



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 01.08.2017

Pronounced on : 15.12.2017

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CORAM :

THE HONOURABLE MR.JUSTICE K.K.SASIDHARAN
and
THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.2172 of 2017

A.Kannan

... Petitioner

vs.

1.Tamil Nadu State Election Commission,
rep. by its Secretary,
No.208/2, Jawaharlal Nehru Road,
Arumbakkam, Chennai - 106.

2.The District Election Officer/District Collector,
Madurai - 20.

3.The Returning Officer/Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai - 20.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, directing the respondents herein to furnish and publish the list of candidates who are disqualified an account of non filing of their Election Expenditure Account in a prescribed format for having contested in the 2011 Local Body Elections before the 1st respondent issuing notification to Local Body Election in the near future and to direct the 1st respondent to include the provision in the concerned Assistant Returning Officer/Returning Officer's Guide and in the Candidate's Guide so as to make it mandatory to provide acknowledgment and written order either rejecting or accepting the objections to the candidates or their proposers or their authorised representatives while making written objection at the time of scrutiny of nomination papers in the Local Body Elections conducted by the 1st respondent herein.

For Petitioner

: Mr.A.Kannan, Party-in-person

For Respondents

: Mr.R.Karthikeyan, AGP for RR1&2
Mr.R.Murali for R3

ORDER

(Order of the Court was made by G.R.SWAMINATHAN, J.)

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This petition has been filed by a practising lawyer.

2.His wife Mrs.Muthu Sumathi filed nomination papers for contesting the local body elections for the post of ward counsellors in Madurai Corporation when local body elections were notified in the year 2016. On 4.10.2016, the scrutiny of nominations was taken up. The petitioner raised objection that a rival candidate did not file the election expenditure account for the year 2011 in the prescribed format and within the stipulated time limit. He therefore demanded rejection of the nomination papers of the said rival candidate.

3.It is the grievance of the writ petitioner that the returning officer did not provide the details regarding submission of election expenditure account by the rival candidate. He even refused to acknowledge in writing that the petitioner lodged his objections. He also did not pass any written orders. Aggrieved by the conduct of the returning officer, the petitioner herein submitted a representation dated 5.10.2016 to the State Election Commissioner. The first respondent, responded vide letter dated 14.11.2016 that the complaint has been forwarded to the District Collector, Madurai, who is the District Election Officer. Since there was no follow-up action, the present petition has been filed for issuance of a direction for furnishing and publishing the list of candidates who are disqualified on account of non-filing of their election expenditure account in the prescribed format, following their contest in the earlier local body elections. He would also seek incorporation of a provision in the Guide book making it mandatory for the returning officers to provide acknowledgement in writing whenever objections are raised.

4.When the matter was listed before the learned Single Judge of this court for admission, it was directed to be listed before the Division Bench since the prayer sought for in the writ petition is in the nature of public interest litigation.

5.When the matter came up for hearing before the Division Bench, the learned Additional Government Pleader appearing for the respondents represented that as many as 4772 persons have been disqualified on account of their non-submission of election expenditure account. The State Election Commission was therefore directed to up-date in their web site the details of persons who have been disqualified from participating in the electoral contest on account of non-furnishing of the election expenditure account.



6. Pursuant to the direction given on 23.2.2017, the first respondent reported compliance by its communication dated 1.3.2017.

7. The learned Additional Government Pleader appearing for the respondents filed a voluminous typed set containing the list of the persons, who have been declared by the Tamil Nadu State Election Commission as disqualified for being chosen as a member or president for a period of 3 years from the date of the order. The orders were passed in exercise of the statutory powers conferred by the various statutes. Hence the first part of the writ prayer no longer requires adjudication.

8. However, the grievance of the petitioner that when objections are raised at the time of scrutiny, the returning officer must give a written acknowledgement deserves to be considered.

9. The learned Additional Government Pleader produced a copy of the communication bearing Rc. No.6519/2016/MP 1, dated 28.9.2016 addressed by the Tamil Nadu State Election Commission to all the District Election Officers, containing instructions for adherence by the returning officers / assistant returning officers at the time of scrutiny of nominations. Though the instructions are fairly detailed and the importance of the process of scrutiny has been rightly highlighted, we note that there is no provision mandating that when an objection is raised, it must be acknowledged in writing. If no acknowledgement is issued by the returning officer, one would be left without any means of verifying later when the issue comes up.

10. No doubt, objections can be raised at the time of scrutiny of nominations even orally. But when the objection is lodged in writing, a proper acknowledgement must be issued. Only then it will be possible for the objector to establish later during the election petition that he in fact raised the objection at the appropriate time. The objector can be asked to lodge the original objection petition before the returning officer and get an acknowledgement in his hand copy. Since a varied number of situations can be encountered, it is for the first respondent to take them into account and issue appropriate instructions in this regard. The petitioner has highlighted this important issue in these proceedings.

11. We direct the first respondent to issue a revised set of instructions with regard to scrutiny of nominations by providing for acknowledgement by the returning officer / returning officers of rural / urban local bodies when written objections are lodged at the time of scrutiny of nomination papers. Such instructions shall be issued before the notification of the next local body elections.



12. This writ petition stands allowed accordingly.

No costs.

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/True Copy/

Sd/-

Assistant Registrar (C.O)

Sub-Assistant Registrar

To

1. The Secretary

Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Arumbakkam, Chennai - 106.

2. The District Election Officer/District Collector,
Madurai - 20.

3. The Returning Officer/Commissioner,
Madurai Corporation,
Arignar Anna Maligai,
Madurai - 20.

+One cc to Mr.A.Kannan (Pary-in-Person), SR.No.93387

+One c to Mr.R.Murali, Advocate, SR>No.92875

+2 ccs to The Special Government Pleader, SR.Nos.93712 and 93194

Arul

RL/8C/4P/KKR/SAR1/18/1/2018

Order made in
W.P.(MD)No.2172 of 2017

15.12.2017