

Reserved on : 19.09.2016

Delivered on : 23.09.2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 23.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

C.R.P.(NPD).No.1215 of 2016

K.S.Arumugam

... Petitioner

Vs.

1.The District Collector,
Tiruvallur District, Tiruvallur.

2.The Election Officer-cum-Commissioner,
Poonamallee Panchayat Union-cum-
Block Development Officer,
Poonamallee.

3.The State Election Commissioner,
Office of the Election Commissioner,
Vadapalani, Chennai - 600 026.

4.S.Muthukrishnan

5.V.Kumar

6.Elagovan

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 25.01.2016 in Election

O.P.No.190 of 2011 on the file of the Principal District Judge, Tiruvallur District.

Petitioner : Mr.K.S.Arumugam,
Party in person

For Respondents : Mr.T.Jayaramaraj,
Government Advocate (CS) (R1 & R3)

Mrs.A.Sri Jayanthi,
Special Government Pleader (R2)

Mr.N.R.Anantha Ramakrishnan (R4)
Mr.C.Prabhakaran (R6)

R5- no appearance

ORDER

Challenging the order passed in Election O.P.No.190 of 2011 on the file of the Principal District Court, Tiruvallur, the petitioner who had contested the Poonamallee Panchayat Union Election held on 19.10.2011 for the post of Village Panchayat of Kannapalayam Village Panchayat, has filed the above Civil Revision Petition.

2.The petitioner was an unsuccessful candidate in the election. Out of the 2602 valid votes polled, the 6th respondent secured 967 votes, the 5th respondent secured 935 votes, the 4th respondent secured 599 votes and the revision petitioner secured 101 votes. Since the 6th respondent had secured the highest number of votes, he was declared successful on the date of counting (i.e.) on 21.10.2011.

3.The brief case of the petitioner is as follows:

According to the petitioner, his rival candidates viz., the respondents 4 to 6 adopted corrupt practices by bribing the voters by giving sarees, nose studs and money between Rs.1,000/- and Rs.2,000/- per vote. According to the petitioner, the said corrupt practices were informed to the Election Officer over phone and in writing. However, the Election Officer did not take any action against the persons indulged in corrupt practices. The 6th respondent was declared elected by spending huge amount and by using more vehicles than prescribed limit. Further, the Ballot Papers did not have the seal of the Election Officer, booth number and date of election. When it was intimated during the counting process, no action was taken, but the counting process was completed and the 6th respondent was declared as successful candidate.

4.The brief case of the respondents 1 to 3 are as follows:

The respondents 1 to 3 have stated that the polling materials and the Ballot Papers were thoroughly verified by the Election Officials and supplied to the respective booths. The counting was done as per the rules and Form-5 was verified and also acknowledged by the agents of the contesting candidates at the time of election. The petitioner did not raise objection regarding the Ballot Papers. There is no violation in the election process.

The 6th respondent, who contested in “Lock and Key” symbol secured 967 votes, the 5th respondent, who contested in “Hand Roller” symbol secured 935 votes, the 4th respondent, who contested in “Ladder” symbol secured 599 votes and the petitioner, who contested in the “Scissors” symbol secured 101 votes. The 6th respondent, who secured highest vote, was declared elected. The petitioner, who lost the election, with personal intention, has filed the petition with false allegations.

5.The brief case of the 6th respondent is as follows:

According to the 6th respondent, the petitioner has filed the petition out of jealousy and to wreck vengeance. The petitioner has criminal cases pending against him. He lost all the elections he contested and he is not an acceptable candidate by the voters of the Kannapalayam Village. The petitioner habitually file petitions against others to threaten and grab money. In these circumstances, the 6th respondent prayed for dismissal of the petition.

6.Before the Principal District Court, Thiruvallur, on the side of the petitioner, 3 witnesses were examined and 6 documents, Ex.P1 to P6 were marked. On the side of the respondents, 2 witnesses were marked and 3 documents, Exs.R1 to R3 were marked.

7.The Court below, taking into consideration the oral and documentary evidences let in by the parties, dismissed the Election Petition. Aggrieved over the same, the unsuccessful candidate has filed the above Civil Revision Petition.

8.Heard Mr.K.S.Arumugam, petitioner, who appeared in person, Mr.T.Jayaramaraj, learned Government Advocate (CS) for the respondents 1 & 3, Mrs.A.Sri Jayanthi, learned Special Government Pleader for the 2nd respondent, Mr.N.R.Anantha Ramakrishnan, learned counsel for the 4th respondent and Mr.C.Prabhakaran, learned counsel for the 6th respondent.

9.It is not in dispute that the revision petitioner contested the local body election held on 19.10.2011 for the post of President, Kannapalayam Village Panchayat, Thiruvallur District. In the election held on 19.10.2011, the 6th respondent was the successful candidate securing 967 votes. The 5th respondent secured 935 votes, the 4th respondent secured 599 votes. The revision petitioner secured 101 votes.

10.It is settled position that any protest regarding the polling or counting should be raised by the candidates by writing, before the declaration of the results. In the Election Original Petition, the petitioner

has stated that he had given written representation to the Election Officer and that the Officer had refused to receive the same. However, in order to support his contention, he has not produced any evidence before the District Court. Ex.P6 dated 24.10.2011 is the requisition given by the petitioner to the District Collector, Thiruvallur to cancel the election of the President. Ex.P6 is the only document produced by the revision petitioner requesting the District Collector to cancel the election. Even Ex.P6 was given subsequent to the election. Unless the petitioner proves that the written request was given to the Officer for re-counting before the declaration of the results, the contention raised by the petitioner cannot be accepted. Even on a reading of Ex.P6 dated 24.10.2011, it could be seen that the averments stated in the said letter are very vague.

11.As per Section 83 of the Representation of the Peoples Act, an Election Petition should contain a concise statement of the material facts, which the petitioner relies and shall set forth full particulars of the names and parties alleged to have committed such corrupt practice and the date and place of commission of each such practice.

12.Apart from not mentioning of the particulars of the persons indulged in corrupt practice and the date and place of such corrupt practice,

the petitioner miserably failed to establish his pleas that the alleged corrupt practice was brought to the notice of the Authorities immediately. In the absence of any pleading with regard to the specific allegations made by the petitioner, the Court below has rightly rejected the evidence of P.W.2, who spoke about the allegations. The allegations made by P.W.2 is not supported by any other evidence. When the petitioner had contested the elections on previous occasions, one can come to the conclusion that he is not a new comer to the elections and that he had sufficient experience in the elections. In spite of the same, the petitioner has not followed the rules either for re-counting or for filing the Election Petition. For the election held on 19.10.2011, the votes were counted on 21.10.2011 and Ex.P6 written representation alleging corrupt practice was given only on 24.10.2011. Therefore, it is clear that the petitioner had waited till the declaration of the results for giving a complaint alleging corrupt practice. The petitioner, having lost the election, has come out with these allegations for the reasons best known to him. When the petitioner had noticed corrupt practice in the election held on 19.10.2011, he should have brought it to the notice of the Authorities in writing about the corrupt practice, which was not done by the petitioner till the declaration of the results.

13.The petitioner contended that in the Ballot Papers, the seal of the Election Officer containing the booth number and date of election were not mentioned. However, Ex.P5 document produced by the petitioner himself would disprove his own case.

14.As per the Tamil Nadu Panchayat Election Rules, 1995, any objection regarding counting should be made in writing before the declaration of the result.

15.As already stated, the 1st complaint was made only after the declaration of the results. The provisions of Section 83 (1) of the Act was not followed by the petitioner.

16.It is settled position that an order for inspection of Ballot Papers cannot be granted to support vague pleas in the petition not supported by material facts or to fish out the evidence to support such case.

17.As per Exs.R2 & R3 copy of Form-22, the total number of votes polled were 2669. Out of this 2669 votes, the revision petitioner had secured 101 votes and the 6th respondent had secured 967 votes. Since there was no *prima facie* genuine need for inspection for Ballot Papers made out by the

petitioner, the Court below had rightly dismissed the petition. Since the petitioner had failed to prove his case in accordance with the provisions of the Tamil Nadu Panchayat Election Rules 1995, I do not find any reason to interfere with the order passed by the District Court, Thiruvallur.

18. In these circumstances, the Civil Revision Petition is devoid of merits and the same is liable to be dismissed. Accordingly, the Civil Revision Petition is dismissed. No costs.

Index : No
Internet : Yes
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23.09.2016

To

The Principal District Judge,
Tiruvallur District.

M.DURAIWAMY,J.
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Order made in
C.R.P.(NPD).No.1215 of 2016

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