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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2019

CORAM:

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

WP (MD) No.1178 of 2019
and WMP (MD) No.984 of 2019

Vedha @ Dhamodharan

... Petitioner

vs.

1. The Election Commission of India,
Rep. by its Chief Election Commissioner,
Nirvachan Sathan,
New Delhi.

2. The Tamil Nadu Chief Electoral Officer,
Arumbakkam,
Chennai - 600 106.

3. The State of Tamil Nadu,
Rep. by its Chief Secretary,
St. Fort George,
Secretariat, Chennai.

... Respondents

WRIT Petition filed under Article 226 of the Constitution of India, praying for the issuance of a writ of certiorarified mandamus, calling for the entire records pertaining to the 1st respondent impugned order No.100/TN-LA/1/2019 dated 06.01.2019 and quash the same as illegal and against the Representation of the People Act, 1951 and further direct the 1st and 2nd respondent as illegal.

For Petitioner : Mr.S.Kumarsankar
for Mr.S.M.Anantha Murugan

For Respondents: Mr.Niranjan Rajagopalan (for R1 & R2)
Standing counsel for ECI
Mr.E.Manoharan (for R3)
Additional Government Pleader

ORDER

(Order of the Court was made by S.MANIKUMAR, J)

Petitioner has sought for a writ of certiorarified mandamus, to quash the order No.100/TN-LA/1/2019 dated 06.01.2019 passed



by the Chief Election Commissioner, Election Commission of India, Chennai, the 1st respondent herein.

2. Sequence of events culled out from the material on record shows that on 31.12.2018, election to Thiruvarur Constituency was notified by the Election Commission of India

3. Vide proceedings dated 06.01.2019, Election Commission of India, has ordered that in so far as Tiruvarur Assembly Constituency, election will be cancelled. For brevity, order dated 06.01.2019, is reproduced.

In re: Bye-Election to Tamil Nadu Legislative
Assembly from 168- Thiruvarur Assembly Constituency

ORDER

A vacancy arose in the State Legislative Assembly of Tamil Nadu from 168-Thiruvarur Assembly Constituency with effect from 07.08.2018 due to demise of Sh.M.Karunanidhi. As per section 151A of the Representation of the People Act, 1951(43 of 1951) (hereinafter referred as 'the RP Act, 1951'), the bye-election to fill the vacancy is required to be held within a period of six months, i.e. by 06.02,2019.

2. Accordingly, the Election Commission of India, vide its notification No. 100/TNLA/1/2019 dated 3 January, 2019, in pursuance of sub-section (1) of section 150 of the RP Act, 1951, called upon the said Assembly Constituency in the State of Tamil Nadu to elect a member and under sections 30 and 56 of the RP Act, 1951, the Commission fixed different dates for various stages of election, as under:-

a) the 10th January, 2019 (Thursday), as the last date for making nominations;

b) the 11th January, 2019 (Friday), as the date for the scrutiny of nominations;

c) the 14th January, 2019 (Monday), as the last date for the withdrawal of candidatures;

d) the 28th January, 2019 (Monday), as the date on which a poll shall, if necessary, be taken; and

e) the 31st January, 2019 (Thursday), as the date before which the election shall be completed.

3. Chief Secretary, Tamil Nadu in her letter dated 03.12.2018 apprised the commission regarding cyclone 'Gaja', mentioning that it devastated the delta district and severely affected a total of 12 districts in the State. The cyclone caused extensive



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damage to the standing agriculture, horticulture crops and livelihood of the people in these 12 districts. Around 6 lakh houses, 1.5 lakh electric poles, a large number of transformers & substations have been damaged. Thiruvavarur district is one of the main districts which bore the brunt of the cyclone and it will take at least three months for life to return to normal in the district. Therefore, she requested not to hold the by-election to Thiruvavarur assembly constituency (which is to be filled in by 06.02.2019) before April, 2019. In this communication, she also requested not to conduct bye-election in those 18 assembly constituencies, where vacancies are required to be filled in by April, 2019.

4. In the light of the letter received from Chief Secretary, Tamil Nadu, the Commission vide its letter dated 28* December, 2018, requested the Ministry of Home Affairs (MHA), Government of India, being the administrative ministry for calamity and disaster management, to give its views in the matter.

5. In response to the Commission's letter, MHA on 31.12.2018 furnished its views on the ongoing relief and rehabilitation work in the 12 districts of Tamil Nadu affected by cyclone 'Gaja'. The comments of MHA are as follows:-

i. The severe cyclonic Storm 'Gaja' had a landfall near Vendaranyam, Nagapattinam districts of Tamil Nadu in the late night on 15th November, 2018 and in early hours on 16th November, 2018.

ii. IMCT (Inter-Ministerial Central Team) has reported severe destruction in 5 (five) districts viz. Nagapattinam, Tiruvarur (Thiruvavarur), Thanjavur, Pudukkottai & Dindigul. It resulted in damages to agricultural and horticultural crops/plantations, houses and huts, besides extensive damages to public and private property and power infrastructure. Further, there is normal damage in 7(seven) districts, hi. As per the National Disaster Management Policy, the primary responsibility for disaster management including undertaking relief and rehabilitation measures rest with the States. Accordingly, necessary relief and rehabilitation measures in the area affected by the cyclone 'Gaja' are required to be undertaken by the State Government of Tamil Nadu.

Further, it stated that the State Government would



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be in the best position to assess the time frame for carrying out relief and rehabilitation measures in the cyclone affected areas, since execution of the necessary measures on the ground is the responsibility of the State administration.

6. On 02.01.2019, National Secretary, Communist Party of India, vide its e-mail requested the Commission to postpone the said bye-election after consultation with the Central Government. Subsequently, he met the Commission on 03.01.2019 to underscore the issues mentioned in the e-mail. Further, he stated that due to the said cyclone the State machineries are busy with the relief and restoration of the cyclone affected areas, and many residents of the district - Thiruvarur have been displaced due to the cyclone and have migrated temporarily to other districts. Taking note of the situation, the Commission directed the Chief Electoral Officer, Tamil Nadu to furnish a detailed report in the matter.

7. On 06.01.2019, the Chief Electoral Officer furnished a detailed report. In the report, he has mentioned that the District Election Officer, Thiruvarur invited all the recognised political parties in tire district for a meeting on 05.01.2019 and all of them including Communist Party of India (Marxist), Bharatiya Janata Party, Indian National Congress, Nationalist Congress Party, All India Anna Dravida Munnetra Kazhagam, Dravida Munnetra Kazhagam and Desiya Murpokku Dravida Kazhagam requested to postpone the electoral process in view of the ongoing relief and rehabilitation works in the district.

8. Further, the District Election Officer, Thiruvarur submitted, in the report, that,

(i) the district administration needs time to ascertain the details of any migration of the families as the same cannot be ruled out;

(ii) the relief distribution is half way and needs time to complete and the same set of officers are incharge of relief works as well as election related works;

(iii) the prime festival of the land, viz. Pongal falls during the period of election;

(iv) the harvest of Samba cultivation is due and opening of Direct Procurement Centres is inevitable as and when required in the villages, which may be



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construed or raised as an issue by some political parties as a breach of Model Code of Conduct, though it is a regular activity;

(v) the affected people are yet to return back to normal life;

(vi) the Merchant associations too were not in favour of elections at the juncture;

(vii) the students facing public examinations may be put to hardship since the teachers form the core of the Polling Personnel. With hardly 2 months left for their examination conduct of elections at this time will have an effect on the academic performance of the students;

(viii) active participation of the public in the polling may get affected due to the aforesaid reasons;

(ix) almost all the political functionaries who took part in the all party meeting unilaterally requested to postpone the bye-election to 168-Thiruvarur Assembly Constituency.

9. Thus, having regard to the totality of the facts and circumstances enumerated above, and taking note of the fact that necessary relief and rehabilitation measures in the area affected by the cyclone Gaja are required to be undertaken by the State Government of Tamil Nadu and the district administration of Thiruvarur, which has to conduct the said bye election, continues to be pre-occupied with the relief and rehabilitation works, the Commission is of the considered view that the process of conduct of bye-election from 168-Thiruvarur Assembly Constituency of Tamil Nadu can not be continued at present. In this context, it may be relevant to state that the Hon'ble Supreme Court, while holding in Election Commission vs. State of Haryana (AIR 1984 SC 1406) that "the ultimate decision as to whether it is possible and expedient to hold the elections at any given point of time must rest with the Election Commission", has further observed in that case that A sense of realism, objectivity and non- alignment must inform the decision of the Commission on such issue'.

10. Accordingly, the Commission hereby directs, under Article 324 of the Constitution read with sections 150, 30, 56 of the Representation of the People Act, 1951, and further read with Section 21 of the General Clauses Act, 1897 and all other power enabling it in this behalf, that the Commission's Notifications No. 100/TN-LA/1 /2019 dated 3rd January, 2019, calling upon the said 168-Thiruvarur



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Assembly Constituency to elect a member of Legislative Assembly shall stand rescinded forthwith. Consequently, all actions and steps taken by the Returning Officer of the said 168-Thiruvarur Assembly Constituency, District Election Officer and all other electoral authorities concerned are hereby declared as null and void.

11, The bye-election to fill the above vacancy in the Legislative Assembly from 168- Thiruvarur Assembly Constituency will be held by the Commission in due course when the situation becomes conducive to the holding of free, fair and peaceful election.

ORDERED ACCORDINGLY

Sd/-

(SUNIL ARORA)

CHIEF ELECTION COMMISSIONER

Sd/-

(ASHOK LAVASA)

ELECTION COMMISSIONER

New Delhi the 6th January, 2019

No. 100/TN-LA/1/2019"

4. Having regard to the provisions under Section 151A (b) of the Representation of the People Act, 1951, the Principal Secretary, Election Commission of India, New Delhi, has sent a letter dated 08.01.2019 in Lr.No.99/Vacancy/2019-EPS, to the Secretary to Government of India, Ministry of Law & Justice, Legislative Department, Shastri Bhawan, New Delhi, informing them about the above proceedings and requested to convey the view of the Government of India in the matter, so that necessary certificate can be issued by the Election Commission.

5. Thereafter, on 29.01.2019, the Additional Legislative Council, Government of India, Ministry of Law and Justice, Legislative Department has addressed a letter to the Secretary, Election Commission of India, New Delhi and the letter reads thus:

"Subject: Casual Vacancies in the Legislative Assembly from 168-Thiruvarur Assembly Constituency of Tamil Nadu - Certificate under Section 151A(b) of the Representation of the People Act, 1951 - regarding.

Sir,

I am directed to refer to the Election Commission's Letter No.99/Vacancy/2019-EPS 180 dated 8th January, 2019 on the subject above and to convey the concurrence of the Central Government to the proposal contained therein under clause (b) of the proviso to Section 151A of the Representation of People Act, 1951.



6. On 04.02.2019, the Principal Secretary, Election Commission of India, New Delhi has forwarded the certificate issued under Section 151A(b) of the Representation of People Act, 1951 to the Secretary to the Government of India, Ministry of Law & Justice, Legislative Department, Shastri Bhavan, New Delhi and the certificate reads thus.

No.99/Vacancy/2019/EPS Dated: 4th February, 2019

CERTIFICATE

Whereas, a casual vacancy occurred in the Legislative Assembly of Tamil Nadu from 168 -Thiruvarur Assembly Constituency on 07.08.2018 due to demise /death of Shri M. Karunanidhi, whose normal term would have expired on 24.05.2021.

2. And whereas, the said vacancy is required to be filled within six months from the date of its occurrence i.e. 06.02.2019 in terms of the provision of section 151A of the Representation of the People Act, 1951.

3. And whereas, the Election Commission of India vide its press note no. ECT/PN/81 /2018 dated 31.12.2018 in pursuance of section 151A of the Representation of the People Act, 1951, announced the schedule for election to the said Assembly Constituency in the State of Tamil Nadu to elect a member of Legislative Assembly.

4. And whereas, the Commission, after assessing the ground realities through consultation with political parties, State Government, Chief Electoral Officer (CEO) Tamil Nadu, Ministry of Home Affairs, local administration and considering response of public at large after the devastative affect of Gaja cyclone in 12 district of Tamil Nadu, where Thiruvarur district is one of the main district which bore the brunt of the cyclone, came to the unanimous view that the situation in the Thiruvarur district of Tamil Nadu is not conducive for holding participatory elections, at this stage.

5. And whereas, the Commission vide its Order No.100/TN-LA/1/2019, dated 6th January 2019, under Article 324 of the Constitution read with sections 150, 30, 56 of the Representation of the People Act, 1951, and further read with Section 21 of the General Clauses Act, 1897 and all other power enabling it in this behalf, has directed that the commission's Notification No.100/TN-LA/1/209 dated 3rd January, 2019, calling upon the said 168-Thiruvarur Assembly Constituency to elect a member of Legislative



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Assembly stand rescinded forthwith.

6. An whereas, as required under clause (b) of the proviso to the said section 151 A of the Representation of the People Act, 1951, the Election Commission has consulted the Central Government vide its letter No.99/Vacancy/2019/EPS dated 08.01.2019. addressed to Ministry of Law & Justice explaining therein the difficulties in holding the Bye-election to fill the said vacancy within the period specified in section 151A, and the Central Government has concurred with the views of the Election Commission vide Ministry of Law and Justice, Legislative Department letter F.No.11024/6/2017-Leg-II dated 29th January 2019.

7. Now therefore, after taking all relevant factors into account, the Commission hereby certifies that the process of bye-election to the Legislative Assembly to fill up the said casual vacancy could not be held within the period contemplated in Section 151A of the Representation of the People Act, 1951.

(SUMIT MUKHERJEE)
PRINCIPAL SECRETARY.

7. In WP (MD) No.22801 of 2018, one Mr.K.K.Ramesh, has filed a writ petition for issuance of a mandamus, to the Chief Election Commissioner, Election Commission of India, New Delhi and the Chief Election Officer (CEO), Tamilnadu, Chennai, respondents 2 and 3 therein, to conduct bye election in 195-Thiruparangundram and 168-Thiruvarur Constituencies in Tamil Nadu, by considering his representation dated 08.10.2018. A Hon'ble Division Bench of this Court (Madurai Bench) vide order dated 26.11.2018 has passed interim orders in WP(MD) No.22801 of 2018.

8. Being aggrieved, the petitioner therein Mr.K.K.Ramesh (W.P (MD) No.22801 of 2018), has approached the Hon'ble Apex Court in SLP (C) No.3919 of 2019. Having heard the learned counsel for the petitioner therein and the relevant materials, the Hon'ble Supreme Court, by order dated 15.02.2019, dismissed the SLP. Said order reads thus:

"Heard learned counsel for the petitioner and perused the relevant material.

The grievance raised before the High Court was with regard to non-holding of election in respect of two constituencies of the State of Tamil Nadu, namely, 195-Thiruparankundram Assembly Constituency and 168-Thiruvarur Assembly Constituency. The materials on record disclose that the election to 195-



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Thiruparankundram Assembly Constituency cannot be held as an election petition is pending in respect thereof. So far as 168-Thiruvarur Assembly Constituency is concerned, election was notified on 3rd January, 2019, but the said Notification was cancelled on 6th January, 2019. The order dated 6th January, 2019, passed by the Election Commission of India in consultation with the Central Government is an elaborate order. This order is in terms of the proviso to Section 151-A of the Representation of the People Act, 1951, which carves out an exception to the requirement of holding election within six months from the date of occurrence of the vacancy if the situation so demands in the opinion of the Election Commission. This is what has been done in respect of 168-Thiruvarur Assembly Constituency by Notification dated 6th January, 2019.

We, therefore, find no merit in this special leave petition. The same is, accordingly, dismissed."

9. Contentions of the petitioner in the instant writ petition are that the Election Commission of India, ought not to have postponed the elections on the request of State Government. Said contentions have been addressed by the Hon'ble Supreme Court in SLP No.3919 of 2019, stated supra.

10. That apart, Mr.Niranjan Rajagopal, learned standing counsel for the Election Commission of India submitted that election in Tiruvarur Assembly Constituency has been notified by the Chief Election Commissioner, Election Commission of India, New Delhi and polling is scheduled on 18.04.2019. In support of his contention, he invited the attention of this Court to the Notification dated 19.03.2019 of the Chief Election Commissioner, Election Commission of India, New Delhi. Notification reads thus.

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

APPOINTMENT OF DATES FOR VARIOUS STAGES OF BYE-ELECTION TO TAMIL NADU LEGISLATIVE ASSEMBLY FROM 168-THIRUVARUR ASSEMBLY CONSTITUENCY AND FIXATION OF HOURS OF POLL TO FILL A VACANCY CAUSED BY THE DEATH OF A MEMBER

No. SRO G-22/2019

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated: 19th March, 2019 [28 Phalguna, 1940 (Saka)] is published:



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No.100/TN-LA/11/2019: - Whereas, the seat of Shri Karunanidhi. M., in the Legislative Assembly of the TamH Nadu State, elected from 168-Thiruvarur Assembly Constituency has become vacant on 07.08.2018, by reason of his death; and

2. Whereas, a bye-election is to be held for the purpose of filling the vacancy so caused; and

3. Whereas, in pursuance of sub-section (1) of Section 150, and Sections 30 and 56 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India called upon the said 168-Thiruvarur Assembly Constituency in the State of Tamil Nadu to elect, a person, for the purpose of filling the said vacancy in the Legislative Assembly of the State, vide notification dated 03-01-2019 appointing 28-01-2019 as the date of poll; and.

4. Whereas, Subsequently, the Commission, for reasons stated in its order No.100/TN-LA/1/2019, dated 06th January, 2019 rescinded the poll in said 168-Thiruvarur Assembly Constituency that was scheduled to be taken on the 28-01-2019, for the reason stated therein; and.

5. Whereas, the Commission has now decided to hold the Bye-Election to 168-Thiruvarur Assembly in the State of Tamil Nadu; and

6. Now, in pursuance of sub-section (1) of Section 150, and Sections 30 and 56 of the Representation of the People Act 1951 (43 of 1951), the Election Commission of India hereby:-

(A) Calls upon the said 168-Thiruvarur AC in the State of Tamil Nadu to elect, the before the 27-05-2019 (Monday) and in accordance with the provisions of the said Act and of the rules and orders made thereunder, an person, for the purpose of filling the said vacancy in the Legislative Assembly of the State; and

(B) Appoints, with respect to the said election,-

(a) the 26-03-2019 (Tuesday), as the last date for making nominations;

(b) the 27-03-2019 (Wednesday), as the date for scrutiny of nominations; (c) the 29-03-2019 (Friday), as the last date for withdrawal of candidatures;

(d) the 18-04-2019 (Thursday), as the date, on which a poll shall, if necessary, be taken;

(e) the 27-05-2019 (Monday), as the date before which the election shall be completed, and

(C) Fixes the hours from 7.00 A.M. to 6,00 P.M. as the hours during which the poll shall, if necessary, be taken on the date specified above, for the election



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Secretariat,
Chennai-600 009.
19th March, 2019.

(By Order)

M a l a y M a l l i c k ,
Secretary,
Election Commission of India.

SATYABRATA SAHOO,
Chief Electoral Officer and
Secretary to Government,
Public (Elections) Department

11. In the light of the order of the Hon'ble Supreme Court and having regard to the fact that election has been notified for Tiruvarur Constituency on 18.04.2019, instant writ petition has to be dismissed and accordingly, dismissed. No Costs. Consequently, the connected Writ Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sathan, New Delhi.

2. The Tamil Nadu Chief Electoral Officer,
Arumbakkam, Chennai - 600 106.

3. The Chief Secretary,
State of Tamil Nadu,
St. Fort George, Secretariat, Chennai.

WP (MD) No.1178 of 2019
and WMP (MD) No.984 of 2019

KS(CO)
CSL/30.04.2019