



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.12.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 25804 of 2021
and
W.M.P. No. 27262 of 2021

Senthil Rajkumar

... Petitioner

-Vs-

1. The Director,
Sericulture Department,
Registrar, Silk Co-operative Societies,
Asthampatti,
Salem - 636 007.
 2. The Regional Joint Director / Special Officer,
Sericulture Department,
Office of the Regional Joint Director,
Erode - 12.
 3. The Joint Director / Managing Director (Addl. Charge),
TANSILK, Sericulture Department,
The Tamil Nadu Co-operative Silk Producers Federation Ltd.,
No.522, Gandhi Road,
Kancheepuram - 631 501.
 4. The Tamil Nadu Co-operative Silk Producers
Federation Limited, No.944,
Represented by its Managing Director,
No.522, Gandhi Road,
Kancheepuram - 631 501.
- ... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the first respondent's impugned letter No.Na.Ka.No.18563/Tho.Kul/2021 dated 26.10.2021 and impugned No Confidence Motion proceeding dated 16.11.2021 presided over by the second respondent as communicated by the third respondent vide Na.Ka.No.851/U/2021 dated 16.11.2021 and quash the same and further direct the third respondent to permit the petitioner to assume the office of the Vice Chairman of the fourth respondent Society.



WEB COPY

For Petitioner : Mr.L.Chandrakumar
for Mr.R.Subburaj

For Respondents : Mr.J.Ravindran
Addl. Advocate General
assisted by Mr.A.Selvendran
Special Government Pleader

ORDER

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the first respondent's impugned letter No.Na.Ka.No.18563/Tho.Ku1/2021 dated 26.10.2021 and impugned No Confidence Motion proceeding dated 16.11.2021 presided over by the second respondent as communicated by the third respondent vide Na.Ka.No.851/U/2021 dated 16.11.2021 and quash the same and further direct the third respondent to permit the petitioner to assume the office of the Vice Chairman of the fourth respondent Society.

2. The case of the petitioner is that, the fourth respondent, i.e., the Tamil Nadu Co-operative Silk Producers Federation Limited (hereinafter called as TANSILK) is a state level Co-operative Society and the main object of the federation is to produce raw silk yarn and twisted silk and market the same to its members for further process of twisting.

3. The petitioner is the elected member of the fourth respondent Society and was elected as Vice Chairman to the fourth respondent Society on 13.11.2019 and he assumed the charge on 13.11.2019 itself. The tenure for his post is five years

4. The total elected members are 21, among them, the petitioner was elected as Vice Chairman and one R.T.Sekar was elected as Chairman.

5. When that being so, the first respondent had sent a letter on 26.10.2021 along with the representation for No Confidence Motion proposal against the petitioner as well the Chairman, one R.T.Sekar.

6. According to the petitioner, the said notice issued by the Managing Director of the fourth respondent Society expressing their willingness to bring No Confidence Motion as against the petitioner and the Chairman, was signed by 15 members.

7. However, the petitioner claims that, the petitioner in the meanwhile has received a letter from three members and they



wrote, saying that, their signatures are forged and it was signed by one Manikandan, who is one of the member and since he is trying to get the Chairman post, such kind of forgery signatures had been made in the request for issuing notice for bringing the No Confidence Motion against the petitioner as well as the Chairman.

8. On receipt of such communication, the petitioner has sent a letter through his lawyer on 03.11.2021 which has been acknowledged on 08.11.2021.

9. In this context, it is the further case of the petitioner that, three members among the fifteen have specifically pleaded that, their signatures were forged and they also have informed that, they have no interest in moving the No Confidence Motion against the Chairman and Vice Chairman, i.e., petitioner herein. Therefore, the first respondent ought to have conducted an enquiry to bring out the trust-worthiness of the alleged letter dated 25.11.2021.

10. Despite the said position, the first respondent seems to have called for a meeting to discuss and decide the No Confidence Motion on 16.11.2021, where, it was claimed that, 16 Directors of the fourth respondent participated in the meeting to discuss the No Confidence Motion held on 16.11.2021, where the resolution was passed. Therefore, on the same day, i.e., on 16.11.2021, the first respondent had issued a communication, whereby, the petitioner had been removed from the Vice Chairmanship of the fourth respondent. Subsequent to the removal of the petitioner from the Vice Chairmanship, since the respondents are making arrangement to conduct a fresh election to elect new Chairman and Vice Chairman of the fourth respondent, where the election was slated to be held on 02.12.2021, the petitioner has moved this Writ Petition urgently after getting permission from this Court.

11. On 02.12.2021, after hearing the learned counsel appearing for the petitioner as well as the learned Special Government Pleader appearing for the respondents, this Court has passed the following order:

"It is the claim of the petitioner that, when notice for No Confidence Motion against the petitioner, being the Vice Chairman of the 4th respondent, was given on 25.10.2021, 4 among the 14 Directors who had given the said notice for No Confidence Motion against the petitioner had claimed by sending letters in writing to the 1st respondent that, they did not sign in the No Confidence Motion notice and their signature were forged.



WEB COPY

2. It is also the case of the petitioner that, despite these factors which were brought to the notice of the 1st respondent, the respondents went ahead of conducting the deliberation to decide the No Confidence Motion on 16.11.2021 and according to them, the Resolution was passed. Therefore, on 16.11.2021 itself, the impugned communication has been sent to the petitioner that, in view of the No Confidence Motion having been passed against the petitioner, he was removed from the Vice Chairmanship.

3. It is the further case of the petitioner that, subsequently also, some of the Directors, who already claimed that their signature were forged in the notice given for No Confidence Motion, sent separate letters to the 1st respondent stating that, without even disclosing what was transpired on 16.11.2021, they were forced to sign some documents, therefore, they did not support the alleged No Confidence Motion made against the petitioner.

4. However, Mr.A.Selvendran, learned Special Government Pleader appearing for respondents would submit that, each of the 4 or 5 Directors, whose signatures claimed to have been forged as claimed by the petitioner side, had given written affidavit stating that, the petitioner came to their place and compelled those Directors to sign some documents, otherwise they had to face dire consequences.

5. Copy of those affidavits also have been filed by the learned Special Government Pleader before this Court.

6. I have heard the learned counsel for both sides. Pursuant to the impugned communication dated 16.11.2021, as the petitioner's office i.e. Vice Chairman of the 4th respondent Society since has been vacated, according to the respondents, they fixed the date for Election to elect the Vice Chairman, in place of the petitioner, which is slated for tomorrow (03.12.2021), therefore, urgently this writ petition is moved by the petitioner.

7. Since both sides claimed that the four Directors are in their favour and in this regard, documents and counter documents have been filed before this Court, in order to testify the veracity of the claim made by the so-called Directors as in which side they shown their loyalty, this Court wants to examine them as a special case and in this



WEB COPY

regard, the learned Special Government Pleader would contend that, all the four Directors can be brought before this Court even by tomorrow.

8. In view of the same, this Court feels that, in order to undertake the exercise of testifying their statement by examining them before this Court, let the four Directors be brought before this Court by tomorrow i.e., on 03.12.2021.

9. In view of this, the Election which is scheduled to be conducted tomorrow i.e., on 03.12.2021 to elect the Vice Chairman of the 4th respondent Society in the place of the petitioner, shall be deferred for a week. Post the matter on 03.12.2021 immediately after admission cases.

12. In response to the said order passed on 02.12.2021, when this Writ Petition is taken up for further hearing today, Mr.A.Selvendran, learned Special Government Pleader appearing for the respondents has submitted that, in respect of whom, allegations were made by the petitioner's side that, their signatures were forged at the time of issuing the request for No Confidence Motion and pursuant to the directions given by this Court dated 02.12.2021, those three Directors namely, Lakshmi, Manimegalai and Valiammal are present before this Court. Therefore, they can be enquired prima facie by this Court to verify the veracity of the allegation and counter allegation made in this regard, he contended.

13. In view of the said submission made by the learned Special Government Pleader and the three Directors in respect of whom since such controversy has arisen, this Court wanted to examine them and all the three who have come before this Court have stated that, they consciously and willingly have signed in the notice for No Confidence Motion to be issued in this regard against the petitioner as a Vice Chairman as well as the another person as Chairman of the fourth respondent Society. All the three are representing some Co-operative Societies at various places in Dharmapuri District, which are part of the fourth respondent and therefore, in the capacity as Directors, they become voters to vote and select the Chairman and Vice Chairman of the fourth respondent Society.

14. In view of the said categorical statement made by the three Directors before this Court, the learned counsel appearing for the petitioner would submit that, since now they have taken side, petitioner cannot over come now, however at the time of giving the notice, certainly these three Directors were not in the idea of supporting the No Confidence Motion.

15. Be that as it may, that position cannot be accepted now



in view of the categorical statement made by these three Directors who appeared in person before this Court.

16. It is also the submission of the learned counsel appearing for the petitioner that, among the three, in respect of two Directors who represents the respective Society, it has become defunct, as such they are not eligible voters as on date to vote for the proposed election of Chairman or Vice Chairman.

17. Insofar as the said objections raised by the petitioner's counsel is concerned, Mr.J.Ravindran, learned Additional Advocate General appearing for the respondents would contend that, in respect of the present Writ Petition, the question was, whether the No Confidence Motion notice issued by the 15 Directors is with quorum or without quorum and also whether the three days clear notice or clear time should have been given before conducting election have been complied with or not and the election proposed can go on or not.

18. In respect of these aspects, each of the objections raised by the petitioner now have been cleared, because, insofar as the quorum for issuing the notice for No Confidence Motion is concerned, three Directors before this Court have stated that, they willingly supported the No Confidence Motion. Insofar as the three days period is concerned, the three days notice have been given, the learned Additional Advocate General contended.

19. Therefore, he also contended that, insofar as the present objection raised by the petitioner's side that, among the three Directors now appeared before this Court, in respect of two, they cannot be treated as eligible voters allegedly because the Society where they belong is defunct, is an afterthought. Therefore, in respect of the said aspect, this Court need not traverse those objections raised by the petitioner's side, otherwise the present Writ Petition has to traverse beyond the scope of the Writ Petition, the learned Additional Advocate General contended.

20. I have considered the said rival submissions made by the learned counsel appearing for the parties and have taken note of the materials placed before this Court.

21. Insofar as the first and prime objection raised by the petitioner with regard to want of quorum for issuing the No Confidence Motion notice is concerned, it has been now cleared beyond doubt that, the three Directors, on whom such controversy has arisen, have come before this Court deposed literally that, they have signed in the No Confidence Motion on their own volition and willingness. Therefore, it can be well taken that, they supported the No Confidence Motion. Therefore, the first



objection raised in this Writ Petition by the petitioner's side is to be rejected.

22. Insofar as the second objection, i.e., three days notice shall be given as contemplated under the Act as well as the Rules, before conducting the election is concerned, the original election slated to be conducted on 02.12.2021, since it has been directed to be deferred for a week, now enough time is available. Therefore, the Election Officer who have already been appointed to conduct the election can conduct the election after three clear days, for which, the date can be fixed by them. Therefore, that objection also cannot stand now.

23. Insofar as the plea raised by the petitioner that, two out of the three Directors who appeared before this Court have become disqualified and they cannot vote in the proposed election, is concerned, that controversial issue cannot be decided by this Court, as it is outside the scope of the Writ Petition as rightly pointed out by the learned Additional Advocate General appearing for the respondents.

24. Nevertheless, this Court has to take a judicial notice as to the mandate made in this regard by the Tamil Nadu Co-operative Societies Rules, 1988, in short 'the Rules' made under the Tamil Nadu Co-operative Societies Act, in short 'the Act.'

25. In this context, Rule 53 under the heading 'Election of Office Bearers' has been giving lots of procedures to be followed by the Election Officer while conducting the election, wherein the Sub Rule 6 (a) and (b) are relevant which reads thus:

"(6) (a) Where there is more than one eligible candidate for any office, the election officer shall allot a serial number to each eligible candidate according to their name in the alphabetical order in English language, and forthwith arrange for taking poll by providing the ballot papers and a ballot box. At every election where poll is taken, votes shall be recorded by secret ballot in the following manner and no vote shall be recorded by proxy. The serial numbers, as allotted, together with the names of the eligible candidates, shall be displayed prominently in the place of meeting. Each ballot paper shall contain the serial number allotted to the eligible candidate for each office and the seal and signature of the election officer. The members shall make the mark X or + on the ballot paper against the serial number of the candidate for each office for whom they desire to vote and put the ballot papers in the ballot box.

(b) The election officer shall decide in writing



the objection, if any, which may be made in regard to the right of any member to vote at the election after making such summary enquiry as he considers necessary."

26. Under Sub Rule 5 of Rule 53, when there is not more than one eligible candidate for any office, the Election Officer, shall declare such eligible candidate to be duly elected to such office.

27. In case of more than one candidate, Rule 6 (a) contemplates, how the election should be conducted, wherein Sub Rule (6)(b) of Rule 53 is most relevant in the present context where it is mandated that, the Election Officer shall decide in writing the objection, if any, which may be made in regard to the right of any member to vote at the election after making such summary enquiry as he considers necessary.

28. The word "shall" in said Rule 53(6)(b) of Rules makes it as a mandatory one that if at all any objection raised by any one with regard to the eligibility of a voter to vote in the election to be conducted in this regard, such objection, after conducting a summary enquiry, shall be decided on merits by the Election Officer.

29. When that being the position, it cannot be stated that, the petitioner cannot make any such objection before the Election Officer as it is a statutory duty mandated under the said Rule as quoted herein above.

30. In this regard, except making this observation as to the legal procedure of the Rule, where it is possible for anyone to make objection before the Election Officer in respect of the disqualification of the voter concerned, this Court do not wish to make any further directions or observations as in what manner the objection, if any, to be decided by the Election Officer, because, it is a settled proposition that, if a statute mandates that, a particular thing has to be done in a particular manner it should be done only in that manner not otherwise.

31. Taking into account of these legal principle, it is expected that, whoever may be the Election Officer, who would conduct the election, should conduct the election only in accordance with law.

32. In view of the aforestated facts and discussions, this Court feels that, the grounds raised by the petitioner, against the No Confidence Motion already been passed as well as the consequential removal of the Vice Chairman of the fourth respondent Society and to conduct the election to elect the new set of office bearers, including Vice Chairman, are not



countenanced. Therefore, this Writ Petition in those aspects has failed.

33. In view of the aforesaid decision, there can be no impediment for the Election Officer to go ahead with the proposed election, as the same, which was already slated to be conducted on 02.12.2021, has been directed to be deferred by the earlier interim order, referred to above, by giving three clear days from tomorrow, i.e., from 04.12.2021.

34. Resultantly, this Writ Petition is dismissed with the above observations. However, there shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

vji

To

1. The Director,
Sericulture Department,
Registrar, Silk Co-operative Societies,
Asthampatti, Salem - 636 007.
2. The Regional Joint Director / Special Officer,
Sericulture Department,
Office of the Regional Joint Director,
Erode - 12.
3. The Joint Director / Managing Director (Addl. Charge),
TANSILK, Sericulture Department,
The Tamil Nadu Co-operative Silk Producers Federation Ltd.,
No.522, Gandhi Road, Kancheepuram - 631 501.
4. The Managing Director,
The Tamil Nadu Co-operative Silk Producers
Federation Limited, No.944,
No.522, Gandhi Road, Kancheepuram - 631 501.

+1cc to the Government Pleader, S.R.No.63838

W.P. No. 25804 of 2021
and

W.M.P. No. 27262 of 2021

GMR (CO)
SB(06/12/2021)