

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.05.2016

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE DR.JUSTICE S.VIMALA

W.P.NO.17608 OF 2016 AND
W.M.P.NO.15234 OF 2016

Jayaraj ..Petitioner
Vs.

1. The Chief Electoral Officer
of Tamilnadu and Principal
Secretary Public (Election)
Department,
Secretariat, Fort St.George,
Chennai - 600 009
2. The District Electoral Officer
cum District Collector,
Coimbatore District, Coimbatore.
3. The Returning Officer and
Revenue Divisional Officer,
119- Thondamuthur Assembly
Constituency,
Coimbatore District ..Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for a Writ of Certiorarified Mandamus to call for the records from the 3rd respondent pertaining to the impugned proceedings Na.Ka.No.1600/ 2016/A4 dated 30.04.2016 and quash the same consequently to direct the 3rd respondent to enlist the petitioner's name in contesting candidate list of 119-Thondamuthur Assembly Constituency.

For Petitioner : No appearance

For Respondents: Mr.Niranjana Rajagopalan for R1
Mr.P.H.Aravindh Pandiyan
Addl. Advocate General for R2 and R3
assisted by Mr.P.Sanjay Gandhi
Special Government Pleader

O R D E R

The challenge in this Writ Petition is to the proceedings dated 30 April 2016 whereby and whereunder nomination of the petitioner was rejected by the Returning Officer.

2. The petitioner was sponsored by Bahujan Samaj party to contest the ensuing Tamil Nadu Legislative Assembly election from 119-Thondamuthur Assembly Constituency. The nomination was filed on 29 April 2016. Scrutiny was on 30 April 2016. The nomination was rejected on the ground that the petitioner failed to rectify the defects as pointed out earlier and resubmitted, after the prescribed time. Feeling aggrieved by the decision taken by the Returning Officer, the petitioner has come up with this Writ Petition.

3. The only question that arises for consideration is as to whether the Writ Petition challenging the rejection of nomination is maintainable before the culmination of the election process.

4. Article 329 of the Constitution of India takes away the jurisdiction of the Courts in certain matters relating to election, which are governed by Part XV of the Constitution. Clause (b) of Article 329 excludes the jurisdiction of the Courts to entertain any matter relating to election.

5. The question as to whether the word "Election" used in Article 329(b) of the Constitution would embrace the whole procedure of election and whether it is not confined to the final result thereof, came up for consideration before the Constitutional Bench of the Hon'ble Supreme Court in N.P.Ponnuswami vs. The Returning Officer, Namakkal, AIR 1952 SC 64. The Supreme Court interpreted Article 329(b) of the constitution and held that the word "Election" in the said provision would include the entire process of election, commencing with the issue of a notification and terminating with the declaration of election of a candidate and that an application under Article 226 of the Constitution of India challenging the validity of any of the acts forming part of that process would be barred.

6. The Supreme Court in N.P.Ponnuswami, (cited supra) indicated that rejection or acceptance of a nomination paper would come within the ambit of the term "Election", meaning thereby, in case of improper rejection of a nomination, the remedy is only to file election petition.

7. The Supreme Court in Election Commission of India v. Ashok Kumar, (2000) 8 SCC 216, scanned the earlier judgments relating to the role of Courts in electoral matters with reference to Article 329 of the Constitution of India and summarized the legal position in the following words :-

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

in the above:

(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.

8. The petitioner has come up with a grievance that his nomination was rejected without any justifiable reason. In view of the categorical pronouncements made by the Constitutional Bench of the Hon'ble Supreme Court, interpreting Article 329 of the Constitution of India, we are not in a position to entertain the Writ Petition.

9. In the upshot, we dismiss the Writ Petition. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ssd/svki/tar

To

1. The Chief Electoral Officer of Tamilnadu and Principal Secretary Public (Election) Department, Secretariat, Fort St.George, Chennai - 600 009
 2. The District Electoral Officer cum District Collector, Coimbatore District, Coimbatore.
 3. The Returning Officer and Revenue Divisional Officer, 119- Thondamuthur Assembly Constituency, Coimbatore District
- + 1 cc to Mrs. G.R.Associates, Advocate Sr.28178

W.P.No.17608 of 2016 and
W.M.P.No.15234 of 2016

LRS (CO)
Eu 11.05.16