

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.10.2015

CORAM:

THE HON'BLE MR.JUSTICE SATISH K. AGNIHOTRI
AND
THE HON'BLE MR.JUSTICE K.K.SASIDHARAN

W.P.No. 28122 of 2015
and
M.P.No.1 of 2015

G. Rajkumar

... Petitioner

Vs.

1. The District Collector
Coimbatore District
Coimbatore

2. The District Collector
Tiruppur District
Tiruppur

3. The Revenue Divisional Officer
Tiruppur District
Tiruppur

4. The Tahsildar
Udumalaipettai Taluk
Tiruppur District

5. Dr. K. Krishnasamy

... Respondents

Writ Petition filed under Article 226 of the Constitution seeking a writ of mandamus directing the respondents 1 to 4 to consider the petitioner's representation dated 12.05.2015 seeking to conduct an enquiry with regard to the community certificate of the fifth respondent and file an enquiry report within a stipulated time.

For petitioner : Mr. A.V. Raja

ORDER
(delivered by SATISH K. AGNIHOTRI, J.,)

According to the petitioner, he belongs to Hindu Pallar community, notified as a Scheduled Caste community. He contested the 2011 general election for Member of Legislative Assembly from Ottapidaram Assembly Constituency in Tirunelveli District, a constituency reserved for Scheduled Castes. It is stated by the petitioner that the fifth respondent, belonging to Konda Reddy community, which comes under Backward Class, obtained Scheduled Caste community certificate, being Devendra Kula Vella community, on the basis of bogus documents. By virtue of the false community certificate so obtained, the fifth respondent contested the 2011 general election to the Legislative Assembly, along with the petitioner and the fifth respondent was returned successfully. Thus, this writ petition seeking a direction to the official respondents to enquire into the irregularities in grant of the aforesaid community certificate to the fifth respondent.

2. The short point that arises for consideration in the instant writ petition is as to whether the community certificate issued in favour of the fifth respondent may be questioned by a third party, who was a political opponent, in writ jurisdiction under Article 226 of the Constitution of India.

3. Even assuming but without conceding that the fifth respondent obtained Scheduled Caste community certificate on furnishing bogus documents and got elected in the reserved constituency for Scheduled Castes, the petitioner has full opportunity to challenge the election in the election petition when he was admittedly a candidate in the fray. Needless to state that the issue in respect of community certificate on the ground that the fifth respondent has contested the election from a reserved category without having the valid community certificate or without belonging to the said community, is an important issue that may be agitated in the election petition itself on the ground that the acceptance of nomination of the fifth respondent on the basis of false certificate, was not proper.

4. Section 100 of the Representation of the People Act, 1950 (for short "the Act") provides for grounds for declaration

of election to be void in an election petition. Sub-clause (d) of clause (1) of Section 100 of the Act stipulates that the result of the election may be declared as void insofar as it concerns a returned candidate by the improper acceptance of nomination. Filing of nomination in a reserved constituency based on alleged false community certificate is a good ground for declaring election as void on acceptance of improper nomination.

5. Further, it is a trite law that the jurisdiction of the High Court under Article 226 of the Constitution of India stands excluded in view of the provisions of the Act read with Article 329(b) of the Constitution of India (See N.P. Ponnuswami vs. Returning Officer, Namakkal Constituency, Namakkal, Salem District and 4 others¹ and Mohinder Singh Gill and another vs. Chief Election Commissioner, New Delhi and Others², referred to and followed with approval subsequently).

6. In the case on hand, the community certificate of the fifth respondent was produced before the Returning Officer. It was neither a case of production of false documents before the Returning Officer nor impersonation. On a perusal of the documents annexed to the instant petition, it is manifest that the petitioner has preferred Criminal Original Petition being CrI.O.P. No.15956 of 2013 before the Madurai Bench of this Court, seeking to direct the official respondents therein to register a case on the complaint given by him on 09 May 2013 against the fifth respondent herein alleging that the fifth respondent, who does not belong to Scheduled Caste, has obtained a false Scheduled Caste community certificate by forged means. In the said petition, the learned Senior Counsel who appeared for the fifth respondent herein had categorically stated that the community status of the third respondent therein (who is the fifth respondent herein) was decided by the competent authority, i.e., the District Revenue Officer and duly verified by the State Level Scrutiny Committee. Eventually, the said Criminal Original Petition was disposed of, wherein, the aforesaid submission of the learned Senior Counsel was not rebutted.

7. In such view of the matter, this seems to be a case of personal political vendetta and the petitioner seeks indulgence to settle the score. There is no evidence on record to show that

¹ AIR 1952 SC 64

² (1978) 1 SCC 405

any attempt was made by the petitioner to question the election on the aforestated ground in an appropriate election petition under the provisions of law. In effect, the petitioner is seeking to set aside the election of the fifth respondent on the ground that the community certificate issued in his favour was false or improper. In the conspectus of the aforestated factual matrix, no roving enquiry is permissible.

8. As a sequitur, the writ petition is dismissed as not maintainable. No costs. Connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

cad

To

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+1cc to Mr.V.Raja, Advocate, S.R.No.53420

W.P. No.28122 of 2015

KJI (CO)
CA(15/10/2015)