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IN THE HIGHCOURT OF JUDICATURE AT MADRAS

RESERVED ON: 14.07.2022

DELIVERED ON: 18.04.2023

CORAM:

THE HON'BLE MR.T.RAJA, THE ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE K.KUMARESH BABU

W.A.No.3299 of 2019

and C.M.P.No.21161 of 2019

R.Vasanthi

President,

K.K – 142, Pottaneri Primary Agricultural

Co-operative Credit Society (PACCS),

Pottaneri, Mettur Taluk,

Salem District.

...Appellant

vs.

1.A.Senthil Murugan

2.The State Election Officer,

Tamilnadu Co-operative Societies Election Commission,

No.273, Kamadhenu Co-operative Stores,

Anna Salai, Chennai – 600 018.



3.The District Election Officer (Co-operative Elections),
Salem District,
Salem.

4.The Election Officer,
K.K – 142, Pottaneri Primary Agricultural
Co-operative Credit Society Ltd.,
Pottaneri, Mettur Taluk,
Salem District.
...Respondents

Prayer: Writ Appeal filed against the order of this Court allowing W.P.No.18086 of 2019, dated 24.09.2019 and the order passed by the learned Judge is liable to be set aside.

For Appellant : Mr.M.R.Jothimanian
For Respondents : R1 & R4 – No appearance
Mr.U.Karunakaran for R2
Mr.V.Manoharan for R3
Additional Government Pleader

J U D G M E N T

(Judgment of the Court was delivered by The Hon'ble The Acting Chief Justice)

The instant Writ Appeal has been filed challenging the order of the learned Single Judge wherein the learned Judge had set aside the election conducted to a Pottaneri Primary Agricultural Co-operative Credit Society (hereinafter referred to as “Society”).

2.The brief facts of the case is that the election to the Society was originally



notified in the month of March 2018 and 61 members had filed their nominations.

While so, a Division Bench of this Court had granted an interim order of status quo which was challenged by the Co-operative Department before the Hon'ble Apex Court which permitted it to conduct the co-operative election. In respect of the aforesaid Society, the applications had been submitted by various candidates and a final list of 41 candidates was published on 23.04.2018. The said election was postponed, as one of the candidates had approached this Court by filing a writ petition in which directions were issued to conduct an enquiry and pass appropriate orders. Based upon the said directions, an enquiry was conducted and the entire election process was directed to be cancelled and a fresh election was ordered to be conducted. Further Election Notification dated 10.01.2019 was issued which became a subject matter of challenge before this Court. The said election was also cancelled and a fresh Election Notification was issued on 14.06.2019. Pursuant to the said Election Notification, 64 nominations were filed of which 25 nominations were duly accepted and five candidates were declared unopposed towards reserved category (two Scheduled Caste and three women) for the remaining six posts of Directors, the election was conducted on 21.06.2019. Among 20 candidates, six persons were elected based on the votes secured by them. The first respondent herein had also filed his nomination, whose nomination was rejected and had challenged the election in



W.P.No.18086 of 2019. Learned Judge had set aside the election on the ground that the guidelines issued by the Division Bench had not been followed as the first respondent had not been permitted to correct the minor errors on the basis of which his nomination had been rejected. It is pertinent to note that the order of the learned Judge had been stayed by this Court.

3.Heard Mr.M.R.Jothimanian, learned counsel for the appellants and Mr.U.Karunakaran, learned counsel for the second and Mr.V.Manoharan, learned counsel for the third respondent.

4.Learned counsel for the appellant would vehemently contend that the learned Judge erred in presuming that the election was not conducted in a fair and proper manner and there was a violation of procedure contemplated under the Tamilnadu Co-operative Rules. He would submit that a detailed counter affidavit had been filed by the Election Officer indicating that the nominations filed by the first respondent were defective. It is not the case of the first respondent that his nomination was correct in all aspects. He would further submit that when an individual files his nomination, he ought to have filled in all the particulars in the nomination form and he cannot rely upon a relaxation so as to validate his nomination form. He would



further submit that the election to the post of six Directors which was set aside by the learned Judge was not unopposed. 20 candidates were found eligible to contest the election for the said six posts and an election was duly held by the Election Officer. When such being so, the learned Judge ought not to have interfered with the election and should have relegated the first respondent to exhaust his remedy under Section 90 of the Tamilnadu Co-operative Societies Act which provides for a resolution of election dispute. He would further submit that the elections were conducted in a fair and free manner and the entire election process were video graphed with Police protection as per the directions of this Court. He would further submit that after the election process has been initiated and completed, the learned Judge has no jurisdiction to interfere with the election process, as there is an alternative remedy available with the first respondent to challenge the election. He would also rely upon two judgments of the Division Bench of this Court in W.A.No.33444 of 2018 dated 10.09.2018 and W.A.No.1282 of 2013 dated 07.06.2013.

5.No appearance on behalf of the first respondent and the fourth respondent, learned counsel for the respondents 2 and 3 would submit that the election process has been conducted in a fair and proper manner and that the learned Judge without considering any of the aspects has set aside the election so conducted. Hence, they



would support the arguments made by the learned counsel for the appellant.

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6.I have considered the rival submission made by the respective counsels and perused the materials available on record.

7.Learned Judge had held that the rejection of nomination of the first respondent is without any justification. Learned Judge had not accepted the reasons given by the Election Officer in rejecting the nomination of the first respondent. He had proceeded on the footing that by rejecting the nomination of the first respondent and other similarly placed persons, the Election Officer was acting at the behest of some vested interested persons as claimed by the first respondent. He further held that the Election Officer had not considered the representation of the first respondent before conducting the election.

8.We are in disagreement with the findings and conclusions arrived at by the learned Judge in setting aside the election that had been conducted to the Society, It is seen from the facts of the case that the election to the post of six Directors had been conducted among 20 candidates who had validly filed their nominations. We fault the



presumptions of the learned Judge that the nominations have been rejected in favour of some vested interested persons is without any basis. Had the six Directors elected unopposed by rejection of other nominations on some ground or the other, we could safely conclude that there was some vested interest in rejecting the nominations. As culled out from the facts, there were 20 valid nominations for the post of six Directors and the election has also been held based upon which the six Directors were elected based upon the votes that have been secured by them.

9.It is also pertinent to note that the first respondent had not challenged the election but had prayed for a mandamus to cancel the election to the Board of Management of the Society and to further direct to conduct a fresh election, hence, such a writ petition at the outset itself cannot be entertained. When there is no challenge to the election conducted, an innocuous prayer to direct to cancel an election that had been conducted is not maintainable. When an election has been held and if the election is sought to be challenged by an individual, the same can be made only by filing an appropriate application as provided under Section 90 of the Tamilnadu Co-operative Societies Act. This view has been reiterated by two Division Bench of this Court by relying upon various other judgments.



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10. In view of the reasonings and conclusions arrived at by us supra, the order impugned in the writ petition passed by the learned Judge dated 24.09.2019 is set aside and consequently, the Writ Appeal is allowed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

(T.R., A.C.J.) (K.B., J.)

18.04.2023

Index: Yes/No

Speaking Order: Non-Speaking Order

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**THE HON'BLE THE ACTING CHIEF JUSTICE
AND
K.KUMARESH BABU, J.**

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**Pre-delivery judgment in
W.A.No.3299 of 2019**

18.04.2023