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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07.09.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.NO.18520 OF 2020

AND

W.M.P.NO.22960, 22968 & 22972 OF 2020

P.Duraikannu

...Petitioner

Vs.

- 1.The Union of India
Represented by the
Chief Secretary to Government,
Government of Puducherry, Puducherry.
- 2.The Secretary to Government,
Co-operative Department,
Government of Puducherry, Puducherry.
- 3.The Registrar of Co-operative Societies,
Puducherry.
- 4.P-35 Reddiyarpalayam Primary Agricultural
Co-operative Credit Society,
Represented by its President,
ArokiyanatharKovil Street,
Reddiyarpalayam, Puducherry - 605 010.
- 5.Mr.G.Boopalan
President
P-35 Reddiyarpalayam Primary Agricultural
Co-operative Credit Society,
ArokiyanatharKovil Street,
Reddiyarpalayam, Puducherry - 605 010.

6.Mr.G.Panneerselvam

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the fourth respondent relating to the impugned notification dated 18/11/2020, published in the Daily Thanthi Tamil Newspaper dated 18/11/2020, Quash the same and consequently direct the respondents 1 to 3 to appoint an administrator to manage the affairs of the fourth respondent society and to scrutinize its eligible members



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For Petitioner : Mr.K.Nirmal Kumar
For Respondents : Ms.V.Usha
Additional Government Pleader
Puducherry for R1 to R3
Mr.P.Suresh for R4

O R D E R

This writ petition has been filed challenging the Election Notification issued by the 4th respondent and for a consequential direction to respondents 1 to 3 to appoint an administrator to manage the affairs of the 4th respondent Society.

2.The petitioner is a Member of the 4th respondent Society. According to the petitioner, a person can become a member of the 4th respondent Society only if he satisfies the criteria provided under by-law No.16.

3.The grievance of the petitioner is that an Election Notification was issued by the 4th respondent for conducting the election for the 4th respondent Society on 18.11.2020. According to the petitioner, the 6th respondent respondent has committed various illegalities and with his political clout is able to take control of the Society and conduct the affairs of the Society as per his whims and fancies. According to the petitioner, no Annual General Body Meetings were held in the Society and the accounts of the Society was also not audited and in spite of the same, respondents 1 to 3 never took any action. Even the representations made by the petitioner did not evoke any response. It is at this point of time, the Election Notification was published in the newspaper on 18.11.2020. Aggrieved by the same, the present writ petition has been filed before this Court.

4.The 3rd respondent has filed a counter affidavit. The relevant portions in the counter affidavit are extracted hereunder:

4) I respectfully furnish the following events, pertaining to the said election, for the perusal of this Hon'ble Court: -

a) The term of office of the then committee of the society was going to expire on 31.12.2020. The committee consists of nine (9) members of the society, elected by and from among the members of the society from seven (7) constituencies, viz, Constituency I to VII.



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- b) The outgoing committee arranged to conduct an election to elect a new committee to assume office with effect from 01.01.2021.
- c) The outgoing committee published an election notice dated 18.11.2020, by which an election schedule was fixed.
- d) Election proceedings were conducted as per the election schedule.
- e) Based on the request made by the society. ThiruK.Maran, Senior Inspector, Cooperative Department was appointed as "Election Officer" vide RCS Proceedings dated 01.12.2020, to conduct the election. It is pertinent to submit that, Election Officer's role begins with receipt of nominations.
- f) The committee published the tentative list of eligible voters on 02.12.2020.
- g) Objections, if any, on the tentative list of eligible voters list were to be submitted before 3.00 P.M. on 04.12.2020. It is pertinent to submit that, no member of the society, including the writ petitioner, didn't submit any objection till 04.12.2020.
- h) Final list of eligible voters was published on 05.12.2020.
- i) The Election Officer received nominations from the contesting candidates on 10.12.2020.
- j) Scrutiny of nominations were taken up on 11.12.2020 and eligible list of contesting candidates was published on 11.12.2020 itself.
- k) Candidates were allowed to withdraw their nominations up to 4.00 P.M. on 12.12.2020.
- l) Seven (7) members of the society were elected unanimously from constituencies. I,II,III,VI and VII as there was no contest in these constituencies.
- m) Six (6) Senior Inspectors of the Cooperative Department were appointed as "Polling Officers", vide RCS Proceedings dated 15.12.2020, to assist the Election Officer.



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n) Thiru A.Irysappan, Deputy Registrar (Credit), Thiru P.Ramachandraiah, Deputy Registrar (Audit) and Thiru D.Kumaran, Cooperative Officer (Credit) of the Cooperative Department were appointed as "Observers" with RCS proceedings dated 15.12.2020, to oversee the polling.

o) Polling was held on 19.12.2020 between 10.30 A.M. and 4.00 P.M., to elect one candidate each from constituency No. IV and V.

p) With the protection given by the Police Personnel, polling went off peacefully and without any untoward incidents.

q) Details of polling held on 19.12.2020 are furnished below:

Constituency No.	Total No. of eligible voters	No. of contesting candidates	No. of candidate to be elected	Total No. voters participated in the polling	Polling Percentage
IV	98	2	1	76	78%
V	122	2	1	80	66%
Total	220	4	2	156	

r) It was reported that, new office-bearers of the society. Viz. President and Vice-President, were elected by and from among the newly elected members of the committee on 26.12.2020.

s) It was also reported that, the newly elected committee assumed office with effect from 01.01.2021. The newly elected committee will be in office till 31.12.2023. At present, the society is being managed by the newly elected committee.

5) I respectfully submit that, the writ petitioner alleged that, the then committee admitted ineligible individuals as members of the society with an ulterior motive to succeed in the elections. Without concrete evidence, this allegation was made by the writ petitioner. As per the registered bye-laws of the society, the committee is the competent authority to admit eligible individuals as new members of the society. If the committee admitted ineligible individuals as members of the society, this can be



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challenged by the writ petitioner or anyone else at any time in accordance with law. Such allegations cannot be brought during the election process.

6) I respectfully submit that, the writ petitioner made 2 representations dated 18.09.2020, and 24.09.2020 and requested to dissolve the committee of the society and to democratically conduct election to the committee in an unbiased manner. The writ petitioner also made another representation dated 24.11.2020, and without any documentary evidence, he alleged about the inclusion of deceased members of the society and overdue members of the society in the voters list. The writ petitioner made a representation dated 09.12.2020, along with 13 death certificates of deceased members of the society, to the Chief Secretary to the Government, which was received by this respondent on 11.12.2020, i.e, on the day of scrutiny of nominations.

7) I respectfully submit that, the writ petitioner should have submitted his objection before the then committee and within the time fixed for filling of objection, but, he didn't do so for reasons unknown, If the writ petitioner filed his objection during the time fixed for filling of objection on or before 04.12.2020, the committee would have decided such objection and would have removed such deceased members from the eligible voters list. Under any circumstance, it cannot be presumed that, the then committee of the society had already known the details of deceased members of the society. However, in view of this writ petition and before the date of polling, the voters list for Constituency Nos. IV and V were examined with the death certificates furnished by the writ petitioner. It is true that, 15 numbers of deceased members of the society were included in the voters list for Constituency No.IV. Copy of the 13 death certificates were handed over to the Election Officer. No members of the society came down on the date of polling to vote claiming in the name of the said 15 deceased members of the society.

8) I respectfully submit that, the Puducherry Cooperative Societies Act, 1972 provides grievance redressal mechanism for election related disputes. As per Section 84 of the said Act, any aggrieved person, having locus standi, can file an election dispute after declaration of results and within two months thereafter. The RCS or any of his subordinate officer authorized in this behalf will hear and decide the



dispute in accordance with the said Act and the Rules made thereunder.

5.The learned counsel for the petitioner submitted that the respondents 1 to 3 before issuing the Election Notification ought to have scrutinized the list of members of the Society. That apart they should have ensured that the Society is being run as per the by-laws by conducting the Annual General Meeting and by auditing the accounts of the Society. The learned counsel for the petitioner submitted that the 4th respondent Society is being run as per the whims and fancies of the 6th respondent who has a political clout and thereby the entire functioning of the Society is adverse to the interest of the members of the Society. Therefore, the learned counsel submitted that this is a fit case where the respondents 1 to 3 should be directed to conduct an enquiry and take action in accordance with law.

6.The learned counsel for the petitioner to demonstrate the fact that the election was conducted in an illegal manner, brought to the notice of this Court the list of voters which contained the names of even dead persons. The learned counsel further submitted that the persons who were not entitled to vote in the election due to the dues payable by them, were also allowed to participate in the election. Hence, the entire election process is vitiated and it requires the interference of this Court.

7.Per contra, the learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 submitted that the tentative list of eligible voters was published on 02.12.2020 and the objections were called for and it had to be submitted by 04.12.2020 at 3.00 p.m. Since, no objections were received, the final list of eligible voters was published on 05.12.2020. The learned Additional Government Pleader further submitted that the allegations made by the petitioner to the effect that the names of dead persons were also found in the voters list was also verified by the 3rd respondent and it was found to be factually correct. However, a cross check was done to see if any vote has been cast in the name of dead person and it was found that not a single vote has been cast in the name of dead persons. The learned Additional Government Pleader further submitted that the election was conducted in accordance with law and if at all any one has a grievance, the same can only be raised by way of an election petition under Section 84 of the Pondicherry Co-operative Societies Act.

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

9.There are broadly two major grievances that have been expressed by the petitioner. The first grievance pertains to the



running of the 4th respondent Society. The second grievance pertains to the manner in which the election had taken place for the 4th respondent Society.

10. Insofar as the 2nd grievance is concerned, it is seen that the elections were conducted in nine Constituencies out of which in seven Constituencies, the Members were elected unanimously without contest. The election had taken place only insofar as the two Constituencies viz., Constituency No. IV and Constituency No. V. The grievance expressed by the petitioner is that the voters list in these constituencies carried the names of ineligible members and also the names of dead persons. Insofar as the ineligible members are concerned, it is a matter of fact which cannot be gone into by this Court. Insofar as the dead members are concerned, a specific stand that has been taken by the 3rd respondent to the effect that not a single vote has been cast in the name of the dead persons at Constituency Nos. IV and V. Hence, even though the names of the dead persons were found in the voters list, it did not really have an impact since no vote was cast in the name of the dead persons. Even otherwise, an election dispute of this nature cannot be gone into by this Court under Article 226 of the Constitution of India and there is an alternative remedy that is provided under Section 84 of the Pondicherry Co-operative Societies Act. Therefore, insofar as the grievance regarding election is concerned, this Court is not inclined to interfere with the same in this writ petition.

11. The other grievance that has been expressed by the petitioner is with regard to the manner in which the 4th respondent Society is being run. The petitioner has made a very specific allegation to the effect that the Annual General Meeting is not being conducted and the accounts of the Society is not being audited. That apart the petitioner also states that the 6th respondent with his political clout is completely in control of the Society and it goes against the interest of the members of the Society. These are allegations which cannot be merely brushed aside and it requires an enquiry. It is true that respondents 1 to 3 cannot interfere with the functioning of the Society and particularly the elected members of the Society. However, when there is an illegality pointed out in the running of the Society, obviously the 3rd respondent has to act upon the same and conduct an enquiry and find out the truth. Considering the seriousness of the allegations made by the petitioner, it is necessary for the 3rd respondent to conduct an enquiry on the functioning of the Society and find out if the allegations made by the petitioner are true. To this extent, this Court is inclined to issue directions to the 3rd respondent.

12. In view of the above, there shall be a direction to the petitioner to make a fresh representation to the 3rd



respondent by pointing out all the illegalities committed in the 4th respondent Society. This representation shall be given, within a period of two weeks from the date of receipt of copy of this order. The 3rd respondent on receipt of the same, shall conduct an enquiry and shall act strictly in accordance with law and take a decision, within a period of six weeks from the date of receipt of the representation from the petitioner. This direction is issued to ensure that the 4th respondent Society is being run in a lawful manner in the interest of its members.

13. This writ petition is disposed of with the above directions. No Costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

ssr

To

1. The Chief Secretary to Government,
Union of India,
Government of Puducherry,
Puducherry.
2. The Secretary to Government,
Co-operative Department,
Government of Puducherry,
Puducherry.
3. The Registrar of Co-operative Societies,
Puducherry.
4. The President,
P-35 Reddiyarpalayam Primary Agricultural
Co-operative Credit Society,
Arokiyanatharkovil Street,
Reddiyarpalayam,
Puducherry - 605 010.

+1cc to M/s.K.Nirmalkumar, Advocate SR.No.45607

+1cc to the Government Pleader SR.No.45606

W.P.No.18520 of 2020
and W.M.P.No.22960, 22968 & 22972 of 2020

RR(CO)
RVM(06/10/2021)