



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.09.2021

CORAM

THE HONOURABLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P(MD)No.11459 of 2021

and

W.M.P. (MD) .Nos.8978 to 8980 and 10077 of 2021

Saravanan

... Petitioner

Vs.

1.The Inspector General of Registration (Societies),
No.100, Santhome High Road,
Chennai-29.

2.The District Registrar (Societies),
Madurai Road,
Virudhunagar.

3.Arupukottai Devangar Mahajana Sabhai,
Represented by it Secretary,
Thangasalai Street,
Arupukottai, Virudhunagar District.

4.S.Veera Sundaramani,
Convenor of Election / Election Officer,
Arupukottai Devangar Mahajana Sabhai,
Thangasalai Street,
Arupukottai, Virudhunagar District.

5.R.Munijayaram

6.G.Sankaravel

7.K.Murugesan

8.P.Sankaranarayanan

9.Pugalendhi

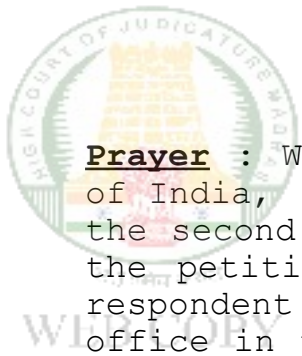
10.V.Murugan

11.N.Soundappan

12.M.Annamalaisamy

... Respondents

(Respondent Nos.5 to 12 impleaded vide order of this Court dated
29.09.2021 in W.M.P.(MD).Nos.10729, 11063, 11065 and 11782 of 2021
in W.P. (MD), No.11459 of 2021)



Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the second respondent to ensure the issuance of nomination forms to the petitioner and the contestants for the election to the third respondent Society by the fourth respondent and also nominate an office in terms of Section 26 (4) of the Tamil Nadu Societies Registration Act, 1975, to supervise and observe the fair conduct of election to the third respondent Society.

For Petitioner : Mr.M.Ajmalkhan,
Senior Counsel,
for M/s.Ajmal Associates

For R-1 & R-2 : Mr.Veerakathiravan,
Additional Advocate General,
assisted by Mr.P.Subbaraj,
Counsel for State.

For R-3 : Mr.M.Thirunavukkarasu

For R-4 : Mr.H.Arumugam

For R-5 : Mr.E.Marees Kumar

For R-6 & R-7 : Mr.J.Sulthan Basha

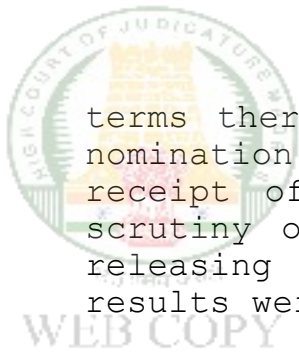
For R-8 to R-10 : Mr.Sulthan Alaudeen

For R-11 & R-12 : Mr.Ragtheeshkumar
for M/s.Isaac Chambers

ORDER

The petitioner seeks a direction for issuance of nomination forms in respect of the elections to the third respondent Society and also seeks nomination of an officer in terms of Section 26 (4) of the Tamil Nadu Societies Registration Act, 1975.

2. The third respondent is a Society registered under the Tamil Nadu Societies Registration Act, 1975. The said Society appears to have been formed for the welfare of the Kannada speaking Devangar Community in Arupukottai, which is a linguistic minority community in the State of Tamil Nadu. The said Society administers several schools. It has a membership in the region of 3700 members. Once every three (3) years, elections are conducted to elect members of the Administrative Committee of the said Society. Such Administrative Committee has a total membership of 51. The present dispute arises in relation to an Election Notification dated 01.07.2021. By such Election Notification, the Election Officer, the fourth respondent herein, set out the election schedule. In



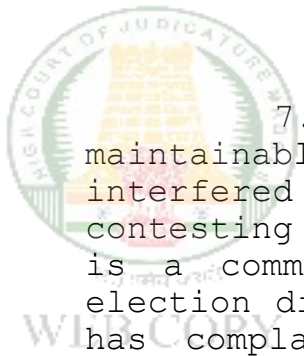
terms thereof, 07.07.2021 was fixed as the date for submission of nomination forms and 08.07.2021 was specified as the last date for receipt of such nomination forms. 09.07.2021 was the date for scrutiny of the nomination forms and 11.07.2021 was the date for releasing the final list of candidates. Eventually, the election results were to be declared on 30.07.2021.

3. The petitioner assails the election on the ground that he was not provided a nomination form upon request. In fact, the petitioner contends that no elections were held for the Administrative Committee over the last eight (8) triennia. According to the petitioner, there was no contest because nomination forms were provided only to the chosen candidates, all of whom were elected unopposed.

4. With regard to the salutary principle of non-interference in the electoral process, the petitioner contends that such non-interference is in the context of elections to the Parliament, Legislative Assemblies or other local bodies. The petitioner refers to Article 329 of the Constitution and Article 243-O thereof to contend that with regard to those elections there is a statutory bar. On the contrary, it is contended that there is no statutory bar with regard to interference in elections to a Society formed under the Tamil Nadu Societies Registration Act, 1975.

5. In support of these contentions, the petitioner relies upon an earlier order of this Court in W.P.(MD).No.12454 of 2021, order dated 18.08.2021, wherein this Court concluded that interference may be warranted if the parties seeking interference with the electoral process are able to demonstrate that a willing candidate was unjustly and unfairly prevented from participating in the electoral process. A judgment of the Division Bench of this Court in ***the Music Academy, represented by its Executive Trustee Vs. the Inspector General of Registration and others, 2005-4-L.W.67*** was also relied upon so as to substantiate the contention that the Court is entitled to interfere in appropriate cases under Article 226 of the Constitution.

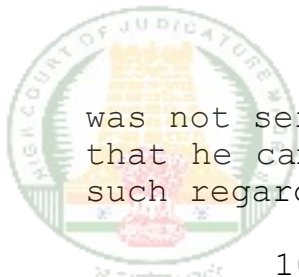
6. The petitioner also points out that the Election Notification does not indicate the date for issuance of nomination forms; on the contrary, it only sets out a date for submission of nomination forms. The petitioner points out that the Society is undertaking the socially significant activity of administering several educational institutions and, therefore, the facts and circumstances warrant interference with the electoral process. Section 26 (4) of the Tamil Nadu Societies Registration Act, 1975 is relied upon to contend that the official respondents are empowered to appoint an observer as regards any General Body Meeting of the Society.



7. The State contends that the Writ Petition is not maintainable. The State points out that the Division Bench interfered in the Music Academy case on the basis of consent of the contesting parties. It is also pointed out by the State that this is a community based society and that there is no history of election disputes. The State further contends that only one person has complained and that, therefore, the fact situation in the present case is substantially similar to that in W.P.(MD).No.12454 of 2021 and, therefore, deserves the same outcome. In addition, the State refers to by-law 18(a) of the Society and points out that there is an alternative remedy not only before the jurisdictional civil court but also before the Committee constituted in relation to election disputes.

8. The Society also contends that the Writ Petition is not maintainable. The Society points out that one person and the father of another, from and out of 28 persons, who had submitted the representation dated 03.05.2021, were elected without contest in respect of previous triennia. The Society refers to and relies upon the judgment of the Supreme Court in ***Boddula Krishnaiah and another Vs. the State Election Commissioner (1996) 3 SCC 416***. The Society also relies upon the judgment in ***K.S.S.Kowshik Vs. State Bank of India and others*** dated 10.06.2016 and, in particular, paragraph 17 thereof, wherein the Court concluded that an electoral dispute should not be interfered with once the electoral process commences and that the person aggrieved should agitate such issue after the conclusion of the electoral process. The Society points out that no defect in the Election Notification was indicated in the affidavit filed in support of the Writ Petition. Besides, the Society points out that an Observer may be appointed under Section 26 (4) only with regard to a General Body Meeting and not with regard to elections.

9. The Election Officer also made brief submissions. The first contention on behalf of the fourth respondent was that the representation was not given to the Election Officer with regard to the alleged refusal to provide the nomination form. In this connection, the Election Officer asserts that the petitioner did not even specify as to whom the request for nomination form was made. By referring to the representation dated 05.07.2021, the Election Officer points out that the text of the said representation indicates that the refusal was by more than one person. However, the names and other details of the persons who refused to provide the nomination form has not been specified. The Election Officer also points out that the Election Notification specified a fee of Rs.25/- (Rupees Twenty Five only) for submission of the nomination form, and that there is no evidence that the petitioner tendered the same. The Election Officer echoes the submission of the Society that Section 26(4) would not apply to an election and that this would be clear upon examining Sub-Sections 1, 2 and 3 thereof. The Election Officer concluded the submissions by pointing out that he



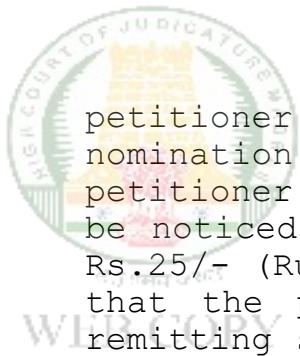
was not served with a copy of the ad-interim order of this Court and that he came to know of the same only from the paper publication in such regard.

10. Two contentions were raised on behalf of the proposed parties. First, that they did not know of the Election Notification until the interim order of this Court. Secondly, that by-law 13 mandates a public notice, whereas such notice was not given in this case.

11. The principal issue that arises for consideration is whether the petitioner has made out a case to interfere with the electoral process notwithstanding the fact that such process had commenced before the petitioner approached the Court. The petitioner contended that the principle of non-interference was formulated in a different context and that such principle should not be extended to elections to a Society registered under the Tamil Nadu Societies Registration Act. The said contention is not wholly devoid of merit. As correctly pointed out by learned Senior Counsel for the petitioner, Article 329 and Article 243-O of the Constitution prescribe a prohibition against interference by Court once the electoral process commences. There is no such prohibition under the Tamil Nadu Societies Registration Act, 1975. Even otherwise, the power under Article 226 of the Constitution is extremely wide and is largely subject only to self imposed fetters.

12. Nonetheless, it should be examined as to whether the present case warrants interference by this Court. On this issue, it should be borne in mind that a sole petitioner is before this Court assailing the electoral process. No doubt, a couple of persons have sought to intervene in the matter and lend their support to the petitioner. However, the case largely rests on the allegation of the petitioner that he was not provided the nomination form in spite of requesting for the same. Therefore, this aspect assumes centre stage in the adjudication.

13. For such purpose, one should turn to the Election Notification and the events that followed. As correctly pointed out by learned Senior Counsel for the petitioner, the Election Notification does not specify the date for supply of nomination forms to prospective candidates. However, it specifies the date for filing of nomination forms, including the last date in such regard. These two dates are significant and, therefore, merit repetition. 07.07.2021 is the date of commencement of lodging of nomination forms and 08.07.2021 is the last date for submission thereof. The petitioner has carried a representation to the District Registrar on 05.07.2021. By such representation, the petitioner alleges that he requested for but was refused such nomination form. When the petitioner submitted the relevant representation, the petitioner was fully aware of the Election Notification and the schedule prescribed



petitioner made a request to the Election Officer seeking supply of nomination form. Indeed, there is no communication at all from the petitioner to the Election Officer. On this issue, it should also be noticed that the fee or charge for lodging a nomination form is Rs.25/- (Rupees Twenty Five only). Once again, there is no evidence that the petitioner endeavoured to lodge the nomination form by remitting such fee. Instead, it appears that the petitioner jumped the gun and decided to lodge a representation with the District Registrar even before the date of commencement of filing of nomination forms.

14. The other aspect to be noticed is that while 28 persons submitted a representation on 03.05.2021 only one person has complained about alleged refusal to supply nomination forms and has subsequently approached this Court.

15. The petitioner substantiates his contention that the electoral process of the third respondent is flawed by pointing out that, admittedly, all the appointments to the Administrative Committee were made unopposed across the eight (8) previous triennia. This fact is a matter of concern but per se does not justify interference. It should also be noticed that there is no history of prior litigation either at the instance of the petitioner or otherwise in respect of previous elections. At least, there is nothing on record to indicate that there is a history of litigation pertaining to elections of the third respondent.

16. The proposed parties also pointed out that the Election Notification was not effected in accordance with the by-laws, which mandate the issuance of a public notice. This contention warrants attention. However, in the cumulative facts and circumstances of this case and bearing in mind the fact that the electoral process had already commenced, no case is made out for interference at this juncture. Needless to say, it is open to the proposed parties to raise this issue upon conclusion of the election by way of appropriate proceedings.

17. For the reasons set out above, W.P.(MD).No.11459 of 2021 is dismissed without any order as to costs by leaving it open to the petitioner to assail the election either by approaching the Committee constituted for such purpose or by approaching the jurisdictional civil court in accordance with law. Consequently, W.M.P.(MD).Nos.8978 to 8980 of 2021 and 10077 of 2021 are closed.

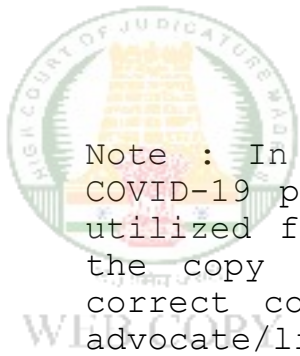
Sd/-

Assistant Registrar (CRL)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Inspector General of Registration (Societies),
No.100, Santhome High Road,
Chennai-29.

2.The District Registrar (Societies),
Madurai Road,
Virudhunagar.

+1 CC to M/s.H.ARUMUGAM, Advocate (SR-30788[F] dated 30/09/2021)

+1 CC to M/s.M.THIRUNAVUKKARASU, Advocate (SR-30702[F] dated 30/09/2021)

+1 CC to M/s.ISAAC CHAMBERS, Advocate(SR-30765[F] dated 30/09/2021)

+1 CC to M/s.SPL.GP (SR-30728[F] dated 30/09/2021)

+1 CC to M/s.SPL.GP (SR-30890[F] dated 01/10/2021)

W.P (MD) No.11459 of 2021
29.09.2021

MGJ(25.10.2021) 7P 8C