

Madras High Court

Saravanan vs The Secretary To Government on 25 June, 2013

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :- 25.06.2013

Coram

The HONOURABLE MRS. JUSTICE R. BANUMATHI

and

The HONOURABLE MR. JUSTICE T.S. SIVAGNANAM

W.P.Nos.9391 & 9723 of 2013

W.P.No.9391 of 2013

Saravanan

.. Petitioner

vs.

1. The Secretary to Government,
Co-operation food and consumer protection department,
Fort St. George,
Chennai 600 009.
2. The Election Commissioner,
Co-operative Societies,
Fort St. George,
Chennai 600 009.
3. The District Co-operative Societies Election Officer,
Dharmapuri District.
Dharmapuri.
4. The Electoral Officer,
Dharmapuri District Public Library Employees
Co-operative, Thrift and Credit Society Limited,
DD-159,
District Central Library,
Dharmapuri 636 701.

5. The Special Officer,
Dharmapuri District Public Library Employees
Co-operative, Thrift and Credit Society Limited,
DD-159,
District Central Library,
Dharmapuri 636 701.

6. The State Commissioner of Disabled,
Tamilnadu State,
Govt. Peripheral Hospital Campus,
Jawaharlal Nehru Road,
K.K. Nagar,
Chennai 600 078.

.. Respondents

W.P.No.9723 of 2013

M.Mohan

.. Petitioner

Vs.

1. The Secretary to Government,
Co-operation food and consumer protection department,
Fort St. George,
Chennai 600 009.

2. The Election Commissioner,
Co-operative Societies,
Fort St. George,
Chennai 600 009.

3. The District Co-operative Societies Election Officer,
Dharmapuri District.
Dharmapuri.

4. The Electoral Officer,
Dharmapuri District Public Library Employees Co-operative Department
Employees Cooperative Society Ltd.,
Mint Street,
Chennai 600 079.

5. The Special Officer,
Tamil Nadu Government Printing and Stationary
Department Employees Cooperative Society Ltd.,
Mint Street,
Chennai 600 079.

6. The State Commissioner of Disabled,

Tamilnadu State,
Govt. Peripheral Hospital Campus,
Jawaharlal Nehru Road,
K.K. Nagar,
Chennai 600 078.

.. Respondents

Prayer in W.P.No.9391 of 2013 : The Writ Petition filed under Article 226 of the Constitution of India

Prayer in W.P.No.9391 of 2013 : The Writ Petition filed under Article 226 of the Constitution of India

For Petitioners : Mr.M.Christopher

For Respondents : Mr.A.L.Somayaji Advocate General
for Mr.L.P.Shanmugasundaram Spl.G.P
for RR1, 3 & 5 in W.P.No.9391 of 2013
for RR1, 3 & 6 in W.P.No.9723 of 2013

Mr.N.R.Chandran
for Mr.M.S.Palanisamy for RR2 & 4 in
W.P.Nos.9391 & 9723 of 2013

M/s.P.Rajalakshmi
for R6 in W.P.No.9391 of 2013 and
for R5 in W.P.No.9723 of 2013

C O M M O N O R D E R

R.BANUMATHI, J. &
T.S.SIVAGNANAM, J.

These writ petitions have been filed to declare Section 34 (i) of the Tamil Nadu Co-operative Societies Act, 1983 (The Act) as being null and void as far as visually impaired persons are concerned and for a consequential relief to declare the election of the petitioner as valid, if he is elected in the election for the Board of Directors of the fifth respondent cooperative society held on 12.04.2013.

2. Both the writ petitions are visually impaired persons and they are working as binders. The petitioner in W.P.No.9723 of 2013, is working as a Binding Assistant in the Government Press at Mint, Chennai and the petitioner in W.P.No.9391 of 2013 is working as a Binding Assistant in the District Central Library, Dharmapuri. Since the nature of grievance expressed by both the petitioners and grounds of challenge are identical, we have heard both the writ petitions together.
3. The facts which are imperative to be adumbrated are that the Constitution 97th Amendment Act, 2011 inserted a new Article 42B in part IV of the Constitution relating to promotion of co-operative societies stating that the State shall endeavour to promote voluntarily formation, autonomous functioning, democratic control and professional management of co-operative societies. After Part IXA of the Constitution Part IXB dealing with Cooperative Societies was inserted containing the following Articles, namely Articles 246ZH, defining authorized persons, board, co-operative society, multi-state co-operative society, office bearer, registrar, State Act and State level co-operative society; Article 243ZI dealing with incorporation of the co-operative societies; Article 243ZJ, the number and terms of members of Board and its office bearers; Article 243ZK, election of members of Board; Article 243ZL super-session and suspending of board and interim management; Article 243ZM Audit of accounts of co-operative societies; Article 243ZN convening of general body meetings; Article 243ZO right of a member to get information; Article 243ZP returns, Article 243ZQ offences and penalties; Article 243ZR application to multi-state co-operative societies; Article 243ZS application to Union Territories; and Article 243ZT continuance of existing laws.
4. The 97th amendment came into force on 15.02.2012. In view of the 97th amendment to the Constitution, the Government of Tamil Nadu amended the provisions of the Tamil Nadu Co-operative Societies Act by Tamil Nadu Co-operative Societies (Amendment) Act, 2013 (Tamil Nadu Act 5 of 2013). The Tamil Nadu Co-operative Societies Rules, 1988, was also amended by G.O.Ms.No.10, dated 31.01.2013. By virtue of the said amendment under Rule 52A, an Election Commission was constituted for the purpose of holding election to the boards and office bearers of the boards of all co-operative societies. By virtue of the Amended Rule 53, a District Election Officer shall be appointed by the Election Commission for conduct of the election of members of the board of the society, who in turn may also appoint an alternative election officer for conducting the election. The procedure and the manner in which, the election has to be conducted have been stipulated under the amended rules.
5. The second respondent in these writ petitions is the Election Commissioner so constituted under the amended provisions. The petitioners herein contested for the elections to the fifth respondent co-operative society and the election schedule was from 04.03.2013 to 16.04.2013. Both the writ petitioners filed their nomination for election to the post of Board of Directors of the fifth respondent society. When the list of valid nomination was published by the Election Officer, namely, fourth respondent, the names of both the petitioners did not find place in the list of valid nominations.
6. The petitioners would state that they were orally informed by the election officer that as they are visually impaired, they cannot read and write as ordinary persons and therefore, their nominations were rejected, as it is mandatory that a person should know to read and write in Tamil or English in

terms of Section 34 of the Act. This has given rise to these writ petitions wherein, the petitioners have challenged the Section 34(i) of the Act as being null and void and to quash the election which was held.

7. Mr.M.Christopher, learned counsel for the petitioners submitted that in no other election in the country there is a bar for visually impaired persons to contest in the election and rejecting the petitioners' nominations and preventing them from contesting the elections is discriminatory and violative of Article 14 of the Constitution. The learned counsel further submitted that the petitioners are not illiterates, but they are educated persons and they are Government servants working in the Government Press/District Library and the minimum educational qualification for appointment to a Government post is a pass in 8th standard and unless the petitioners are Government employees, they cannot be admitted as members in the fourth respondent society and without considering these aspects the Election Officer erroneously rejected their nominations. The learned counsel placed reliance on the UN Convention on the Rights of Persons with Disabilities and relying upon the Article 3 of the Convention submitted that the principles of the UN Convention was to ensure non-discrimination, full and effective participation and inclusion in society, equal opportunity and for acceptance of persons with disabilities as part of human diversity and humanity. It is further submitted that in terms of Article 29 of the Convention, the States who are parties to the convention shall guarantee to persons with disabilities political rights and the opportunity to enjoy them on an equal basis with others, which includes the right of the persons with disabilities to stand for election. Therefore, it is submitted that the impugned provision is directly in contravention with the UN Convention on right of persons with disabilities. Further, it is submitted that visually impaired persons are not prohibited from contesting for General Election for State Assembly as well as Parliament, Panchayat, Municipal or Corporation elections and there is no reason to discriminate and prevent the petitioners from contesting for the post of Board of Directors of a co-operative society.

8. By referring to the counter affidavit filed by the respondent State, it is submitted that the counter proceeds on the basis that there is no specific bar for visually disabled to participate in elections, but the respondents state that the petitioners would not be in a position to discharge the duties and responsibilities as a Director in the Board of Management of a co-operative society. Further, it submitted that the election officer did not conduct any enquiry as required under the rules and if clarification was sought for, the petitioners would have been in a position to explain that they are not illiterates. In support of his contentions, the learned counsel placed reliance on the decision of this Court in All India Anna Dravida Munnetra Kazhagam vs. The State Election Commissioner [2007 (1) CTC 705],

9. Mr.A.L.Somayaji, learned Advocate General appearing for the respondent State referred to the various provisions of the Act namely Section 21, which deals with qualifications of a person to become a member of a co-operative society; Section 23(1) dealing with disqualification; Section 33 regarding Constitution of the Board; Section 34(i) dealing with disqualification. Further, the learned Advocate General referred to the Rules 53, 53(a), 55, 60, 62, 65, 88(1) and Sections 33(13), 33(14)(a), Section 84 and Rules 18 and 21(3) and contended that it is mandatory for the person, who desires to contest in the election to the Board of Directors should know to read and write, which

should be in the normal sense of the words employed in the state. The learned Advocate General referred to Section 36, 87, 157 & 160 of the Act, which are penal provisions, which could be invoked against the Board of Directors in the event of their default. Therefore, it is the submission of the learned Advocate General that prescription of qualification to read and write is absolutely essential and valid and such restriction is not imposed for the purpose of becoming a member in the society. It is submitted that if disqualification is based on a legislative policy, this Court should not interfere in such policy decision. In support of his contention, the learned counsel placed reliance on the decision of the Hon'ble Supreme Court in Javed and Ors vs. State of Haryana & Ors., [(2003) 8 SCC 369] , and Union of India vs. Devendra Kumar Pant & Ors., [(2009) 14 SCC 546].

10. Mr.N.R.Chandran, learned Senior counsel appearing for the Election Commissioner contended that in the writ petition apart from the prayer for issuance of a writ of declaration, there is a consequential prayer, which cannot be granted, since the aspect whether the petitioners can read and write is a question of fact and if the petitioners were aggrieved, they ought to have invoked the remedy under Rule 52(23) of the amended Rules or raised a dispute under Section 90 of the Act. Further, it is submitted that both the petitioners are visually impaired and reading is possible with braille, but writing is not possible that is why persons with visually impairment, seek the assistance of a scribe when they are required to write. It is further submitted that elections have been conducted for 22551 societies in the State and these are the only two writ petitions, which have been filed by the persons with visually impairment contending that Section 34(1)(i) to be declared as null and void.

11. We have heard Mr.M.Christopher, learned counsel appearing for the petitioners, Mr.A.L.Somayaji, learned Advocate General appearing for the respondent State and Mr.N.R.Chandran, learned Senior counsel appearing for the Election Commissioner and carefully perused the materials available on record.

12. The challenge in these writ petitions is regards the restriction imposed in Section 34(i) of the Tamil Nadu Co-operative Societies Act, 1983, which reads as follows:-

34.Disqualifications for membership of board:- (1) No person shall be eligible for being elected or nominated as a member of a board of any registered society if he -

.....

(i) does not know to read and write Tamil or English or such other language as the Government may notify in this behalf in relation to any particular area.

13. Section 34 of the Act deals with 'Disqualification for Membership of Board' of a Co-operative society. Section 2(7) defines 'Board' to mean the Board of Directors or the governing body of a registered society by whatever name called, to which the direction and control of the management of the affairs of the society is entrusted to. The Section 34(1)(i) of the Act places an embargo on persons, who do not know to read and write Tamil or English or such other language as the Government may notify in this behalf in relation to any particular area to be disqualified for

membership of the Board of a registered society. From a plain reading of the above provision, it is clear that this condition or embargo operates only in respect of a person, who desires to get elected or nominated to a Board of Management and not a member of a society. A member of a society has been defined under Section 2(16) to mean a person joining in the application for registration of a society and a person admitted to membership after registration in accordance with the provisions of the Act, the rules and bye-laws and includes an associate member.

14. The case of the petitioners is that they are not illiterates and they are capable of reading and writing and the Election Officer erroneously rejected their nomination on the ground that they do not know read and write. We have perused the nomination forms filed by both the petitioners and it is to be stated that both the petitioners have affixed their thumb impression and they are not signed their names. Further, there is no indication in the nomination form, that they are visually impaired persons and nowhere, it has been stated that they have the capacity to read and write by using an alternate method.

15. Be that as it may, we have to test the validity of the provision whether it could be declared as null and void on the grounds raised by the petitioners and as to whether the legislature could have introduced, placed an embargo on a person, who seeks to become an elected/nominated member of a Board of any registered society by stipulating additional qualification than that of an ordinary member of a society.

16. In the counter affidavit, the respondent would state that Section 34(1)(i) does not specifically disqualified a visually impaired person, even if, he can read and write by special method for being elected a member of Board of the registered societies, there is a justifiable reason for the legislature to introduce such a provision as the responsibility cast upon the Board of Directors is onerous and it is essential that they should possess the knowledge to read and write in the language specified.

17. We may at this stage refer to a few provisions of the Act and the Rules to examine the qualifications, nature of duties and responsibilities and such other matters relating to a member of the Board of the registered society.

18. Section 21(2)(i) there is power conferred on the board of the society to refuse admission to an individual seeking membership to the society for good and sufficient reasons to be recorded in writing. In terms of Section 33(1), the management of every registered society shall vest in a board constituted in accordance with the provisions of the Act, Rules and bye-laws.

19. As seen earlier, Section 34 gives power for the board to decide regarding whether any member of the board was or is disqualified to hold office and a decision in this regard is required to be taken. Section 84 deals with 'Maintenance of accounts and books by registered society' and this Section provides that the responsibility for the correct and up-to-date maintenance and production of books for audit shall be of the Chief Executive or the President of the Co-operative Society.

20. Rule 53 deals with 'Election of office bearers' and the manner in which the President and Vice President of a society have to be elected; Rule 55 deals with 'Representative of a society to the board

of another society'; Rule 60 deals with the manner in which the resignation of membership of a board has to be dealt with; Rule 62 speaks of the manner in which an elected office bearers could be removed from office by passing a resolution expressing no confidence; Rule 65 provides for 'Constitution of sub-committee' and the board of a society may delegate any of its powers, functions or duties to such sub-committee.

21. Having perused the relevant provisions of the Act and Rules and also taking note of the scheme and purpose of the Act, it is seen that very important powers has been assigned to an elected board of a registered society. The board has the power to admit members and allot shares; consider the resignation of the members and withdrawal of the shares; appointment of Committees and sub-committees to perform specific functions and cancellation of such committees; delegation of powers to sub-committee and withdrawal of such powers; framing of regulations under the bye-laws in accordance with the Act and Rules fixing the cadre strength under the special bye-law with the approval of the Registrar; fixing pay and allowances of the employees in accordance with the scales of pay fixed by Registrar; purchase or hiring or leasing of land, buildings, godowns with the prior approval of the Registrar; obtaining of deposits, loans and advances; issue of loans and advances to the members; investments of the funds of the society; issuing loans and advances to the employees of the society; incur expenditure necessary for the management of the society with the budget allotted.

22. Apart from the above mentioned powers of the board of a society, there are also duties cast upon the board under the Act and Rules such as to maintain registers and accounts; to take prompt action for recovery of loans due by members; to consider loan applications and dispose of the same in accordance with bye-laws; prepare annual budget for the society and place the same before the general body; to place before the general meeting of the society the audit report, memorandum, notes of inspection etc.; to scrupulously follow the order and directions issued by the Registrar and the financing Bank; prepare the programme of activities of the society for the ensuing year, convening the annual general meeting; carrying out rectification based on inspection reports ensure proper utilization of assets and funds of the society by the officers and employees of the society and maintenance of vehicles and telephones of the society and to regulate their expenditure.

23. Having gone through the provisions of the Act, Rules, it appears that the powers, duties and responsibilities, which are cast upon an elected Board of Director of a registered society is onerous and involves great degree of responsibility both procedurally and monetarily in the light of the scheme and purpose of the Act. Having formed a opinion that the duties are onerous, it has to be seen as to how and in what manner the decision was taken to make such a provision in the Act under Section 34(1)(i).

24. During 1969, the Government of Tamil Nadu constituted a committee headed by Mr.K.Santhanam to make recommendations regarding the cooperative movement in the State. It appears that under Chairmanship of Mr.K.Santhanam the committee made several recommendations and from the extract of the committee's report, it is seen that the committee has specifically recommended ability to read and write should be a necessary qualification for a person to be elected as a Director of any society. The recommendations of the committee were examined by

the Government in consultation with the Registrar of co-operative societies and a decision was arrived by accepting the recommendations as made by Mr.K.Santhanam committee that ability to read and write should be a necessary qualification for a person to be elected as a Director of any society.

25. On the basis of such recommendations, Tamil Nadu Co-operative Societies Bill, 1980, was prepared and the same was placed before the Select Committee appointed by the Government on 12.08.1980. From the report of the Select Committee, it is seen that the committee held 46 sittings and considered the matter with regard to clause 34 of the Bill and observed that knowledge of reading and writing in English shall also be considered as adequate for the said purpose as sub-clause (1)(i) of Clause 34 as it stood originally provided that a member of a board shall be able to read and write in Tamil. Pursuant thereto, the 1983 Act came to be passed and the said provision has been in vogue all these years. By G.O.Ms.No.170, dated 02.03.1989, the Government has issued notification notifying certain languages for the purposes of Section 34(1)(i) and the areas have also been specified. Thus, it is clear that much deliberation has been done prior to introduction of the said provision, which has been in force from 1983.

26. If such is the situation, it has to be seen as to whether the said provision amounts to a class legislation and whether it offends Article 14 of the Constitution. In Javed and Ors vs. State of Haryana & Ors., [(2003) 8 SCC 369], the challenge was regarding the constitutional validity of two provisions of the Haryana Panchayat Raj Act, 1994. By virtue of the impugned provisions, a sarpanch of a grama panchayat, who has more than two living children was disqualified from holding the post. This provision was challenged as being arbitrary and violative of Article 14 of the Constitution that the provision is discriminatory, it adversely affects the liberty of a person and such other matters. The question as to whether the classification made under the impugned enactment was arbitrary and violative of Article 14, whether it was discriminatory and whether the disqualification does not serve the purpose sought to be achieved by the legislation was answered by the Hon'ble Supreme Court on the following terms:-

8. It is well settled that Article 14 forbids class legislation; it does not forbid reasonable classification for the purpose of legislation. To satisfy the constitutional test of permissibility, two conditions must be satisfied, namely: (i) that the classification is founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (ii) that such differentia has a rational relation to the object sought to be achieved by the statute in question. The basis for classification may rest on conditions which may be geographical or according to objects or occupation or the like. (See Constitution Bench decision in Budhan Choudhry v. State of Bihar¹.) The classification is well defined and well perceptible. Persons having more than two living children are clearly distinguishable from persons having not more than two living children. The two constitute two different classes and the classification is founded on an intelligible differentia clearly distinguishing one from the other. One of the objects sought to be achieved by the legislation is popularizing the family welfare/family planning programme. The disqualification enacted by the provision seeks to achieve the objective by creating a disincentive. The classification does not suffer from any arbitrariness. The number of children viz. two is based on legislative wisdom. It could have been more or less. The number is a matter of policy decision which is not

open to judicial scrutiny.

27. While considering the question as to whether the impugned provisions therein were violative of Articles 21 & 25 of the Constitution. The Hon'ble Supreme Court held as follows:-

22. Right to contest an election is neither a fundamental right nor a common law right. It is a right conferred by a statute. At the most, in view of Part IX having been added in the Constitution, a right to contest election for an office in Panchayat may be said to be a constitutional right a right originating in the Constitution and given shape by a statute. But even so, it cannot be equated with a fundamental right. There is nothing wrong in the same statute which confers the right to contest an election also to provide for the necessary qualifications without which a person cannot offer his candidature for an elective office and also to provide for disqualifications which would disable a person from contesting for, or holding, an elective statutory office.

23. Reiterating the law laid down in N.P. Ponnuswami v. Returning Officer, Namakkal Constituency [AIR 1952 SC 64] and Jagan Nath v. Jaswant Singh [AIR 1954 SC 210] this Court held in Jyoti Basu v. Debi Ghosal [(1982) 1 SCC 691] (SCC p. 696, para 8) 8. A right to elect, fundamental though it is to democracy, is, anomalously enough, neither a fundamental right nor a common law right. It is pure and simple, a statutory right. So is the right to be elected. So is the right to dispute an election. Outside of statute, there is no right to elect, no right to be elected and no right to dispute an election. Statutory creations they are, and therefore, subject to statutory limitation.

28. In the light of the authoritative pronouncement of the Hon'ble Supreme Court firstly, it has to be stated that there is no fundamental right nor a common law right to contest an election. Right to contest in an election may be said to be a Constitutional right, which has originated in the Constitution and given shape by a Statue. The Hon'ble Supreme Court upheld the statue, which provides for necessary qualification without which a person cannot offer his candidature for an elective office. In the case of Javed and Ors vs. State of Haryana & Ors., referred supra, the statutory provision provided for such disqualification to emphasize family welfare programmes, which includes family planning as well.

29. For us to hold that the impugned provision in these writ petitions are either null and void or unreasonable, it has to be seen whether they satisfy the twin tests laid down by the Hon'ble Supreme Court. Firstly whether the classification contained in the statue is founded on an intelligible differentia, secondly that such differentia has a rational relation to the object sought to be achieved by the statue in question.

30. The relevant provisions of the Tamil Nadu Co-operative Societies Act and Rules have been dealt with in the preceding paragraphs and we found that there is no educational qualification prescribed for a person to become a member of a registered co-operative society. Such qualification has been fixed only in respect of a person, who desires to get elected or nominated to the Board of management of the registered society. As noticed earlier, the duties and responsibilities cast upon the Board of Directors, which includes the President and Vice President are onerous. Therefore, prescription of the qualification to read and write has definitely distinguished the persons, who are

ordinary members of a cooperative society and such of those persons, who possess the ability to read and write have been grouped in a different category for the purpose of contesting to be elected/nominated to a Board of Management. The rationale behind such classification as could be seen from the scheme of the Act is for efficient and effective administration of the affairs of a registered cooperative society. Therefore, the impugned enactment namely Section 34(1)(i) cannot be stated to be an arbitrary piece of legislation and the distinction sought to be made between an ordinary member of the society and the member who desires to be elected/nominated to the board of management is definitely founded on an intelligible differentia and there is a rational relation to the object sought to be achieved to effectively and efficiently perform their duties and safeguard the interest of illiterate members.

31. The learned counsel appearing for the petitioner submitted that after the coming into force of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, the Union Government has identified Group-A and Group-B posts to be filled up visually impaired persons and in the light of the Articles contained in the United Nations Convention, there should be every endeavour made by the State to make the disabled participate in all spheres of life and the reasons assigned by the State to prescribe a qualification to be able to read and write is not sustainable as the petitioners can always take the assistance of any other co-director or any other person to help him in the discharge of the duties.

32. India is a signatory to the proclamation on the full participation and equality of the people with disabilities adopted during December 1992, by which, it was necessary to enact a suitable legislation to provide for rehabilitation of the persons with disabilities, creating a barrier free environment for them among other things. Accordingly, the Bill was introduced to take steps to safeguard the life of the persons with disabilities, which came into force on 07.02.1996 being Central Act No.1 of 1996. The Act among other things provides for free education to children with disability, identification of posts, which can be reserved for persons with disabilities, non-discrimination in transport, non-discrimination on road, non-discrimination in built environment, and non-discrimination in Government employment.

33. In Union of India vs. Devendra Kumar Pant & Ors., [(2009) 14 SCC 546], the appeal by the Union of India was directed against the judgment and order of the High Court of Allahabad. The first respondent therein was appointed as a Lab Assistant in the Ministry of Railways and promoted as Junior Research Assistance and further promoted as Senior Research Assistant and subsequently promoted to the next higher post of Chief Research Assistant and such promotion was with the condition that it would be effective from the date of submission of fitness certificate in B-1 medical category. This was challenged by the employee stating that it is not necessary for him to secure fitness in the higher medical category of B-1. The employee approached Central Administrative Tribunal, which dismissed his application. Thereupon, he approached the Allahabad High Court by relying upon Section 47(2), Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, stating that no promotion shall be denied to a person merely on the ground of his disability. The contention found favour with the High Court, which allowed his application and the Union of India preferred an appeal before the Hon'ble Supreme Court. The Hon'ble Supreme Court while considering the applicability of the provisions of

the Disabilities Act held as follows:-

33. When invoking or applying the provisions of the Act, it is necessary to keep in view that the intention of the Act is to give a helping hand to persons with disability so that they can lead a self-reliant life with dignity and freedom. But the intention of the Act is not to jeopardise the safety and security of the public, co-employees, or the employee himself or the safety and security of the equipments or assets of the employer, nor to accept reduced standards of safety and efficiency merely because the employee suffers from a disability.....

37. Prescription of a minimum medical standard for promotion should be considered as such, and should not be viewed as denial of a promotional opportunity to a person with disability. We may illustrate. When an advertisement for the post of a police inspector prescribes a minimum height or a minimum chest measurements or a minimum physical stamina, a person who lacks the same and therefore denied appointment, cannot contend that he is discriminated on the ground of physical disability. If a person not having a colour perception is denied appointment to the post of a driver, he cannot complain that he is discriminated on the ground of his disability. Same would be the position where the colour perception is a required minimum standard for a particular post. A person not possessing it is not being denied appointment or promotion on the ground of disability. The denial is on the ground of non-fulfilment of a minimum required standard/qualification. Viewed accordingly, it will be seen that Section 47(2) is not attracted at all.

34. As could be seen from the above decision, the said Disabilities Act was brought about with an intention to give a helping hand to persons with disability so that they can lead a self-reliant life with dignity and freedom. But the intention of the Act is not to jeopardize the safety of the public nor to accept the reduced standards of safety and efficiency. Section 34(1)(i) of the Act stipulates the required qualification which has been found to have a reasonable basis. The disqualification in the instant case arises not on the ground of disability, but on the ground of non-fulfillment of the minimum required qualification. Therefore, the plea raised on behalf of the petitioners based on the persons with Disabilities Act is thoroughly misconceived, more so, in the light of the categorical pronouncement of the Apex Court that there is no fundamental right to contest in an election.

35. It is seen that in the counter affidavit a plea has been raised stating that as per Section 34(1)(i), does not specifically disqualify a visually impaired person even if he can read and write by special method for being elected as a board member of the registered society. No record has been placed before this Court by the petitioners to show that they had the ability to read and write despite being fully visually impaired.

36. In the earlier portion of the order, we have upheld the validity of the impugned enactment and we have held that there is no discrimination or arbitrariness in the said provision of the Act and the classification is based on intelligible differentia. Therefore, if the petitioner claims that despite being visually impaired, he has the capacity to read and write by a special method, he has to establish the same. This Court cannot add or substitute words in the statute. The ability to read and write shall connote and mean the ability to read and write in the normal sense. When the words of the statute are unambiguous the Courts cannot implant any words or sub-plant any words in the statute to read

into provision what is not explicitly contained therein. Therefore, we are of the firm view that the impugned provision cannot be declared as null and void on the grounds raised by the petitioner.

37. As rightly contended by the learned Senior counsel for the Election Commissioner, if the petitioners had the capacity to read and write in a special method that ought to have agitated the same before the Election Officer, when the petitioners' nominations were rejected.

38. Rule 52 of the Rules deals with 'Election of members of the board. In terms of sub-rule 5 of rule 52, the Election Commission shall fix the date of election and draw up a programme for the conduct of election to the society or group of societies and send a copy of the programme so drawn to the State Election Officer and the District Election Officer concerned at least twenty-one days prior to the date of poll and also to the society or group of societies.

39. In terms of clause (a) of sub-rule 8 of Rule 52, no person shall be eligible for being nominated as a candidate for election to the board unless he is qualified for being elected under the provisions of the Act and the Rules and his name is included in the voters' list. The nomination of a candidate for the election shall be in Form No.18 and shall be signed by the candidate. The nomination paper shall be signed by two other members, whose names are included in the voters' list, one as the proposer and other as the seconder for the nomination. In terms of clause (f) of sub-rule 8 of Rule 52, the Election Officer shall endorse on each nomination paper his decision accepting or rejecting the same and if the nomination paper has been rejected, he shall record in writing a brief statement of grounds for such rejection. The original nomination papers of the petitioners were produced before us from which it is seen that the Election Officer concerned have recorded on each of the nomination paper the grounds for rejection.

40. In such circumstances, the petitioner has two statutory remedies. As per newly inserted sub-rule 23 of Rule 52 there is power vested with the Election Commission to exercise suo-moto power or on complaint. The other remedy available is to raise a dispute under Section 90 of the Cooperative Societies Act. The petitioners did not avail either of the remedies available.

41. The power to entertain writ petitions in election matters is no longer res integra. In a Suo Motu writ petition in the matter of the Chief Election Commissioner, [2011 (6) CTC 129], the jurisdiction of the High Court to entertain the petitions under Article 226 of the Constitution of India to issue interim direction after the commencement of the electoral process was considered and it was held that this Court under Article 226 of the Constitution cannot interfere with the decision of the Election Commission except in a rarest of rare case as pointed out by the Hon'ble Supreme Court:-

8. The Constitution Bench decision rendered in N.P. Ponnuswami's case AIR 1952 SC 64 was considered by the Supreme Court in the case of Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216. Their Lordships considered the jurisdiction of the High Court to entertain Petitions under Article 226 of the Constitution of India to issue interim direction after commencement of electoral process. After taking into consideration of the decisions of the Constitution Bench in N.P. Ponnuswami v. Returning Officer, Namkkal Constituency, AIR 1952 SC 64 and Mohinder Singh Gill v. Chief Election Commissioner, (1978) 1 SCC 405, the Supreme Court

held as hereunder:

32. For convenience sake we would now generally sum up our conclusions by partly restating what the two Constitution Benches have already said and then adding by clarifying what follows therefrom in view of the analysis made by us hereinabove:

(1) If an election (the term election being widely interpreted so as to include all steps and entire proceedings commencing from the date of Notification of election till the date of declaration of result) is to be called in question and which questioning may have the effect of interrupting, obstructing or protracting the election proceedings in any manner, the invoking of judicial remedy has to be postponed till after the completing of proceedings in elections.

(2) Any decision sought and rendered will not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the Election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body being shown to have acted in breach of law.

(4) Without interrupting, obstructing or delaying the progress of the Election proceedings, judicial intervention is available if assistance of the Court has been sought for merely to correct or smoothen the progress of the Election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the Court.

(5) The Court must be very circumspect and act with caution while entertaining any election dispute though not hit by the bar of Article 329(b) but brought to it during the pendency of Election proceedings. The Court must guard against any attempt at retarding, interrupting, protracting or stalling of the election proceedings. Care has to be taken to see that there is no attempt to utilise the Court's indulgence by filing a Petition outwardly innocuous but essentially a subterfuge or pretext for achieving an ulterior or hidden end. Needless to say that in the very nature of the things the Court would act with reluctance and shall not act, except on a clear and strong case for its intervention having been made out by raising the pleas with particulars and precision and supporting the same by necessary material.

9. Further, their Lordships, considering the facts of the case in Election Commission of India v. Ashok Kumar (supra), wherein the ground alleged was mala fide exercise of power, held as follows:

. Such a dispute could have been raised before and decided by the High Court if the dual test was satisfied:

(i) the order sought from the Court did not have the effect of retarding, interrupting, protracting or stalling the counting of votes and the declaration of the results as only that much part of the Election proceedings had remained to be completed at that stage;

(ii) a clear case of mala fides on the part of Election Commission inviting intervention of the Court was made out, that being the only ground taken in the Petition.

10. In the light of the law laid down by the Constitution Bench of the Supreme Court and other decisions, we are of the definite opinion that no Constitutional issue needs further adjudication by this Court in the instant Writ Petition. Once the election is notified, it is within the exclusive domain of the Election Commission to fix the date of election as also a suitable date for declaring the result of the election. This Court, under Article 226 of the Constitution, cannot interfere with such decision of the Election Commission except in the rarest of the rare case as pointed out by the Hon'ble Supreme Court.

42. In the light of the above referred decision, the consequential prayer sought for in the writ petitions cannot be maintained. Furthermore, if the petitioners are aggrieved there is an effective alternate remedy by raising a dispute under Section 90(1) of the Act and the proviso provides that no dispute relating to, or in connection with any election shall be referred under sub-section (1) of Section 90, till the date of declaration of the result of such election. Under sub-section 9 (a) (iii) of Section 90, when the dispute is in respect of, or in connection with, any election, the period of limitation shall be two months from the date of declaration of the result of the election. Under Sub-Clause (b), the Registrar may admit a dispute after the expiry of the period of limitation, if the applicant satisfies that he had sufficient cause for not referring the dispute within such period.

43. Thus, the Tamil Nadu Cooperative Societies Act and the Rules framed thereunder being a code by itself, there is no justifiable reason for the petitioners to bypass the remedy provided under the Act and Rules.

44. Undoubtedly, the petitioners have not chosen to avail such statutory remedy, but straightway approached this Court and filed these writ petitions. In the mean time, the elections in the fifth respondent society have been completed and the Board of Directors have been elected and the office bearers have also been elected. The elected members are not before us, as they have not been impleaded as respondents. In such circumstances, the second limb of the prayer sought for by the petitioners cannot be acceded to.

45. The learned counsel appearing for the petitioners placed reliance on the decision of the Division Bench of this Court in the case of All India Anna Dravida Munnetra Kazhagam vs. The State Election Commissioner [2007 (1) CTC 705]. The said matter arose out of a Public Interest Litigation challenging the local body elections held in 155 wards of Chennai City Corporation. The Division Bench interfered in the said elections after coming to the conclusion that the monstrosity of the situation and the exceptional circumstances called for interference and since the case was an extraordinary case, it called for an extraordinary remedy and in the peculiar circumstances of the case in order to protect concept of democracy interfered in the matter even after the election process

was over. While issuing directions, the Division Bench held that the High Court is required to be circumspect in such matters and interfere only in rarest of rare cases. The case on hand would not fall within the category of those cases, which calls for an extraordinary remedy and there is no monstrosity of situation established warranting interference under Article 226 of the Constitution. Moreover, these writ petitions are not Public Interest Litigations, but filed by two candidates, whose nominations were rejected. Therefore, there was no valid reason for the petitioners to bypass the statutory remedy available under the Act.

46. For all the above reasons, we hold that Section 34(1)(i) cannot be declared as null and void on the grounds raised by the petitioners and the consequential relief sought for by the petitioners to declare the election of the petitioners as valid if he is elected or to set aside the election cannot be granted.

47. In the result, the writ petitions fail and they are dismissed. No costs. Consequently connected miscellaneous petitions are closed.

pbn To

1. The Secretary to Government, Co-operation food and consumer protection department, Fort St. George, Chennai 600 009.

2. The Election Commissioner, Co-operative Societies, Fort St. George, Chennai 600 009.

3. The District Co-operative Societies Election Officer, Dharmapuri District.

Dharmapuri.

4. The Electoral Officer, Dharmapuri District Public Library Employees Co-operative, Thrift and Credit Society Limited, DD-159, District Central Library, Dharmapuri 636 701

5. The Special Officer, Dharmapuri District Public Library Employees Co-operative, Thrift and Credit Society Limited, DD-159, District Central Library, Dharmapuri 636 701.

6. The State Commissioner of Disabled, Tamilnadu State, Govt. Peripheral Hospital Campus, Jawaharlal Nehru Road, K.K. Nagar, Chennai 600 078.

7. The Special Officer, Tamil Nadu Government Printing and Stationary Dept. Employees Cooperative Society Ltd., Mint Street, Chennai 600 079.

8. The State Commissioner of Disabled, Tamilnadu State, Govt. Peripheral Hospital Campus, Jawaharlal Nehru Road, K.K. Nagar, Chennai 600 078