



Writ Petition Nos. 22770, 24199 and 24384 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :30.08.2023

PRONOUNCED ON :13.09.2023

CORAM

THE HONOURABLE MR.JUSTICE S.SOUNTHAR

Writ Petition Nos.22770 ,24199 and 24384 of 2023
and W.M.P.Nos.22224, 23650, 23651, 23652, 23823, 23596 of 2023

W.P.No.22770 of 2023:

D.Palanisamy

... Petitioner

Vs

1.The Registrar of Co-operative Societies/State Election Officer,
No.170, NV Natarajan Maaligai, EVR High Road,
Poonamallee High Road, Kilpauk,
Chennai – 600 010.

2.The Joint Registrar of Co-operative Societies,
Tirupur Region,
Tirupur.

3.The President,
Management of T.P.SPL.29, Sivan Malai Primary
Agricultural Co-operative Societies,
Sivanmalai, Tirupur – 638 701.

4. Tamil Nadu State Co-operative Societies Selection Commission,
Kamadenu Super Market Building,
No.273, Scheme Road, Subbarayan Nagar,
Subbarayan Nagar, Teynampet, Chennai – 600 018.

(R-4 impleaded vide order dated 21.08.2023 made in WMP.No.23036 of
2023 in W.P.No.22770 of 2023 by SSJ)

... Respondents



Writ Petition Nos. 22770, 24199 and 24384 of 2023

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the respondents from dissolving or prematurely terminating the tenure of the petitioner as the President of T.P.SPL.29, Sivan Malai Primary Agricultural Co-operative Society elected on 10.06.2019, in the elections conducted in accordance with the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules, 1988.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents: Mr.R.Shanmugasundaram
Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader
and Miss.A.S.Shakeena for R1 and R2
Mrs.S.Anitha
Special Government Pleader for R3
Mr.U.Karunakaran
Co-operative Election Commission for R4

(ii) **W.P.No.24199 of 2023:**

P.Chinnasamy,
President,
KK 159-A, Sekkarapatti Primary Agricultural
Co-operative Credit Society Ltd.,
A.Sekkarapatti Adagapadi Post,
Dharmapuri District.

... Petitioner

Vs

1.The Joint Registrar of Co-operative Societies,

2/24



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Dharmapuri Region,
(Full Additional Charge)., Dharmapuri.

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2.The Administrator,
KK 159-A, Sekkarapatti Primary Agricultural
Co-operative Credit Society Ltd.,
A.Sekkarapatti Adagapadi Post,
Dharmapuri District.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the order passed by the 1st respondent in Na.Ka.No.2030/2023 sapa (2), dated 06.08.2023 and consequential resolution No.1, dated 07.08.2023 on the file of the 2nd respondent quash the same and forbear the respondents from interfering with the democratically elected board of management of the 2nd respondent society till 13.06.2024.

For Petitioner : Mr.M.S.Palaniswamy

For Respondents: Mr.R.Shanmugasundaram
Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader
and Miss.A.S.Shakeena for R1
Mr.K.Tippu Sulthan
Government Advocate for R2

(iii) W.P.No.24384 of 2023:



Writ Petition Nos. 22770, 24199 and 24384 of 2023

B.Vasanthi

... Petitioner

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Vs

1.The Registrar of Co-operative Societies/State Election Officer,
State Election Officer, No.170, NV Natarajan Maaligai,
EVR High Road, Poonamallee High Road, Kilpauk, Chennai – 600 010.

2.The Registrar of Co-operative Societies (Housing),
Chennai.

3.The Secretary,
Management of K 1917 Tiruppur Co-operative Housing Society,
No.108-A, Gemani Complex,
Kumaran Road,
Tirupur – 641 601.

... Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a writ of Mandamus, forbearing the respondents from dissolving or prematurely terminating the tenure of the petitioner as the President of K 1917 Tiruppur Co-operative Housing Society elected on 10.06.2019 in the elections conducted in accordance with the Tamil Nadu Co-operative Societies Act, 1983 and the Tamil Nadu Co-operative Societies Rules, 1988.

For Petitioner : Mr.L.P.Shanmugasundaram

For Respondents : Mr.R.Shanmugasundaram
Advocate General
Assisted by Mrs.S.Anitha
Special Government Pleader
and Miss.A.S.Shakeena for R1 and R2
Mr.S.Arumugam
Government Advocate for R3



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COMMON ORDER

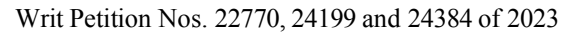
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The following interesting question of law involved in these writ petitions:

Whether the term of Office of Board Members of Co-operative Society commences from the date of election of such members or from the date of election of office bearers of the board by such members?

2. W.P.Nos.22770 and 24384 of 2023 are filed by the President of respective Co-operative Societies, seeking issuance of Writ of Mandamus forbearing the respondents from dissolving or prematurely terminating the tenure of the petitioner as the President of respective Co-operative Societies as they were elected as Presidents only on 10.06.2019.

3. W.P.No.24199 of 2023 is filed by the President of the Co-operative Society, challenging the order passed by the 1st respondent appointing an Administrator to manage the Co-operative Society under Section 89 (1) (i) of Tamil Nadu Co-operative Societies Act treating the tenure of members elected to board as expired and also consequential



assumption of charge by Administrator.

that day.

electing Officer bearers was conducted on 10.06.2019 and they assumed



office on that day.

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6. In W.P.No.24199 of 2023, the member of the board was elected on 09.04.2018. Here again, due to the judicial order, the election to the office bearers could not be proceeded with and ultimately after High Court appointed committee upheld the validity of election that had taken place on 09.04.2018, the election for Office bearers was conducted on 14.06.2019 and Officer bearers assumed charge on that day.

7. The Core contention of the petitioners is though the members of the board were elected on 28.08.2018, 03.09.2018 and 09.04.2018 in respective writ petitions, their five years tenure will not commence from the date of election as members of the board, but the five years tenure will commence only from the date of election of Office bearers.

8. The learned counsel appearing for the petitioners submitted that the Board of Directors of the Co-operative Society deem to be constituted only after election of office bearers. Therefore, their term should be counted only from the date of election of office bearers and not from the



date of election of members of the board. The learned counsel appearing for the petitioners drawn the attention of this Court to Sections 2(7), 33(10) (a) of Tamil Nadu Co-operative Societies Act (*herein after referred as Act for brevity*) and Rules 52(5) and 53 of Statutory Rules framed under the Act, in this regard.

9. The learned counsel appearing for the petitioners also relied on Articles 56, 67, 83(2) and 172 of Constitution of India and Section 33(a) (4) of Tamil Nadu Co-operative Societies Act, for the purpose of interpreting Section 33(10) (a) of Act.

10. In support of their contention, the learned counsel appearing for the petitioners relied on the following judgments:

***(i) The Special Officer, Varadarajaswami Silk Handloom Weavers Co-operative Society, G.No.2105, 437, Gandhi Road, Kancheepuram, Chengalput District and others Vs T.Anbalagan and others* reported in (1989) 2 MLJ 379;**

***(ii) Union of India Vs. Rajendra N.Shah and another* reported in 2021 SCC online SC 474;**



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11. Per contra, the learned Advocate General appearing for the respondents 1 and 2 by taking this Court to Section 33(10) (a) of Act, submitted the five years period shall be counted from the date of election. The learned Advocate General by taking this Court to Article 243 (z) (j) (2) of Constitution of India submitted that the term of five years shall be from the date of election. The learned Advocate General in support of his contention relied on the following judgments:

(i) ***Election Commission of India through Secretary Vs Ashok Kumar and others*** reported in ***(2008) 8 SCC 216***;

(ii) ***Bhausahab S/o.Kachru Natkar Vs. State of Maharashtra and others*** reported in ***2021 5 Mh.L.J page 719***;

12. The learned counsel appearing for the 4th respondent/Tamil Nadu State Co-operative Societies Selection Commission in W.P.No.22770 of 2023 submitted that five years tenure of the members of the society shall be reckoned only from the date of election as members of the society.

13. The main question that has to be decided in these writ petitions is what is the date on which the term of five years referred to under



Section 33(10) (a) of Co-operative Societies Act commences. The relevant section reads as follows:

“33(10) (a) the term of Office of a member who is elected to any board constituted under this Act, the rules or the bye-laws shall be five years.”

14. The word 'board' is defined under Section 2(7) of Act, which reads as follows:

2(7) "board" means the board of directors or the governing body of a registered society by whatever name called, to which the direction and control of the management of the affairs of the society is entrusted to;

15. A reading of Section 33(10) (a) of the Act would make it clear that the term of office of a member, who is elected to board of the Co-operative Society shall be five years. The term of office of elected members of the board is declared as five years under the relevant provision of law. However, the relevant provision does not say expressly the date of commencement of term. Therefore, the learned counsel for the petitioners argued the date of commencement of term shall be taken as a date election of office bearers because only from that date board becomes functional.



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16. In the case on hand, there is a delay of nearly 10 to 14 months in conducting election to office bearers after election of members to the board was over due to litigation. According to the learned counsel for the petitioners, during the relevant period, the board did not function, but the society was administered by Administrator appointed by the Government. In this connection, as mentioned above, the learned counsel appearing for the petitioners had taken this Court to Articles 56, 67, 83(2) and 172 of Constitution of India. The relevant Articles read as follows:

“56. (1) The President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that-

(a) The President may, by writing under his hand addressed to the Vice-President, resign his office;

(b) The President may, for violation of the Constitution, be removed from office by impeachment in the manner provided in article 61;

(c) The President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) shall forthwith be



communicated by him to the Speaker of the House of the People.”

67. The Vice-President shall hold office for a term of five years from the date on which he enters upon his office:

Provided that-

(a) A Vice-President may, by writing under his hand addressed to the President, resign his office;

(b) A Vice-President may be removed from his office by a resolution of the Council of States passed by a majority of all the then members of the Council and agreed to by the House of the People; but no resolution for the purpose of this clause shall be moved unless at least fourteen days' notice has been given of the intention to move the resolution;

(c) A Vice-President shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

83(2) The House of the People, unless sooner dissolved, shall continue for ¹[five years] from the date appointed for its first meeting and no longer and the expiration of the said period of [five years] shall operate as a dissolution of the House:



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Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

172. (1) Every Legislative Assembly of every State, unless sooner dissolved, shall continue for 1[five years] from the date appointed for its first meeting and no longer and the expiration of the said period of 1[five years] shall operate as a dissolution of the Assembly:

Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

(2) the Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

17. Article 56 and 67 of Constitution of India expressly declare that the President and Vice President of India as the case may be shall hold



Office for a term of five years from the date on which, he enters upon his.

office. Article 83(2) and 172 of Constitution of India talks about the term of the Parliament and State Legislature as the case may be. A reading of above articles would establish that the house of people (Lok Sabha) and the State Legislative Assembly as the case may be shall continue for five years from the date appointed for its first meeting. Therefore, in the above mentioned articles, the date of commencement of tenure is expressly mentioned in the relevant articles which define the term. However, under Section 33(10) (a) of the Act, though the term of office of members of the board is declared as five years, the date of commencement of the term is not expressly mentioned.

18. The relevant provision declares the term of office of member who is elected to any board constituted under the Act, rules or bye-laws shall be five years. When relevant provision declares the term of office of elected member is five years, the period of five years commences from the date of election unless there is an express provision to the contrary indicating commencement of term from a later date. In constitutional provisions relied on by the counsel for the petitioners, the date of commencement of term is



expressly indicated as a later date from the date of election. However, in Section 33(10) (a) of Act, when there is no express provision indicating commencement of the term of elected members from a later date it shall be construed that the term commences from the date of declaration of election results or the date on which they are elected to board. There is nothing in the Act indicating postponement of the date of commencement of the term of Office. In fact, Article 243-ZJ (2) of Constitution of India declares the term of Office of elected members of the board as follows:

(2) The term of office of elected members of the board and its office bearers shall be five years from the date of election and the term of office bearers shall be coterminous with the term of the board:

Provided that the board may fill a casual vacancy on the board by nomination out of the same class of members in respect of which the casual vacancy has arisen, if the term of office of the board is less than half of its original term.

19. Therefore, the relevant provision of Constitution in express terms indicates the term of Office of elected members commences from the date of election. However, the entire part IX-B of Constitution of India, which deals with Co-operative Societies, which was inserted by 97th



Constitutional amendment was declared inoperative by the Apex Court in so far State Co-operative Societies are concerned as per the decision in ***Union of India Vs. Rajendra N.Shah and another*** reported in **2021 SCC online SC 474** for want of ratification by half of the States as required under Article 368 (2) of Constitution of India. Hence, as far as Co-operative Societies constituted under the State enactments are concerned, the above said provision in the constitution has become in-operative. Therefore, the respondents cannot rely on Article 243-ZJ of Constitution of India to contend that the term of office commences from the date of election.

20. The learned Advocate General relied on the judgment of Bombay High Court in ***Bhausahab S/o.Kachru Natkar Vs. State of Maharashtra and others*** reported in **2021 5 Mh.L.J page 719**. The relevant observation of Division Bench of Bombay High Court in the above mentioned case law reads as follows:

17. Article 243ZJ of the Constitution provides for the term of the members of the committee of cooperative society. Sub article 2 of Article 243ZJ unambiguously prescribes the term of office of elected members of the board and its office bearers to be five years from the date of election. The



provisions of the Constitution of India are sacrosanct. Statutes and Rules framed by the legislature have to be subservient to the constitutional mandate and its provisions. The Act 2014 passed by the State Legislature in conformity with the prescription provided in Article 243ZJ incorporated sub-section 3 to Section 73AAA prescribing the term of the office of the elected members of the committee and its office bearers to be five years. The term of the office bearers is coterminous with the term of the committee. The same provision further provides that on expiry of the term of the committee, the members shall be deemed to have vacated their office as member of the committee.

21. Though Article 243-ZJ of Constitution of India was relied on in the above mentioned case law to come to the conclusion that term of office of elected members of the board is five years from the date of election, in view of the subsequent judgment by the Apex Court in ***Union of India Vs. Rajendra N.Shah and another*** reported in ***2021 SCC online SC 474*** referred above, the respondents are not entitled to rely on Article 243 -ZJ of Constitution of India, which was declared inoperative in so far as State Co-operative Societies are concerned. The relevant observation of the Apex Court in this regard reads as follows:



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was enhanced to five years from three years. Therefore, when Act 4 of 2013 was enacted by Tamil Nadu Legislature, it was aware the term of Office would commence from the date of election as provided in the provisions of the Constitution namely Article 243-ZJ (on that date Article 243-ZJ was fully operational) that is why the legislature did not prescribe any later date as a date of commencement. When there is nothing in the Statute book suggesting commencement of term of Office from the date subsequent to the date of election, we have to interpret the provision as it stands.

24. In fact, when the provision was made the State Legislature was aware the term of Office will commence only from the date of election. In such circumstances, the arguments advanced on behalf of the petitioners that the term of office will commence not from the date of election of members to board, but from the date of election of office bearers of the board cannot be accepted. Therefore, the submissions of the learned counsel appearing for the petitioners in this regard are liable to be rejected.



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25. In *The Special Officer, Varadarajaswami Silk Handloom*

Weavers Co-operative Society, G.No.2105, 437, Gandhi Road,

Kancheepuram, Chengalput District and others Vs T.Anbalagan and

others, relied on by the learned counsel for the petitioners, the appointment

of Special Officers contrary to Section 33(5) of the Act came up for

consideration. The Division Bench of this Court by relying on Section 33(5)

of the Act held that any member of the board holding Office by election or

nomination on the date of coming into force of new Co-operative Societies

Act (13.04.1988) shall continue in Office until a date of expiry of the term is

specified by the Government notification. Since no notification was issued

by the Government as mentioned under Section 33(5) of Act, it was held

that appointment of Special Officer was bad and the members of the board

as on 13.04.1988, were entitled to continue till notification by the

Government as contemplated under said Section. Therefore, the said case

law will not advance the case of the petitioner that under Section 33(10) (a)

of the Act, the term of elected members of the board shall commence only

from the date of election of office bearers.



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26. It is settled law, while interpreting a section, the Court shall go by literal meaning of the provisions unless, there is an ambiguity in the provisions. As far as Section 33(10) (a) of Co-operative Societies Act is concerned, there is no ambiguity in the provision. It clearly declares that term of office of elected members of the board shall be five years. When there is no express provision suggesting term of office shall commence from a later date, I am inclined to hold that the term of office shall commence only from the date of election.

27. As discussed earlier, such interpretation goes in tune with the relevant constitutional provisions that stood on the date of Tamil Nadu Act 4 of 2013. Merely because due to some reasons or other the office bearers of the board were not elected immediately or board could not start function, we cannot extend the term of office by prescribing later date for commencement of term, in the absence of such a legislative intent.



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28. In view of the discussions made earlier the contentions raised by the learned counsel appearing for the petitioners are not acceptable to this Court and the writ petitions stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

13.09.2023

Index : Yes/No
Speaking order: Yes/No
Neutral citation: Yes/No
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To
1. The Registrar of Co-operative Societies/State Election Officer,

22/24



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No.170, NV Natarajan Maaligai, EVR High Road,
Poonamallee High Road, Kilpauk,
Chennai – 600 010.

2.The Joint Registrar of Co-operative Societies,
Tirupur Region, Tirupur.

3.The President,
Management of T.P.SPL.29, Sivan Malai Primary
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4. Tamil Nadu State Co-operative Societies Selection Commission,
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5.The Joint Registrar of Co-operative Societies,
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(Full Additional Charge)., Dharmapuri.

6.The Administrator,
KK 159-A, Sekkarapatti Primary Agricultural
Co-operative Credit Society Ltd.,
A.Sekkarapatti Adagapadi Post, Dharmapuri District.

7.The Registrar of Co-operative Societies/State Election Officer,
State Election Officer,
No.170, NV Natarajan Maaligai,
EVR High Road, Poonamallee High Road, Kilpauk, Chennai – 600 010.

8.The Registrar of Co-operative Societies (Housing), Chennai.

9.The Secretary,
Management of K 1917 Tiruppur Co-operative Housing Society,
No.108-A, Gemani Complex, Kumaran Road, Tirupur – 641 601.

S.SOUNTHAR, J.

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