

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.06.2015

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

W.P.No.18857 of 2015
and M.P.No.1 of 2015

K.R.Ramaswamy @ Traffic Ramaswamy

... Petitioner

- Versus -

Rep. By State of Tamil Nadu

1.The Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi 110 001.

2.The Chief Electoral Officer of Tamil Nadu,
Fort St George,
Chennai 600 009.

3.The Returning Officer,
R.K.Nagar Constituency,
Chennai.

... Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus directing the respondents herein to take appropriate action on the petitioner's representation by way of letters dated 22.06.2015 and 24.06.2015 and to direct the respondents to assist for R.K.Nagar bye election to be conducted in free and fair manner, save the democracy.

Petitioner

: Mr.P.T.Perumal for
Mr.A.Ramesh Manikandan

For Respondents

: Mr.Niranjan Rajagopalan for
M/s.G.R.Associates for RR1 to 3

ORDER

By consent, the writ petition is taken up for final disposal.

2. The petitioner claims that he is the Founder and Chairman of Tamil Nadu Social Workers Organization and the organisation is rendering free service to the citizens of the country, mainly, for the people in the State of Tamil Nadu by way of protecting their valuable rights, enshrined in the Constitution of India and other

laws. The petitioner would state that he has filed more than hundred and odd public interest litigations which enabled this court to deliver historic judgements in the important matters pertaining to public interests. The petitioner would further submit that he is one of the candidates contesting in the bye-election held on 27.06.2015 for R.K.Nagar Assembly Constituency and is contesting the election as an independent candidate. The Chief Minister of Tamil Nadu is also contesting the election as a candidate of AIADMK party. Admittedly, now the election is over and the counting is set to take place shortly.

3. The petitioner would further state that, on 22.06.2015, when the AIADMK candidate was engaged in canvassing the votes, the police officials had blocked the roads and also committed various illegalities and irregularities in blatant violation of the model code of conduct and erected barricades and also assisted the party men to erect very many digital flex banners and also to draw electricity energy directly from the live wires through the lamp posts without any authorisation or permission from the authorities concerned.

4. The petitioner would also submit that, in this regard, he has submitted a representation dated 22.06.2015 to the respondents and the 3rd respondent, in turn, has instructed the petitioner to approach the jurisdictional Deputy Commissioner of Police and express all his grievance and accordingly, he approached the jurisdictional Deputy Commissioner of Police on 22.06.2015. According to the petitioner at the time when he met the police official, without heeding to his words, the concerned police official bluntly started supporting the AIADMK candidate and its party men. It is further submitted by the petitioner that on 23.06.2015 at about 18.40 Hours he was assaulted and criminally intimidated by some unknown AIADMD party workers.

5. The grievance expressed by the petitioner is that though he made a request dated 22.06.2015 and 24.06.2015 to the 3rd respondent to give him in writing the reasons for having permitted the ruling party men to erect very many digital flex banners and barricades and also the reason for the deployment of excessive police force, the 3rd respondent did not furnish any reply. Hence, the petitioner has come forward with this writ petition seeking to direct the respondents to take appropriate action on the petitioner's representation dated 22.06.2015 and 24.06.2015 and also direct the respondents to assist in the bye election for R.K.Nagar Assembly Constituency.

6. The writ petition has been filed on 26.06.2015 and it is posted today for admission. Today, the petitioner has filed a miscellaneous petition in M.P.No.1 of 2015 seeking to direct the respondents to hold re-polling for all 230 booths in R.K.Nagar Assembly Constituency or direct to hold re-poll, particularly, in Booth Nos.156, 157, 160, 174, 175, 176, 177, 178 and 179 where the candidates were attacked.

7. Mr.Niranjan Rajagopalan for M/s.G.R.Associates, who accepts notice for the respondents 1 to 3, has no serious objection for taking up the miscellaneous petition in M.P.No.1 of 2015 for hearing along with writ petition.

8. Mr.P.T.Perumal, the learned counsel appearing for the petitioner would draw the attention of this court to the typed set of papers filed in support of the writ petition as well as the miscellaneous petition and would submit that since the Chief Minister of Tamil Nadu is contesting the aforesaid bye election as the ruling party candidate, very many violations had taken place and despite the fact that those violations have been brought to the knowledge of the concerned authorities, they remained as mute / dumb spectators and they never cared to take cognizance of the same and take appropriate further action.

9. The learned counsel for the petitioner would further submit that the respondents 1 to 3, being the statutory authorities, have to act strictly in accordance with the provisions of The Representation of People Act, 1951 and though the illegalities and irregularities perpetuated by the cadre belonging to ruling party were brought to the notice, for obvious reasons, the concerned authorities have not taken any action and since the counting is going to take place shortly, prays for appropriate orders.

10. Mr.Niranjan Rajagopalan, the learned counsel appearing for the respondents would, on the other hand, submit that the petitioner in his representation dated 22.06.2015 alleged that he was assaulted and criminally intimidated by the unknown AIADMK party men and based on such petition, the concerned police officers were directed to take suitable action and as per the information furnished by the Additional Commissioner of Police (Law and Order), Chennai City, appropriate action is being taken. According to him, the petitioner was, in fact, informed of the same by a letter dated 24.06.2015.

11. In so far as the prayer sought for by the petitioner in M.P.No.1 of 2015, according to the learned counsel for the respondents, no representation making such kind of allegations or requesting for re-polling, has been received by any of the respondents and therefore, he is unable to say anything on the merits of the above said miscellaneous petition.

12. This court has considered submissions made by the learned counsel for the petitioner and the rivals submissions made by the learned counsel for the respondents and also perused the records carefully.

13. The prayer in the writ petition is for issuance of writ of mandamus directing the respondents 1 to 3 to take appropriate action on the representations of the petitioner in the form of letters dated 22.06.2015 and 24.06.2015 with a further prayer to direct the respondents to assist in the bye - election to be conducted for R.K.Nagar Assembly Constituency in a free and fair manner in order to

save the democracy.

14. The petitioner in his representation dated 22.06.2015 alleged that the police officials had put up number of barricades on the road which resulted in traffic congestion and also permitted the ruling party men to tap the electricity power directly from live wires through the lamp posts to light up number of fancy and other lights in the roads and streets and despite the fact that all such illegal acts have been brought to the knowledge of the top most official of the Chennai City Police, he remained silent and therefore, prayed for transfer of the Commissioner of Police, Chennai City. The petitioner further stated in his representation that if no action is taken on his complaint, he would rather go on fasting unto death.

15. In the representation dated 23.06.2015 addressed to the Inspector of Police, H-3, Tondiarpet Police Station, the petitioner has alleged that his vehicle was attacked by the unidentified AIADMK party men at about 18.40 Hours on 23.06.2015. It is further alleged by the petitioner that the unknown persons not only started pelting stones against him and his supporters but also threatened and abused him. In such circumstances, he requested the Inspector of Police to take appropriate action against the persons indulged in the crime under the penal provision punishable under Section 307 of IPC.

16. Thereafter, the petitioner sent another representation to the 1st respondent on 24.06.2015 through fax. The 1st respondent on receipt of such fax communication, informed the petitioner that a report has been furnished by the Additional Commissioner of Police (Law and Order), North Chennai, and as per the communication, the petition / complaint of the petitioner should be enquired into by the police officer at the level higher than the Deputy Commissioner of Police and, therefore, he has nominated Dr.R.Dhinakaran, IPS, Joint Commissioner of Police, North Zone to enquiry into the petition and submit a report at the earliest for further action.

17. In so far as the prayer made by the petitioner in the miscellaneous petition in M.P.No.1 of 2015 is concerned wherein he has wanted re-polling in respect of all booths or re-polling in some of the booths, admittedly, no representation has been submitted by the petitioner to the respondents 1 to 3 making such a request. However, the fact remains that some action has been taken on the representations of the petitioner dated 22.06.2015 and 24.06.2015 and he was also informed of the same.

18. The learned counsel appearing for the respondent would vehemently contend that the irregularities committed during polling, which took place on 27.06.2015, as enlightened by the petitioner would show that the bye election was not conducted in a free and fair manner and therefore in order secure the ends of justice, there may be a direction issued to the respondent for re-polling in all booths or at least in some of the booths as sought for in the miscellaneous petition.

19. In the considered opinion of this court, the prayer sought for by the petitioner in M.P.No.1 of 2015 for ad-interim direction travels beyond the scope of the main writ petition. Admittedly, the petitioner did not submit any representation to the respondents bringing to their knowledge about the alleged illegalities or irregularities that took place at the time of polling.

20. For the foregoing reasons, this court is of the view that no interim direction as sought for by the petitioner in M.P.No.1 fo 2015 could be given as the relief sought falls beyond the scope of the prayer in the main writ petition and hence, the MP No.1 of 2015 deserves to be dismissed.

21. In respect of the relief sought for in the writ petition is concerned, as it is evident from the typed set of papers filed by the petitioner himself that appropriate action has already been taken on the complaints made by the petitioner with respect to the alleged assault and criminal intimidation and the petitioner has also been informed of the same. However, the Joint Commissioner of Police (Law and Order) , North Zone, Chennai is directed to infrom the petitioner, as to the action taken on his petition/complaint at regular intervals.

22. In the result, the writ petition is disposed of accordingly. M.P.No.1 of 2015 is dismissed for the reasons stated above. No costs.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

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To

- 1.The Chief Election Commissioner, Nirvachan Sadan, Ashoka Road, New Delhi 110 001.
- 2.The Chief Electoral Officer of Tamil Nadu, Fort St George, Chennai-9.
- 3.The Returning Officer, R.K.Nagar Constituency, Chennai.
- 4.The Joint Commissioner of Police (Law and Order) North Zone, Chennai.

1 cc to Government Pleader.Sr.No.32011
2 cc to Mr.Ramesh Manikandan, Advocate Sr.No.31952

W.P.No.18857 of 2015

sku (co)
pmk.30.6.2015