

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 21/3/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.2019 of 2019

Sahul Hameed @
Tamil Mulakkam
Sahul Hameed
Candidate of Thiruvavarur Assembly
Constituency
Naam Tamilar Katchi
Thiruvavarur.Petitioner

Vs

The Election Commission of India
through its Chief Election Commissioner
Nirvachan Sadhan
Ashoka Road
New Delhi 110 001.Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first respondent to formulate a guidelines/policy to be followed by the respondent before cancelling any election and consequently pay Rs.1 crore compensation and Rs.1.5 lakhs expenses to Naam Tamilar Katchi, as the respondent acted cavalier manner in calling for and in withdrawing the Thiruvavarur Constituency Bye-Election.

For petitioner : Mr.F.Camilus Selva
for Mr.M.Selvakumar

For respondents : Mr.Niranjan Rajagopal

O R D E R

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

Mr.Sahul Hameed @ Tamil Mulakkam Sahul Hameed, member of a political party Naam Tamilar Katchi, has sought for a writ of

mandamus, directing Election Commission of India, through its Chief Election Commissioner, respondent, to formulate guidelines/policy to be followed by the respondent before cancelling election and consequently, to pay Rs.1 crore compensation and Rs.1.5 lakhs to Naam Tamilar Katchi, as the respondent acted in a cavalier manner in calling for and withdrawing the Thiruvarur Constituency Bye-Election.

2. Contending inter alia that consequent to the announcement of bye-election, for the constituency 168 - Thiruvarur, Tamil Nadu, which was scheduled, on 28/1/2019, petitioner and his supporters spent huge amounts, for election propaganda. Without following due process of law, the respondent has cancelled the election, on 6/1/2019. Hence, the petitioner has sent a representation, dated 8/1/2019, to the Election Commission of India, New Delhi, demanding a sum of Rs.1.5 lakhs to him and Rs.1 crore, as compensation, to Naam Thamizhar Katchi. Contenting inter alia that the said representation, remains unanswered, instant writ petition has been filed.

3. On the averments made in the writ petition and prayer sought for, Mr.Niranjan Rajagopal, learned counsel for Election Commission of India submitted that under the Constitution of India and Election laws, Election Commission of India, New Delhi, exercise plenary powers and that the same cannot be circumscribed by any guidelines to be framed by the Election Commission of India. Exercise of plenary powers, depends upon different situation, natural calamity, law and order problem, change of dates of elections, location of polling booths and such other issues, which the Election Commission of India, in exercise of the constitutional powers would decide.

4. According to him, powers of the Election Commission of India cannot be limited and Election Commission of India, should be given the latitude to decide depending upon the need and situation. Learned counsel further submitted that Article 324 of the Constitution of India has been conceived only to take comprehensive provisions dealing with the powers of the Election Commission of India.

5. For brevity, Article 324 of the Constitution of India is extracted hereunder:-

Superintendence, direction and control of elections to be vested in an Election Commission.

(1). The Superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of

elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission)".

6. Learned counsel for the Election Commission of India also referred to the following decisions:-

- (i). In the matter of Special reference No.1 of 2002 - {(2002) 8 Supreme Court Cases - 237};
- (ii). West Bengal State Election Commission Vs. State of West Bengal & Ors (I.A.Nos.7 to 26 & RP (C) No.1480-83 of 2012, in Special Leave petition No.19928 - 19931 of 2013;
- (iii). Election Commission of India Vs. State of Haryana {1984 (Supp) Supreme Court Cases - 104};
- (iv). Election Commission of India, through Secretary Vs. Ashok Kumar and Others {(2008) 8 Supreme Court Cases 216}
- (v). N.P.Ponnuswami Vs. Returning Officer, Namakkal Constituency, Namakkal, Salem District and four others {1952 SCR 218} and
- (vi). Mohinder Singh Gill and Another vs. the Chief Election Commissioner, New Delhi and another vs. the Chief Election Commissioner, New Delhi and others {(1978) 1 Supreme Court Cases - 405}.

7. Heard Mr.F.Camilus Selva, learned counsel for the petitioner and Mr.Niranjan Rajagopal for the respondent.

8. Firstly, on 31/12/2018, the Election Commission of India has issued Notification, announcing the bye-election, for the constituency - 168 Thiruvavur, to be scheduled on 28/1/2019. Subsequently, on 6/1/2019, election notified has been cancelled. Judicial notice can be taken that cancellation of election by Notification, dated 6/1/2019 was challenged, in W.P.(MD) No.1178 of 2019, for a writ of certiorarified mandamus, to quash the order No.100/TN-LA/1/2019 dated 6/1/2019, passed by the Chief Election Commissioner, Election Commission of India, Chennai, the 1st respondent therein.

9. Yesterday, when W.P.(MD) No.1178 of 2019 was listed before this Court, on the submission of Mr.Niranjan Rajagopal, learned counsel for the Chief Election Commission of India, New Delhi that constituency 168 Tiruvarur, Tamil Nadu has also been notified, for the ensuing election, on 18/4/2019, we dismissed the said writ petition.

10. Now that election has been notified for Tiruvarur constituency. Therefore, on the facts and circumstances, and without expressing any opinion on the contentions of the petitioner, vis-a-vis for the Election Commission of India, as

to whether powers are plenary or to be circumscribed by guidelines, we leave issue open.

11. On the prayer for compensation of Rs.1.5 lakhs to the petitioner and Rs.1.5 crores to Naam Thamizhar Katchi, it is a trite law that damages suffered on account of any tortious act, remedy is not under Article 226 of the Constitution of India, except in a case where there is a failure, in exercise of duty, affecting Article 21 of the Constitution of India. In the case on hand, petitioner has contended that he had incurred expenditure to the tune of Rs.1 crore lakhs and Rs.1.5 lakhs to Naam Tamilar Katchi. Petitioner has to approach only the common law remedy, if he or the party has incurred expenditure and suffered damages. Writ petition is not maintainable.

12. In the light of the above discussion, writ petition is dismissed. No costs.

mvs

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Chief Election Commissioner
Election Commission of India
Nirvachan Sadhan
Ashoka Road
New Delhi 110 001.

+1cc to M/s.Niranjan Rajagopalan ,Advocate, SR.No.27246
+1cc to the Govt.Pleader, vide SR.No.27222

Writ Petition No.2019 of 2019

Kak(25/03/2019)

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