

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 11/4/2019

C O R A M

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

Writ Petition No.10969 of 2019

A.P.Suryaprakasam

...

Petitioner

Vs

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

2. The Chief Election Officer
Government of Tamil Nadu
Fort St. George
Chennai 600 003.

...

Respondents

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 consider the petitioner's representation dated 4/4/2019 and direct the first respondent Election Commission to immediately give wide publicity in print and visual media as well as putting banners in each and every polling booth about the illegality of accepting money for votes from the contesting candidate of any of the political party and the penal consequences of selling votes for cash or in kind and further inform that voters who vote for ruling party or opposition party are equally entitled to receive Rs.2,000/- being the monetary grant announced by Tamil Nadu Government prior to the election announcement.

For petitioner ... Mr.S.P.Surya Prakasam

Party-in-person

For respondents ... Mr.Niranjan Rajagopalan

O R D E R

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

Mr.A.P.Suryaprakasam, a practising Lawyer of this Court, stated to have sent a representation, dated 4/4/2019, to the

Election Commission of India, wherein he has state that money is paid, when Arathi is taken in plates, by the candidates and agents, and that the same has to be curtailed, thereby making the election free from corruption and further contending inter alia that the said representation remains unanswered, has filed the instant writ petition, for a mandamus, directing the first respondent, to consider the petitioner's representation, dated 4/4/2019 and to direct the first respondent Election Commission to immediately give wide publicity, in print and visual media, as well as putting banners, in each and every polling booths about the illegality of accepting money for votes from the contesting candidate of any of the political party and the penal consequences of selling votes for cash or in kind and further inform that voters who vote for ruling party or opposition party are equally entitled to receive Rs.2,000/- being the monetary grant announced by Tamil Nadu Government prior to the election announcement.

2. In support of his contention, petitioner has relied on a judgment of this Court in W.P.No.25846 of 2018, dated 28/3/2019, wherein this Court has observed about the evil practice in securing votes. On the above averments, Mr.A.P.Suryaprakasam, party-in-person made submissions. Portion of the order made in W.P.No.25846 of 2018, dated 27/3/2019, relied on by the party-in-person is extracted hereunder:-

Recently, popular corruption is 'Vote For Cash'. Our Great Nation had large number of Statesmen. However, during present days, the concept of 'Vote For Cash' is being developed by many number of political parties. An ambitious citizen, who would like to become a Member of Parliament or a Member of Legislative Assembly, in order to contribute his knowledge, experience for enacting good laws for the development of the society and to our Great Nation are indulging in illegal activities of 'Vote For Cash'.

These Representatives of people are not only accountable but also responsible for enactment of laws. If they indulge in such corrupt activities of 'Vote For Cash', then the very foundation of the democratic principles are shaken.

It is undoubtedly a slam on democracy. If these activities are allowed to be developed, the very expectation of the people for the development is demolished and people will end in frustrations.

Equally few voters are not realising the

sanctity and the value of the right of voting in a largest democracy in the world. Exercise of the democratic right is of paramount importance. It is a duty enunciated under Article 51-A of the Constitution of India. To abide by the constitutional rights, its ideals and institutions are the fundamental duties enunciated in the constitution. Noble ideas are to be followed. The integrity of our Great Nation is to be protected. Unfortunately, the social evil of corruption has now become an accepted social phenomenon and the way of life for many people.

Corruption becomes way of life which is deep-rooted almost in all levels. An effortful action is to be progressed in order to control the corrupt activities, both in public life as well as amongst the public servants.

Philosophies and ethos of the constitution, which are to be borne in mind and is to be taught to the citizen right from their childhood. Patriotism is to be injected in the blood of the children of this Great Nation. A distinct and different perceptions and high thought level, are certainly required.

The minority non-corrupt and right thinking persons are necessarily to be encouraged and protected by the Constitutional Courts and the Authorities Competent to ensure that fight against majority corrupt is advanced. The minority non-corrupt are 'Pandavas' and the majority corrupt are 'Kauravas'.

This Court is of the fond hope that the minority non-corrupt will certainly win the battle field against the corruption, if the spirit of democracy and constitutional principles are advanced and implemented amongst the youth of this Great Nation.

3. In so far as the measures taken by the Election Commission of India, to have a free, fair and transparent elections and on the aspect of the corruption or corrupt practices, awareness to the voters, in one of the writ petitions in W.P.(MD)No.6062 of 2019, dated 26/3/2019, this Court, after taking note of the submission of Mr.Niranjan, Rajagopalan, learned counsel for Election Commission of India, on the steps taken, dismissed the similar and other prayer sought for therein. Prayers sought for by the petitioner in W.P.(MD)

No.6062 of 2019, is reproduced hereunder:-

"A) To publish the giving and receiving cash for vote is punishable offence in TV, News Papers, Radio and Display Board;

B) To increase the number of flying squad appointed by Election Commission to control cash for vote to monitoring;

C) To publish the contact number of flying squad to complaint against the cash for vote;

D) To Register case against the head of political party who installs temporary or permanent flex boards / hoardings and establishes temporary dais for political meeting in the middle of the road or Pathway or junction or Bazaar by affecting traffic; and

E) If election is postponed or cancelled for the reason of distribution of cash for vote or for deviating any Election Rules the huge money spent for election by Government will be recovered from the candidate / Head of political party."

4. Submission of the Election Commission of India and the materials considered therein are also reproduced.

25. In support of his contention on all the prayers sought for, Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India, took us through the relevant provisions in the Model Code of Conduct, Compendium of Instruction on Election Expenditure Monitoring and the periodical orders issued by the Commission. He further submitted that under the SVEEP (Systematic Voter Education and Electoral Participation) initiatives, awareness is created among the public through various events. He also submitted that sufficient Flying Squad have been deployed in the constituency and depending upon the situation, Election Commission would increase deployment of the flying squad. Help line has already been notified and an App is also created in public domain. Learned counsel for the Election Committee of India submitted that following the orders of the Kerala High Court, directions have been issued by the Election Commission of India, on the use of plastics, biomedical waste etc.

5. Parliament has enacted the Representation of People Act, 1951 and some other Acts, to prevent and curtail the corrupt practice of cash for vote, to conduct a fair Election.

For the past two decades citizens of India are in the daily news papers that most of the government heads, Ministers of Central and State Governments, and higher officials are involved in corrupt practices, disproportionate assets over and above their income, their arrest and conviction etc. In India, there are so many laws enacted by the Parliament and State Legislatures, to prevent corrupt practices cash for vote by the politicians. But, the enacted laws are only in paper and the law enforcing authorities are not implementing the laws properly, because the implementing authorities also join hands with the corrupt politicians and higher officials of the Government. Higher officials of the Government escape from the clutches of law, by using their powers joining with corrupt politicians. Hence, Parliament of India has proposed to enact a law, to bring the corrupt politicians, into the clutches of law.

6. Contention of the petitioner that his representation remains unanswered and therefore, a mandamus be issued to consider the same. He also prayed for a warning to the contestants and voters.

7. When directions have already issued on the subject matter, Election Commission of India cannot be directed to consider each and every representation, sent by one or the other. We are not inclined to issue any mandamus for the reason that sufficient measures have already taken by the Election Commission of India. However, observe that instructions issued be implemented on letter and spirit and scrutiny be tightened.

8. Hence, instant writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True Copy//

Sub Assistant Registrar

mvs.

To

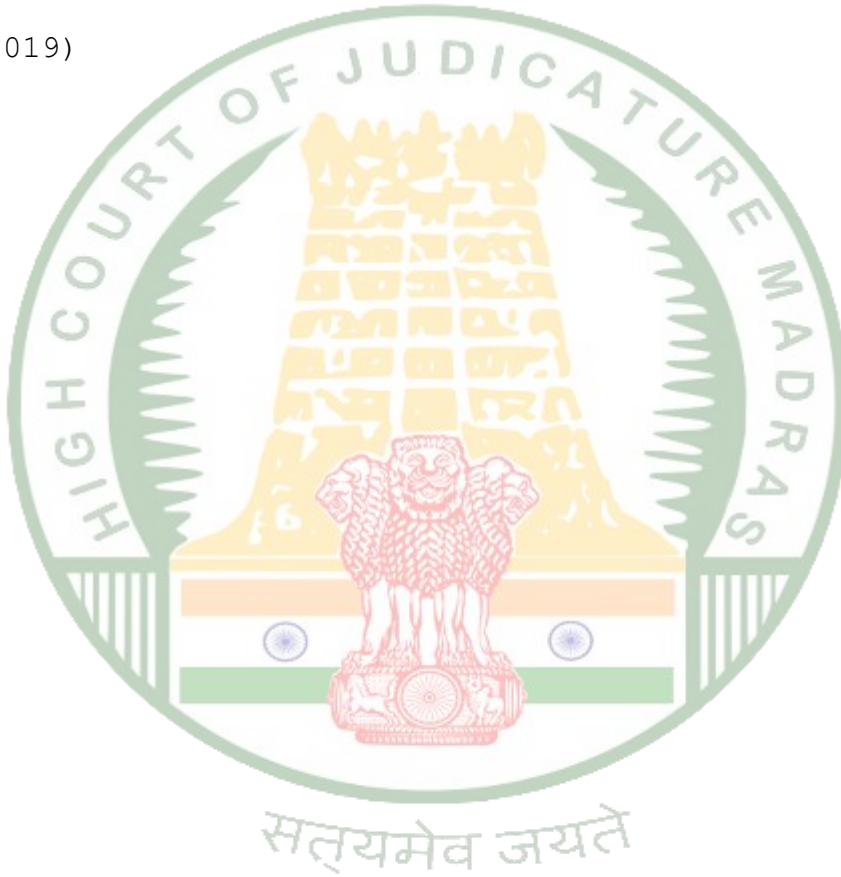
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+1cc to Mr.G.R.Associates, Advocate, S.R.No. 36586
+1cc to the Government Pleader, S.R.No. 36260

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RV(CO)
GN(22/04/2019)



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