



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.19177 of 2016
and
W.M.P (MD) No.13846 of 2016

Shanthi

... Petitioner

vs.

1) The Chief Electoral Officer,
State Election Commission,
208, Jawaharlal Nehru Street,
Opposite to CMBT,
Arumbakkam,
Chennai-600 106.

2) The District Collector,
Collector Office,
Dindigul District.

3) The Electoral Registration Officer/
Revenue Divisional Officer,
Electoral Office/RDO Office,
Dindigul.

4) The Electoral Officer/Tahsildar,
Taluk Office,
Dindigul.

... Respondents

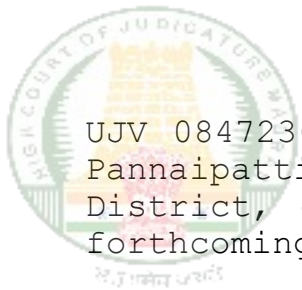
Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Mandamus, directing the respondents to re-induct the petitioner's name in the voters list in S.No. 236 UJV 0847236 of the voters list of 2015 in Vol-83, Ward-2, Block-4, Pannaipatti Village 129, Athur Assembly constituency, Dindigul District enabling the petitioner to cast vote and contest in the forth-coming local body election during 2016.

For Petitioner: Mr.R.Manoharan

For R1 to R4 : Mr.R.Karthikeyan,

Additional Government Pleader

ORDER



UJV 0847236 of the voters list of 2015 in Vol-83, Ward-2, Block-4, Pannaipatti Village 129, Athur Assembly constituency, Dindigul District, enabling the petitioner to cast vote and contest in the forthcoming local body election 2016.

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. Consequently, W.M.P (MD)No.13846 of 2016 is closed.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To

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+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 58307

NBI

TE/CK : 08/11/2016 : 3P/6C

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and

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