

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.02.2019

CORAM:

THE HONOURABLE MR. JUSTICE D. KRISHNAKUMAR

W.P. No.4525 of 2019 and
WMP.No.5099 and 5102 of 2019

S.S.K.Rajendran

.. Petitioner

Vs.

1. The Tamil Nadu State Co-operative Election Commissioner
No.273, Scheme Road, Subbarayan Nagar,
Teynampet, Chennai.
2. The District Election Officer/Deputy Registrar
of Co-operative Societies
Chengalpattu.
3. The Electoral Officer/the Sub-Registrar
of Co-operative Societies (Housing)
Chengalpattu.
4. The Election Officer
Gandhi Nagar Co-operative Society G1304
No.5, V.O.C. Salai, Gandhi Nagar,
Madipakkam, Post,
Chennai-600 091.

.. Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, to call for the records of the first respondent in his proceedings Na.Ka.7047/2016/koo.th.5 dated 05.02.2019 issued on the basis of the third respondent's report dated 21.11.2018, quash the same and direct the third respondent to conduct the enquiry in terms of the directions issued by this Court, in the common order dated 03.09.2018 in W.P.Nos.22059/2018 and 21653/2018.

For Petitioner : R.Ashokan

For Respondents : Ms.T.Girija (R2 and R3)
Government Advocate

Mr.M.S.Palanisamy (R1)
Mr.L.P.Shanmugasundaram (R4)
Special Government Pleader

O R D E R

By consent, this Writ Petition is taken up for final disposal, at the stage of admission itself.

1. This Writ Petition has been filed challenging the proceedings of the first respondent in Na.Ka.7047/2016/koo.th.5 dated 05.02.2019 issued on the basis of the third respondent's report dated 21.11.2018, quash the same and direct the third respondent to conduct the enquiry in terms of the directions issued by this Court, in the common order dated 03.09.2018 in W.P.Nos.22059/2018 and 21653/2018.

2. According to the petitioner, he made a allegation against the third respondent by stating that the petitioner's name along with 48 other members were illegally removed from the voters list. It is stated that on the representation, the name of the petitioner as well as the other persons have been included and subsequently the petitioner's name was also removed. Thereafter, the petitioner submitted a nomination and in the meantime the election was cancelled and direction was issued to conduct fresh election. Challenging the same, the petitioner was before this Court by filing Writ Petitions in W.P.Nos.21653 of 2018 and 22059 of 2018, by alleging that the name of the petitioner as well as 48 other members were found place in the voters list and subsequently removed by the third respondent without any enquiry. The representation made by the petitioner was also rejected, without citing any reason. This Court, by an order dated 03.09.2019 has directed the third respondent to conduct an enquiry on the complaint given by the petitioner as well as other persons after issuing notice to the petitioner as well as to one Mr.C.Sridharan and pass orders on merits and in accordance with law. According to the petitioner, pursuant to the said order of this Court, no enquiry was conducted by the third respondent, however sent a report to the first respondent on 21.11.2018. Based on the same, the first respondent has published the election schedule in the notification and therefore, the petitioner states that the third respondent is deliberately violating the orders of this Court and therefore the present petition is filed before this Court, challenging the proceedings of the first respondent dated 05.02.2019.

3. The learned Special Government Pleader appearing for the respondents 2 and 3, on instructions would submit that pursuant to the order passed by this Court, the petitioner and one Sridhar was asked to appear for an enquiry and thereafter the report has been submitted to the Election officer and following the same, impugned notification was issued and therefore the Writ Petition filed is not maintainable. If the petitioner is aggrieved by the election process, he has to file an E.P. before the appropriate forum.

4. Heard both sides and perused the materials on record.

5. According to the petitioner the third respondent has not followed the order passed by this Court and issued impugned notification to conduct election. This Court in W.P.No.12915 of 2013 dated 12.09.2017 has passed the following order:

"21. The salutary principle is that, when remedies in the nature of statutory remedies are available to an aggrieved party, cannot invoke Article 226 of the Constitution, as a remedy by way of a writ petition. Under Article 226 of the constitution, five types of writs issued which are also essentially intended to apply in exceptional cases, in which ordinary legal remedies are not adequate, although the language of Article 226 expressly does not say so. However, the powers under Article 226 of the Constitution confers extensive discretion to the High Court and when discretion is exercised on well established principles such as delay, suppression of facts, disputed question of fact, futile writs etc. The ground of availability of an alternative remedy is also one such reason not to exercise discretion under Article 226 of the Constitution and refusal to grant any relief, if the aggrieved party can have recourse to an alternative or adequate remedy elsewhere. The High Court can always entertain Article 226 of the

constitution of India when there is a patent error or, when there is violation of principles of natural justice or when the order impugned is ultra vires of the Act or prima facie fundamental right has been infringed. Further, if the alternative remedy is not adequate, then the High Court can entertain a writ petition. In the aforesaid contingencies, even if the alternative remedy is available, a writ petition can be entertained. Now, considering the Article 329 (b) of the Constitution of India, there is a bar to interference of a court in matters pertaining to an election. In the case of NP Ponnusamy Vs. Returning Officer, Namakkal reported in AIR 1952 SC 64, the Hon'ble Supreme court has held that the term 'election' has been interpreted and held that rejection or acceptance of nomination is included in the term 'election'. The aforesaid Judgment has been followed by the Hon'ble Supreme Court in Nanhoo Mal Vs. Hira Mal reported in AIR 1976 SC 2140 which was a case of election to a Municipal Board, wherein it has been held that the election to the office of the President could be challenged only according to the procedure prescribed by the Municipalities Act i.e. by means of an election petition presented in accordance with the provisions of that Act and in no other way. Thus, in our view, a post-election remedy by way of an election petition is the ultimate remedy available to an aggrieved party to challenge the rejection or acceptance of the nomination of a candidate. In the case of S.T. Muthusamy Vs. Natarajan [(1988) 1 SCC 572] the Hon'ble Supreme Court has held that the Court in exercise of its discretion should always be declined to invoke writ jurisdiction in an election dispute, if an alternative remedy of an election petition is available. In the matter of election dispute all the power under Article 329 of the

Constitution of India conferred to the Parliament and State legislature. The principle emanating from that Article is applicable to all the elections including that of local bodies or authorities constituted by a statute or to the bodies formed under a statute. Therefore, we find that the aforesaid decisions would clearly imply that even in the case of improper rejection of a nomination of a candidate, the aggrieved party has to avail of the remedy by way of election petition which is a statutory remedy. Even, in the case of State of Uttar Pradesh Vs. Uttar Pradesh Rajya Khanija Vikas Nigamaa reported in (2008) 2 SCC 675 and in the case of Nanjundaswamy Vs. Assistant Registrar of Cooperative Societies reported in ILR 1992 KAR 972 categorically held that the remedy by way of an election petition is the remedy that is normally available in election disputes. The principles of law is that, once the election process has begun it should not be interfered with. Yet another Full bench of the High Court of Karnataka in the case of Maruthi Vs. State of Karnataka reported in ILR 1990 KAR 1378 and in the case of B.Gurumallappa Vs. State of Karnataka reported in ILR 1991 KAR 577, the Karnataka High Court has held that High Court can exercise power in election disputes only in the most extraordinary circumstances. Therefore, in the light of the aforesaid Judgments of the Hon'ble Supreme Court as well as the High Court decision cited supra, the writ petition is not maintainable. There is an efficacious alternative remedy is available to the petitioner to file an election petition before the appropriate authority under the act.

22. Further in view of the principles of law settled by the Hon'ble Supreme Court and the decisions of this Court, once election is commenced, the writ petition cannot be

entertained under Article 226 of the Constitution of India, the writ petition is not maintainable.

23 The writ petition is dismissed as not maintainable. However, liberty is granted to the petitioner to file an election petition, if so advised, within a period of four weeks from the date of receipt of a copy of this Order. In case of filing election petition, the authority concerned has to consider, without being influenced by the observations made in this writ petition and pass orders on merits and in accordance with law. Consequently, connected miscellaneous petition is closed. No costs."

6. In the light of the aforesaid order passed by this Court, the petitioner cannot invoke Article 226 of Constitution of India to challenge the impugned election notification issued by the third respondent. It is open to the petitioner to seek remedy before the appropriate authority to challenge the election conducted for the third respondent. Therefore, this Court cannot entertain this Writ Petition.

This Writ Petition is dismissed with the above directions. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Tamil Nadu State Co-operative
Election Commissioner
No.273, Scheme Road, Subbarayan Nagar,
Teynampet, Chennai.

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No.5, V.O.C. Salai, Gandhi Nagar,
Madipakkam, Post,
Chennai-600 091.

+1 cc to Mr.R.Asokan, Advocate, S.R.No.14334

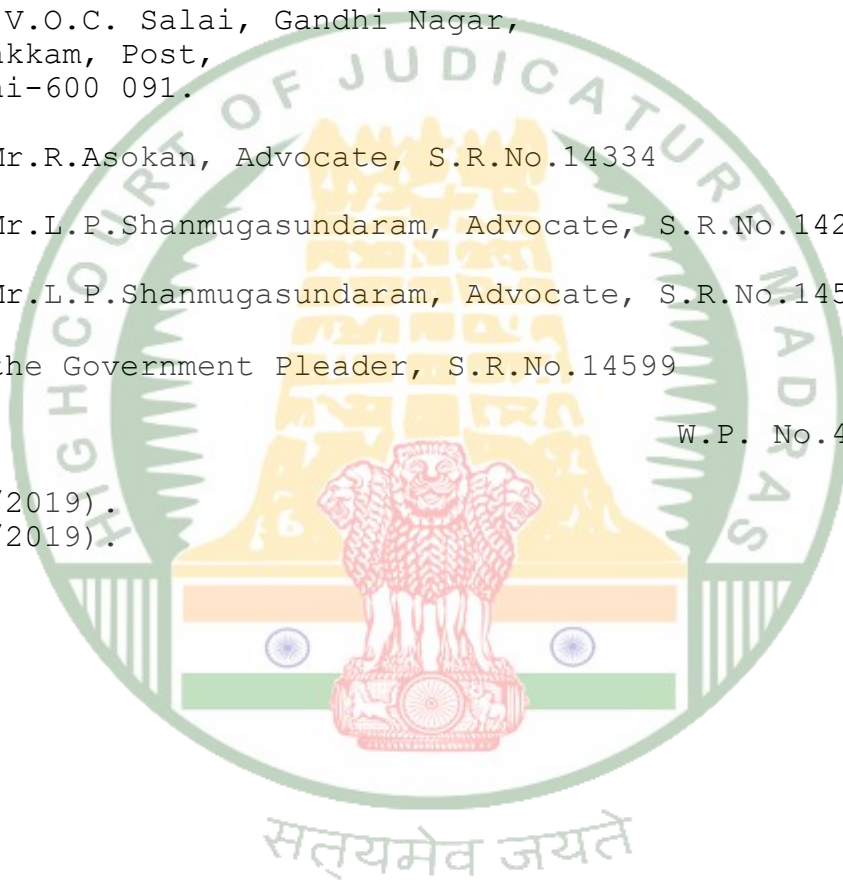
+1 cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.14257

+1 cc to Mr.L.P.Shanmugasundaram, Advocate, S.R.No.14531

+1 cc to the Government Pleader, S.R.No.14599

W.P. No.4525 of 2019

PM(CO)
SSM(12/04/2019).
SSM(07/05/2019).



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