

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.03.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7144 of 2020
and
WMP.Nos. 8518 & 8519 of 2020

K. Arumugam

... Petitioner

vs.

1. The State Election Commissioner
Tamil Nadu State Co-operative
Societies Election Commission,
Kamadenu super market building,
273, Scheme Road,
Subbarayan Nagar, Teynampet,
Chennai - 600 018.
2. The Election Officer,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.
3. The Secretary,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.
4. B. Kalamani
Membership No.1991,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.
5. P. Kalamani
Membership No.1736,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk,
Coimbatore District.

6. R. Poongodi,
Membership No.1525,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

7. R. Balakrishnan
Membership No.960
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

8. K. Arumugam
Membership No.1737,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

9. M. Mahendran
Membership No.1496,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

10. P. Ramakrishnan,
Membership No.1921,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

11. R. Narayanasamy
Membership No. 84,
K1853, Allapalayam Primary
Agriculture Co-operative Society
Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the entire records connected with the impugned declaration of results made on 14.03.2020 by the 2nd respondent and quash the same as illegal

and consequently, directing the 2nd respondent to conduct fresh election to the 3rd respondent-society on the basis of a voters list only after removing the Dead Members of the 3rd respondent society and removing the names of the new members admitted after 02.05.2018.

For Petitioner : Mr.S. Sathia Chandran

For Respondent : Mr. M.S. Palanisamy
Standing Counsel [R1]

Mr.L.P.Shanmugasundaram
Special Government Pleader [R2 & R3]

ORDER

This writ petition has been filed seeking for declaration of the results announced in the election by the second respondent on 14.03.2020 as illegal and unjust in law.

2. The case of the petitioner is that he is the member of the third respondent Society and he was already elected as a Chairman during the previous elections and he hold the said post during the period 2013-2016. Subsequently, elections were announced in the year 2018. The elections were postponed twice citing law and order problem. Ultimately, notification was issued to start the process of election from where it was left during the previous occasion. One of the contestants approached this court and filed W.P.No.5897 of 2020 seeking for postponement of election. This Court passed a final order in the said writ petition on 05.03.2020. The relevant portions in the order is extracted hereunder:

"7.It is seen from the proceeding of the 1st respondent dated 25.02.2020 that direction has been given to the 3rd respondent Society to start the election process from the stage of polling. This was the stage at which the previous two elections stood cancelled. Therefore in exercise of the power under Rule 52 (18)(c) of the Co-operative Societies Rules, 1988, this direction has been given by the 1st respondent to the Society. Therefore, there is no controversy with regard to the stage at which the election can be commenced.

8.The next issue that has been raised by the petitioner is that the time given for the candidates to campaign is very short and the Notification is issued on 28.02.2020 by fixing the election date as 06.03.2020. This Court is inclined to give some more time for the candidates to campaign in the election. This should be done considering the fact that the earlier elections got cancelled in the year

2018 and the present election is starting from the stage of polling <http://www.judis.nic.in> after nearly one and half years. Therefore, in the interest of justice, more time should be given to the candidates to campaign during elections.

9. Insofar as the allegations made against the Election Officer, the Society itself has volunteered to change the Election Officer and therefore, the grievance expressed by the petitioner has been attended.

10. Insofar the voters list is concerned, the Society has assured that the individual voters will be verified with the register maintained by the Society and no bogus voting will be permitted.

11. In view of the above, this writ petition is disposed of with the following directions:

(a) The 3rd respondent is directed to fix the date of polling on 13.03.2020 between 08.00 a.m. to 05.00 p.m. The revised Notification shall be issued immediately and the same shall be intimated to all the candidates and the voters.

(b) A new Election Officer shall be appointed by the Society to conduct the election on 13.03.2020 and

(c) The identity of each voter shall be verified with the register maintained by the Society and bogus voting shall be completely avoided."

3. Pursuant to the above direction given by this Court, the election was held on 13.03.2020 and the votes were counted on 14.03.2020 and the results were displayed in the Notice Board on 15.03.2020 and the petitioner and the respondents 4 to 11 were declared as elected.

4. The grievance of the petitioner is that the second respondent has conducted the election based on a voters list, which contained 127 names, who are all dead persons. The further grievance of the petitioner is that as many as 31 persons have been included as new members after commencement of the electoral process. According to the petitioner, this has resulted in bogus voting and the entire election is vitiated. This has caused an impact on the chances of the petitioner getting elected to the post of Chairman since the persons who were supporting the petitioner, had lost in the elections.

5. The learned counsel for the petitioner submitted that under normal circumstances, the lost candidates will have to challenge the elections under Section 90 of the Co-operative Societies Act, 1983. However in the present case, the electoral list that was published by the second respondent

contained 127 names of persons, who are all dead and it also contained the names of 31 persons, who have been added in the voters list after announcing the electoral process. The learned counsel for the petitioner submitted that this has resulted in bogus voting and ultimately resulted in the candidates supporting the petitioner losing the election.

6. The learned counsel submitted that this patent illegality in conducting the election can be taken cognizance by this Court in exercise of its jurisdiction under Article 226 of the Constitution of India. The learned counsel submitted that in view of such patent illegality, there is no necessity for the lost candidates to adopt the process under the Co-operative Societies to challenge the elections.

7. Per contra, the learned Special Government Pleader appearing on behalf of the second and third respondents submitted that even in the voters list as against the name of 127 persons, it was clearly mentioned as 'D', which means dead. The learned counsel submitted that there was no vote representing any of these 127 voters. The learned counsel further submitted that the election was conducted strictly in accordance with the directions given by this Court in W.P.No.5897 of 2020. It was further contended that the entire election has been recorded in the CCTV camera and it was conducted with the protection given by the police. The learned counsel also submitted that each and every voter was scrutinized by checking the Pass Book, KCC card, Voter ID Card, Smart Family Card, Driving License and Aadhar Card. Only after checking with these documents, they were allowed to vote. The learned counsel further submitted that there were absolutely no objections raised at the time during which the polling took place. The learned counsel submitted that the petitioner and respondents 4 to 11 have been declared as elected.

8. The learned counsel further submitted that the petitioner having been elected, cannot be allowed to challenge this election. If at all any one is aggrieved, it is only the candidates who had lost the election and even they have to challenge it only by way of filing an appropriate petition under Section 90 of the Tamil Nadu Co-operative Societies Act, 1983. Therefore, the learned counsel questioned the very maintainability of the present writ petition.

9. This Court has carefully considered the submissions made on either side and the materials available on record.

10. The main issue that has been raised in the present writ petition, which was affirmed by the learned counsel for the petitioner and denied by the learned Special Government Pleader appearing on behalf of the respondents 2 and 3, requires appreciation of facts and evidence. That apart, the persons, who had lost the elections will have to challenge the same by way of an appropriate petition under Section 90(1)(a)

(iii) of the Tamil Nadu Co-operative Societies Act, 1983.

11. A writ petition cannot be entertained in view of the availability of an alternative remedy to file an election petition under Section 90 of the Act. In view of the fact that the dispute that has been raised requires a thorough examination of the evidence, this Court cannot exercise its jurisdiction under Article 226 of the Constitution of India. It will always be open to the candidates, who had lost the elections to put forth all the contentions available to them in law and the appropriate authority will have to consider the same on its own merits and in accordance with law.

12. In view of the above discussion, this Court is not inclined to entertain this writ petition. However, it is left open to the aggrieved candidates to file an appropriate petition under Section 90 of the Tamil Nadu Societies Act, 1983. On such petition being filed, the appropriate authority shall take a decision within a period of four months from the date of filing of the petition.

13. This writ petition is dismissed with the above directions. No costs. Connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-)

//True Copy//

Sub Assistant Registrar

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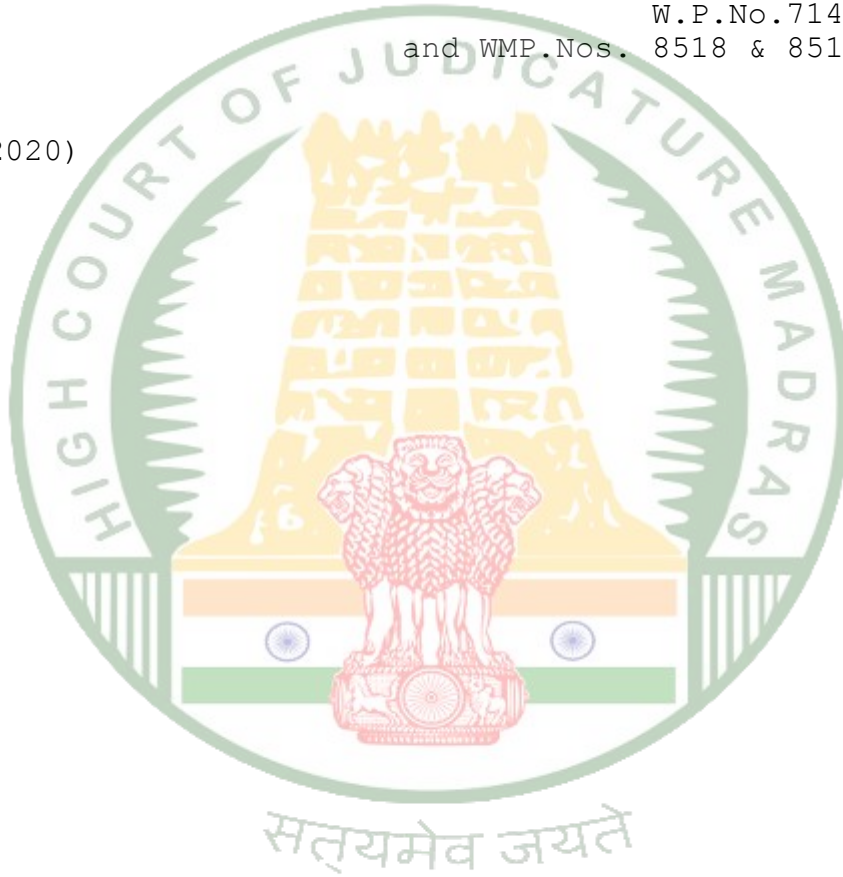
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K1853, Allapalayam Primary
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Ruthiriyampalayam,
Allapalalyam Post,
Annur Taluk, Coimbatore District.

+1cc to Mr.S.Sathiachandran, Advocate, S.R.No. 24510
+1cc to the Special Government Pleader, S.R.No.24572

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RLD(CO)
GN(22/10/2020)



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