

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18.09.2017

CORAM

THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE M.SUNDAR

W.P.No.24083 of 2017

K.K.Ramesh

.. Petitioner

Vs.

- 1 The Government of India
rep. by its Home Secretary
Ministry of Home Affairs
North Block, New Delhi.
- 2 The Government of India
rep. by its Secretary
Ministry of Law and Justice
Shastri Bhawan
New Delhi - 110 115.
- 3 The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi - 110 001.
- 4 The Chief Election Officer (CEO)
Tamil Nadu, Fort St. George
Secretariat, Chennai - 600 009. .. Respondents

PRAYER: Petition under Article 226 of the Constitution of India seeking issuance of a writ of mandamus directing respondents 2 and 3 to conduct the Bye Election in 11-Dr.Radhakrishna Nagar Constituency, Chennai by considering the representation dated 03.07.2017.

For Petitioner : Mr.M.Purushothaman

For Respondents : Mr.Niranjan Rajagopalan

ORDER

(Order of the Court was made by the Hon'ble Chief Justice)

This writ petition, purportedly by way of public interest, has been filed by one K.K.Ramesh of No.26A, Old Mahalipatti Road, Southveli Street, Madurai - 625 001, seeking a writ of mandamus directing the second and third respondents to conduct the bye-election of 11-Dr.Radhakrishna Nagar Assembly Constituency upon consideration of the representation dated 3.7.2017 made by the petitioner.

2. It is the case of the petitioner that the bye-election was required to be conducted within six months from the date on which the seat became vacant. It appears that the seat fell vacant on 5.12.2016 upon the demise of the Former Chief Minister of Tamil Nadu, Ms.J.Jayalalithaa.

3. The learned counsel appearing on behalf of the respondents, Mr.Niranjan Rajagopalan, has taken a preliminary objection to the maintainability of this writ petition. Counsel submits that the petitioner, who is a resident of Madurai, cannot possibly have any public interest in filing the writ petition. The competence of the petitioner to represent the voters of 11-Dr.Radhakrishna Nagar Constituency has been questioned.

4. Counsel appearing for the petitioner, Mr.M.Purushothaman, however argued that the representatives of the State in the Council of States are elected by the elected Members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote. Every elector, therefore, has an interest in all the constituencies, as the Member of the Legislative Assembly who represents the people of Madurai will form the electoral college along with the Member of the Legislative Assembly of 11-Dr.Radhakrishna Nagar Constituency for the purpose of electing the Members of the Council of States.

5. Mr.Niranjan Rajagopalan has referred to Section 151-A of the Representation of the People Act, 1951, which is set out herein below for convenience:

"Section 151-A. Time limit for filling vacancies referred to in sections 147, 149, 150 and 151.-

Notwithstanding anything contained in section 147, section 149, section 150 and section 151, a bye-election for filling any vacancy referred to in any of the said sections shall be held within a period of six months from the date of the occurrence of the vacancy:

Provided that nothing contained in this section shall apply if -

(a) the remainder of the term of a member in relation to a vacancy is less than one year; or

(b) the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period."

6. Mr.Niranjan Rajagopalan submitted that the Election Commission of India had issued a Certificate bearing No.100/TN-LA/1/2017/Vol.III, dated 2.6.2017, in consultation with the Government of India, certifying that the bye-election to the Legislative Assembly to fill up the vacancy could not be held within the period contemplated under Section 151-A of the Representation of the People Act, 1951 and that the bye-election would be held when the situation in the constituency concerned became conducive to the conduct of free and fair election.

7. We agree with the learned counsel for the respondents that the petitioner lacks competence to file the writ petition in public interest, inasmuch as he is a resident of Madurai and is not a voter of the constituency concerned.

8. The Member of the Legislative Assembly elected by the petitioner has not approached this Court, nor has any elector of the concerned constituency. It is nobody's case that the Member of the Legislative Assembly concerned, who represents the petitioner or other electors of the 11-Dr.Radhakrishna Nagar Constituency, is not able to file a writ petition.

9. In any case, as observed above, there being a certificate under Section 151-A(b) of the Representation of the People Act, 1951, there can be no question of this Court issuing a writ of mandamus directing the holding of bye-election at this stage. At the same time, elections cannot indefinitely be kept in abeyance. It is expected that the Election Commission will announce the election dates at the earliest and preferably conduct the elections within 31.12.2017.

The writ petition is disposed of accordingly. No costs.

Sd/-
Asst.Registrar (CS II)

/true copy/

Sub Asst. Registrar

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To:

- 1 The Home Secretary
Government of India
Ministry of Home Affairs
North Block, New Delhi.
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- 4 The Chief Election Officer (CEO)
Tamil Nadu, Fort St. George
Secretariat, Chennai - 600 009

+1cc to M/S.G.R.Associates, Advocate Sr. 67860

+2ccs to Mr.M.Purushothaman, Advocate Sr. 68031

W.P.No.24083 of 2017

KJI (CO)
VR(06/10/2017)