

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.09.2018

CORAM

THE HONOURABLE Mr.JUSTICE V.BHARATHIDASAN

W.P. 1760 of 2018

S.Parthiban

... Petitioner

Vs

1. The Chief Election Commissioner,
Local Body Election Commission,
Head Office at No.208/2,
Jawaharlal Nehru Road,
(100 ft. Road), Vadapalani,
Chennai-600 106.

2. The District Collector,
Chennai District,
Chennai-600 001.

3. The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

4. The Council Secretary,
Corporation of Chennai,
Rippon Building,
Chennai-600 003.

5. The Returning Officer,
Ward No.140, Zone-X,
Corporation of Chennai,
Chennai-600 015.

6. The Assistant Returning Officer,
Ward No.140, Zone-X,
Corporation of Chennai,
Chennai-600 015.

7. Mrs.Sakthivel
The Assistant Revenue Officer,
Ward No.140, Zone-X,
Corporation of Chennai,
Chennai-600 015.

8. Mr.N.Bhaskaran,
S/o. S.A.Nagarajan,
Member of Council,
Corporation of Chennai,
Ward No.140, Zone-X,
Chennai-600 015.

... Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the 6th respondent to conclude the enquiry proceedings as against the 8th respondent by implementing the order of the first respondent in his proceeding in Na.Ka.No.ME1/1621/2015-2, dated 02.07.2015 after giving affordable opportunity to the 8th respondent.

For Petitioner : Mr.A.Ilayaperumal
For Respondents : Mr.B.Nedunchezhan for R-1

Mrs.K.Bhuvaneswari,
Addl. Govt. Pleader for R-2

Mr.R.Arunagiri for R-3 to R-

Mr.R.Thiyagarajan,
Senior Advocate for
Mr.N.Velayudhan for R-8

O R D E R

This writ petition has been filed seeking for a direction to the 6th respondent, who is an Assistant Returning Officer in respect of Ward No.140, Zone-X, Corporation of Chennai to conclude the proceedings against the 8th respondent based on the orders passed by the 1st respondent dated 02.07.2015 as per the Chennai City Municipal Corporation Act.

2. The case of the petitioner is that the election to the Corporation of Chennai was slated to be held on 17.10.2011 and the 8th respondent herein has filed his nomination for the Member of Council in Ward No.140, in the Chennai City Municipal Corporation. During the election, the 8th respondent involved in many corrupt practices, but, despite the complaint, no action has been taken for the violation of Election Code of Conduct.

3. That apart, while filing the nomination forms, and an affidavit of oath related to his personal details as required in the election manual is not properly submitted by the 8th respondent. While filing the nomination papers, the 8th respondent has suppressed his earlier employment in Bharat

Scouts and Guides, Tamil Nadu at Venlock Park, Kamarajar Salai, Chennai-5 as Junior Assistant. When the 8th respondent has committed misappropriation of funds, a disciplinary action has been initiated against him and he was dismissed from service on 31.07.2001. The above fact was not disclosed, when he filed the nomination before the Returning Officer.

4. Apart from that, the 8th respondent has obtained a loan of Rs.50,000/- on 01.03.2002 from Chennai Government and Government Undertaking Employees Co-operative Society Ltd., Triplicane, Chennai and he has not repaid the said loan. The said society is also taking action for recovery of the said amount with interest. It was also suppressed by the 8th respondent. The suppression of above facts and misappropriation of funds are clearly an offence under Sec.125-A of the Representation of People Act, 1950 and hence, he should be punished in accordance with law.

5. In the said circumstances, the petitioner has made representation to the respondents 1 to 7 on 04.03.2015 narrating all those facts and requested them to take action against the 8th respondent, but his representation was not considered. Hence, he has filed a Writ Petition in W.P.No.12173 of 2015, seeking for a direction to consider his representation and this court by an order dated 24.04.2015 directed the authorities to consider the representation of the petitioner and pass order on merits.

6. Thereafter, the 1st respondent passed an order dated 02.07.2015 requesting the Corporation to take appropriate action based on the complaint given by the petitioner. Since no action has been taken by the 6th respondent, the present Writ Petition has been filed.

7. The Respondents 3 to 7 have filed their counter affidavit, inter alia, stating that the Returning Officer and the Assistant Electoral Registering Officer, in the cadre of Assistant Revenue Officer was in existence only during the local body Election. At present, the said posts are not in existence. As the Local Body Election has been over, the post of Returning Officer and Assistant Returning Officer also stands cancelled, hence, the prayer sought for by the petitioner cannot be granted at this stage.

8. The 8th respondent has also filed the counter affidavit stating that, if at all, the petitioner has any grievance against the election of 8th respondent, the only remedy available for him is to file a petition under Sec.54(A) of the Chennai City Municipal Corporation Act, and for filing the election petition, a time limit also fixed. The petitioner can only raise the dispute by way of election petition before the Principal

Judge, City Civil Court within 45 days from the date of declaration of Election Result. Hence, now the petitioner cannot maintain the Writ Petition.

9. I have heard the submissions made by the learned counsel appearing for the petitioner as well as the learned counsels appearing for respondents 1 to 7 and the learned Senior Counsel Mr.R.Thiyagarajan appearing for 8th respondent.

10. The grievance of the petitioner is that while filing the nomination for the post of Councillor in the year 2011, the 8th respondent has suppressed some material facts and for that, action should be taken against the 8th respondent. Admittedly, the election was over in the year 2011 and for first time, the petitioner has sent his representation to the authorities in the year 2015 seeking for action against the 8th respondent after expiry of four years. If at all, there is any suppression in filing the nomination papers, it is only give rise to a election dispute and for that, the only remedy available to the petitioner is to file election petition under Sec.54(a) of the Chennai City Municipal Corporation Act within 45 days from the date of declaration of election result. Now, the petitioner without filing any election petition, after four years of election, he said to have sent a representation to the authorities and to take action, for which, the authorities have power. That apart, now the council period is also over and the 8th respondent is also ceased to hold the office of Councillor.

11. In view of the above facts and circumstances, the prayer sought for in the Writ Petition cannot be granted at this stage. Therefore, the Writ Petition stands dismissed. No costs.

Sd/-

Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

rpp

To

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+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.61061

+1cc to Mr.R.Arunmozhi, Advocate, S.R.No.60940

+1cc to Mr.N.Velayudam, Advocate, S.R.No.60939

+1cc to Mr.A.Ilaya Perumal, Advocate, S.R.No.60836

+1cc to the Government Pleader, S.R.No.61745

W.P. 1760 of 2018

NRL(CO)
GSP(03/10/2018)

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