

(1969) 01 MAD CK 0003
In the Madras High Court

O.N. Muthu Ramalingam and Another	APPELLANT
Vs	
T.M. Sembuselli Gounder, Member, Executive Committee, Bhavani Co-operative Land Mortgage Bank Ltd. and Others	RESPONDENT

Date of Decision : 21-01-1969

Acts Referred:

Citation : (1969) 2 MLJ 243

Hon'ble Judges : P. Ramakrishnan, J

Bench : Single Bench

Judgement

P. Ramakrishnan, J.—These two writ petitions deal with a common matter. That is why they were heard together. The occasion, which led

to the filing of the writ petitions, is the proceeding for election of the Executive Committee of the Bhavani Co-operative Land Mortgage Bank

Limited, which is a body admittedly governed by the Madras Co-operative Societies Act, 1961. According to the affidavits of the petitioners, the

Executive Committee as well as the President elected under the provisions of the previous Co-operative Societies Act, 1934 were functioning till

June, 1966. Then for the first time the provisions of the new Co-operative Societies Act LIII of 1961, had to be applied for election of all the

members of the Executive Committee including the President. Besides the main provisions of the Act there are also an elaborate set of Rules under

the aforesaid Act issued by the Government from time to time. Chapter V of the Rules contains detailed provisions for the conduct of elections to

the Managing Committee or Executive Committee of the societies. These Rules have to be applied in the context of Section 27(3)(a) of the Act,

which provides that the term of office of an elected member of the committee constituted under the Act shall be three years provided that as nearly

as may be one-third of the members elected to the committee at the first election shall retire at the end of the first year, then another one-third at

the end of the second year and the remaining one-third at the end of the third year. The Rules For the Conduct of the Elections provide inter alia as

follows : (1) Rule 29 (2) provides that the President or in his absence any other person shall preside over the meeting for the election of the

members of the committee provided that no person seeking election shall act as the presiding officer, in which case any other officer of the society

not seeking election shall be chosen as the presiding officer by the committee of the society; (2) Rule 29 (5) (iii) says that every nomination paper

shall be presented in person to the President of the society or any other officer duly authorised in this behalf by the committee of the society, and

that if the President himself is a candidate, for election, the Committee of the society shall authorise some other officer who is not a candidate for

election, to receive the nomination papers; (3) Rule 29 (6) (i) (a) is to the effect that on the day following the date fixed for the receipt of

nomination papers the committee of the society shall take up the scrutiny of the nomination papers, but a member of the committee whose name

has been proposed for election shall not attend and shall not participate in such meeting in his capacity as a member of the committee; (4) Rule 30

(2) says that the election shall be held at a general meeting of the society and the President or in his absence any other person presiding over the

meeting shall commence and conduct the election, provided that no person seeking election shall act as the presiding officer and any other officer

of the society not seeking election shall be chosen as the presiding officer by the general body of the members of the society.

2. Apparently, it was felt that at the election of the first committee to be formed under the new Act, the abovesaid provisions of the Rules, could

not be effectively applied. The abovesaid rules were evidently intended to deal with the election to the committee at subsequent stages after the first

committee had been formed, when the principle enumerated in Section 27(3)(a) for the retirement of one-third of the members elected to the

committee after each year, would take effect. Realising this practical difficulty the Government in exercise of the powers conferred on them by Rule

103 of the Rules issued G.O.Ms. No. 5693 (Co-operative) I.L. and C., dated 5th December, 1963 applying to the societies the provisions of

Rules 29 and 30, subject to the modifications specified below:

(1) The proviso to Sub-rule (2) of the said Rule 29 or the proviso to Sub-rule (2) of the said Rule 30 shall be omitted.

(2) In Sub-clause (a) of Clause (i) of Sub-rule (6) of the said Rule 29, the second sentence and the proviso to the said sub-clause shall be omitted.

The petitioners in both these writ petitions feel aggrieved, because they found after they had filed their nomination papers that it was the outgoing

President of the Bank who had called for nomination papers and arranged for their scrutiny by the committee and also actually held the election in

spite of the fact that he himself had filed a nomination and also stood for election. They were apprehensive that the President would be in a position

to influence the election because of his active interest in the result, and, therefore, the petitioners and some more persons withdraw their

candidature. The result was that the remaining candidates including President were declared duly elected without opposition, as their number was

less than the required number of committee members. The petitioners urge that the arrangement which has resulted from the Government Order

and on which the outgoing President of the committee had relied for his action led to a situation where the President of the Committee had to

conduct an election as a Presiding Officer, in which election he himself was personally interested as a candidate. This would tantamount to creating

a situation where the democratic principle of a free election would be nullified. The Presiding Officer of the election could not effectively discharge

the duties with fairness and impartiality, when he himself is a candidate for the election.

3. There can be no gain-saying that such a result has followed in this case from the peculiar features of the exemption granted by the aforesaid

Government Order. The Registrar of Co-operative Societies in a circular issued on 10th December, 1963 explained the scope of the Government

Order. He sought to justify it on the ground that such a course was necessitated by the exigency which arose in the case of election of members of

the committee for the first time following the new Act. But that is hardly a circumstance, which would justify a result in which a person is made to

appear, so to speak, to be a judge in his own cause. That violates not merely the principles of natural justice, but also the principles of fairplay and

free election, essential to be observed in a democratic set up. It is not as if the Rules themselves do not provide for a remedy to avoid such a result.

The Registrar under Rule 29 (23) of the Act is empowered to appoint any person as an election officer to conduct the election, if, in his opinion,

such a course is necessary for the proper conduct of the election. Where an election officer is so appointed, all references to the President,

Presiding Officer or the committee, as the case may be, shall be construed as reference to the election officer. There was, therefore, scope under

the Act to resort to other provisions which would enable the principle of a free election under a democratic set up to be adopted in the present

case, and avoid the aforesaid anomalous situation, of which the petitioners, in my opinion, have a legitimate grievance.

4. It is urged in particular, in the counter-affidavit, that the petitioners had withdrawn their nomination papers at the time of the election and

therefore they have no subsisting grievance, which could be agitated in these writ petitions. There is a short answer to this argument. They

withdrew their nomination papers, because they were aggrieved against the arrangement made for the conduct of the election from the time of the

receipt of the nomination papers, their scrutiny and the subsequent holding of the election. If the procedure at any of these stages in which they

took part is irregular, the petitioners certainly can seek for relief in this writ proceeding. Therefore, the fact that they withdrew from the election

after filing nomination papers feeling aggrieved against the unsuitable method proposed for the several subsequent stages of the election would not

be a ground for denying the remedy which they now seek. The petitions are therefore allowed and the impugned election of the respondents in

these writ petitions is set aside. It will be open to the concerned authorities to arrange for a proper election to be held, after issuing suitable

direction in modification of the directions issued in the Government Order aforesaid and which will be in conformity with the true principles of

election to a democratic body. No order as to costs.