

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 02.06.2020

CORAM :

THE HON'BLE MR.A.P.SAHI, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.A.No.221 of 2020

A.Janakiraman

Appellant

vs.

- 1.The Railway Employees Co-operative Credit Society Limited,
rep. by its Chief Executive,
Ashok Vihar Complex,
Old Zoo Road,
Chennai - 600 003.
- 2.N.Kanniah,
Chairman,
The Railway Employees Co-operative Credit Society Limited,
Ashok Vihar Complex,
Old Zoo Road,
Chennai - 600 003.
- 3.Central Registrar,
Multi State Co-operative Societies,
Ministry of Agriculture Department of
Agriculture and Cooperation,
Krishi Bhavan,
New Delhi - 110 001.

.. Respondents

PRAYER: Appeal filed under Clause 15 of the Letters Patent against the order dated 05.12.2019 passed by the learned Single Judge in W.P.No.31326 of 2018.

Prayer in W.P.No.31326/2018

Filed under Article 226 of the constitution of India to issue a writ of Declaration, Declaring that the continuation of the 2nd respondent as Chairman and the practice of the 2nd respondent alternating between Chairman and Vice Chairman of the 1st respondent society is illegal and consequently direct the

3rd respondents to ensure that the 2nd respondent demits office as Chairman/ Vice Chairman and fill the post of Chairman in the 1st respondent society in accordance with Section 44 of the Multi State Co-operative Societies Act 2002.

For Appellant : Ms.D.Nagasaila

JUDGMENT
(Delivered by The Hon'ble Chief Justice)

Heard learned counsel for the appellant, Ms.D.Nagasaila.

2. The appellant filed a writ petition seeking declaration that the continuation of the second respondent, and his inter-changing position as Chairman and Vice-Chairman, be declared as illegal in respect of the Railway Employees Co-operative Credit Society Limited, in as much as the provisions of Section 44 of the Multi State Co-operative Societies Act, 2002 (for brevity, "the 2002 Act") are being wrongly interpreted and implemented with a mala fide intention to enable the second respondent to continue.

3. Learned counsel has invited the attention of the Court to Section 37 of the repealed Multi State Co-operative Societies Act, 1984 and Section 44(2) of the 2002 Act, coupled with the Bye-laws of the society to substantiate her submissions. Learned counsel submits that the Bye-laws were amended with the sole intention of allowing the second respondent to retain his position in the society. The contention is that such continuance on the strength of such manipulation deserves to be struck down.

4. She further contends that this was not an election dispute entirely in as much as the violation of the statutory provision is clearly made out and the action being violative of Article 14 of the Constitution of India, the writ petition cannot be thrown out on the ground of alternative remedy. She submits that on this issue the learned Single Judge has accepted that even though there is an alternative remedy of raising an election dispute before an Arbitrator, yet since the writ petition was admitted and was pending for one year, the learned Single Judge found it necessary to entertain the writ petition and dismiss it on merits. She, therefore, contends that the dismissal on merits being erroneous, is being assailed before this Court on the grounds referred to herein above.

5. We have considered the submissions raised and we find that the learned Single Judge was not correct in entertaining the writ petition merely because about one year had elapsed

since the filing of the writ petition. A mere lapse of one year of time does not rule out the applicability of the alternative remedy that is statutorily available to the appellant. All election disputes can be decided and taken up before the Arbitrator. This is clearly a statutory remedy.

6 Learned counsel contends that this is not a pure election dispute, but it is a pure question of law. We are unable to agree because it is the continuance of an office bearer of a society which has been questioned and, therefore, in our opinion is clearly an election dispute. The learned Single Judge has accepted the dispute to be an election dispute, but has entertained the petition on merits only on the ground of lapse of one year of time. This, in our opinion, is neither justified in law, nor can it be said to be the correct position of law, in as much as it has time and again been ruled by the Supreme Court that any doubt or dispute arising out of the election has to be taken up before the appropriate forum that has been created under the statute for deciding an election dispute. The right to get elected to an office is not a fundamental right and is governed by a statutory provision. The right of continuance being dependent on the interpretation of the provisions of the 2002 Act and the applicability of the Bye-laws, the same cannot be said to be outside the purview of a dispute regarding election, the very foundation whereof is based on the aforesaid legal question raised by the appellant. The question of continuance is directly linked with the said legal question and, therefore, is very much part of the election dispute. The learned Single Judge, therefore, ought to have dismissed the writ petition on this ground alone.

7. Learned counsel for the appellant then vehemently argued that to avail of arbitration is to cause a pecuniary burden on a low paid employee like the appellant, who cannot afford to meet the arbitration expenses and for this the learned counsel has relied on the salary bill of the appellant. She also urged that the remedy of getting the election dispute decided through arbitration being costly, is practically illusory.

8. We are unable to appreciate this argument for the simple reason that a statutory remedy has been provided and the provision of remedy has not been challenged as ultra vires. To contend that it is illusory and may take a longer time is no answer to a remedy created by the statute and this will amount to questioning the wisdom of the legislature for no valid ground. The question of meeting expenses is equally untenable as it is applicable in matters of all types of litigation, and therefore we are unable to compare and conclude that litigation in Court is less costly than arbitration in the absence of any such material before us.

9. Thus, an election dispute has to be raised before the Arbitrator as per Section 84 of the 2002 Act and the Rules framed thereunder and the respondent/Society not being an exception to the same, the appellant's remedy was to avail of the forum meant for resolution of such disputes. Admittedly, in the instant case, the forum available for the resolution of such an election dispute was through arbitration, which the appellant has chosen voluntarily not to avail of. In such a situation, the following observations of the Constitution Bench of the Supreme Court in the case of A.V.Venkateswaran v. R.S.Wadhwani, AIR 1961 SC 1506 are clearly attracted:

"11. Secondly, as we have already indicated, we must express our dissent from the reasoning by which the learned Judges of the High Court held that the writ petitioner was absolved from the normal obligation to exhaust his statutory remedies before invoking the jurisdiction of the High Court under Article 226 of the Constitution. If a petitioner has disabled himself from availing himself of the statutory remedy by his own fault in not doing so within the prescribed time, he cannot certainly be permitted to urge that as a ground for the Court dealing with his petition under Article 226 to exercise its discretion in his favour. Indeed, the second passage extracted from the judgment of the learned C.J. in State of U.P. v. Mohammed Nooh [(1958) SCR 595 at pp. 605-607] with its reference to the right to appeal being lost 'through no fault of his own' emphasizes this aspect of the Rule."

10. It is settled legal position that the High Court would ordinarily decline to exercise discretion in election disputes, wherein a statutory remedy is provided and reference may be made, in this regard, to paragraphs (4) and (5) of the judgment in Umesh Shivappa Ambi and others v. Angadi Shekara Basappa and others, (1998) 4 SCC 529, which are extracted herein under:

"4. It is now well settled that once an election is over, the aggrieved candidate will have to pursue his remedy in accordance with the provisions of law and this (sic High) Court will not ordinarily interfere with the elections under Article 226 of the Constitution. (See in this connection para 3 in K.K. Shrivastava v. Bhupendra Kumar Jain [(1977) 2 SCC 494 : AIR 1977 SC 1703].) The Court will not ordinarily interfere where there is an appropriate or equally efficacious remedy available, particularly in relation to election disputes. In the present case, under Section 70(2)(C) of the

Karnataka Cooperative Societies Act, 1959 any dispute arising in connection with the election of a President, Vice-President, Chairman, Vice-Chairman, Secretary, Treasurer or member of Committee of the Society has to be referred to the Registrar by raising a dispute before him. The Registrar is required to decide this in accordance with law.

5. This was, therefore, not a fit case for intervention under Article 226. Hence, the impugned judgment is set aside and the order of the learned Single Judge is restored. The period of 6 months prescribed in the order of the learned Single Judge for the decision of the Registrar will run from the date of the raising of the dispute before him."

11. Another decision in the case of Shri Sant Sadguru Janardan Swami (Moingiri Maharaj) Sahakari Dugdha Utpadak Sanstha v. State of Maharashtra, (2001) 8 SCC 509 considered the allegation of breach of rules and its applicability, and while explaining the law held as under in paragraphs (9) to (11):

"9. If the contention of the appellants is that there was a breach of rule or certain mandatory provisions of the Rules were not complied with while preparing the electoral roll, the same could be challenged under Rule 81(d)(iv) of the Rules by means of an election petition. In view that the preparation of electoral roll is part of the election process and if there is any breach of the Rules in preparing the electoral roll, the same can be called in question after the declaration of the result of the election by means of an election petition before the Tribunal.

10. In the case of Bar Council of India v. Surjeet Singh [(1980) 4 SCC 211] Untwalia, J. speaking for the Court observed thus: (SCC pp. 219-20, para 12)

"12. There is no substance in the last submission made on behalf of the appellants. The manner of resolving disputes as to the validity of election is provided for in Rule 34 of the Delhi Bar Council Election Rules. This is not an appropriate and adequate alternative remedy to defeat the writ petitioner on that account. Firstly, no clause of Rule 34 covers the challenging of the election on the ground it has been done in this case. Secondly, the Election Tribunal will not be competent to declare

any provision of the Election Rules ultra vires and invalid.”

11. In the aforesaid case, this Court held that a writ petition under Article 226 of the Constitution should not be rejected on account of an alternative remedy by way of election petition where, firstly, the challenge is not a ground under the Act or the Rules for filing an election petition and, secondly, where the validity of a rule is challenged being ultra vires and invalid. It is true that a tribunal being a creature of an Act or the Rules has a limited jurisdiction and it is not open to a tribunal to decide the validity of the Act and the Rules. But, that is not the case here

12. Neither the cost of the arbitration proceedings, nor the time taken in getting it decided can be an excuse for seeking judicial review straight-away under Article 226 of the Constitution of India.

13. We are, therefore, not inclined to either accept the argument of the learned counsel for the appellant or even the view of the learned Single Judge to entertain the writ petition merely because the writ petition was pending for one year in the High Court.

14. On the merits of the claim, therefore, we find that the learned Single Judge had no reason to proceed further in the matter, yet we agree with the conclusion that the writ petition deserved to be dismissed.

The writ appeal is, accordingly, consigned to records with the said observations.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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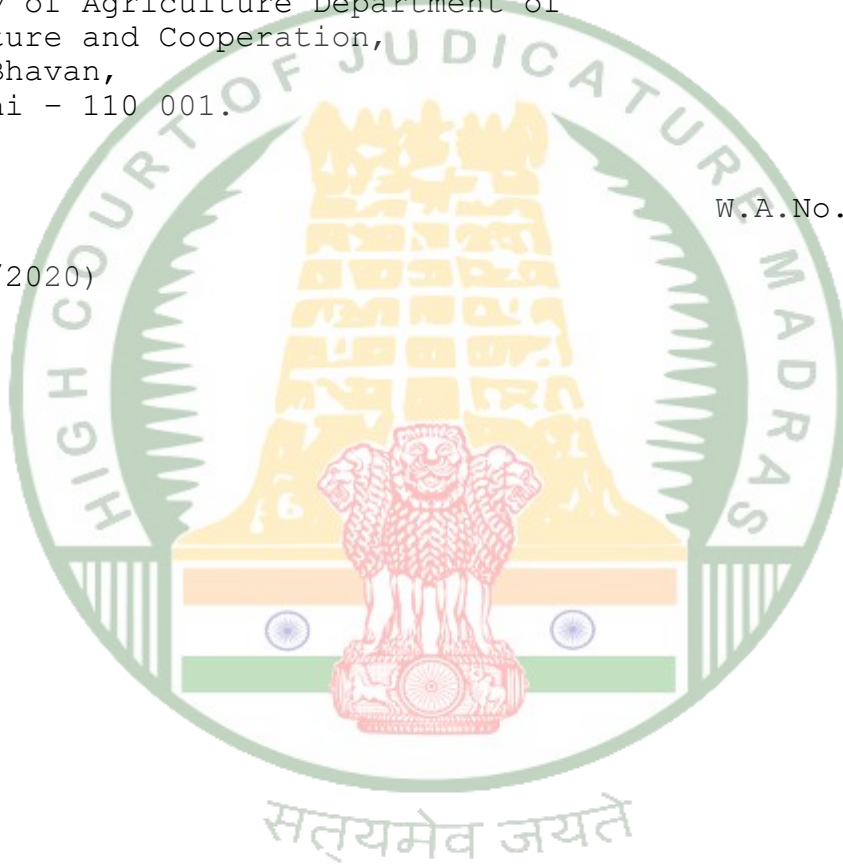
To:

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2.The Central Registrar,
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EV(CO)
RMP(20/07/2020)



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