

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.No.18159 of 2016 and
W.P.No.18196 of 2016 & W.M.P.No.15940 of 2016

W.P.No.18159 of 2016

Satta Panchayat Iyakkam (SPI),
Represented by its General Secretary,
Senthil Arumugam,
No.31, South West Boag Road,
T.Nagar, Chennai-600 017. ... Petitioner

Vs

1.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
New Delhi - 110 001.

2.The Chief Electoral Officer,
Election Commission of India,
Secretariat, Chennai-600 009.
Tamil Nadu.

Prayer: Petition is filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the first respondent to dispose of the representation dated 15.05.2016 expeditiously and pass such other further orders or directions as this Hon'ble court may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.M.Senthil Arumugam (Party-in-Person)

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

W.P.No.18196 of 2016

Dalit Pandiyan

.. Petitioner

Vs

1.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

2.The Chief Electoral Officer,
State of Tamil Nadu,
Secretariat, Chennai-600 009.

.. 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 postpone the counting of votes on 19.05.2016, and to count the votes any date after 23.05.2016 in the General Election held in State of Tamil Nadu for the Legislative Assembly on 16.05.2016 to any other date after 23.05.2016.

For Petitioner : Mr.P.Ravi Shankar Rao

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

COMMON ORDER

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

1.1. The Writ Petition in W.P.No.18159 of 2016 has been filed seeking for issuance of a Writ of Mandamus, directing the first respondent to dispose of the representation of the petitioner dated 15.05.2016.

1.2. According to the Writ Petitioner / party-in-person, the General Election to the Tamil Nadu State Legislative Assembly was notified by the Governor of Tamil Nadu on 22.04.2016 and on the same day Election Commission issued a notification, fixing 16th May 2016 as the date on which polling shall be taken in all 234 Constituencies in Tamil Nadu; that the Election Commission tried their best to stop corrupt practice during the Election period in Tamil Nadu and in spite of best efforts by the Election Commission, the voters were bribed almost in all

Constituencies; that on complaint, the Election Commission had conducted surprise raids in various Districts and found huge corrupt practices in Karur and Tanjore Districts and decided to postpone the Elections in Aravankurichi Constituency and Tanjore Constituency on 23.05.2016 and decided to announce the results for these Constituencies on 25.05.2016.

1.3. The grievance of the petitioner is that as per the Election Commission's notification, the Election results for 232 Constituencies would be announced on 19.05.2016 and the results of the two Constituencies in which, the Elections were postponed will be announced on 25.05.2016. After announcement of Election results for 232 Constituencies on 19th May 2016, the people would know which political party is going to come to power and it will influence the voters in two Constituencies viz., Aravankurichi and Tanjore and there will not be free and fair Election and to ensure free and fair Election in the two Constituencies, the results for all 232 Constituencies should be announced on the same day. Aggrieved by the notification of the Election Commission dated 14.05.2016 to postpone the Elections in two Assembly Constituencies, the petitioner preferred a representation dated 15.05.2016. It is further alleged that considering the reasons for postponement of Elections, the recognition of political parties involved in corrupt practice have to be cancelled. Aggrieved over the non-consideration of the representation, the petitioner has filed the Writ Petition.

2. The petitioner in W.P.No.18196 of 2016 has prayed for postponement of counting of votes on 19.05.2016 and to count the votes on the day after 23.05.2016 for the General Election held in State of Tamil Nadu for the Legislative Assembly on 16.05.2016 or to any other date after 23.05.2016. According to the petitioner, originally the respondents fixed 16.05.2016 as date of polling for the Legislative Assembly and 19.05.2016 to count the votes. However, on 14.05.2016, the first respondent postponed the Elections of Aravankurichi and Tanjore Constituencies, fixing the date of polling as 23.05.2016 and date of counting as 25.05.2016, and if the votes polled on 16.05.2016 are counted on 19.05.2016, it will have an adverse impact in the minds of the general public, who will cast their votes on 23.05.2016. Hence, the petitioner sent a representation dated 16.05.2016 by Fax and by E-mail on 17.05.2016. Since the request was not considered, the present Writ Petition has been filed.

3. Mr.Senthil Arumugam / party-in-person in W.P.No.18159 of 2016 would submit that in view of the corrupt practice happened in the State of Tamil Nadu, during the Assembly Elections in May 2016, the Election Commission found that a sum of Rs.4.77 Crores seized by the Income Tax Authorities from the house of one Sri.Anbunathan on 22.04.2016 and also seized materials and

documents for purchase of articles worth Rs.1.30 Crore. Further, the Income Tax Department conducted search in the house of K.C.Palanisamy on 10.05.2016, who is a candidate of Dravida Munnetra Kazhagam in Aravakurichi Assembly Constitution and seized Rs.1.98 Crore, while postponing the Elections to the two Constituencies, decided to count the votes and announce the results on 19.05.2016 for the remaining 232 Constituencies. The decision of the Election Commission is not proper, while postponing the counting in the States of Assam and West Bengal on the premise that the declaration of the results in the States of Assam and West Bengal, though the Elections were over on 11.04.2016 and 05.05.2016, the announcement of the result would affect Elections in the State of Tamil Nadu, Kerala and Puducherry, the same logic has to be followed in the case of postponement of Election to two Constituencies in Tamil Nadu.

4. The petitioner would further contend that after conducting Election in Aravankurichi and Tanjore, the results have to be published, otherwise, it will not ensure free and fair Election in those Constituencies. The petitioner also refers Section 123 of the Representation of People Act, 1951.

5. Mr.P.Ravi Shankar Rao, learned counsel for the petitioner in W.P.No.18196 of 2016 would submit that in case of tie between the political parties after declaring the result on 19.05.2016, the voters in Aravankurichi and Tanjore Constituencies will not have a free and fair Election and they will be influenced by the political parties. The learned counsel adopted the submissions made by the parties in the other Writ Petition.

6. Mr.Niranjan 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 term of 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, as per Article 329(b) of the Constitution of India. In view of the bar under Article 329(b) of the Constitution of India, the Writ Petitions are 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 result. It is further submitted that it is the wisdom of the Election Commission to conduct or postpone the Election and the petitioners without any material have 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 subsequent notification and the Writ

Petitions filed under Article 226 of the Constitution of India is not maintainable and prayed for dismissal of the Writ Petitions.

7. 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."

8(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."

8(b). In the case of Mohinder Singh Gill and anr. vs. The Chief Election Commissioner, New Delhi [AIR 1978 SC 851], it is observed that Article 329(b) is a blanket ban on litigative challenge to electoral steps taken by the Election Commission for carrying forward the process of Election to its culmination in the formal declaration of the result. The compendious expression "Election" commences from the initial notification and culminates in the declaration of the return of a candidate and in paragraphs 29, 31 & 32, it is 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.

30.

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."

8(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" .

9. 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.

10. The main question arises for consideration is whether the Writ Petitions filed under the guise of Public Interest Litigation are maintainable in view of the bar in Article 329(b) of the Constitution of India, before culmination of the Election process. 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. The question as to whether the word "Election" in Article 329(b) of the Constitution would embrace the whole procedure of Election or whether it is not confined to the final result, 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.

11. Further, as rightly pointed out by the learned counsel for the Election Commission, the petitioners have not challenged the Election notification and according to the learned counsel, if there is any complaint, the grievance can be looked into only

by the Election Commission and the aggrieved party, has to file only Election Petition after completion of the Election process and the same shall not be challenged by way of Writ Petition. Further, the Election Commission has got power to take a decision to postpone the Election according to the ground reality and it cannot be questioned before the Court, at this stage under Article 226 of the Constitution of India.

12. 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. It is also not in dispute that the term of the present Assembly would come to an end on 22.05.2016. The main allegation of the petitioners is that the political parties have involved in corrupt practice by distributing money to the voters and the Election Commission having found truth in the allegations has 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. As rightly pointed out by the learned counsel for the Election Commission, there is no bar for declaration of the results while the Elections are postponed in two Constituencies and the above Writ Petitions have been filed only on assumptions, presumptions and surmises, as the Writ Petitioners have not placed any material before this Court in support of their contentions.

13. In the light of the categorical pronouncement of the decisions cited supra and our findings interpreting Article 329 (b) of the Constitution of India, the prayer sought for in both the Writ Petitions cannot be entertained. Accordingly, these Writ Petitions are dismissed. No costs. Consequently, connected miscellaneous petition is closed.

सत्यमेव जयते

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

1.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
New Delhi - 110 001.

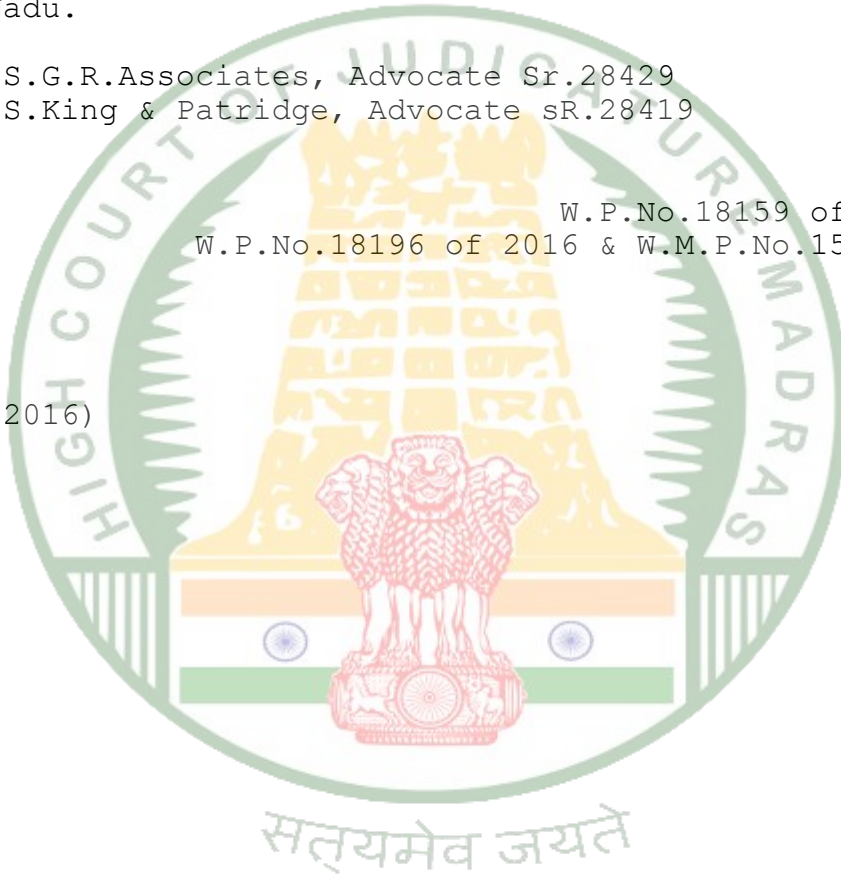
2.The Chief Electoral Officer,
Election Commission of India,
Secretariat, Chennai-600 009.
Tamil Nadu.

+1cc to M/S.G.R.Associates, Advocate Sr.28429

+1cc to M/S.King & Patridge, Advocate sR.28419

W.P.No.18159 of 2016 and
W.P.No.18196 of 2016 & W.M.P.No.15940 of 2016

ppa (CO)
srg (24/05/2016)



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