari could be issued when a jurisdictional error is clearly established. The jurisdictional error may be from failure to observe the limits of its jurisdiction. It may arise from the procedure adopted by the body after validly assuming jurisdiction. It may act in violation of principles of natural justice. The body whose decision which comes under attack may decide a collateral fact which is also a jurisdictional fact and assume jurisdiction. Such a finding of fact is not immune from being interfered with by a Writ of Certiorari. As far as the finding of fact which is one within the jurisdiction of the court, it is ordinarily a matter 'off bounds' for the writ court. This is for the reason that a body which has jurisdiction to decide the matter has the jurisdiction to decide it correctly or wrongly. It would become a mere error and that too an error of fact. However, gross it may amount to, it does not amount to an error of law. An error of law which becomes vulnerable to judicial scrutiny by way of Certiorari must also one which is apparent on the face of the record. As held by this Court in Hari Vishnu Kamath v. Ahmed Ishaque (AIR 1955 SC 233), as to what constitutes an error apparent on the face of the record, is a matter to be decided by the court on the facts of each case. A finding of fact which is not supported by any evidence would be perverse and in fact would

constitute an error of law enabling the writ court to interfere. It is also to be noticed that if the overwhelming weight of the evidence does not support the finding, it would render the decision amendable to certiorari jurisdiction. This would be the same as a finding which is wholly unwarranted by the evidence which is what this Court has laid down M/s. Perry and Co. Ltd. v. P.C. Pal, Judge of the Second Industrial Tribunal, Calcutta and others (AIR 1970 SC 1334)."

Having regard to the aforesaid parameters laid down for judicial review viz-a'-viz cogent reasons assigned in the impugned order, Learned Counsel for the Petitioner has not been able to show any infirmity in the decision-making process of the First Respondent warranting interference by this Court in the exercise of powers under Article 226 of the Constitution of India.

4. In the aforesaid circumstances, the Writ Petition, which cannot be entertained, is dismissed at the admission stage. Consequently, connected Miscellaneous Petition are closed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

maya/sj

To

1. The Secretary
Justice K.Venkataraman Judicial Enquiry Committee
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Tiruvallur.
2. Tamil Nadu State Co-operative Societies
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Co-operative Credit Society
Padavedu, Polur Taluk
Tiruvannamalai District.

+1cc to Mr.L.P.Shanmugasundaram, Advocate,S.R.No.15167
+1cc to Special Government Pleader, High Court Madras,
S.R.No.15645

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PPA (CO)
KKV/15/06/2020



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