

Reserved On: 12-09-2016

Delivered On: 16-09-2016

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16-09-2016

CORAM

THE HONOURABLE THIRU JUSTICE M. DURAISWAMY

C.R.P.(NPD)No.1244 of 2016

P. Sivalingam

... Petitioner

vs

1. G. Asokan

2. The Returning Officer
for Kolagampatti Panchayat
BDO, Harur Union
Harur Town & Taluk,
Dharmapuri District

3. The District Election Officer,
(District Collector),
Dharmapuri

4. The State Election Commission,
Chennai

5. The Executive Officer,
Kolagampatti Panchayat,
Kolagampatti Village & Post,
Pappireddipatti Taluk,
Dharmapuri District

.... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India against the order dated 24.02.2016 passed in EOP No.5 of 2011 on the file of Principal District Judge, Dharmapuri.

For petitioners	:	Mr.R. Ezhilarasan
For 1 st respondent:		Mr.V.P. Senguttuvel
For R.2 to R.5	:	Mr.T.Jayaramaraj Government Advocate

ORDER

Challenging the order passed in EOP No.5 of 2011 on the file of Principal District Court, Dharmapuri, the petitioner has filed the above Civil Revision Petition.

2. The Election Original Petition in EOP No.5 of 2011 was filed by the revision petitioner under Sections 258, 259, 260 r/w Rule 122 of the Tamil Nadu Panchayat Act to declare the election of the first respondent as the President of the Kolagampatti Village Panchayat as null and void and to declare the petitioner as the successful candidate for the post of President of Kolagampatti Village Panchayat and to

order recount of the votes polled.

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

According to the petitioner, the election for the post of the President of Kolagampatti Village Panchayat was held on 19.10.2011 and in the said election, the petitioner and the first respondent contested for the post of the President of the Panchayat. The Returning Officer did not properly seal the ballot boxes as per the Rules and thus, he allowed the ballot to be mishandled by the interested persons. The petitioner was not allowed to enter the counting room nor his agents to watch the counting in his absence.

4. As per Form 20, furnished by the Election Officer of the Booth, the total votes polled and the votes available in the box were 2124, but the Returning Officer has wrongly stated that the total votes were 2126. The entries with regard to the postal ballot papers were not properly made by the Returning Officer. In the copy of Form 20, supplied to the petitioner, the total number of votes was mentioned as 2128, which included 72 rejected votes and 4 postal votes and the remaining were counted as valid votes.

5. The Returning Officer failed to furnish Form-22 to the petitioner. The first respondent got 1030 votes and the petitioner got 1028 votes. Therefore, the first respondent was declared as the successful candidate. The valid votes polled in favour of the petitioner was wrongly rejected on flimsy grounds. The counting officers were influenced by the first respondent in adding the votes, which ought to have been rejected, to his account. In these circumstances, the petitioner has filed the the original petition.

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

According to the first respondent, the petitioner has not raised any objection at the time of counting. Hence, there is no question of violation of mandatory Rules. The Returning Officer acted as per the Rules. The Returning Officer furnished Form-22 to the petitioner. As per Form-20, the total votes polled and the votes available in the box were 2126. There is no irregularity committed in the counting of votes. No malpractice was committed in the counting process, There is no necessity for recounting of the votes since everything was done as per the Rules. Since the petitioner was defeated in the election, he has

made several allegations against the election officers and blamed the entire counting process. The petitioner and his agents kept quite through out the counting process. Only after announcement of the result, the petitioner started making allegations. In these circumstances, the first respondent prayed dismissal of the petition.

7. The brief case of the second respondent is as follows:

According to the second respondent, the Returning Officer, all the election materials were sent to all the polling stations one day before the date of election and after completion of the poll, the ballot boxes were sealed by the Presiding Officer of the respective Polling Stations and the same were handed over to the Zonal Officer by the Polling Officials and the sealed ballot units were not handed over to the Returning Officer.

8. The Presiding Officers obtained the signature of the Polling agents, while sealing the ballot boxes, as per the election rules. All the polled ballot boxes were handed over by the Zonal Officers along with the police escort at the reception center in the counting center. The storage room was also sealed by the Returning Officer in the presence

of the agents/candidates and police escorts. The casting of votes was done in the presence of the polling officials and the agents and not in the presence of the Returning Officer. The agents of the petitioner were allowed to enter inside of the barricade to watch the counting of polled votes. The counting tables laid at a distance of 1 meter from the barricade and cent percent visibility of votes was ensured. The counting officials have not acted in favour of the first respondent. They acted impartially in counting of votes. There was no irregularity or misconduct on the part of the counting officials and the Returning Officer. The counting of votes was done according to the Rules and there was no violation of mandatory rules by the returning Officer in counting of the votes. The votes polled in the boxes were counted by the counting officials in the presence of the counting agents/candidates. The total number of votes available for counting were 2126. Form-22 was furnished to the contesting candidates. The postal votes relating to Kolagampatty Panchayat were opened and counted. Out of 4 postal votes, the petitioner secured 1(one) vote and the first respondent secured 3 (three) votes. The total votes in the ballot boxes were 2126, including invalid votes of 72 and 4 postal ballot papers. The total votes polled were 2130 and not 2128. The

petitioner has secured 1028 votes, including 1 (one) postal ballot and the first respondent secured 1030 votes, including 3 (three) postal ballots. The remaining 72 votes were invalid votes. Each and every polled votes were shown to the polling agents at the time of counting by the counting officials. The petitioner has raised the issue only after his defeat. The Returning Officer has not favoured the winning candidate in counting of the polled votes. The entire process of counting was done in accordance with rules. The invalid votes were shown to all the agents and the invalid votes were rejected. The votes secured by each candidate was furnished in Form-22. The invalid votes were recounted at the request of the petitioner. The petitioner made false complaint and blamed the counting officials and the Returning Officer for the reasons that he was defeated in the election. In these circumstances, the second respondent prayed for dismissal of the petition.

9. Before the Principal District Court, Dharmapuri, on the side of the petitioner, two witnesses were examined and nine documents Exs.P.1 to P.9 were marked. On the side of the respondents, five witnesses were examined and Ex.R.1 was marked.

10. The Election Tribunal, after taking into consideration the case of both the parties, dismissed the original petition. Aggrieved over the same, the petitioner has filed the above Civil Revision Petition.

11. Heard Mr.R. Ezhilarasan, learned counsel for the petitioner and Mr.V.P. Senguttuvel, the learned counsel for the first respondent and Mr.T. Jayaramaraj, learned Government Advocate for the respondents 2 to 5.

12. Mr.R. Ezhilarasan, learned counsel, appearing for the petitioner, submitted that the Election Tribunal dismissed the petition without taking into consideration that the Returning Officer has not considered the postal ballots in a proper manner. Further, the learned counsel for the petitioner submitted as per Ex.P.7, the total votes were only 2124, whereas, in Ex.P.8, the respondents have mentioned the total polled votes as 2126. The learned counsel further submitted that since there is discrepancy in the total number of votes polled, the same would establish that the counting of votes were not done in a

proper manner. The learned counsel, in support of his contention, relied upon the judgment reported in **2015 (4) L.W 135 (Vahitha vs Majitha Begum and Others)**, wherein, this court held as follows:

" 20. The next issue relates to the arbitrary act of declaration of valid votes as invalid votes. The petitioner as well as first respondent admitted that the marker was having Swasthik mark only on one side. The other side was blunt. The Election Officer was examined as D.W.2. The Election Officer very clearly admitted that even if marking is given with the blunt side and there is indication that the vote is polled in favour of a particular symbol/candidate, such votes would be valid, notwithstanding the fact that Swasthik mark was not affixed.

21. The second proviso to Rule 63(a) of the Tamil Nadu Panchayats (Election) Rules, 1995 reads thus:

"Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is not distinct or made more than once, if the intention that the vote shall be for a particular Candidate clearly appears from the way the paper is marked.

22. The above quoted provision clearly shows that

in case the intention of voter to vote in favour of a particular candidate could be ascertained with certainty, such votes shall not be declared invalid. In short, in case the intention of the voter is clear that he wanted to cast the vote in favour of a particular candidate, such vote shall be declared as valid, notwithstanding the fact that mark indicating the vote is not distinct.”

13. Countering the submissions made by the learned counsel for the petitioner, Mr.V.P. Senguttuvel, learned counsel appearing for the first respondent, submitted that the counting of votes was done in a proper manner, in accordance with the Rules of the Tamil Nadu Panchayat Act and that, the petitioner, having been present at the time of counting of the votes, cannot now dispute the number of votes polled, invalid votes and postal votes. Further, the learned counsel submitted that having kept quiet at the time of counting votes, the petitioner is estopped from raising objections in the counting process.

14. Mr.T. Jayaramaraj, learned Government Advocate, appearing for the respondent 2 to 5, submitted that the election was conducted in accordance with the provisions of the Tamil Nadu Panchayat Act and that, no mandatory rule was violated by the

Returning Officer at the time of counting of votes. Since the election and counting of votes were done in accordance with law, the petition was rightly dismissed by the Court below.

15. On a careful consideration of the materials available on record, submissions made by the learned counsel on either side and also the judgment relied upon by the learned counsel for the petitioner, it could be seen that in the election, held on 19.10.2011, for the post of President of Kolagampatti Panchayat, the petitioner and the first respondent contested the election. The second respondent is the Returning Officer of the Panchayat Election. The case of the petitioner is that the ballot boxes were not properly sealed and the same was tampered with and also that the Returning Officer violated the Rules by not issuing Form-20.

16. Contrary to the said averment, the petitioner, who got himself examined as P.W.1, in his evidence, admitted that the election officer issued Form-20 and also admitted that the Returning Officer issued Form -22. As per Form-22, the total valid votes polled in the Panchayat were 2130, including 4 postal votes. The petitioner secured

1028 votes, including one postal vote; the first respondent secured 1030 votes, including 3 postal votes. Though the petitioner disputed the correctness of the invalid votes, in his cross examination, he admitted that there were four postal votes polled in the election and out of the four postal votes, he got one postal vote and the remaining three postal votes were polled in favour of the first respondent.

17. The learned counsel appearing for the petitioner mainly contended that the postal votes were wrongly added to the first respondent's account. The contention, now raised by the learned counsel for the petitioner, is contrary to the evidence, let in by P.W.1. When the petitioner himself admitted that out of four postal votes, he got only one vote and the first respondent got three postal votes, the contention, now raised by the learned counsel for the petitioner, cannot be accepted. In the petition, the petitioner has stated that neither himself nor his agent was allowed to enter the counting hall at the time of counting of votes, but in the cross examination of P.W.1, he specifically admitted that at the time of counting of votes, two of his agents were present in the Hall. Therefore, from the evidence of P.W.1, it is clear that his agents were allowed to be present at the

time of counting of votes. However, the agents did not raise any objection with regard to counting of votes at the time of counting. The objections were raised by the petitioner only after the declaration of the results. The petitioner has come forward to file the Election Original Petition, making allegations against the respondents, since the difference between the votes obtained by the petitioner and the first respondent is only two votes.

18. It is also pertinent to note that the petitioner has not given any request for recounting of the votes to the Election Officer. It is settled position that the burden of proof lies on the petitioner to establish his case by oral and documentary evidence. He cannot succeed on the weakness of the respondent's case. In the case on hand, the evidence of P.W.1 itself is sufficient to reject his case, which runs contrary to his pleading. The evidence let in by P.Ws are contrary to the averments stated in the petition.

19. In the absence of any evidence, produced by the petitioner in support of his case, the trial court has rightly dismissed the petition. The averments stated in the petition does not come within the purview

of Sec.259 of the Tamil Nadu Panchayat Rules, 1994. In these circumstances, I do not find any merits in the Civil Revision Petition and the Civil Revision Petition is dismissed. No costs.

16 -09-2016

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To

The Principal District Judge, Dharmapuri.

M. DURAISWAMY,J.,

sr

Pre-Delivery Order in
CRP(NPD)No.1244/2016

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