



W.P(MD)No.29042 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.12.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.29042 of 2022

and

W.M.P(MD)No.23021 of 2022

S.J.Alagu Raja

... Petitioner

Vs

- 1.The State represented by,
Its Principal Secretary to the Government,
Public Works Department,
Fort St.George,
Chennai – 09.
- 2.The District Collector,
Sivagangai,
Sivagangai District.
- 3.The Revenue Divisional Officer,
Sivagangai,
Sivagangai District.
- 4.The Executive Engineer WRO PWD,
Saruganiyar Basin Division,
Public Works Department,
Sivagangai.
- 5.The Assistant Executive Engineer PWD WRO,
Saruganiyar Basin Division,
Irrigation Division – II,
Sivagangai District.

... Respondents



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Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, forbearing the respondents from conducting the Vaviyendhal, Piramanur Water Users Association Election without preparing the Landholders / Voters List / Water Users List in tune with the Rule 4 of the Tamilnadu Farmers Management of Irrigation Systems Rules, 2002 read with Rule 7 of the Tamilnadu Farmers Management of Irrigation Systems Election Rules, 2003.

For Petitioner : Mr.T.Lajapathi Roy

For Respondents : Mr.R.Baskaran
Additional Advocate General
Assisted by
Mr.G.Suriyananth
Additional Government Pleader

ORDER

Heard the learned counsel appearing for the writ petitioner and the learned Additional Advocate General assisted by the learned Additional Government Pleader appearing for the respondents. Mr.C.P.Mohan Kumar, Assistant Executive Engineer, Saruganiyar Basin Division, Irrigation Division – II, Sivagangai District, Mr.S.Boominathan, Assistant Engineer, Thiruppuvanam and Mr.Bose, Junior Engineer, Virahanoor are present before this court. This order is being passed in the presence of the said instructing officials.



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2.The case on hand pertains to conducting election for electing the Executive Committee members of the petition mentioned Water Users Association.

3.The learned counsel appearing for the petitioner categorically alleges that the voters list already prepared by the authorities is defective. According to him, it contains the names of quite a few dead persons. He also would contend that the names of the pattadhars who are also water users are not found in the voters list.

4.It appears that the election is proposed to be held on 29.12.2022. My attention is drawn to the order dated 27.09.2022 made in W.P(MD)Nos.13698 and 13722 of 2022. Paragraph Nos.3, 6 and 7 of the said order read as follows :

“3.A water user association is neither like Gymkhana club or like the other associations registered under the Tamil Nadu Societies Registration Act, 1975. It is having a statutory character. In order to ensure equitable distribution of water for irrigation and to reform the irrigation sector for sustainable management and development through decentralization, the Tamil Nadu Act 7 of 2001 (The Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000) was promulgated. The Act contains 50 Sections spread over 7 chapters. The definitional provision is contained in Section 2. Section 2(b), (I), (q), (y) and some of the material provisions read as follows :



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“(b)"area of operation", in relation to a farmers organisation, means a contiguous block of land in the command area as the Government may, by notification, specify in this behalf;

(i)"farmers organisation" means the -

(i)"Water Users Association" at the primary level consisting of all the water users, as constituted under section 4; or

(ii)"Distributary Committee" at secondary level, as constituted under section 7; or

(iii)"Project Committee" at the project level, as constituted under section 10;

(q)"land" means any land under any registered ayacut of any irrigation system;

(y)"water user" means any farmer holding any land either as the owner or as the tenant recorded as such in the revenue records of rights in respect of such land and includes any other individual or body or a society using water for agriculture, from a Government source.”

Section 3, 4 and 5 of the Act are as follows :

“3.(1)The Collector may, in such manner as may be prescribed, delineate command area under each irrigation system on a hydraulic basis, which may be administratively viable, and declare it to be a Water Users Association area for the purposes of this Act; Provided that in respect of the command area under the minor irrigation systems, the entire command area may as far as possible, form a single Water Users Association area.



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(2)Every Water Users Associations area shall be divided into territorial constituencies, which shall not be less than four, but shall not be more than ten, as may be prescribed.

4.(1) There shall be a Water Users Association called by its local distinct name for every Water Users Association area delineated under Section 3.

(2)Every Water Users Association shall consist of all the water users in such Water Users Association area, as members: Provided that any person, who is in lawful possession and enjoyment of any land, may, on proof of such possession and such enjoyment in a crop year, claim membership, notwithstanding whether he is a recorded land holder or not, in which case the Water Users Association shall not refuse the membership of such person for the purposes of this Act, and such person shall be liable to pay the fees, as if he is the water user: Provided further that any person who is eligible to become a member for more than one territorial constituency of a Water Users Association shall be entitled to be a member of only one territorial constituency, at his option.

(3)The members specified in sub-section (2) shall constitute the general body for the respective Water Users Association and such members alone shall have the right to vote.

5.(1) There shall be managing committee for every Water Users Association.

(2)The Collector shall make arrangements for the election of



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the President of the Managing Committee of the Water Users Association by direct election from among its members, by the method of secret ballot, in such manner as may be prescribed.

(3)The Collector shall also make arrangements for the election of the members of the managing committee, consisting of one member from each of the territorial constituency of the Water Users Association area, by the method of secret ballot, in such manner as may be prescribed.

(4)If at an election held under sub-section (2) or (3), the President or the member in any territorial constituency is not elected, fresh election shall be held in the same manner as specified in sub-section (2) or (3), as the case may be :

Provided that the Government may, for the reasons to be recorded in writing, from time to time, postpone the election.

(5)The President and the members of the managing committee shall, if not recalled under section 13, be in office for a period of five years and six months*, from the date of the first meeting of the managing committee.

(6)The managing committee shall exercise the powers and perform the functions of the Water Users Association.”

Section 50 of the Act empowers the Government to make Rules to carry out all or any of the purposes of the Act. Rule 4, 5 and 6 of the Tamil Nadu Farmers' Management of Irrigation Systems Rules, 2002 are as follows :

“4.Preparation of landholders list, voters list and water users list.- (1) The Collector shall prepare the list of landholders on



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the basis of record of rights in Form-V. On the basis of the list so prepared, he shall prepare the territorial constituency-wise voters list in Form-V-A consisting of those landholders who have completed eighteen years of age as on the date of issue of notification for conducting elections in a Water Users Association area for electing the President and members of the Managing Committee of the Water Users Association.

(2) The lists prepared under sub-rule (1) shall be displayed on the notice board of the office of the concerned Village Panchayat and Panchayat Union. (3) Before finalizing the lists mentioned in sub-rule (1), the Collector shall invite objections against inclusion of any name. Any objection for the inclusion of any name in the said voters list shall be in Form-VI and any representation for inclusion in, or deletion from, the said voters list, as the case may be, shall be in Form-VII and Form-VIII, respectively. The Collector shall 'consider all such objections within a week and finalise such lists, by appending the names to be deleted or incorporated, at the end of the each list and final notice thereof shall be published in Form-IX in respect of voters list and be made available for verification.

(4) Each landholder in the Water Users Association area shall have one vote only irrespective of his land holdings in the said area. In case of a landholder holding ayacut lands in more than one Water Users Association, though he will have the voting rights in all such Water Users Association, but can hold only one official post in any one of them.



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(5) (a) In case, a landholder has land in more than one Territorial Constituency of a Water Users Association area, the landholder shall opt for only one constituency for voting by giving a declaration as specified in Form-X to the Collector.

(b) In case, no such option is exercised by the landholder, the Collector shall allot his vote to the constituency in which the landholder holds the maximum extent of land where such land held is the same in two territorial constituencies, any of the constituency maybe allotted and his decision shall be final.

(6) The lists prepared under sub-rule (1) shall be revised six months before the commencement of the elections in the manner specified in sub-rules (1) to (5).

5.Appeal for correction of voters list. - If any discrepancy has been noticed by any person, in respect of the voters list prepared under rule 4, such person may prefer an appeal to the Commissioner whose decision shall be final.

6.Delineation of Distributory Committee Area. - (1) The Government may, keeping in view the operational viability and in consultation with the Collectors, for the purpose of constituting the Distributory Committee, delineate the command area for major and medium irrigation system in Form-III and declare them as Distributory Committee areas as they consider proper.

(2) In delineating a Distributory Committee area, no Water Users Association area shall be divided or bifurcated into parts.

[(3)The Collector shall prepare the voters list for the election of the President and members of the Managing Committee of the Distributory Committee. The voters list shall be in Form V-B.]”



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Rule 16 states that the general body of the farmers association shall comprise of all members as specified in sub-section (3) of section 4, subsection (2) of section 7 and sub-section (2) of section 10 of the Act in respect of the Water Users Association, Distributory Committee and Project Committee respectively. Form-V and Form-VA read as follows :

“[Form V]

[See rules 4(1) and 32(3)(B)]

Under sub-rule (1) of rule 4 of the Tamil Nadu Farmers' Management of Irrigation Systems Rules, 2002, I,.....hereby publish the as indicated in the Table below.

Any objections or claims against the above list may be filed before me within seven days from the date of display of this list on the notice board of the Panchayat or the Panchayat Union.

.....Irrigation System.

.....Water Users Association

Name of the Village Total No. of Territorial Constituencies.....

Name of the Taluk Name of the major/medium/minor irrigation system.....

Total Ayacut in hectares Territorial Constituency No.....Part No.....

SI.No.	Name of the landholder	Extent of holding (ha)	Survey Nos.	Name of the Village	Age
(1)	(2)	(3)	(4)	(5)	(6)

Collector

“[Form V-A]

[See rules 4(1) and 32(3)(B)]

Under sub-rule (1) of rule 4 of the Tamil Nadu Farmers' Management of Irrigation Systems Rules, 2002, I,....., hereby display in this Form the List of all Voters who are the Landholders and have completed eighteen years of age on the date of issue of Notification prepared Territorial Constituency-wise, for electing the President and Members of the Managing Committee of the Water Users Association specified below.



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Any objection against the list may be filed before the undersigned within a week of display of the list for consideration and finalisation.

Voters List of Water Users Association

Name of the Water Users Association.....
Name of the Village.....Name of the Taluk.....
District.....
Total Ayacut (hectares).....
Total Territorial Constituencies.....
Territorial Constituency No.....(Part No.)

Landholders List

Sl.No	Name of the Voter	Father's Name	Age	Name of the Village	Land Holding	
					S.No.	Extent (ha)
(1)	(2)	(3)	(4)	(5)	(6)	(7)

Collector.....”

Challenge in these writ petitions is to the impugned notices proposing to hold elections for the petition mentioned Water User Associations. The learned counsel for the petitioners alleged that proper publication was not given. They faulted the manner in which the voters' lists were prepared. They pointed out that the final voters' lists contain a number of dead persons. They highlighted the fact that the lists produced by the respondents merely contained the names alone and that details such as voters' fathers' name, patta number, age etc., have not been set out.

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6.The importance of the farmers organization as statutorily constituted under the Tamil Nadu Act 7 of 2001 has been highlighted in the order dated 02.09.2020 made in WP(MD)Nos. 6755 of 2020 etc., (M.Bose v. the District Collector and ors). They discharge important functions in public interest. They are body corporates having perpetual succession. Duty is cast on the District Collectors to constitute Water Users Association by including all the Water Users who shall constitute General Body. In other words, it is not a case of applying and getting admitted to the membership of the organization. The individual water user in most cases is likely to be a lay and rustic villager. He need not knock the doors of the authority for enrolling as a member. Instead, the statute casts the onus and responsibility on the officials to enrol every water user in the voters' list. Only a water user who is not a recorded land holder may have to apply for membership and he shall not be refused membership for the reason that he is not a recorded land holder. It is for the officials to certify that the voters' list finalized by them includes the names of all the recorded land holders. Thereafter, they have to invite objections for deletions and inclusions. Dead persons will have to be deleted and if by oversight, some eligible persons, as contemplated by proviso to Section 4(2) of the Act, have been omitted, they can be included after enquiry. In the cases on hand, this statutory mandate has not been fulfilled. I reiterate that the authorities had frankly conceded before me that they cannot affirm that all the recorded land holders were included in the respective voters' list of the petition mentioned Water Users Associations.



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7.The District Collectors are duty bound to constitute the Water Users Association as contemplated by law. It is their responsibility to ensure that all the eligible members are included in the voters' list. It is this that distinguishes farmers associations as statutorily constituted under the Tamil Nadu Act 7 of 2001 from other organizations where eligible members have to seek membership. Here, by virtue of one being a recorded land holder, one is entitled to become a member. English jurist Henry Maine wrote “the movement of the progressive societies has hitherto been a movement from Status to Contract.” While the relationship of the members of other societies and associations is governed by contract, membership in the farmers organizations constituted under the Act 7 of 2001 is status-based. Of course, I would add that this does not make the legislation any less progressive.”

Applying the aforesaid decision, I have to necessarily direct the respondents to postpone the conduct of the elections. The respondents shall rectify the defects pointed out by the writ petitioner and publish the draft voters list on 31.01.2023. Objections shall be invited and the final voters list shall be published by 15.02.2023. Election shall be held by the respondents thereafter as per law.



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5.This writ petition is allowed on these terms. There shall be no order

as to costs. Consequently, connected miscellaneous petition is closed.

23.12.2022

Index : Yes / No

Internet : Yes/ No

MGA

Note: Issue Order Copy on 09.01.2023.

To

- 1.The Principal Secretary to the Government,
Public Works Department,
Fort St.George, Chennai – 09.
- 2.The District Collector,
Sivagangai, Sivagangai District.
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G.R.SWAMINATHAN, J.

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and
WMP(MD)No.23021 of 2022

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