



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Orders Reserved On : 04.10.2017

Orders Pronounced On: 05.10.2017

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CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL
and
THE HON'BLE MR.JUSTICE ABDUL OUDDHOSE

W.M.P.(MD) No.14873 of 2017
in
W.P.(MD)No.15818 of 2017

TTV.Dhinakaran .. Petitioner/7th Respondent
vs.

1.B.Ramkumar Adityan ..1st Respondent/Petitioner

2.The Chief Election Commissioner,
O/o.Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi - 110 001.

3.The Chief Election Officer,
Public (Election) Department,
St.George Fort,
Chennai - 600 009.

4.E.Madhusudhanan

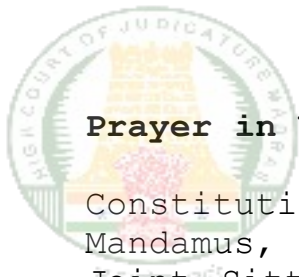
5.O.Paneerselvam

6.S.Semmalai

7.V.K.Sasikala
(R7 is given up in the present
Writ Miscellaneous Petition as per the endorsement made)

8.K.C.Palanisamy
... Respondents 2 to 8 /Respondents 1 to 6 and 8

Prayer: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying to extend the deadline of deciding the Election Dispute Case No.2 of 2017 by the Respondent No.2 from 31.10.2017 to 28.02.2018 and further to direct the Respondent No.2 to extend the scope of Dispute and to direct Respondent No.2 further to grant sufficient opportunity to the Parties to effectively produce their defence, reply and rebuttal.



Prayer in WP(MD). 15818/ 2017 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the 1st respondent to conduct an election in a Joint Sitting of all MLAs, MPs and Members of Executive Council and General Council of All India Anna Dravida Munnetra Kazhagam (AIADMK) to ascertain support enjoyed by the splinter groups under the supervision of a retired Hon'ble Judge of this Honble High Court subsequently allot party symbol "Two Leaves" to the splinter group which enjoys majority support in the above said Joint Sitting within stipulated time.

For Petitioner : Mr.Veerakathiravan, Senior Counsel
for Mr.K.Balasubramanian
For R1 : Mr.S.Karthick Subramanian
For R2 & R3 : Mr.K.K.Senthil
for
M/S.G.R.Associates
For R4 : Mr.K.Chellapandian, Senior Counsel
for
Mr.N.Subramanian
For R5 & R6 : Mr.Aravind Pandian, Senior Counsel
for
Mr.N.Subramanian
R7 : Given up
For R8 : Mr.S.Ramesh
for
Mr.V.Raghavachari

O R D E R

[Order of the Court was made by M.VENUGOPAL, J.]

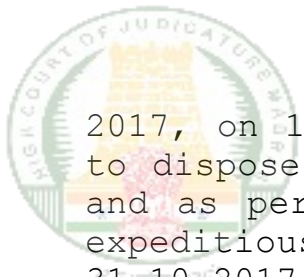
Heard the Learned Senior Counsel for the Petitioner and the Learned counsel for the Respondents.

2.The petitioner/7th Respondent has preferred the instant Writ Miscellaneous Petition praying for passing of an order by this Court to extend the deadline of deciding the Election Dispute Case No.2 of 2017 by the second Respondent from 31.10.2017 to 28.02.2018. Further, he has sought for passing of an order by this Court to direct the second Respondent not to enlarge the scope of Dispute and to afford sufficient opportunity to the parties to effectively produce their 'Defence, Reply and Rebuttal'.

3.According to the Learned Senior Counsel for the petitioner, the Petitioner was impleaded as 7th Respondent in the main W.P. (MD)No.15818 of 2017 as per order dated 31.08.2017 passed in WMP (MD)No.13114 of 2017.

<https://hcservices.ecourts.gov.in/hcservices/>

4.The Learned Senior Counsel for the petitioner, submits that this Court while disposing of the Writ Petition (MD)No.15818 of



2017, on 15.09.2017 had directed the Election Commission of India to dispose the proceedings in Dispute Case No.2 of 2017 on merits and as per law, after hearing all the parties to the Dispute as expeditiously as possible and in any case, on or before 31.10.2017.

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5.The Learned Senior Counsel for the petitioner, brings it to the notice of this Court that pursuant to the order dated 15.09.2017, made by this Court in W.P.(MD)No.15818 of 2017, the Petitioner on 21.09.2017 received a notice through E-mail whereby the parties in election Dispute case No.2 of 2017, if they so desire, may file fresh submissions duly supported by sworn affidavits and if any individual affidavit of support are being filed, such affidavits should be confined to the Members of the Legislative Wing (Members of Parliament and Legislative Assembly) and the Apex Level representative bodies in the organizational wing of the party on or before 29.09.2017.

6.The Learned Senior Counsel for the petitioner, proceeds to point out that the Petitioner made a representation on 26.09.2017 before the second Respondent/Chief Election Commissioner, New Delhi by mentioning that there was already more than seven lakh pages of affidavit and pleadings filed before the Election Commission, out of which, there were already affidavits of 102 MLAs, 37 Members of Parliament and 1912 Members of General Council and Central Executive Committee expressing their support for the sixth Respondent and for himself, filed and therefore, asking for fresh affidavits was against the Principles of Natural Justice, Equity and Good Conscience etc.

7.The Learned Senior Counsel for the petitioner, projects an argument that by means of letter dated 28.09.2017, issued around 6.00 p.m., the Hon'ble Commission was pleased to reject the representation and observed that it will hear the matter on 06.10.2017 at 3.00 p.m., as already intimated vide notice, dated 22.09.2017.

8.The Learned Senior Counsel for the petitioner, submits that in the communication dated 28.09.2017 of the Election Commission of India, it was mentioned that any objections/Rejoinder against the submissions and documents that may be filed by the other group, it would be open to the Petitioner to file the same by 04.10.2017 and in regard to the request for more time to file documents and to adjourn the hearing, the same was not entertained, in view of the order passed by this Court in W.P.(MD) No.15818 of 2017 dated 15.09.2017.

9.The Learned Senior Counsel for the Petitioner draws the attention of this Court to the communication dated 29.09.2017 addressed by the Petitioner to the second Respondent/Chief Election Commissioner, New Delhi, wherein a request was made to



grant him three days more time, to file affidavits of District Heads of the Organization because due to paucity of time (as fresh affidavits and submissions were called only by notice dated 21.09.2017, against which, a representation was made, which was rejected only yesterday (03.10.2017) evening, giving no time to get all the affidavits prepared and submit the same before the Hon'ble Commission etc.,) and further in the said communication, it was mentioned that out of 55 District Units, at present, filing was done for 27 and that within 3 days time, they would file the rest of the affidavits for the Organizational heads of the Apex bodies of the Districts.

10.The Learned Senior Counsel for the Petitioner takes a primordial stand for the deadline of 31.10.2015 fixed by this Court, to dispose of the proceedings in Dispute case No.2 of 2017 by the Election Commission of India, was based on the premise that Local Body Elections are to be conducted by 17.11.2017. In this connection, it is represented on behalf of the Petitioner that the State Election Commission in Civil Appeal No.5467-71 of 2017 has sought time to first carry out delimitation process and then hold election for Local Bodies and that is the primordial reason why they had not issued any Notification which they were supposed to issue by 18.09.2017 and, therefore, the urgency as noted in the order dated 15.09.2017 does not now prevail.

11.On behalf of the First Respondent/writ petitioner, it is submitted before this Court that the Dispute case No.2 of 2017 is pending for final adjudication and only with a view to drag on the main proceedings, the Petitioner has filed WMP(MD)No.14873 of 2017.

12.It is represented on the side of the Respondent Nos.2 and 3 that this Court had determined the time limit to dispose of the Dispute Case No.2 of 2017 on or before 31.10.2017 and accordingly, the Election Commission of India through its communication dated 28.09.2017 had inter alia directed the Petitioner to file written submissions and documents by 29.09.2017, as mentioned in the Commission's notice, dated 21.09.2017 and the date of hearing was fixed on 06.10.2017 at 3.00 p.m., (As already intimated as per notice dated 22.09.2017).

13.The Learned Senior Counsel for the Fourth Respondent contends that the present WMP(MD)No.14873 of 2017 in W.P.(MD) No.15818 of 2017 was filed by the Petitioner is per se not maintainable in the eye of law, because of the reason that the main W.P.(MD)No.15818 of 2017 is disposed of by this Court on 15.09.2017. Furthermore, it is the submission of the Learned Senior Counsel for the Fourth Respondent that originally, the Election Commission of India had fixed the date of hearing of Dispute Case No.2 of 2017 on 05.10.2017 at 15:00 hrs, as per notice dated 21.09.2017 and that the hearing of the Dispute was



rescheduled to 6th October, 2017 (Friday) at 3.00 p.m., as per notice dated 22.09.2017 of the Election Commission of India.

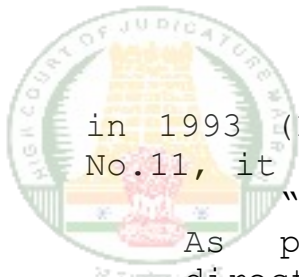
14. Added further, the Learned Senior Counsel for the fourth Respondent points out that the Petitioner was provided with an opportunity of filing objections/Rejoinder against the submissions and documents that may be filed by the other group by 04.10.2017 and further, the Election Commission had directed the Petitioner to file written submissions and documents by 29.09.2017 as per Commission's notice dated 21.09.2017. Apart from that, a plea is put forward that the Petitioner was also specifically informed by the Election Commission of India through communication dated 28.09.2017 that the Dispute Case No.2 of 2017 would be heard on 06.10.2017 at 3.00 p.m., (vide notice dated 22.09.2017). Therefore, in view of the pendency of Dispute Case No.2 of 2017, as on date, the present Miscellaneous Petition in WMP(MD)No.14873 of 2017 filed by the petitioner, is not to be entertained by this Court, in the interest of justice.

15. The Learned Senior Counsel for the Fourth Respondent points out that the Petitioner made a similar prayer as that of the Miscellaneous Petition before the second Respondent/Chief Election Commissioner, New Delhi, on 26.09.2017 through his communication and that was taken into account by the Election Commission of India, when it gave reply to the Petitioner on 28.09.2017.

16. The Learned Senior Counsel for the fourth Respondent submits that as against the order dated 28.09.2017 passed by the second Respondent/Chief Election Commissioner of India, the Petitioner is to approach the competent higher forum in the manner known to Law and in accordance with Law and without assailing the correctness of the order, dated 28.09.2017 of the Election Commission of India, the filing of the present Miscellaneous Petition before this Court seeking to extend the deadline to decide the Dispute Case No.2 of 2017 is not maintainable in the eye of law.

17. The Learned Senior Counsel for the Respondent Nos.5 and 6 contends that the petitioner/7th Respondent was heard through the Learned counsel and in fact, the Petitioner was provided with an opportunity to contest the main writ petition (MD)No.15818 of 2017. Besides this, it is the categorical stand of the Respondent Nos.5 and 6 that the plea of the Petitioner to seek extension of time from 31.10.2017 to 28.02.2018 is not to be acceded to by this Court because of the fact that the aim of the petitioner/7th Respondent is only to drag on the matter.

18. The Learned Senior Counsel for the Respondent Nos.5 and 6 refers to the Division Bench Judgment of this Court in *Quaid-E-Millath Teachers Training Institute, represented by its Correspondent v. The State of Tamil Nadu and three others* reported



in 1993 (1) L.W. 392 at special page 396, wherein at paragraph No.11, it is observed as under:-

"We are unable to accept any of these contentions. As pointed out earlier, the interlocutory order directing the Respondents to grant recognition to the Petitioner Institute is itself invalid as it travels beyond the scope of the main writ petition and such a relief should not have been granted by this court. We can even say that the order is per incuriam. Based on that order, it is not open to the Petitioner to seek further consequential reliefs. We have also pointed out that the order itself is made subject to the final result in the writ petition with reference to the validity of G.O.Ms.No.536. Now that we have held the said Government Order to be valid, it follows automatically that the temporary recognition granted to the Petitioner is invalid as admittedly the Petitioner has not fulfilled the requirements of the rules framed in the said Government Order."

19.The Learned Senior Counsel for the Respondent Nos.5 and 6 seeks in aid of the Division Bench decision of this Court in Medical Council of India Vs. the Registrar/Returning officer, Tamil Nadu Dr.M.G.R.Medical University by its Registrar and 3 others reported in 2014-2-L.W.838 at special page 842, whereby and whereunder, at paragraph No.12, it is observed as follows:-

"Admittedly, the writ Petitioner did not seek any relief of postponement of election to the Executive Committee of Medical Council of India. Equally, the Tamil Nadu Dr.M.G.R.Medical University has also not challenged the conducting of election by the Medical Council of India to its Executive Council by any separate proceedings. When that being the factual position, we wonder as to how such an interim application is maintainable, that too, at the instance of another Respondent against the appellant herein. Needless to say that an interim relief sought for during the pendency of the main petition should be within the ambit and scope of the main relief itself and cannot travel beyond the scope of the main relief. If the interim relief sought is having an effect of an independent right sought to be established against any of the parties to the proceedings, then it is to be held that such interim application is not maintainable and that the applicant who prayed such interim relief has to work out his remedy only through a separate proceedings as the relief sought in the interim application arises out of an independent cause of action."

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20.The Learned Senior Counsel for the Respondent Nos.5 and 6 seeks in aid of the decision of the Hon'ble Supreme Court in Shri



Sadiq Ali and another vs. The Election Commission of India reported in (1972) 4 Supreme Court Cases 664 at special page 675, wherein at paragraph No.22, it is mentioned as under:-

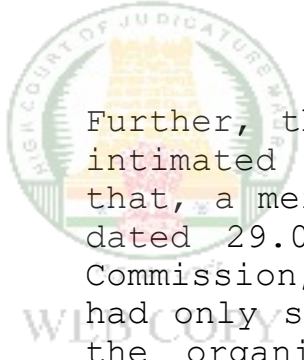
"Let us now go back to Paragraph 15. The occasion for making an order under this paragraph arises when the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party. The Commission in such an event decides the matter after taking into account all available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard. The Commission may decide that one such rival section or group is that recognised political party or that none of such rival sections or group is that party. The aforesaid decision has been made binding on all the rival sections or groups who claim to be the political party in question."

21.The Learned counsel for the Respondent No.8 submits that the Petitioner was provided with an adequate opportunity by this Court when it disposed of W.P.(MD)No.15818 of 2017 on 15.09.2017 and that the present Writ Miscellaneous Petition (MD)No.14873 of 2017 is filed by the Petitioner only with a view to procrastinate the Dispute Case No.2 of 2017.

22.It is to be borne in mind that in Law, a party against whom additional evidence is produced/admitted ought to have an opportunity to rebut the same and this would be quite in tune with the requirements of adhering to the Principles of 'Natural Justice'.

23.As far as the present case is concerned, this Court, keeping in mind that the time should be fixed for disposal of Dispute Case No.2 of 2017, directed the Election Commission to dispose of the Dispute Case No.2 of 2017 on or before 31.10.2017 by means of an order dated 15.09.2017. Also, this Court while disposing of the main W.P.(MD)No.15818 of 2017, had taken note of the submission made by the Standing Counsel for the Election Commission that the Commission would dispose of the proceedings as early as possible, in case, the parties extend their co-operation for early disposal.

24.On a careful consideration of respective contentions and also this Court, bearing in mind the reply dated 28.09.2017 of the Election Commission of India, New Delhi, is of the considered view that the Commission had directed the Petitioner to file his objections against the submissions and documents that may be filed by the other group by 04.10.2017 and also directed him to file his written submissions and documents by 29.09.2017.



Further, the date of hearing of the Dispute Case No.2 of 2017 was intimated to the Petitioner as 06.10.2017 at 3.00 p.m. Apart from that, a mere running of the eye over the contents of communication dated 29.09.2017 addressed by the Petitioner to Chief Election Commission, New Delhi, unerringly points out that the Petitioner had only sought three days time to file rest of the affidavits of the organizational heads of the Apex bodies of the District. Therefore, it is not open to the petitioner to take a contra plea in the present Writ Miscellaneous Petition. In reality, in Law, the petitioner cannot 'Approbate' and 'Reprobate' in the eye of Law. Suffice it to point out that the plea of the Petitioner in the present Writ Miscellaneous Petition to extend the deadline for determining the Dispute Case No.2 of 2017 by the second Respondent from 31.10.2017 to 28.02.2018 etc. cannot be acceded to by this Court to prevent an aberration of justice. Consequently, the Writ Miscellaneous Petition fails.

25. In fine, the Writ Miscellaneous petition (MD)No.14873 of 2017 in W.P.(MD)No.15818 of 2017 is dismissed. Before parting with the case, it is abundantly made clear that the dismissal of the present Writ Miscellaneous Petition (MD)No.14873 of 2017 in W.P.(MD)No.15818 of 2017 will not preclude the Petitioner to raise all factual and legal pleas before the Election Commission of India at the time of hearing of the Dispute Case No.2 of 2017, of course in the manner known to Law and in accordance with Law.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar.

To:

1. The Chief Election Commissioner,
O/o. Election Commission of India,
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001.

2. The Chief Election Officer, Public (Election) Department,
St. George Fort, Chennai - 600 009.

Copy to: The Registrar(Judicial),

Madurai Bench of Madras High Court, Madurai.

+1CC to Mr.K.Balasubramanian, Advocate, SR.No.81689

+2CC to Mr.V.Raghavachari, Advocate, SR.No. 81708

+1CC to Mr.K.K.Senthil, Advocate, SR.No. 81733

+1CC to the Special Government Pleader SR.No. 81700

Order made in
W.M.P. (MD) No.14873 of 2017
in

W.P. (MD) No.15818 of 2017
05.10.2017