

(2008) 02 MAD CK 0030

In the Madras High Court

Case No : Writ Petition No. 34721 of 2005

I. Sivasubramanian

APPELLANT

Vs

Special Commissioner and Commissioner of Land
Administration, Disaster and Disaster Relief Department, The
District Collector and Thiru. Chellappa Pillai

RESPONDENT

Date of Decision : 11-02-2008

Acts Referred:

Tamil Nadu Farmers Management of Irrigation System Election Rules, 2002 — Rule
14(3), 16, 16(2), 25(4), 25(5)

Tamil Nadu Farmers Management of Irrigation Systems Act, 2000 — Section 12, 17, 2,
22, 3

Citation : (2008) 2 CTC 160 : (2008) 3 LW 960 : (2008) 3 MLJ 1402

Hon'ble Judges : P. Jyothimani, J

Bench : Single Bench

**Advocate : G. Vasudevan, for the Appellant; L.S.M. Hasan Fizal, Government
Advocate for Respondents 1 and 2 and T.R. Rajaraman, for Respondent 3, for the
Respondent**

Final Decision : Allowed

Judgement

P. Jyothimani, J.—Heard Mr. G. Vasudevan, learned Counsel appearing for the
petitioner, Mr. L.S.M. Hasan Fizal, learned Government

Advocate appearing for the first and second respondents and Mr. T.R. Rajaraman
learned Counsel appearing for the 3rd respondent.

2. This writ petition is directed against the order of the first respondent dated
06.10.05 by which the first respondent by allowing the Revision

petition filed by the third respondent has set aside the election of the petitioner
as President of Thoivalai Channel Neerienai Payanpaduthuvor

Sangam (Thoivalai Channel Water Users Association).

3. According to the petitioner he is having irrigation land in Kulasekaramputhoor

Village in Survey Nos. 324/4, 326/10, 326/12 and 336/3 and

therefore he was qualified to be a candidate for the post of President for Thovalai Channel Neerienai Payanpaduthuvor Sangam as per the Tamil

Nadu Farmers' Management of Irrigation System Act, 2000. As per the said Act, the Public Works Department has prepared the Electoral Roll

of the concerned Irrigation System Association and in as much as the petitioner is having land in the said village, he has filed his nomination in the

election which was held on 07.02.04 and he secured 594 votes against his rival candidate namely Mr. Chellappa Pillai, the third respondent herein,

who has secured only 150 votes. The second respondent being the Election Officer has declared the petitioner being elected as President of

Thovalai Channel Neerienai Payanpaduthuvor Sangam.

4. Against the above said order of the second respondent, the 3rd respondent preferred an Election petition in O.P. No. 58/2004 on the file of the

District Court, Kanyakumari on the basis that the petitioner was not qualified to contest the election as per the Act, that the petitioner's father

name was mentioned as Iyaakutti Nadar but in the nomination he has stated the name of his father as Hariharan and therefore he is a fictitious

person. Further, there is no Survey No. 384/4 in Kulasekaranputhoor Village and hence the claim of the petitioner in respect of the land he has

stated to be in possession in S. No. 384/4 is wrong and that the petitioner is having subsisting contract with the Government and therefore he is not

eligible for election to the post of the President.

5. The petitioner has filed a detailed counter statement in the said election petition filed before the second respondent. In the meantime, the 3rd

respondent has also filed a Revision before the first respondent by suppressing the fact of his filing election petition before the District Court,

Kanyakumari on the same ground.

6. The first respondent after hearing both the parties has passed the impugned order setting aside the election of the petitioner as President and

directed the second respondent District Collector to conduct fresh election. The said impugned order of the first respondent is challenged by the

petitioner on various grounds. The term Land and Water Users has been defined u/s 2 (q) & (y) of the Act. u/s 2(q) Land means ""any land under

any registered ayacut of any irrigation system"" and Section 2(y) defines Water

Users as "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. That apart, the order is challenged on the ground that the first respondent has no revisionary powers under the Act especially when the 3rd respondent himself has filed Election O.P. challenging the election of the petitioner. As per Section 17 of the Tamil Nadu Farmers' Management of Irrigation System Act, 2000, the petitioner is owning land and being a member of Thovalai Channel

Organised Water Users Association, is eligible to hold the post of President.

7. It is the further case of the petitioner that the Act does not say that lands classified as dry land in the revenue records cannot have right of

irrigation and in this regard the finding of the first respondent that the petitioner is having only dry land and not wet land and therefore he is not

deemed to be a water user is not correct. It is the case of the petitioner that he has proved before the second respondent Election Officer that he

holds land in Survey No. 324/4, 326/10, 326/12 and 336/5 at Kulasekaramputhooor Village whereas in respect of one Survey Number which has been mistakenly printed as 384/4 whereas the correct S. No. is 324/4.

8. It is the further case of the petitioner that his father's name recorded in the revenue records is Iyyakutti alias Hariharan and to that effect the kist

receipts were issued in the said name and there was no suppression of the name of the father of the petitioner and according to the petitioner his

father's name is Hariharan otherwise called as Iyyakutti. It is the further case of the petitioner that the first respondent has no power to direct the

second respondent to conduct fresh election.

9. The third respondent who has contested against the petitioner in the election has filed a counter affidavit. According to the third respondent, the

Tamil Nadu Farmers' Management of Irrigation System Election Rules, 2002 provides for the preparation of Electoral Roll for the Water Users'

Association under Rule 4. The case of the third respondent is that even at the time of election, the third respondent had submitted his objections to

the Returning Officer on 29.01.2004 itself raising the following objections viz.,

(i) the Address of the petitioner is Sivasubramaniam, S/o Iyyakutty Nadar, D. No. 127, Mylaudy Main Road, Marungoor, whereas in the

nomination to the election he has given his name as S/o Hariharan, Kulasekarapuram therefore, it amounts to impersonation.

(ii) The voters list shows that the petitioner is the S/o Hariharan as land owner of 0.20.5 hect. of land comprised in Re.S. No. 384/4 of

Kulasekarapuram Village.

(iii) The petitioner is a contractor by profession, having kisting agreement with Marungoor Town Panchayat and Agasteeswaram Panchayat at

PWD, Nagercoil Division and therefore he is disqualified.

10. According to the third respondent, in spite of the fact that the said disqualification was brought to the notice of the Returning Officer, he

rejected the same and conducted the election on 07.02.2004 and declared that the writ petitioner was elected as President and therefore,

according to the third respondent the petitioner's election as President is by suppression of material facts. According to the third respondent, when

the petitioner is owning dry lands he did not come under the purview of the definition of Section 2(g) of the Act and he has also submitted that as

per Section 47 of the Act, any decision or order or other proceedings made under the Act can be challenged by way of Revision and therefore

Revision petition is maintainable. It is his further case that pendency of the Election Petitioner is not a bar for filing Revision. Even assuming that the

writ petitioner is qualified to contest the election, the fact that he is owning wet land disqualify him from contesting the election.

11. It is the admitted case that the Election petition filed by the third respondent against the petitioner before the District Court, Kanyakumari has

been subsequently withdrawn. In the said election petition, the second respondent who was the Election Officer has filed counter statement. In the

counter statement, the second respondent has clearly stated that the third respondent has not filed any objection at the time of election regarding

the contesting of the petitioner. The second respondent has further stated in the counter statement that as per the list prepared by the Public Works

Department Officials as per the Act No. 7/2001, the 5th respondent name is shown as Sivasubramoniam and to that effect he has also shown the

records. It was also stated by the second respondent in the counter statement that the petitioner was having irrigation land in the same village and

he hold land in Survey Nos. 324/4, 326/10, 326/12 and 336/3 at

Kulasekaramputhooor village and to that effect the petitioner has also produced documentary evidence and it is also stated that in respect of S. No. 324/4, the Survey number has been wrongly given as S. No. 384/4. It is also specifically denied by the second respondent in the counter statement that the writ petitioner is a contractor by profession and according to the second respondent election process has been completed as per the provisions of the election rules framed under the Tamil Nadu Farmers"

Management of Irrigation Systems Act, 2000 and the results were declared.

12. The election of the petitioner as President of Thoivalai Channel Organised Water Users Association was held on 07.02.04 and the petitioner was declared elected as president which is for a period of five years. As per the Tamil Nadu Farmers" Management of Irrigation Systems Act, 2000 which was enacted essentially to promote and secure distribution of water among its users, adequate maintenance of the irrigation system, efficient and economic utilisation of water to optimize agricultural production, by involving the farmers and inculcating a sense of ownership of the irrigation system in them in accordance with the water budget and the operational plan. The Act has also been enacted with the object of scientific and systematic development and maintenance of irrigation infrastructure as considered best possible through farmers organisations and in order to give the farmers organisation an effective role in the management and maintenance of the irrigation system for effective and reliable supply and distribution of water, the Act has been enacted. Under the Act the term "Land" has been defined u/s 2(q) which means any land under any registered ayacut of any irrigation system.

one other provision that is relevant for this case is ""Water User"" which is defined u/s 2(y), which means:

any farmer holding 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 reads as follows:

Section 3. Delineation of Water users Association area:- (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 purpose 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.

(2) Every Water Users Association 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.

Section 4 while speaking about the Constitution of Water Users Association makes it clear that every Water Users Association shall consist of all the water users in such Water Users Association area, as members. Section 4 of the Act reads as follows:

Section 4. Constitution of Water Users Association:- (1) There shall be a Water Users Association called by its local distinct name for every Water Users Association area delineated u/s 3.

(2) Every Water Users Association shall consists 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 purpose 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.

A overall view of the Act shows that for the purpose of distribution of water in equitable manner, Distribution Committee is constituted in which the

President of Water Users Association becomes ex-officio member. In addition to that there is a Project Committee for every Project initiated by

the Government in which the elected President as well as its Members are made

as parties.

13. The functions of the Water Users Association are enumerated u/s 22 of the Act which reads as follows:

Section 22. Functions of Water Users Association:- The Water Users Association shall perform the following functions, namely:

(a) to prepare and implement an operational plan and a Rotational Water Supply for each irrigation season, consistent with the operational plan,

prepared by the Distributory Committee and the Project Committee, and based upon the entitlement, area, soil and cropping pattern as approved

by the managing committee or Distributory Committee, or as the case may be, of the Project Committee;

(b) to prepare a plan for the maintenance of irrigation system in the area of its operation at the end of each crop season and carry out the

maintenance works of both distributory system, water courses and field drains in its area of operation with the funds of the Water Users

Association, from time to time;

(c) to regulate the use of water among the various sluices under its area of operation according to the Rotational Water Supply;

(d) to promote economy in the use of water allocated;

(e) to assist the authorities of the Revenue department of the Government, in the preparation of demand and collection of water charges;

(f) to maintain a register of water users, as published by the Revenue department of the Government;

(g) to prepare and maintain an inventory of the irrigation system within the area of operation;

(h) to monitor flow of water for irrigation;

(i) to resolve the disputes, if any, between the members of the Water Users Association in its area of operation;

(j) to raise resources;

(k) to maintain accounts;

(l) to cause annual audit of its accounts;

(m) to assist in the conduct of elections to the managing committee;

(n) to maintain such other records, as may be prescribed;

(o) to abide by the decisions of the Distributory Committee and Project

Committee;

(p) to conduct general body meetings, in such manner as may be prescribed;

(q) to encourage avenue for plantation on canal and tank poramboke, and to protect and maintain such plantations;

(r) to conduct regular water budgeting and also to conduct periodical social audit, as may be prescribed; and

(s) to remove the encroachments on canal, drains and tank poramboke in the area of jurisdiction of the Water Users Association.

14. In exercise of the powers conferred u/s 50 of the Act, the Government has enacted Tamil Nadu Farmers' Management of Irrigation Systems

Election Rules, 2003. It provides for nomination of Polling Officer by the Collector and also Returning Officer appointed by the Collector, who

shall not be below the rank of Revenue Divisional Officer. Rule 7 contemplates preparation of electoral roll for Water Users Association. The

preparation of electoral roll also provides for publication of electoral rolls which is in the custody of the Collector, which shall be kept in the office

of the Collector for a period of six years from the date of its final publication or till a new roll is published whichever ever is earlier.

15. The procedure for conduct of election to the office of the Members of Territorial Constituencies and President of Water Users Association is

enumerated under Chapter-4 of the election rules. Rule 14(3) states as follows:

Rule 14. Presentation of Nomination Paper:

(1) ...

(2) ...

(3) A candidate for the election of member of Territorial Constituency or President of a Water Users Association and his proposer shall be the

persons, whose names are borne on the electoral roll relating to the Territorial Constituency or the Water Users Association as the case may be.

The rule also provides for scrutiny of nominations which is enumerated in Rule 16(2) which reads as follows:

Rule 16. Scrutiny of Nominations:

(1) ...

(2) The nomination forms shall then be examined with reference to the electoral roll and objections if any shall be decided by the Returning Officer

at the time of scrutiny of nominations after summary enquiry as he thinks necessary. The Returning officer may reject any nomination on any of the following grounds namely:

- (i) that the candidate is ineligible for election as a member or President of Water Users Association u/s 17 of the Act; or
- (ii) that the name of the candidate (or) of his proposer is not found in the electoral roll; or
- (iii) that the signature of the candidate or the proposer in the nomination paper is not genuine;

Provided that the nomination of a candidate shall not be rejected merely on the ground of an incorrect description of his name or of the name of his

proposer, or of any other particulars relating to the candidate or his proposer as entered in the electoral roll if the identity of the candidate or

proposer, as the case may be, is otherwise established beyond reasonable doubt.

The Rule 25(4) & (5) provides for challenging of identity of persons. For the purpose of this case, Rule 25(4) & (5) is extracted below:

Rule 25. Challenging of identity:

(1) ...

(2) ...

(3) ...

(4) If, after the enquiry, it is considered that the challenge has not been established, the person challenged shall be allowed to vote and if the

challenge has been established, the person challenged shall be debarred from voting and such person shall be handed over to the Police personnel

on duty for being dealt with in accordance with Law.

(5) The decision of the Presiding officer for the Polling station, under Sub-rule 4 shall be final.

The entire rules prescribe the procedure to be followed for the purpose of conducting the election and declaration of results, even though there is

no clause about the procedure to be followed in case of failed candidates to enable them to dispute the election.

16. Pending writ petition, this Court granted an order of interim stay on 28.10.05 and and same was made absolute on 27.10.06.

17. In the present case, on the facts and circumstances and on perusal of the

counter affidavit filed by the second respondent being the Election

Officer in the election petition, makes it very clear that the third respondent has never raised any objection about the entitlement of the petitioner.

Even otherwise as per proviso to Rule 16(2), it is made clear that nomination of a candidate shall not be rejected merely on the ground of an

incorrect description of his name. The contention of the third respondent is that if the petitioner's name is given as Sivasubramanian S/o Hariharan

in the nomination whereas his father's name is Iyyakutty Nadar and therefore according to the third respondent it is impersonation. In as much as

the second respondent Election Officer in the counter affidavit filed in the Election O.P. has clearly made out a case that there was no question of

mistaken identity of the petitioner, I do not think that the impugned order which proceeded on the basis that there is impersonation or mistaken

identity of the petitioner is proper.

18. As far as the next point on which the Revision Petition came to be allowed is that the petitioner was not owning nanja land and he was owning

only dry land and therefore the petitioner cannot be called as a Water User as per the said Act. As I have enumerated above, the term Water User

which is defined u/s 2(y) has never distinguished between holder of dry land and wet land, it only contemplates the person who is holding land as a

water user which includes any individual or body or a society using water for agriculture, from a Government source. Therefore, from a bare

reading of the rules, I do not think that the decision arrived at by the first respondent in exercising his Revisionary powers that the petitioner cannot

be deemed to be a water user is correct.

19. In this regard, it is again relevant to note the counter statement filed by the second respondent Election Officer, wherein he has not only stated

that the Survey numbers of the property of the petitioner has been mistakenly stated as S. No. 384/4 which is otherwise S. No. 324/4 and he has

categorically stated that the above land comprised in S. Nos. 324/4, 326/10, 326/12 and 336/3 of Kulasekaramputhooor village owned by the

petitioner are agricultural land of the same village and in such circumstances, the reasoning given by the first respondent in setting aside the election

of the petitioner on the ground that the petitioner cannot be termed as water user is not sustainable.

20. It is relevant to reiterate the contention of the third respondent that the petitioner's disqualification was brought to the notice of the Election

Officer at the time of the election and the second respondent Election Officer has not considered the same and has erroneously declared that the

petitioner was elected as President of Thovalai Channel Neerienai Payanpaduthuvor Sangam.

21. Section 47 of the Tamil Nadu Farmers' Management of Irrigation Systems Act, 2000 empowers the Commissioner, first respondent herein

with the power of revision, Section 47 reads as follows:

Section 47. Revision by Commissioner:- The Commissioner may, either on his own motion or on application made, call for and examine the

records of any farmers organisation or as the case may be, the records of the Apex Committee in respect of any decision, order, or other

proceedings made under this Act, to satisfy himself as to the correctness, legality or propriety of any such decision or order, or as to the regularity

of such proceedings and if, in any case, it appears to the Commissioner that such decision, order or proceedings should be modified, annulled,

reversed or remitted for reconsideration, he may pass orders accordingly;

Provided that the Commissioner shall not pass any order prejudicial to any person unless he has been given an opportunity of making a

representation.

The revisionary powers enables the Commissioner to examine the records of any farmers association and the records of the Apex Committee. The

Apex Committee which is constituted u/s 12 of the Act shall exercise such powers and functions as may be prescribed by the Government so as to

lay down the policies and guidelines for implementation of the provisions of this Act and it is in respect of the decision taken by the Apex

Committee apart from satisfying himself as to the correctness, legality or propriety or regularity of the proceedings, the Commissioner has power of

revision.

22. In this case as it is seen in the counter affidavit filed by the second respondent before the Election Tribunal, the third respondent has not raised

any objection about the disqualification of the petitioner during the time of election and therefore cannot file revision u/s 47 of the Act especially

when his Election O.P. was pending. The next point on which revision petition

came to be allowed is that the writ petitioner was a contractor in the Public Works Department. In the counter affidavit filed before the Election Tribunal, the second respondent has stated that on enquiry it was found to be incorrect.

23. In these circumstance, the impugned order passed by the first respondent is not only without jurisdiction, but also in an erroneous interpretation

of the various terms of the Act. Even though there is no provision under the election rules as stated above for the defeated party to file election

petition, once the petitioner has approached the District Court by filing an election petition under the common law, it is not known as to how the

first respondent has exercised the revisional jurisdiction especially when he was not expected to deal with the functioning of the Water User

Association and also the policies laid down by the Apex Committee as enumerated u/s 47 of the Act. It is also relevant to note that the election

results were declared on 7.2.2004 for a period of five years and the writ petitioner has been continuing in the post of President all these years and

he has got only one more year. In view of the same, the writ petition stands allowed and the impugned order passed by the first respondent in his

proceeding No. Na.Ka.Va.Ni.6(2)/20241/2004 dated 06.10.2005 is set aside. No costs.