



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.12.2016

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THE HONOURABLE DR.JUSTICE S.VIMALA

W.P. (MD) No.20237 of 2016

and

WMP (MD) No.14505 of 2016

Ibrahim Bathusah

.. Petitioner

Vs

1. The Returning Officer,
Kadayanallur Municipality,
Kadayanallur,
Tirunelveli District.

2. The Commissioner,
Kadayanallur Municipality,
Kadayanallur,
Tirunelveli District.

3. Tamilnadu State Election Commission,
Jawaharlal Nehru Road,
Arugambakkam,
Chennai - 600 106,
Through its Commissioner.

.. Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus calling for the records pertaining to the 2nd respondent acting as first respondent in Na.Ka.No.4779/2016/A3 and quash the same and further direct the respondents to restore the petitioner's nomination papers to file for the election of ward No.29, in Kadayanallur Municipality.

For Petitioner : Mr.T.S.R.Venkataramana

For Respondents : Mr.R.Karthikeyan

Additional Government Pleader

ORDER

This is a writ of Certiorarified Mandamus, challenging the order of the first respondent dated 05.10.2016 and consequently, direct the respondents to restore the petitioner's nomination papers to file for the election of ward No.29, in Kadayanallur Municipality.



2.The respondent herein made a demand by the proceedings, dated 04.10.2016 and thus, intimated the petitioner that tax amount of Rs.12,11,044/- is due until the year 2016-2017.

3.It has been informed that the determination/estimation of property tax is pending determination as per the order passed by the Madurai Bench of Madras High Court in C.R.P.No.392 of 2005 and CMP.NO.1447 of 2005.

4.The petitioner intended to contest for the election in ward No.29 of Kadayanallur Municipality and he submitted the nomination on 03.10.2016. The nominations submitted by the petitioner was rejected by the Commissioner, Kadayanallur Municipality, by the order, dated 05.10.2016 on the ground that the petitioner did not pay the tax due to the Municipality and this order is under challenge.

5.When the matter came up for admission, this Court raised the issue as to how the nomination can be rejected on the ground of tax due, when the amount of tax payable itself has not been determined.

5.1.The learned counsel for the respondent gave an undertaking that steps are being taken to withdraw the order dated 05.10.2016 and it would be withdrawn on or before 28.11.2016.

5.2.Recording the undertaking, this Court observed that failing compliance, the Court will be constrained to pass further orders.

6.When the matter was taken up subsequently for further hearing, the learned counsel for the petitioner pointed out that tax amount due has been arbitrarily fixed and the respondent has served the order, fixing the tax due and this order is to be challenged in future.

7.Thereafter, the matter was posted for counter and disposal and the matter was heard on 28.11.2016.

8.The learned counsel for the petitioner submitted that the writ petition itself is not maintainable in view of Article 243-ZG of the Constitution of India and therefore, the writ petition should be rejected.

8.1.Article 243-ZG of the Constitution of India reads as under:-

*"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-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."

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9. The learned counsel for the respondent submitted that the notification for election itself has been quashed by the Principal Bench of the Madras High Court and therefore, there is no election to the Municipality as per 243-ZG (b) of the Constitution of India and therefore, the writ petition is maintainable.

9.1. This contention of the learned counsel for the petitioner is acceptable.

10. The next contention of the learned counsel for the petitioner is that, the writ petition is not maintainable and this Court has no jurisdiction in the light of the provisions of Section 51-A of the Tamil Nadu District Municipalities Act, 1920, where under, the Forum for challenging the election has been stated to be the District Judge of the District, in which, the municipality is situated and the provision reads as under:-

"51.A. Election petitions.- (1) No election of a chairman or a councilor shall be called in question except by an election petition presented to the District Judge of the District in which the municipality is situated within (forty-five days) from the date of the publication of the result of the election under section 27.

(2) An election petition calling in question any elector may be presented on one or more of the grounds specified in Section 51-B by any candidate at such election, by any elector of the ward concerned, or any councillor.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) An election petition --

(a) shall contain a concise statement of the material facts on which petitioner relies;

(b) shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

(c) shall be signed by the petitioner and verified in the manner laid down in Code of Civil Procedure, 1908 (Central Act V of 1908), for the verification of pleadings.

[(5) The trial of an election petition shall, so far as it practicable, consistently with the interest of justice in respect of the trial, be continued from day-to-day until its conclusion, unless the District Judge finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(6) Every election petition shall be tried as



expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the District Judge for trial.]”

11.The grounds under which, the election can be declared to be void is provided under Section 51-A of the Tamil Nadu District Municipalities Act, 1920, under which, improper rejection of nomination is also one of the grounds for declaring the election to be void.

12.Considering this case, in the light of Section 51-A of the said Act, whether it is the High Court which has jurisdiction over the dispute or it is the District Judge has got the jurisdiction, is the main issue to be decided.

13.The fact remains that the Election Notification originally issued had been quashed by this Court and as such, no election is in contemplation. Hence, the contention of the petitioner that the writ court alone has jurisdiction has to be accepted.

14.In the result, pending final determination of the quantum of rent payable, part of the impugned order, dated 05.10.2016, rejecting the nomination of the petitioner, is quashed. The writ petition is allowed. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CO)

/True copy/

Sub Assistant Registrar

To

1. The Returning Officer, Kadayanallur Municipality,
Kadayianallur, Tirunelveli District.
2. The Commissioner, Kadayanallur Municipality,
Kadayanallur, Tirunelveli District.
3. Tamilnadu State Election Commission,
Jawaharlal Nehru Road,
Arugambakkam, Chennai - 600 106, Through its Commissioner.

+1 CC to M/s.T.S.R.VENKATRAMANA, Advocate, SR No. 78827/17.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 79000

RJ2/SRK

PSM/MR-KKR/SAR1/13.07.2017/4P/6C

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