

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.02.2015

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

C.R.P. (PD) No.4702 of 2013

&

M.P.No.1 of 2013

Aiyammal

...Petitioner

Vs.

1. Yuvarani
2. Poornima
3. The Collector,
Villupuram District, Villupuram.
4. The Revenue Divisional Officer,
Villupuram.
5. The Block Development Officer,
Villupuram.

...Respondents

Prayer:Petition filed under Article 227 of the Constitution of India praying to set aside the order made in I.A.No.1084 of 2013 in Election O.P.No.139 of 2011 on the file of the Principal District Judge, Villupuram dated 08.10.2013.

For Petitioner : Mr.V.S.Sivasundaram

For Respondents : Mr.C.Prabhakaran for R1
Mr.R.Ramesh for R5

O R D E R

This revision is filed challenging the order passed by the Principal District Judge, Villupuram (Election Tribunal) in I.A.No.1084 of 2013 in Election O.P.No.139 of 2011.

2. The first respondent filed the Election Petition alleging that on the date of election, i.e., on 19.10.2011, the Head Officer of the Polling Booth, calculated the number of votes polled as 1611 and while the votes were counted on 21.10.2011, only 1608 votes were declared to be the total polled votes. After counting, the petitioner herein was declared to be elected for the post of President, Thennamadevi Village Panchayat. The first respondent has alleged that if the entire polled votes counted properly, she would have been successful in the election and the petitioner would have lost.

3. The Election Petition was contested by the respondents. After examination of witnesses and when the Election Petition was posted for arguments, the first respondent filed I.A.No.1084 of 2013 seeking amendment of the Election Petition to include the prayer for recounting in the main prayer column. The said application was resisted by the respondents therein. Despite the fact, the Election Tribunal has allowed the application. Challenging the said order, the present revision is filed.

4. Mr.V.S.Sivasundaram, learned counsel for the petitioner submitted that the prayer sought for in the application is already barred by limitation and the application was filed at a belated stage. It is further contended that there is no specific pleading as well as evidence by the first respondent to seek amendment for recounting and that the first respondent has neither filed written application before the Returning Officer nor made any oral prayer at the time of counting the votes as per the Rules 63 to 66 of the Tamil Nadu Panchayat (Election) Rules, 1995.

5. Learned counsel for the petitioner has relied on the judgment in RAM PAL SINGH V. DEVENDRA PATEL AND OTHERS reporting in AIR 2010 Madhya Pradesh 24 and P.DHARMALINGAM V.1.ARUMUGHAM @ SATTU, 2.THE COMMISSIONER, THIRUPORUR PANCHAYAT AT UNION, THIRUPORUR, 3. THE STATE ELECTION COMMISSIONER, VADAPALANI, CHENNAI-600 026 reported in 2010 (6) CTC 18.

6. On the other hand, Mr.C.Prabhakaran, learned counsel for the 1st respondent submitted that after the counting was over, the petitioner herein was defeated by margin of two votes and the first respondent was declared elected. After she left the counting center, the petitioner herein colluding with the other respondents declared that she got elected in the Election as President of the Panchayat. Learned counsel further submitted that as per the report of the Head Officer of the Polling Booth, the total votes polled was 1611, but the Returning Officer has given the polled votes as 1608. Therefore, the first respondent made oral request at the time of counting which was rejected by the Returning Officer, which necessitates the first respondent to send a representation dated 25.10.2011.

7. The learned counsel further submitted that necessary averments were already incorporated in the Election Petition and also evidence was let in that regard and the prayer for recounting could be made at any stage, which would not change the nature of the case or introduce a new case. Learned counsel placing reliance on the judgment in PATTI OCHAN V. 1.K.MURUGAN 2. THE BLOCK DEVELOPMENT OFFICER-CUM-PANCHAYAT UNION COMMIIERS, THIRUMANGALAM, HAVING OFFICE AT THIRUMANGALAM, MADURAI DISTRICT. 3.M.SEKAR reported in 2011 (3) CTC 834, submitted that oral representation for recounting is sufficient and a written request is not necessary.

8. In AIR 2010 MADHYA PRADESH 24 cited supra, amendment application was filed under Order 6 Rule 17 of the Code of Civil Procedure read with Section 87 of the Code of Civil Procedure to incorporate the averments to that effect to corrupt practice adopted for successful candidate. In the above said facts, the Madhya Pradesh High Court has held that the parties cannot be permitted to include a new ground of charges which would alter the character of the petition.

9. In 2010 (6) CTC 18 cited supra, the petitioner in that case, had not given any written application seeking recounting of votes. After trial, on the basis of evidences, the Election Tribunal has held that the petitioner did not establish any malpractices and dismissed the election petition. While confirming the order, this Court has held that there is no written application seeking recounting of votes. However, in 2011 (3) CTC 834 cited supra, this Court following the judgment of the Supreme Court reported in AIR 2003 SC 320, held that even in the absence of request in writing to the Returning Officer for recounting of votes, there is no prohibition for Election Tribunal or Court to order recounting.

10. In the present case, the first respondent has specifically alleged that total votes polled were 1611, but the counted votes were only 1608. The first respondent has further alleged that if the polled votes were properly counted, she would have been successful and the petitioner would have lost in the Election. On 25.10.2011, the first respondent had sent a representation alleging malpractice committed by the Returning Officer colluding with the petitioner. In view of the specific allegations made in the Election Petition and in the light of the judgment of this Court reported in 2011 (3) CTC 834, the amendment sought for by the first respondent, cannot be rejected on the only ground that there is no written request on the date of counting. I am unable to accept the submission of the learned counsel for the petitioner. The Election Tribunal has rightly allowed the amendment application. I do not find any merit in this revision.

11. In the result, the Civil Revision Petition is dismissed. The Election Tribunal shall dispose of the original petition on merits within a period of two months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

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To

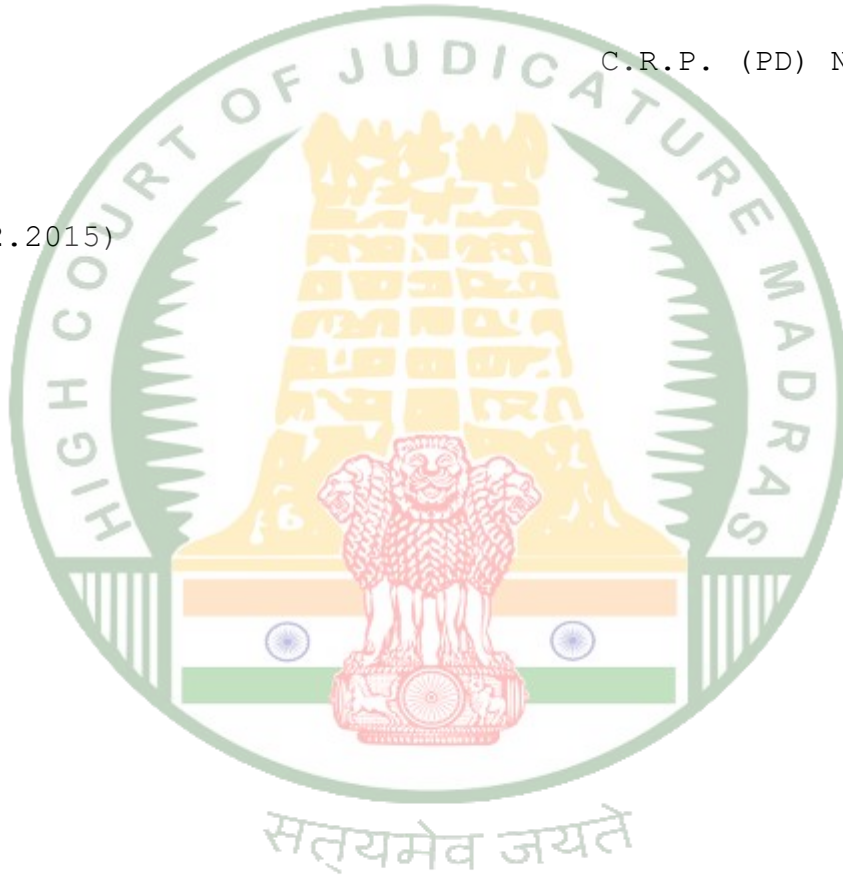
The Principal District Judge,
Villupuram

1 CC to Mr.V.S.Sivasundaram, Advocate SR.No. 8633

1 CC to Mr.C.Prabhakaran, Advocate SR.No. 8182

C.R.P. (PD) No.4702 of 2013 &
M.P.No.1 of 2013

SCD (CO)
PSI (25.02.2015)



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