
(1966) 02 MAD CK 0025

In the Madras High Court

Case No : Writ Petition No. 4415 of 1965

P.B.K. Raja Chidambaram

APPELLANT

Vs

R.P. Rathna Sarma and Others

RESPONDENT

Date of Decision : 17-02-1966

Acts Referred:

Constitution of India, 1950 — Article 226, 329

Citation : AIR 1967 Mad 182

Hon'ble Judges : Kailasam, J

Bench : Single Bench

Advocate : T.R. Srinivasan, for the Appellant; S. Rajagopalan and P.R. Gokulakrishnana, for the Respondent

Judgement

(1) This petition is filed praying for the issue of a writ of certiorari calling for the records connected with the proceedings of the Scrutiny Committee for the election of a Director to the Tiruchirapalli District Co-operative Central Bank Limited dated 4-11-1965 and for quashing the same as illegal and without jurisdiction.

(2) The Tiruchirapalli District Co-operative Central Bank consists of 19 Directors. Out of the 19 Directors, 17 had already been elected. One Director has to be elected from the Lalguidi Co-operative Supervising Union and another from individuals holding fixed deposits. The business year of the Bank begins from 1st January and ends by the 31st December. The term of office of elected members in three years; but it is provided that one third number of members elected from the Board at the first election shall retire at the end of the first year after such election and another one third number of members to retire in the second year. The members that are to retire are to be determined by lots cast by the Board. As a result of lost cast, the petitioner's term as a Director of the Bank expired on 31-12-1965. The petitioner wanted to be elected to the District Co-operative Central Bank from the Lalguidi Co-operative Supervising Union.

(3) on 3-11-1965 the petitioner filed his nomination for election to the Central

Bank. When the nominations were taken up for scrutiny by the scrutinizing Committee consisting of the first respondent, President of the Supervising Union, and respondents 2 to 5, the members of the committee, an objection was raised to the nomination of the petitioner on the ground that he had seconded the nomination of the sixth respondent. This objection was upheld by respondents 1 to 5, and the nomination of the petitioner was rejected.

(4) The petitioner questioned the correctness of the rejection of his nomination on the ground that he did not sound the nomination of the sixth respondent for election to the Central Bank, but only for election to the governing body of the Union and that a fraud was played upon him by changing the name in the nomination paper. This plea of the petitioner was rejected by the Scrutinising Committee. As this finding by the Scrutinising Committee is one of fact, it was rightly not raised before this Court.

(5) The only contention raised in this Court was that even if the petitioner is found to have seconded the nomination of the sixth respondent for election to the Central Bank, that would not invalidate his nomination, as there is no prohibition against a candidate nominating another. The procedure as to election is elaborately laid down in the Madras Co-operative Societies Rules 1963. Rule 29, Cl. (5) relates to nomination of a candidate for election. It requires that the nomination should be made in Form No. 3 which will be supplied to any member free of cost on application. Form No. 3 requires the name of the society, admission number and name of the candidate, father's name, and his address. The admission number and name of the proposer and the admission number and the name of the seconder are also to be given. Every nomination papers shall be signed by two members whose names are included in the list. The nomination papers should be presented in person to the President of the society before the date and hour specified. After receipt of the nomination paper, the person who receives it shall enter in the nomination paper the serial number and certify the date and hour at which the nomination paper was received by him and acknowledge receipt of the nomination paper. Rules 29, Clause (6) relates to scrutiny and it enables the committee to examine the nomination papers and decide all objections, which may be made at the tile, to any nomination and either on such objection or on its own notion after such summary enquiry, if any, as the committee thinks necessary, reject any nominations for valid reasons. The committee is also required to record in writing a brief statement of its reasons for its rejection. Apart from the requirements under R. 29(5), a candidate shall be eligible for being elected or appointed as a member of the committee if he suffers from any of the disqualifications mentioned in S. 28 of Act LIII of 1961. Neither the Co-operative Societies Act, or the rules framed under it or the bye-laws of the Central Bank expressly state that the nomination of a candidate who has seconded the candidature of another shall be disqualified and his nomination rejected. In the absence of any specific rule, the disqualification and the rejection of the nomination on this ground is beyond the powers of the scrutinising committee.

(6) It was next contended on behalf of the respondents that even if the nomination of the petitioner was erroneously rejected, the petitioner has other remedies and a relief by way of a writ of certiorari is not available to him.

(7) Section 73 of the Madras Co-operative Societies Act, 1961, provides that if any dispute arises touching the constitution of the committee, such dispute shall be referred to the Register for decision. It has been held that the election of an officer is certainly a part of the business of the society. A Full Bench of this Court in *M.S. Madhava Rao and Others Vs. D.V.K. Surya Rao, Member of the Pithapuram Co-operative Bank, Pithapuram and Others*, laid down that the validity of a nomination of a candidate for election to the Board of Directors of a registered society is a dispute "touching the business" of the society within the meaning of S. 51, which corresponds to present S. 73 of the Madras Co-operative Societies Act, 1961. It has also been held by the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, and followed by this Court in *Muthuvelappa Gounder v. Deputy Registrar of Co-operative Societies*, (1960) 2 MLJ 393 that the word "election" means the entire process which consists of several stages and embraces many steps, some of which may have an important bearing on the result of the process. The view expressed in *P.K. Muthuvelappa Gounder Vs. The Deputy Registrar of Co-operative Societies and Others*, is that the whole process of election commence from the state of nomination, and the word "election" as including nomination also in its wide sense of the term. On the authority of the decisions cited above, there can be no doubt that the rejection of a nomination paper is a dispute touching the constitution of the committee under S. 73. But the proviso to Cl. (1) of S. 73 excludes any dispute relating to or in connection with the election to a committee being referred to the Registrar under this sub-section till the date of the declaration of the result of such election. The only remedy of the person whose nomination is rejected is to approach the Registrar u/s 73 after the date of the declaration, his remedy before that date having been barred by the proviso to S. 73. Clause (6) of Section 73 provides that the Registrar may pass such interlocutory orders as he may deem for in the interests of justice. The power to pass interlocutory orders will only be available in disputes which can be referred to him under S. 73, that is, election disputes after the date of the declaration of the results of such election. As an election dispute before the date of declaration of the results of such elections. As an election dispute before the date of declaration of results cannot be referred to him under S. 73, he will not have any power to pass any order in an election dispute regarding the rejection of a nomination before the declaration of the election results. It was contended that even if the dispute cannot be referred to the Registrar, an application can be made to him under S. 97 for examining the record of any officer subordinate to him and revising the order. It was submitted that the power of revision is available in cases not covered under S. 96 Section 96 (1) provides for an appeal to the Tribunal against the order of the Registrar under sub-sections (2), (3) and (4) of S. 73, and if no appeal was available under S. 96, the dispute not being

one referable under S. 73, an application under S. 97 was maintainable. Section 97 empowers the Registrar to call for and examine the record of any officer subordinate to him. An "officer", as defined in S. 2(8), includes a member of a committee and any other person empowered under the rules or the by-laws to give directions in regard to the business of the Society. A "committee" is defined as meaning the governing body of a registered society. The scrutiny committee is not the governing body of the registered society and therefore its members are not members of a committee as required by the definition. Though the scrutiny committee is empowered to scrutinise the nominations and accept or reject them, it cannot be stated that they have any power to give directions in regard to the business of the society. The scrutiny of the nomination would not amount to a direction regarding the business of the society. The powers of the Registrar to entertain any dispute in connection with the election of a candidate before the date of declaration of the results is specifically prohibited under the proviso to S. 73. It will not be logical to read into S. 97 an intention to empower the Registrar to go into a dispute relating to rejection of nomination before the date of declaration under S. 97 by way of a revision unless there are express provisions to that effect. I am unable to agree with the contention that under S. 97 the Registrar, though prohibited from entertaining an appeal, could entertain a revision against the order rejecting a nomination pending declaration of the results. Reference was made to S. 120 and it was submitted that the Government could direct the Registrar to make an enquiry into the rejection of the nomination paper of the petitioner. Section 120 is intended to enable the Government to direct the Registrar to make an enquiry or to take appropriate proceedings under the Act in any case specified in the order, Section 120 cannot be availed of by the petitioner to approach the Government for relief. A consideration of the various sections makes it clear that though the dispute relating to the rejection of a nomination can be referred to the Registrar it can only be done after the declaration of the results and the petitioner has no remedy to question the correctness of the invalidation of the nomination before the declaration of the results. The petitioner is also not entitled to prefer an application for revision under S. 97 to the Registrar or to the Government under S. 120.

(8) learned counsel for the respondent contended that the intention of the Legislature was not to provide any remedy against the order of rejection of the nomination until the results were declared, the purpose being to avoid unnecessary prolongation of the process of election. Strong reliance was placed on the decision of the Supreme Court in *N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others*, . It was held by the Supreme Court that the High Court has no jurisdiction under Article 226 of the Constitution to entertain petitions regarding improper rejection by the Returning Office of nomination papers of candidates for election either to the House of Parliament or to the State Assembly and the jurisdiction of the High Court under Art. 226 has been excluded in regard to matters provided for in Art. 329 which covers all "electoral

matters". The Court expressed the view that Article 329(b) was enacted to prescribe the manner in which and the stage at which this ground and other grounds which may be raised under the law to call the election in question, could be urged. Article 329(b) of the Constitution prohibits the questioning of election to the Houses of Parliament and Legislatures of the State except by an election petition presented to such authority and in such manner as may be provided for by or under and law made by the appropriate Legislature. The Representation of the People Act, 1951, was enacted in pursuance of the powers conferred under Article 329 of the Constitution, and the provisions of the Act, particularly Ss. 80, 100, 105 and 170, make it clear that no petition regarding election could be entertained before the declaration of the results of the election. Learned counsel for the respondent submitted that a regarding of the Madras Co-operative Societies Act and the rules framed thereunder would show that interference before the stage of declaration of the results was not intended. But it has to be noted that the power of the High Court to interfere under Art. 226 against the order of rejection of the nomination before the declaration of the results had not been specifically taken away under the Madras Co-operative Societies Act as in the case of elections to the Houses of Parliament and Legislature by Article 329(b) of the Constitution and the Representation of the People Act. Without the power of the High Court under Art. 226 of the Constitution being taken away by competent authority, the contention that the High Court has no power to interfere cannot be accepted as sound. While admitting that the High Court's power to interfere in this case has not been taken away, it was argued that interference at this stage would have the effect of retarding the process of election and would be contrary to the spirit of the enactment. In support of this plea, learned counsel relied on a decision of the Madhya Pradesh High Court reported in Thakur Prasad Vs. V.S. Mehta and Others, Dixit C. J. to whom the question was referred to on difference of opinion, was of the view that the Supreme Court's decision in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, was directly in point and held that the Madhya Pradesh Panchayats Act (7 of 1962) and the rules framed thereunder intended to give a sort of finality to different stages of election and to provide that all matters arising during the election shall be determined and adjudicated upon, after the election is over. The learned Judge, while holding that the provisions of the Act did not in any way affect the jurisdiction of the High Court under Art. 226 or 227, observed that it is not proper to interfere with the orders of the Returning Officer before any election or co-option under the Act is notified.

(9) The contention that under the Madras Co-operative Societies Act, 1961, it was not intended to provide any remedy against the rejection of a nomination paper till the declaration of the result is made is based on the proviso to S. 73. The section read as a whole makes it clear that the Registrar is not empowered to take the matter of an election dispute at any stage before the declaration of the result. But that does not mean that the Legislature intended that the question cannot be agitated before a civil Court or under Art. 226 of the

Constitution of India. The right to resort to civil Court cannot be barred unless it is specifically prohibited. So also, the wide power of the High Court under Article 226 cannot be curtailed unless by one or other of the Articles of the Constitution of India. The only question, therefore, that has to be considered is whether it is desirable that the High Court should interfere at the stage before the election result is declared. The answer to this question would depend on the facts of the case. If the rejection of the nomination is without jurisdiction and on the face of it unsupportable in law and the denial of a remedy at the stage would cause considerable hardship to the petitioner, the High Court will not hesitate to exercise the powers conferred on it by the Constitution. In this case it has been pointed out that neither the Act, the Rules nor the bye-laws disqualify the nomination on the ground that he seconded the nomination of somebody else. In this connection it may be noted that u/s 279 of the District Municipalities Act and under the Panchayat Act an elector desiring to stand is forbidden from signing the nomination paper as an elector or as seconder. There is no such prohibition in the election under the Madras Co-operative Societies Act and such prohibition cannot be inferred. The rejection of the nomination papers, therefore, on the fact of it is unsupportable.

(10) Learned counsel for the respondent contended that even if it is held that the rejection is illegal and unsupportable in law, the High Court should not interfere with it as the scrutiny committee is not a judicial or a quasi-judicial tribunal statutory entrusted with the right and duty to decide disputes between parties. Reliance was placed on the decision of a Bench of this Court reported in *C. Lakshmiah Reddiar Vs. The Sri Perumbadur Taluk Co-operative Marketing Society Ltd.*, . In that case the petitioner prayed for the issue of a writ of certiorari to quash the proceedings of the Board of Directors of a Co-operative Society in so far as if related to the rejection of the nomination paper of the petitioner. Certain regulations were framed by the Society for the conduct of election of Director from among the members of the Society. These regulations empowered the Board to consider the objections to the nominations for the election of members of the Board of Directors. The Board was not a statutory tribunal, but was only discharging functions entrusted to it by regulations. Those regulations were framed by the society itself and had no statutory force. On the facts, therefore it was held that a writ under Article 226 cannot be issued. It was pointed out by the Bench that the petitioner could seek his remedy u/s 51 of the Madras Co-operative Societies Act. Section 51 of the Madras Co-operative Societies Act, 1932, corresponds to Section 73 of the Madras Co-operative Societies Act, 1961. It is pleaded that the Bench decision is an authority for the proposition that a writ does not lie against the order of the scrutiny committee. Though Section 73 of the 1961 Act is more or less the same as Section 51 of the 1932 Act, it has to be noted that statutory rules were framed (The Madras Co-operative Societies Rules) under the powers conferred by sub-sections (1) and (2) of Section 119. It is not denied that the rules are not statutory rules or that they are not enforceable by the issue of a writ. After the enactment of the Madras Co-

operative Societies Act, 1961, and the framing of the Madras Co-operative Societies Rules 1963, the decision in C. Lakshmiah Reddiar Vs. The Sri Perumbadur Taluk Co-operative Marketing Society Ltd., is inapplicable.

(11) On a consideration of all the circumstances in the case, I am satisfied that even though the results of the election have not been declared, this is a fir case in which a writ of certiorari should issue quashing the order of the scrutiny committee rejecting the nomination of the petitioner. The writ petition is allowed; no costs.

(12) Petition allowed.