



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 28.09.2016

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THE HON'BLE Mr. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE Ms. JUSTICE V.M.VELUMANI

W.P. (MD) No.18510 of 2016

S.Vijayakumar

.. Petitioner

Vs.

1.The Chief Electoral Officer,
Tamil Nadu Election Commission,
Public (Elections) Department,
Secretariat,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2.The District Collector,
Madurai District,
Madurai.

.. Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the first respondent not to change the post of Chairman of Paravai Town Panchayat now under General category into Scheduled Tribe category by considering the representation sent by the petitioner, dated 21.09.2016, within the time period stipulated by this Court.

For Petitioner
For Respondents

: Mr.T.Lajapathiroy
: Mr.B.Pugalendhi
Additional Advocate General
Assisted by
Mr.R.Karthikeyan
Additional Government Pleader

ORDER

(Order of the Court was made by V.M.VELUMANI, J.)

This Writ Petition has been filed to direct the first respondent not to change the post of Chairman of Paravai Town Panchayat, now under General category into Scheduled Tribe category, by considering the representation sent by the



petitioner, dated 21.09.2016, within a time frame to be fixed by this Court.

2. According to the petitioner, he is a resident of No.42, Amman Kovil Street, Oormechikulam, Paravai Town Panchayat, Madurai North Taluk. He is a socially conscious person involving himself in common issues affecting the public in general and belongs to general category in terms of community. He is a potential candidate to contest for the post of Chairman of Paravai Town Panchayat under the general category to serve for the upliftment of the people of his area.

3. The post of Chairman of Paravai Town Panchayat was belonged to general category during 2011 local body elections. The Tamil Nadu State Election Commission had already released the main electoral rolls for local bodies and preparation of the electoral rolls for individual wards is under way. According to the petitioner, out of total number of 16,422 voters in Paravai Town Panchayat, the total number of voters belong to S.T. Community will only be 800. There is an apprehension that the post of Chairman of Town Panchayat is to be reserved for S.T. Community.

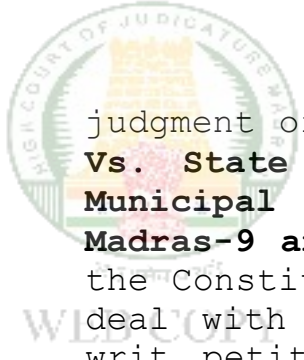
4. As per Rule 4 of the Tamil Nadu Municipal Councils (Reservation of Wards for the Scheduled Castes and the Scheduled Tribes and Co-option of Women in the Councils) Rules, 1991, it is necessary to eliminate any ward from reservation, considering the local conditions or any other factors, such wards shall be omitted from the descending order of population of Scheduled Castes and Scheduled Tribes and the remaining wards shall be considered for reservation.

5. There are only 800 S.T. Voters and reservation to the post of Chairman of Paravai Town Panchayat for S.T. Community would result in grave disappointment. The petitioner, in the circumstances, given a representation, dated 21.09.2016 and filed the present writ petition for the relief stated supra.

6. Mr.B.Pugalendhi, learned Additional Advocate General assisted by Mr.R.Karthikeyan, learned Additional Government Pleader, has submitted that the election notification had issued on 25.09.2016 and the reservation for persons belonging to Scheduled Castes and Scheduled Tribes and for Women had been notified vide G.O.Ms.No.124, Municipal Administration and Water Supply (Election) Department, dated 16.09.2016 and the same has been published in Tamil Nadu Government Gazette on the very same day, i.e., on 16.09.2016. The learned Additional Advocate General further submitted that the writ petition is not maintainable and remedy available to the petitioner is only to approach the District Judge by way of an Election Petition under Sections 51-A and 52 of the Tamil Nadu District Municipalities Act.

<https://hcservices5courts.gov.in/hcservices/>

7. The learned Additional Advocate General relied on the



judgment of this Court reported in 1997 (I) CTC 296 [M.Vaikundaraj Vs. State of Tamil Nadu, Rep. by the Secretary to Government, Municipal Administration and Water Supply, Fort St. George, Madras-9 and others], and submitted that as per Article 243-ZG of the Constitution of India, there is a bar imposed on the Courts to deal with the election matters and prayed for dismissal of the writ petition. Paragraphs 5 to 8 of the said judgment read as follows:

"5. Art.243-ZG has been specifically enacted into the Constitution for taking away the jurisdiction of the Courts, even of the High Court under Art.226, to interfere with the election process. The said Article specifically provides thus:-

"243. ZG Bar to interference by Courts in election matters:-

Notwithstanding anything in this Constitution.-

(a) the Validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Art.243-ZA shall not be called in question in any Court.

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

From the aforesaid provisions contained in Art.243-ZG it is clear that allotment of seats to constituencies cannot also be challenged in a petition under Art.226 of the Constitution and the appropriate remedy for any aggrieved person is to challenge the election by way of an election petition, as stated in Clause (b) of Art.243-ZG of the Constitution.

6. Section 51-B of the Tamil Nadu District Municipalities Act provides for the grounds for declaring the election to be void in an election petition filed before the District Judge under Section 51-A of the said Act. Clause (d) (iv) of sub-Section (1) of Sec.51-A of the Act specifically provides that if the result of the election, in so far as it concerns a returned candidate, has been materially effected by non-



compliance with the provisions of the Act or of any rules or orders made thereunder, the District Judge shall declare the election of the returned candidates to be void.

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7. The contention is that improper allotment of seats cannot be raised in an election petition.

8. We find it very difficult to accept this contention. Section 51-B of the Tamil Nadu District Municipalities Act, 1920, does not make any such distinction. Therefore, we are of the view that in the light of the bar contained under Art.243-ZG of the Constitution, the proper remedy for the petitioner is to file an election petition. We, accordingly, keep open all the contentions and also set aside all the findings, if any recorded, or the observations, if any, made by the learned single judge and dismiss the writ petition on the ground that it is not maintainable. The appeal is, accordingly, dismissed. No order as to costs."

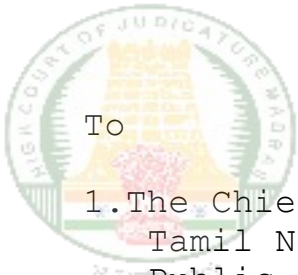
8. We have carefully perused all the materials available on record and considered the arguments advanced by the learned counsel appearing for the parties.

9. It is seen from the Tamil Nadu Government Gazette Publication, dated 16.09.2016, the post of Chairman of Paravai Town Panchayat has already been notified as reserved for Scheduled Tribes (General) on 16.09.2016. The petitioner has given a representation only on 21.09.2016, after the notification of reservation with regard to Paravai Town Panchayat. Immediately, on the next day, he preferred the writ petition and filed the same on 26.09.2016. Now, the Election Notification had been issued on 25.09.2016, fixing the date of Election for Local Bodies as 17.10.2016 and 19.10.2016. In the circumstances, in view of Article 243-ZG of the Constitution of India, there is a bar on the Courts to decide the issue relating to election matters. As per Sections 51-A and 51-B of the Tamil Nadu District Municipalities Act, the issue can be decided only by way of an Election Petition. The ratio laid down in the Judgment reported in **1997 (I) CTC 296** (supra) is squarely applicable to the facts of the present case.

10. In the result, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar(CO)



To

1.The Chief Electoral Officer,
Tamil Nadu Election Commission,
Public (Elections) Department,
Secretariat, Government of Tamil Nadu,
Fort St. George, Chennai - 600 009.

2.The District Collector,
Madurai District, Madurai.

+1 cc to M/s.T.Lajapathi Roy, Advocate in SR.No.56966
+1 cc to The Special Government Pleader in SR.No. 57002

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GJM/GSV-PM/14.10.2016 :5P/5C

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