



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.10.2016

CORAM :

THE HONOURABLE DR.JUSTICE S.VIMALA

W.P (MD) No.19108 of 2016

Umarani

... Petitioner

vs.

1)The Chief Election Commissioner,
O/o. Tamil Nadu Election Commission,
Koyambedu,
Chennai.

2)The District Election Officer cum
District Collector,
Dindigul District,
Dindigul.

3)The Assistant Election Officer cum
Block Development Officer,
Seelapadi Panchayat,
Dindigul West Taluk,
Dindigul District.

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the 3rd respondent to receive my nomination paper and securitizing as a schedule caste reservation consequently conducting the post of Seelapadi Panchayat President Election schedule on 17.10.2016 and 19.10.2016 within the time frame stipulated by this Hon'ble Court.

For Petitioner : Mr.K.Ashok Kumar Ram

For R1 to R3 : Mr.R.Karthikeyan,
Additional Government Pleader

O R D E R

This Writ of Mandamus has been filed to direct the 3rd respondent to receive the petitioner's nomination paper, scrutinize the same as a schedule caste reservation and consequently conduct the Election to the post of Seelapadi Panchayat President scheduled to be held on 17.10.2016 and 19.10.2016 respectively, within a time frame to be fixed by this Court.



2. This writ petition is opposed on the question of maintainability, with regard to jurisdiction.

3. In the case of *Mohinder Singh Gill v. Chief Election Commissioner*, reported in 1978 (1) SCC 405, it was held that every step from start to finish or the rainbow of all processes constitutes election and not merely the conclusion of election. In other words, election does not mean the declaration of results of the returned candidate, but it indicates and includes the commencing stage of notification to declaration of results. A right to elect and a right to get elected are statutory creations and hence, subject to regulations and limitations under the particular statute and the right to dispute an election is governed by law relating to election or statutes consisting of provisions relating to election. The statute may create rights or confer rights, recognize rights or may limit the rights.

4. It is contended that Article 226 of the Constitution is couched in widest possible term and unless there is clear bar to jurisdiction of the High Court, its powers under Article 226 of the Constitution can be exercised and when it is alleged that there is violation of right and if there is no immediate redressal, the valuable right will be lost.

5. The learned Additional Government Pleader appearing for the respondents would reply that the remedy in respect of electoral process is not extinguished by virtue of Article 243 (o) of the Constitution of India and the remedy is only postponed to post election stage. In a democracy, the function of legislature is of critical importance and election should be conducted as early as possible according to the time schedule and as the time schedule is important with a view to prevent any attempt made towards interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is prohibited. If assistance of the Court has been sought for merely to correct or smoothen the progress of the election proceedings, that is to remove the obstacle therein, then the jurisdiction of the Court can be invoked.

6. It is appropriate to consider Article 243-O of the Constitution of India, wherein there is a bar imposed on the Court to deal with Election matters.

'243-O. Bar to interference by Courts in electoral 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 Article 243-K, shall not be called in question in any Court;



(b) no election to any Panchayat 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.''

7.As the election notification is in force, this Writ Petition is dismissed as not maintainable. No costs.

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1)The Chief Election Commissioner,
O/o. Tamil Nadu Election Commission,
Koyambedu,
Chennai.

2)The District Election Officer cum
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Dindigul.

3)The Assistant Election Officer cum
Block Development Officer,
Seelapadi Panchayat,
Dindigul West Taluk,
Dindigul District.

+1 cc to Mr.K.Ashok Kumar Ram, Advocate in SR No.58090

+1 cc to the Spl.Govt.Pleader in SR No.58305

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03.10.2016

NBI

ANR/SS3/03.11.2016/3P/6C