

Original Application No.255 of 2019
in
ELP No.1 of 2016

V.BHARATHIDASAN.J.,

This Original Application has been filed seeking to reopen the evidence on the side of the Election Petitioner for the purpose of adducing further evidence in the Election Petition.

2. According to the petitioner, earlier the petitioner had taken out an application in O.A.No.682 of 2018 seeking to issue subpoena to one Mr.Jayachandran, Tahsildar (Retd.,) who was the Election Officer on 19.05.2016 for the Tindivanam Assembly (SC) Constituency along with two other applications seeking to issue subpoena to then Returning Officer and the incumbent Returning Officer of the constituency and those applications were allowed by this court on 01.08.2018 and subpoena were issued to the witnesses. Accordingly, the present Returning Officer Mr.Mercy Ramya was examined C.W.1 and then Returning Officer Mr.P.N.Sridhar was examined as C.W.2. After the completion of examination of C.W.2

was over, when this court had asked as to whether any other witness was available for examination, the learned representing counsel for the counsel on record for the Election Petitioner had inadvertently submitted that there was no other witness for examination. Recording the same, this court had closed the evidence. Now, seeking to reopen the evidence and to issue subpoena to the Retired Tahsildar, who was the Election Officer during the relevant point of time, the present application has been filed.

3. The learned counsel for the petitioner submitted that the Shri.V.Jaychandran, Retired Tahsildar, is a very crucial witness to be examined in this case to establish the claim of the petitioner. But, due to inadvertence, it was reported to this court that there was no other witness to be examined in the case. Hence, this application.

4. The learned counsel for the 3rd respondent vehemently opposed this application contending that after the subpoena was issued to the Retired Tahsildar, the petitioner had deliberately avoided to examine him and only on the submission made by the learned counsel for the petitioner, the evidence was closed.

Therefore, it is not now open to the petitioner to seek for reopening of the evidence and to examine the Retired Tahsildar who was the Election Officer during the relevant point of time.

5. I have considered the rival submissions carefully.

6. Admittedly, earlier application taken out by the petitioner to issue subpoena to the very same witness was allowed. It is now submitted that after the examination of C.W.2 was over, due to inadvertence, it was reported to this court that there was no other witness for examination and as such, recording the statement of the learned counsel who was present in court, this court had closed the evidence. Considering the peculiar facts and circumstances of the case and in the interest of justice, this court is inclined to allow this application.

7. In the result, this Original Application is allowed and the Registry is directed to issue fresh summons to Mr.Jayachandran, Tahsildar (Retired), residing at No.56, Dhrobathi Amman Koil Street, Murugapakkam, Puducherry-4 to give evidence in ELP No.1 of 2016

on 22.04.2019.

Post this matter on 22.04.2019.

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