



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 04.10.2016

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

W.P. (MD) No.18923 of 2016
& W.M.P. (MD) Nos.13673 & 13674 of 2016

V.Kannan

.. Petitioner

Vs.

1. The State of Tamil Nadu,
Rep. by the Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
2. The State of Tamil Nadu,
Rep. by the Secretary to Government,
Rural Development and Panchayat Raj (PR-1),
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.
3. The State Election Commissioner,
Office of the State Election Commission,
Vadapalani, Chennai.
4. The District Collector-cum-District Election Officer,
Thanjavur District, Trichy Road,
Thanjavur.
5. The Commissioner of Panchayat Union-cum-
Panchayat Union Election Officer,
Ammamet Panchayat Union,
Papanasam Taluk,
Thanjavur District.

.. Respondents

Petition filed under Article 226 of the Constitution of India
praying for issuance of a Writ of Certiorarified Mandamus, to call
for the records relating to the impugned G.O.(Ms)No.102, Rural
Development and Panchayat Raj (PR-1) Department, dated 16.09.2016,
issued by the second respondent and to quash the same and also a



consequential direction to the fourth respondent to pass G.O. by following the provisions contained in the SC/ST General Clauses Act, while reserving candidates for the post of Village Panchayat Board Presidents for the Ammapettai Panchayat Union/fifth respondent.

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For Petitioner : Mr.S.Venkatesan
For Respondents 1,2,4 & 5 : Mr.R.Karthikeyan
Additional Government Pleader

ORDER

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

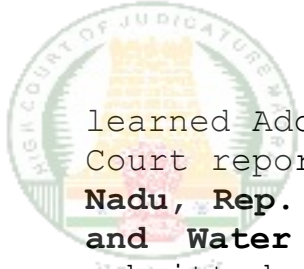
This Writ Petition has been filed in public interest to call for the records relating to the impugned G.O.(Ms)No.102, Rural Development and Panchayat Raj (PR-1) Department, dated 16.09.2016, issued by the second respondent and to quash the same and also a consequential direction to the fourth respondent to pass G.O. by following the provisions contained in the SC/ST General Clauses Act, while reserving candidates for the post of Village Panchayat Board Presidents for the Ammapettai Panchayat Union/fifth respondent.

2. The petitioner stated that he is a resident of Arumalaikkottai Village, Ammapettai Panchayat Union, Thanjavur District and he is a social activist and belongs to backward class community. There are 2300 people are residing in his Village and total voters in his Village is 1761.

3. The petitioner further stated that the Government of Tamil Nadu by G.O.(Ms)No.102, Rural Development and Panchayat Raj (PR-1) Department, dated 16.09.2016, reserved 38% of candidates for the post of President of Village Panchayat within Ammapettai Panchayat Union/fifth respondent herein. As per provisions of the SC/ST General Clauses Act, 20% would be allotted to the SC/ST candidates. Contrary to the said provision of SC/ST General Clauses Act, the respondent has issued G.O.(Ms)No.102, Rural Development and Panchayat Raj (PR-1) Department, dated 16.09.2016, by reserving 38% in Ammapettai Panchayat Union/fifth respondent Panchayat Union. Therefore, the petitioner has come out with the present writ petition for the relief stated supra.

4. According to the petitioner, as per the provisions of SC/ST General Clauses Act, 20% would be allotted to SC/ST candidates. Contrary to the said provision, the Government have reserved 38% in Ammapettai Panchayat Union, which is illegal and therefore, he prayed for quashing of the said Government Order.

5. Per contra, Mr.R.Karthikeyan, learned Additional Government Pleader submitted that the writ petition is not maintainable. The



learned Additional Government Pleader 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 the remedy available to the petitioner is only to approach the District Judge by way of an Election Petition under Sections 258 and 259 of the Tamil Nadu Panchayats Act, 1994.

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

7. The said issue was already considered by us in W.P.(MD) No.17890 of 2016, vide order dated 26.09.2016 and in W.P.(MD) No.18510 of 2016, vide order dated 28.09.2016 and also the First Bench of this Court in W.P.(MD)No.19123 of 2016, vide order dated 03.10.2016.

8. This Court by order dated 26.09.2016 made in W.P.(MD) No.17890 of 2016, in paragraphs 16 to 18, has held as follows:

"16. In the considered opinion of this Court, *prima facie*, the said exercise has been done in accordance with the Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.

17. Section 258 of the Tamil Nadu Panchayats Act, 1994, speaks about Election Petitions and as per sub-section (2) of Section 258, an Election Petition calling in question any such election may be presented on one or more of the grounds specified in Section 259 by any candidate at such election, by any elector of the ward concerned or by any member.

18. Section 259 of the Tamil Nadu Panchayats Act, 1994, deals with grounds for declaring the election to be void and as per Section 259(1)(d)(iv), one of the grounds, is that "*by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare the election of the returned candidate to be void.*"

9. This Court had an occasion to deal with the similar issue in W.P.(MD)No.18510 of 2016, vide order dated 28.09.2016, in paragraph 7, has held as follows:

"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.

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



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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."

10. The Hon'ble First Bench of this Court in W.P.(MD)No.19123 of 2016, vide order dated 03.10.2016, has held as follows:

"The writ petition is dismissed in view of the order of the Division Bench of this Court in W.P.(MD)No.18510 of 2016, dated 28.09.2016 (*S.Vijayakumar v. The Chief Electoral Officer and another*). No costs. Consequently, connected W.M.P.(MD)No.13806 of 2016 is closed."

11. The abovesaid three judgments and the judgment of this Court reported in **1997 (I) CTC 296** (supra) are squarely applicable to the facts of this case. In the circumstances, in view of Article 243-ZG of Constitution of India, there is a bar on the Courts to decide the issue relating to election matter. As per Sections 258 and 259(1)(d)(iv) of the Tamil Nadu Panchayats Act, 1994, the issue can be decided only by way of an Election Petition. Hence, the writ petition is dismissed. No costs. Consequently, connected W.M.P.(MD)Nos.13673 and 13674 of 2016 are closed.

Sd/-

Assistant Registrar (CS-II)

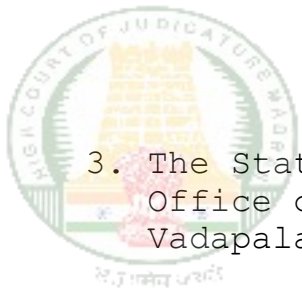
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Sub Assistant Registrar

To

1. The Chief Secretary to Government,
Government of Tamil Nadu,
Fort St. George,
Chennai - 600 009.

2. The Secretary to Government,
State of Tamil Nadu,
Rural Development and Panchayat Raj (PR-1),
Government of Tamil Nadu,
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5. The Commissioner of Panchayat Union-cum-
Panchayat Union Election Officer,
Ammamet Panchayat Union,
Papanasam Taluk,
Thanjavur District.

+ 1 CC TO Mr.S.VENKATESAN, ADVOCATE IN SR No. 59164
+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 59366

SMN2

TE/SK-SKN : 19/10/2016 : 6P/8C

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& W.M.P. (MD) Nos.13673 & 13674 of 2016
04.10.2016