

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

W.P.No.1776, 1859, 1969 of 2022

WMP.Nos.1935, 1936, 2005, 2009, 2130 & 2131 of 2022

WP.No.1776 of 2022

S.Anthonydoss

...Petitioner

Vs.

1.Union of India

Rep by.-

The Secretary to Government FFR Division
(Freedom Fighters and Rehabilitation Division),
Ministry of Home Affairs, New Delhi.

2.The Repatriates Co- Operative Finance and
Development Bank Limited

Rep by its Managing Director
“REPCO TOWER”

No.33, North Usman Road,
T.Nagar, Chennai-600 017.

3.The Central Registrar of Cooperative Societies
O/o. Central Registrar of Cooperative Societies,
Krishi Bhavan, New Delhi.

4.The Chairman

The Repatriates Co- Operative Finance and
Development Bank limited

The Secretary to Government
Public and Rehabilitation Department
Government of Tamil Nadu
Fort St. George, Chennai-600009

5.Returning Officer

The Deputy Registrar of Cooperatives
Societies (Credit)

The Repatriates Co- Operative Finance and
Development Bank Limited
REPCO TOWER NO.33 North Usman Road,
T.Nagar, Chennai-600017

....Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records pertaining to the impugned Election Notice issued by the 5th respondent having Rc. 530 / 2022 / RGB Elections dated 07-1-2022 and quash the same and consequentially direct the 5th respondent to conduct election after removal of the depositors / General Public From A class voting members.

For Petitioner : Mr.R.Udhayakumar
For Respondents : Mr.R.Rakesh Vivekanantham [R1]
Standing Counsel
Mr.Omprakash
Senior Counsel for
Mr.A.Ilangovan [R2 and R5]
Mr.V.Manoharan[R2]
Additional Government Pleader

WP.No.1969 of 2022

P.Ramachandran

...Petitioner

Vs

- 1.Union of India
Represented by its Joint Secretary cum
Central Registrar for Cooperative Societies
Department of Agriculture and Cooperation
Ministry of Agriculture
- 2.The Repatriates Cooperative Finance and
Development Bank (REPCO Bank)
Represented by its Chairman
Public and Rehabilitation Department,
Secretariat Fort St. George Chennai
- 3.The Repatriates Cooperative Finance
and Development Bank (REPCO Bank)
Represented by its Managing Director
No.33,North Usman Road, T.Nagar, Chennai 600 017.

4.The Returning Officer,
The Repatriates Cooperative Finance and
Development Bank (REPCO Bank)
No.33 North, Usman Road, T.Nagar Chennai 600017. ...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorari Call for the records in election notice in RC 530/2022/RGB Elections dated 7.1.2022 issued by the 4th respondent and quash the same as illegal.

For Petitioner : Mr.V.Raghavachari
For Respondents : Mr.R.Rakesh Vivekanantham [R1]
Standing Counsel
Mr.Omprakash
Senior Counsel for
Mr.A.Ilangovan [R3 and R4]
Mr.V.Manoharan[R2]
Additional Government Pleader

W.P.No.1859 of 2022

M.K.K.Rajithvarman
104 Velachery Main Road Pallikarnai
Chennai 100 ...Petitioner

Vs.

- 1.The Principal Secretary
Ministry of Home Affairs,
Office of the Ministry of Home Affairs
New Delhi-110 001
- 2.The Joint Secretary (Rehabilitation Division)
Ministry of Home Affairs
New Delhi-110 001
- 3.The Central Registrar of the Multi State
Co-operative Societies
Dept. of Agriculture and co-operation,
Ministry of Agriculture,
Krishi Bhavan, New Delhi 110 001

4. Repatriates Co-operative Finance and Development Society Ltd
Rep. by its Managing Director
REPCO Tower, 33 North Usman Road,
T. Nagar, Chennai-17
5. The Repatriates Co- Operative Finance and Development Bank Limited
Rep by its Chairman
Public and Rehabilitation Department,
Secretariat, Fort St. George,
Chennai-600 009
6. The Election Officer
Repatriates Co-operative Finance and Development Society Ltd.
REPCO Tower,
33, North Usman Road, T. Nagar Chennai 17
7. The Registrar
State Co-operative Societies
170, E.V.R. Periyar Salai,
Kilpauk Chennai 10

...Respondents

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India, to issue a Writ of Certiorarified mandamus calling for the records relating to the election notice published in Dinamani daily on 7/01/2022 vide No. 530/ 2022/RGB for the Election for the post of delegates of the 4th respondent society to be conducted on 6/2/2022 issued by the 4th respondent and quash the same and to allow the objections raised by the petitioner thereby appointing an Election officer to conduct fresh election as per by-laws of the 4th Respondent society after eligible ordinary A class repatriates members voters list is prepared excluding B Class Nominal or Associate Members.

For Petitioner : Mr.A.Saravanan for
M/s.G.Daisy John
For Respondents : Mr.R.Rakesh Vivekanantham [R1 to R3]
Standing Counsel
Mr.Omprakash

Senior Counsel for
Mr.A.Ilangovan [R4 and R6]
Mr.V.Manoharan[R5]
Additional Government Pleader
Mr.A.Selvachandran [R7]

ORDER

These writ petitions are filed questioning the validity of election notice issued by the respondents on 07.01.2022. As per the election notice, the process of election has already been commenced on 10.01.2022, the date on which the voter list was published by the Returning Officer. On 13.01.2022, final voter list was published by the Returning Officer. Filing of nomination papers was on 22.01.2022, scrutiny of nomination papers on 24.01.2022, publication of valid nominations on 24.01.2022 and withdrawal of nomination by the candidates was on 25.01.2022. Publication of final list of contesting candidates were made on 25.01.2022 itself. The polling date is fixed on 06.02.2022 and counting of votes and declaration of results have to be made on 07.02.2022 from 9 a.m. onwards. Thus, the publication of final list of contesting candidates were already effected and the polling date is fixed on 06.02.2022. Under these circumstances, the election notice is under challenge by the candidates, who all are contesting the elections repatriate members and candidates.

2. The short question which is to be considered by this Court is that whether an election at this point of time shall be interfered with or not, if it is necessary, then under what ground.

3. The vital ground raised by the petitioners are that as per the bye-law no.4, the Bank shall have two categories of members No.1. Ordinary Members-'A' Class Members and No.2 Nominal/Associates Members-B Class Members. Clause 13 of the bye-law speaks about the Rights of Ordinary Member-'A' Class Member. Accordingly, 'A' Class Member shall have the right to vote in the election to elect the Delegates for the General Body Meeting and to take part in the election and contest for the post of the Delegates. The rights of the Delegates of the General Body are also provided in the said Clause.

4. In this context, it is contended that now as per the impugned election notice, the respondents are permitting the 'B' Class Members to vote in the elections, which is directly in violation of the bye-laws of the Society. It is further contended that the amendment effected is a fraud on the provisions of the Act. There was no merger occurred in respect of 'A' class and 'B' class members and the 'B' class membership still remain as 'B' class

members and there is no amendment effected. Thus, the pre-amended bye-law, in respect of 'B' class member is in force and as per the pre-amended bye-law, the 'B' class members are not eligible to cast vote in the elections. The petitioner state that 'A' class members are the repatriates and the society itself was registered for the welfare of such repatriates. Therefore, those 'A' class members alone are competent to vote in the elections and the amendment shall not have any impact in respect of the 'B' class members providing right to vote.

5. The respective learned counsels appearing on behalf of the petitioners raised several issues including the manner in which the amendments were effected. However, those amendment effected in the year 2019 need not be adjudicated in the present writ petitions and it is left open to the parties to raise a dispute before the Competent Authorities under the provisions of the Multi-State Co-operative Societies Act, 2002 (for brevity 'Act') for the purpose of redressing their grievances regarding the issues other than the elections, which is under challenge in the present writ petitions.

6. The learned senior counsel appearing on behalf of the respondent REPCO Bank objected to the contentions raised on behalf of the petitioners

by stating that the General Body Meeting was convened on 25.02.2019 and Clause-4 of the bye-law was amended. The amendment proposed in Clause-5 was not registered by the Central Registrar. The Central Registrar approved the amendment of Clause-4 of the bye-law on 25.02.2019 and as per the amended bye-law, every ordinary member-A Class Member is eligible to vote.

7. It is not in dispute that Clause-4 of the bye-law denotes membership wherein ordinary members- A Class Member is 1st category and nominal/associates members- B Class Members are the 2nd category. The rights of the ordinary member- A class member is also provided in the bye-law. In this context, let us consider the provisions of the Act.

8. Chapter IV of the Act provides Members of Multi State Co-operative Societies and their Duties, Rights and Liabilities. Section 25 of the Act enumerates persons, who may become members, which reads as under:

25. Persons who may become members - (1) No person shall be admitted as a member of a multi-state cooperative society except the following, namely-

- (a) an individual, competent to contract under section 11 of the Indian Contract Act, 1872 (9 of 1872);*
- (b) any multi-state cooperative society or any cooperative society;*
- (c) the Central Government;*
- (d) a State Government;*

(e) the National Cooperative Development Corporation established under the National Cooperative Development Corporation Act, 1962 (26 of 1962);

(f) any other corporation owned or controlled by the Government;

(g) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(h) such class or classes or persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-state cooperative society.

9. Section 26 denotes Nominal or Associates Member of Society. Accordingly, a Multi State Cooperative Society may, if provided in its bye-law, admit a person as nominal or associates members;

Provided that no such nominal or associates member shall be entitled to subscribe the shares of such society to have any interest in the management thereof including right to vote, elect a director of the board or participate in the General Body Meeting.

10. Pertinently, Section 26 of the Act stipulates that a Multi State Co-operative society **may, if provided in its by-law**, admit a person as nominal associate member. Therefore, the choice is given to a Multi State Co-Operative Society either to provide bye-law for admission of nominal or associate member or to admit only ordinary members under Section 25 of the Act. Once a provision has been incorporated in the the bye-law for

admission of nominal or associate member of society, then Section 26 will come into operation. Such nominal or associate member of the society shall not have the right to vote, elect as a director of the board or participate in the general body meetings. Thus, the admission of nominal or associate member of a society is only optional and not mandatory.

11. Therefore, the duties, rights and liabilities of the nominal or associates member of the society have been categorically defined under the Section 26 of the Act. As per above provision, a nominal or associates members of the society do not possess the right to vote or elect a director of the board or participate in the general body meeting. Therefore, any bye-law, either amended or pre-amended, conferring any right to the nominal or associate member of the society for right to vote or to participate in the election is directly in violation of Section 26 of the Act.

12. Thus, the respondents have no right to permit any nominal or associate members of the Society to vote or to contest in the election or to participate in the general body meeting. Even the Central Registrar does not have the power to issue any amendment certificate in violation of Section 26 of the Act and the Act will prevail over any such amendment or approval of the amendment in any by the Central Registrar.

13. Let us now consider what is the amendment effected, as per the respondents. The Text of Amended Bye-Law with effect from 25.02.2019 with reference to bye -law No.4 reads as follows:

BYE-LAW NO.4

Membership

The Bank shall have following categories of membership:

i. Ordinary Member – A class members.

ii. Nominal/Associaates members – B class members.

i. Ordinary Member – A class members:

(a) Individual Repatriates from Burma, Sri Lanka, Vietnam and other countries including their first generation who are competent to contract under section 11 of the Contract Act 1872.

(b) Individual Non-Repatriates who are competent to contract under section 11 of the Contract Act 1872.

(c) Any multi-State Cooperative society or any co-operative society;

(d) Central Government

(e) State Government

(f) The National Co-operative Development Corporation established under the National Co-operative Development Corporation Act,1962 (26 of 1962)

(g) Any other Corporation owned or controlled by the Government

(h) Any Government Company

(i) Such class or classes or persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-State Co-operative society.

14. The effect of amended bye-law in comparison with the pre-amended bye-law is that the pre-amended bye-law in Clause-4 provides

membership and that portion is not amended as there is a provision for ordinary member-A Class Members and nominal/associates-B Class Members remains as same. With regard to the ordinary members-A class members, pre-amended Clause-4 provides four sub-Clauses, which read as under:

Ordinary members – A class members:

(i) Individual Repatriates from Burma, Sri Lanka, Vietnam and other countries including their first generation.

(ii) Central and State Governments, Union Territories and State owned autonomous bodies.

(iii) Any Partnership firm, Company and Statutory Corporation and any other jurisdic person whether incorporated or not participating directly or indirectly in the rehabilitation of the Repatriates.

(iv) Registered Venture Capital Funds and Private Equity Funds.

15. The amended bye-law with effect from 25.02.2019, which is approved by the Central Registrar qualifies the ordinary members-A class members as under:

(a) Individual Repatriates from Burma, Sri Lanka, Vietnam and other countries including their first generation who are competent to contract under section 11 of the Contract Act 1872.

(b) Individual Non-Repatriates who are competent to contract under section 11 of the Contract Act 1872.

(c) Any multi-State Cooperative society or any co-operative society;

(d) Central Government

(e) State Government

(f) The National Co-operative Development Corporation established under the National Co-operative Development Corporation Act, 1962 (26 of 1962)

(g) Any other Corporation owned or controlled by the Government

(h) Any Government Company

(i) Such class or classes or persons or association of persons as may be permitted by the Central Registrar having regard to the nature and activities of a multi-State Co-operative society.

16. According to sub-Clause (a), individual repatriates from Burma, Sri Lanka, Vietnam and other countries including their first generation, who are competent to contract under Section 11 of the Indian Contract Act, 1872 (in short 'IC Act') are eligible to become 'A' Class Members. Sub-Clause (b) contemplates individual non-repatriates, who are competent to contract under Section 11 of the IC Act. In this context, it is relevant to consider Section 25(1)(a) of the Act, which also contemplates an individual to contract under Section 11 of the IC Act and shall be admitted as a members of the Multi State Co-operative Society. Any Multi State Co-operative society of any Co-operative Society, under sub-Clause (c) of the amended bye-law can also become a 'A' Class Member. Central Government and State Governments are also permitted and the other categories mentioned in sub-Clause (f), (g), (h) and (i) are also eligible to become ordinary member-'A' Class Member.

17. Therefore, it is unambiguously made clear that the persons falling under the amended bye-law no.4, in respect of ordinary members- A Class Members alone are eligible to vote in the elections. As far as the nominal/associates members-'B' class members are concerned, they are not entitled to vote or contest in the election or to participate in the general body meetings as per Section 26 of the Act.

18. Admittedly, the amended bye-law no.4 is not under challenge, despite the fact that the amendment was effected in the year 2019. Even in respect of the challenges made, the same has not reached any finality. Thus, it is left open to the parties to challenge the amended bye-law no.4 before the competent authority under the Act and thereafter before the competent Forum or Court.

19. As far as the present election is concerned, the amended bye-law no.4 would be applicable and in respect of bye-law No.5 the amendment was not accepted by the Registrar and therefore the bye-law No.5, with reference to the nominal or associates members- 'B' Class Member, remains as same and such 'B' class members shall not be permitted to vote or contest in the elections.

20. In view of the facts and circumstances, the respondents are directed to proceed with the elections by allowing the ordinary members-'A' Class Members to vote in the elections and in respect of nominal or associates members-'B' class members, the respondents are directed not to permit them to vote or contest the elections. In respect of ordinary members-'A' class members, the amended bye-laws with effect from 25.02.2019, which holds good as of now, is to be followed.

21. With the above directions, all these writ petitions are disposed of. Consequently, connected miscellaneous petitions are closed. No costs.

02.02.2022

Internet: Yes
Index : Yes/No
Speaking order /Non-speaking order
shr/ska

**Note: Registry is directed to issue
order copy on 03.02.2022.**

To

1. Union of India

Rep by.-

The Secretary to Government FFR Division
(Freedom Fighters and Rehabilitation Division),
Ministry of Home Affairs, New Delhi.

S.M.SUBRAMANIAM, J.

shr/ska

- 2.Union of India
Represented by its Joint Secretary cum
Central Registrar for Cooperative Societies
Department of Agriculture and Cooperation
Ministry of Agriculture
- 3.The Central Registrar of Cooperative Societies
O/o. Central Registrar of Cooperative Societies,
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- 4.The Principal Secretary
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