



W.A.No.3361 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.07.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

AND

THE HONOURABLE MR.JUSTICE P.B. BALAJI

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1.Udayanan
2.Srinivasan
3.Vasuki
4.Guhapriya
5.M.Arumugam

... Appellants

versus

1.T.Murugan
2.M.Muniyasamy
3.R.Pandi
4.M.Mahalingam
5.Abdul Hameed
6.R.Muthuraman
7.Jesudoss Jeyakumar
8.Ponnusamy
9.Seeni Syed
10.Ulagammal
11.Sakthivel
12.Pakkiavathi
13.Valarmathi
14.Syed Karunai
15.M.Thangaraj
16.M.Isakkimuthu
17.M.Mariappan



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18.S.Malliga

19.M.Durai

20.The Tamil Nadu State Co-operative,
Election Commissioner,
No.273, Kamadhenu Super Market I Floor,
Anna Salai,
Chennai -600 018.

21.The Director of Fisheries,
P.Box No.24320199, 24320197 and 24336311
DMS Complex Teynampet,
Chennai- 6.

22.The Assistant Director of Fisheries/Election Officer,
Teynampet,
Chennai-600 006.

23.Kaleeswaran

24.Chammans

25.Kandan

26.Kumar

27.Chitra

28.Anandan

29.Velusamy

30.S.Thulasi

31.Ramani

32.A.Gowri

33.A.Abishekar

34.B.Raja

35.M.Xavier Manoharan

36.Mr.P.Kandan

...

Respondents



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PRAYER: Writ Appeal filed under Clause 15 of the Letter Patent against the order dated 26.09.2019 in W.P. No.19712 of 2019.

For Appellants : Mr.M.R.Jothimanian

For Respondents : No appearance
for R1 to R19, R20, 23, 24, 26, 28,
29, 33, 34, 35
Not Ready notice:
Reg R25, 27, R30 to R32 & 36
Mr.UM.Ravichandran
Special Government Pleader
for R21 & R22

JUDGMENT

(Judgment of the Court was delivered by *D.KRISHNAKUMAR, J.*)

The appeal has been filed challenging the order dated 26.09.2019 passed by the Writ Court in W.P. No.19712 of 2019.

2. Though notice has been served on respondents Nos.1 to 19, none appeared on their behalf either in person or through counsel. Therefore, the appeal was decided on merits and orders were passed in the appeal.



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3. The case of the appellants is that they belong to Fishermen Community and they are members of respective primary level fisheries Cooperative Societies. A notification dated 12.06.2019, was issued by the Assistant Director, Fisheries Department/Election Officer, Teynampet, Chennai, for electing seventeen Directors/Executive Committee Members, in the Tamil Nadu Apex Fisheries Co-operative Federation (TAFCOFED) in the entire State of Tamil Nadu. Pursuant to the said Election Notification, seventeen Directors/Executive Committee Members, were declared elected unopposed to the Tamil Nadu Apex Fisheries Co-operative Federation (TAFCOFED), including appellants 1 to 5 in the appeal. Challenging the said election conducted pursuant to the notification dated 12.06.2019, the respondents 1 to 19 have filed a writ petition in W.P.No.19712 of 2019 before this Court, alleging that the said election was not conducted in a free and fair manner. This Court, by order dated 26.09.2019, has allowed the writ petition by directing the Tamil Nadu State Co-operative Election Commissioner to notify fresh election, in accordance with law, within a period of one month, from the date of receipt of a copy of that order. Challenging the said order, the appellants herein have filed this intra court appeal before this Court.



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4. Learned counsel for the appellants submitted that the respondents 1 to 19 have to approach before the Election Tribunal under Section 90 of the Tamil Nadu Cooperative Societies Act, and without exhausting the said remedy, the private respondents have raised several allegations before the Writ Court by filing a writ petition under Article 226 of the Constitution of India and the prayer as sought for by the private respondents in the writ petition for a mandamus, to cancel the election conducted by the society, is liable to be set aside.

5. Learned counsel for the appellants also relied upon the decision of the Division Bench of this Court in W.A.No.3299 of 2019 dated 18.04.2023. The relevant portion of the Judgment is extracted hereunder:

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



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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."

6. Learned counsel for the appellants also drew attention of this Court to a judgment of the Full bench of the Karnataka High Court in the case of **Maurthi vs State of Karnataka**, reported in **ILR 1990 KAR 1378** and another judgment of Karnataka High Court in the case of **B.Gurumallappa vs State of Karnataka**, reported in **ILR 1991 577**, wherein the High Court of Karnataka has held that the High Court can exercise power under Article 226 of the Constitution in election disputes in the course of extraordinary circumstances and in the normal course, a writ petition cannot be entertained, by setting aside or cancelling the elected bodies.

7. Therefore, in the light of the decision of the Division Bench of this Court and following the ratio decidendi laid down by the Hon'ble Karnataka High Court, the order impugned in the present Appeal is liable to be set aside as the same is not maintainable. If the private



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respondents are having any grievance, there is an alternative remedy available to them by invoking Section 90 of the Tamil Nadu Cooperative Society Act and file an election petition challenging the said election of Directors/Executive Committee Members. Without exhausting the said remedy, the private respondents have filed the writ petition before this Writ Court. Therefore, the order passed by the writ court is liable to be set aside. Accordingly, the order dated 26.09.2019, in W.P.No.19712 of 2019, is set aside. In fine, the writ appeal stands allowed. All the private respondents, if they have any grievance, they can agitate the same before the appropriate forum in accordance with law. There will be no order as to costs. Consequently, C.M.P.Nos.24182 & 21590 of 2019 are closed.

[D.K.K., J.] [P.B.B., J.]
25.07.2023

Index : Yes/No
Neutral Citation : Yes/No
mrn



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To

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D.KRISHNAKUMAR, J.
and
P.B. BALAJI, J.

(mrn)

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