

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.05.2016

CORAM

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM
AND

THE HONOURABLE MR. JUSTICE D.KRISHNAKUMAR

W.P.Nos.18054 of 2016 &
W.M.P.No.15837 of 2016

Traffic Dr.K.R.Ramaswamy,
S/o.Rangaswamy,
Social Activist / Senior Citizen,
No.123, Prakasam Salai,
Chennai-600 108. ... Petitioner

Vs

1.The Chief Election Commissioner of India,
New Delhi.

2.Mr.Rajesh Lakhani,
Chief Electrol Officer, Tamil Nadu,
Chennai-600 009.

3.The Regional Director,
Reserve Bank of India,
Rajaji Salai,
Chennai-600 009.

4.The Regional Special Director,
Enforcement Directorate,
26, Haddows Road,
Chennai-34.

5.The Chief Secretary,
Government of Tamil Nadu,
Secretariat, Chennai-9.

... Respondents

Prayer: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the respondents to consider and pass appropriate orders on the representations dated 15.05.2016 and 16.05.2016 made by the petitioner within stipulated time period as may be fixed by this Court.

For Petitioner : Dr.K.R.Ramaswamy (Party-in-Person)

For Respondents: Mr.Niranjan Rajagopalan
For M/s.G.R.Associates for R1 and R2

Mr.C.Mohan
For M/s.King & Patridge for R3

Mr.J.Madana Gopal Rao
SCGSC for R4

Mr.T.N.Rajagoplan
Special Government Pleader for R5

ORDER

(The order was made by K.KALYANASUNDARAM. J., and
D.KRISHNAKUMAR. J.,)

The prayer in the Writ Petition is to issue a Writ of Mandamus, directing the respondents to consider and pass appropriate orders on the representations of the petitioner dated 15.05.2016 and 16.05.2016.

2. The Writ Petition is filed by the party-in-person alleging that the Tamil Nadu State Legislative Assembly Election was announced by the respondents 1 and 2; that as per the statement of the second respondent about Rs.100 Crores of unaccounted money was seized in Tamil Nadu and above 50% of the amount was unclaimed and in this regard several cases were registered by the Tamil Nadu Police based on the complaint by the second respondent; that the Assembly Elections for Aravankurichi and Tanjore have been postponed for the reason of distribution of huge amount by the political parties to the voters for getting votes and huge money was seized from the political parties; and that, on 14.05.2016, a sum of Rs.570 Crores was seized, at Check Post in Tirupur, which was transported in three containers, as they were transported without necessary documents.

3. It is further alleged that though the State Bank of India Main Branch, Coimbatore claimed that the seized amount belongs to them, since they did not follow the Rules laid down by the third respondent / Reserve Bank of India, public and all political parties suspect that the amount involves in the Tamil Nadu State Legislative Assembly Election. Since the third and fourth respondents did not enquire and give their report to the second respondent, the petitioner sent a representation dated

15.05.2016 for proper enquiry by the second respondent and also requested the respondents 1 and 2 not to announce results in Tamil Nadu State Assembly Election held on 16.05.2016. Since no order was passed on his representations, the petitioner/party-in-person has come up with the Writ Petition.

4. Traffic Dr.K.R.Ramaswamy / party-in-person while reiterating the allegations made in the affidavit prayed for issuance of direction to the Election Commission to conduct enquiry with regard to the seized amount of Rs.570 Crores by the Income Tax Department on 14.05.2016 and also suspend or withdraw recognition of the recognized political parties as per Section 16A of the Representation of the People Act, 1951.

5. Mr.Niranjana Rajagopalan, learned counsel for the Election Commission would submit that the Election Commission issued a notification dated 04.03.2016 to conduct Election in the State of Tamil Nadu, and as per the schedule 21st May 2016 is last date for completion of the Election process, since the present Legislative Assembly would expire on 22.05.2016. The Election process started from the date of issuance of notification and would be in force till the declaration of the results. In view of the bar under Article 329(b) of the Constitution of India, the Writ Petition is not maintainable and the Election can be challenged only by filing an Election Petition as per Section 100 of the Representation of the People Act, 1951, after declaration of the Election results. It is further submitted that it is the wisdom of the Election Commissioner to conduct or postpone the Election and the petitioner without any material has come up before this Court making allegations on assumptions and presumptions. It is further submitted that as per Section 73 of the Representation of the People Act, 1951, the Election Commission can count the votes and declare the result barring two Constituencies as per the subsequent notifications and the Writ Petition filed under Article 226 of the Constitution of India is not maintainable and prayed for dismissal of the Writ Petition.

6. Mr.C.Mohan, learned counsel for the Reserve Bank of India would submit that there is no merit in the Writ Petition and the petitioner / party-in-person has not produced any material to support the allegations made in the affidavit and it has been filed only on assumptions and presumptions and the Writ Petition has been filed to sensationalize the trivial issue. It is further submitted that as per Section 45 of the Reserve Bank of India Act, Reserve Bank can appoint an agent to keep in safe custody the amounts collected from the public and the amounts would be kept in currency chest. As per the said Section, the State Bank of India, Coimbatore Branch was appointed as Agent by

the Reserve Bank of India and in view of the shortage of money in State of Bank of India at Visagapattinam and on request, the amount was diverted from State Bank of India, Coimbatore to State Bank of India, Visagapattinam.

7. It is further submitted that if the funds were transferred / diverted within the circle, there need not be any order from the Reserve Bank of India and in case of inter-circle transfer is sought for, a permission will be granted by the Reserve Bank of India. As per letter dated 18.04.2016 and 16.05.2016, Rs.570 Crores were transferred from State Bank of India, Coimbatore to State Bank of India, Visagapattinam and transported in three containers with an Escort from the State of Andhrapradesh headed by Deputy Superintendent of Police. After seizure of amount at Tiruppur on 14.05.2016, the matter was informed to the Election Commissioner and as per the order of the Election Commissioner, the amounts were now remitted back to the State Bank of India, Coimbatore with a direction to the Income Tax Department to conduct an enquiry.

8. According to the learned counsel for the Reserve Bank of India, the Income Tax Department has verified the records of the State of India and found that the amount belongs to the State Bank of India. However, Mr.Niranjana Rajagopalan, learned counsel for the Election Commission would submit that though the amounts were transferred from Tiruppur to Coimbatore, however, the enquiry is not yet completed.

9. It is found that the main grievance of the petitioner/Traffic Dr.K.R.Ramaswamy, is that the political parties have involved in corrupt practice by distributing money to the voters and the Election Commission having found the allegations are true postponed the Elections to the remaining Constituencies viz., Aravankurichi and Tanjore. While so, if the counting takes place on 19.05.2016 and results are declared, it will have influence on the voters in the two Constituencies. However, to substantiate the allegations, the petitioner has not produced any materials. The learned counsel for the Election Commission would contend that the enquiry is pending and it has not been concluded.

10. The learned counsel for the Reserve Bank of India produced a copy of the Chest Slip No.238 dated 18.05.2016 for the reference of this Court, which shows that the seized amount of Rs.570 Crores has been remitted back in the account of State Bank of India, Coimbatore. It is to be noted that the Writ Petitioner has not produced any particulars or materials before this Court to establish the allegations made in the representations and mainly relies on newspaper report.

11. It is also found from the records that the Writ Petitioner/Traffic Dr.K.R.Ramaswamy suffered imposition of cost in the earlier litigations, but he has not paid the cost so far. However, the petitioner would contend that he has filed Review Applications in those Writ Petitions. Further, the learned counsel for the respondents would submit that the writ petitioner is one of the contesting candidates in Mylapore Constituency and the said fact has not been disclosed in the affidavit. Hence, the Writ Petition is liable to be dismissed.

12. The main question arises for consideration is to whether the Writ Petition filed by the petitioner under the guise of Public Interest Litigation, is maintainable in the light of Article 329(b) of the Constitution of India, before culmination of the Election process. Article 329(b) 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. The question as to whether the word "Election" 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's case. In the said case, the Hon'ble Supreme Court has interpreted Article 329(b) of the Constitution of India and held that the word "Election" in the said provision would include the entire process of Election commencing with the issue of notification and terminating with the declaration of election of a candidate and that a petition under Article 226 of the Constitution of India challenging the validity of any of the facts forming any part of that process would be barred.

13. It is also brought to the attention of this Court that under Section 15 of the Representation of People Act, 1951, it is a mandate for the Election Commissioner to complete and declare the Election result before expiry of the existing Assembly or on its dissolution i.e., before 22.05.2016, since the Assembly gets dissolved on 21.05.2016. Therefore, there is no question of postponing the Election result. The Election result should be declared before the Assembly is dissolved. As already held supra, the petitioner's entire case rests upon certain press reports said to have been published in various newspapers and magazines. This alone cannot be a basis for considering the petitioner's case.

14. At this juncture, it would be useful to refer the relevant provisions of law, the decisions rendered by the

Hon'ble Supreme Court to ascertain the scope of Judicial Review in this matter.

(i) Article 329(b) of the Constitution of India, reads as follows:-

"329. Bar to interference by courts in electoral matters:-

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

(ii) Sections 15, 73 and 100 of the Representation of Peoples Act, reads as follows:-

"15. Notification for general election to a State Legislative Assembly. -

(1) A general election shall be held for the purpose of constituting a new Legislative Assembly on the expiration of the duration of the existing Assembly or on its dissolution.

(2) For the said purpose, the Governor or Administrator, as the case may be shall by one or more notifications published in the Official Gazette of the State on such date or dates as may be recommended by the Election Commission, call upon all Assembly constituencies in the State to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing Legislative Assembly, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that Assembly would expire under the provisions of clause (1), of article 172 or under the provisions of section 5 of the Government of Union Territories Act, 1963 (20 of 1963), as the case may be.

73. Publication of results of general elections to the House of the People and the State Legislative Assemblies.-

Where a general election is held for the purpose of constituting a new House of the People or a new State Legislative Assembly, there shall be notified by the Election Commission in the Official Gazette, as soon as may be after the results of the elections in all the constituencies (other than those in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30 or for which the time for completion of the election has been extended under the provisions of section 153) have been declared by the returning officer under the provisions of section 53 or, as the case may be, section 66, the names of the members elected for those constituencies] and upon the issue of such notification that House or Assembly shall be deemed to be duly constituted: Provided that the issue of such notification shall not be deemed—

(a) to preclude—

(i) the taking of the poll and the completion of the election in any Parliamentary or Assembly constituency or constituencies in which the poll could not be taken for any reason on the date originally fixed under clause (d) of section 30; or

(ii) the completion of the election in any Parliamentary or Assembly constituency or constituencies for which time has been extended under the provisions of section 153; or]

(b) to affect the duration of the House of the People or the State Legislative Assembly, if any, functioning immediately before the issue of the said notification.

100. Grounds for declaring election to be void.—

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent], of the candidate or his election agent;

* * * * *

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void."

15(a). The Hon'ble Supreme Court in N.P.Ponnuswamy Vs. The Returning Officer, Namakkal Constituency and others (AIR 1952 SC 64), in paragraph 26 observed as follows:-

"26. And now a word as to why negative language was used in Article 329(b). It seems to me that there is an important difference between Article 71(1) and Article 329(b). Article 71(1) had to be in an affirmative form, because it confers special jurisdiction on the Supreme Court which that Court could not have exercised but for this article. Article 329(b), on the other hand, was primarily intended to exclude or oust the jurisdiction of all courts in

regard to electoral matters and to lay down the only mode in which an election could be challenged. The negative form was therefore more appropriate, and, that being so, it is not surprising that it was decided to follow the pre-existing pattern in which also the negative language had been adopted."

15(b). The Hon'ble Supreme Court in Mohindeer Singh Gill and another Vs. The Chief Election Commission, New Delhi (AIR 1978 SC 851), in paragraphs 29, 31 and 32 observed as follows:-

" 29. Thus, there are two types of decisions, two types of challenges. The first relates to proceedings which interfere with the progress of the election. The second accelerates the completion of the election and acts in furtherance of an election. So, the short question before us, in the light of the illumination derived from Ponnuswami, is as to whether the order for re-poll of the Chief Election Commissioner is 'anything done towards the completion of the election proceeding' and whether the proceedings before the High Court facilitated the election process or halted its progress. The question immediately arises as to whether the relief sought in, the writ petition by the present appellant amounted to calling in question the election. This, in turn, revolves round the point as to whether the cancellation of the poll and the reordering of fresh poll is 'part of election' and challenging it is 'calling it in question.'

31. If 'election' bears the larger connotation, if 'calling in question' possesses a semantic sweep in plain English, if policy and principle are tools for interpretation of statutes, language permitting the conclusion is irresistible' even though the argument contra may have emotional impact and ingenious appeal, that the catch-all jurisdiction under Art. 226 cannot consider the correctness, legality or otherwise of the direction for cancellation integrated with re-poll. For, the prima facie purpose of such a re-poll was to restore a detailed Poll process and to, complete it through the salvatory effort of a repoll. Whether in fact or law, the order is validly made within his powers or violative of natural justice can be examined later by the appointed instrumentality, viz., the Election Tribunal. That aspect will be explained presently. We proceed on the footing that re-poll in one polling station or in many polling stations for

good reasons, is lawful. This shows that re-poll in many or all segments, all- pervasive or isolated, can be lawful. We are not considering whether the act was bad for other reasons. We are concerned only to say that if the regular poll, for some reasons, has failed to reach the goal of choosing by plurality the returned candidate and to achieve this object a fresh poll (not a new election) is needed, it may still be a step in the election.- The deliverance of Dunkirk is part of the strategy of counter-attack. Wise or valid, is another matter.

32. On the assumption, but leaving the question of the validity of the direction for re-poll soon for determination by the Election Tribunal, we hold that a writ petition challenging the cancellation coupled with re-poll amounts to calling in question a step in 'election' and is there, fore barred by Art. 329(b). If no re-poll had been directed the legal perspective would have been very different. The mere cancellation would have then thwarted the course of the election and different considerations would have come into play. We need not chase a hypothetical case."

15 (c). The Hon'ble Supreme Court in Election Commission of India Vs. Ashok Kumar and others (2000 (8) SCC 216), in paragraph 32 observed as follows:-

"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 courts 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" .

16. The principles laid down by the Hon'ble Supreme Court, have been followed by the Division Bench of this Court in Jayaraj Vs. The Chief Electoral Officer of Tamil Nadu and others in W.P.No.17608 of 2016 dated 06.05.2016 and P.Dhamayanthi Vs. The Election Commission of India, New Delhi and others in W.P.No.13665 of 2014, dated 14.05.2014.

17. In the light of the decisions of the Hon'ble Supreme court as well as this Court and our findings supra, we are of the view that the Writ Petition has no merits and it is liable

to be dismissed. Accordingly, the Writ Petition is dismissed.
No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-VI) /VO

//True Copy//

Sub Assistant Registrar

r n s / a v r

To

- 1.The Chief Election Commissioner of India,
New Delhi.
- 2.Mr.Rajesh Lakhani,
Chief Electrol Officer, Tamil Nadu,
Chennai-600 009.
- 3.The Regional Director,
Reserve Bank of India,
Rajaji Salai,
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- 4.The Regional Special Director,
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- 5.The Chief Secretary,
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Secretariat, Chennai-9.

- 1 cc to Mr.K.R.Ramasamy, Party in Person, Advocate, sr.28572
1 cc to M/s.G.R.Associates, Advocates, sr.28428
2 ccs to M/s. Ramalingam & Associates, Advocates, sr.28413
1 cc to M/s. King & Patridge, Advocates, sr. 28403

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