

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.9571 of 2019
and
W.M.P.No.10189 of 2019

R.Viswanathan @ MGR Viswanathan

... Petitioner/Party-in-Person

Vs.

- 1.The Union of India
Rep. by its Secretary to Government
Election Commission of India,
Nirvachan Sadan,
New Delhi - 110001.
- 2.The Chief Election Commissioner
Election Commission of India,
Nirvachan Sadan
New Delhi - 110001.
- 3.The Chief Electoral Officer
Tamil Nadu State Election Commission
208/2, Jawaharlal Nehru Road,
Arumbakkam (Opp to Koyambedu)
Chennai-600 108.
- 4.The Returning Officer
2, North Chennai,
Zone 5, Chennai Corporation,
Chennai-79.
- 5.The Returning Officer
12, Perambur Assembly Constituency,
Chennai Zone 5, Chennai Corporation,
Chennai-39.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a writ of Mandamus, directing the respondents 4 and 5 herein to accept my election nomination deposit amounts and permit the petitioner to contest the

election in the 2, North Chennai Parliamentary general constituency and in the 12, Perambur Assembly Chennai constituency respectively.

Petitioner : Mr.R.Viswanathan@MGR
Viswanathan (Party-in-Person)

For Respondents : Mr.Niranjan Rajagopalan

O R D E R

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

Petitioner/Party-in-Person, claiming himself to be the founder of 'MGR Makkal Katchi' recognised by the Election Commission of India, New Delhi, in 2018, has contested in Ambattur Assembly Constituency, Thiruvallur District, in Tamil Nadu Assembly General Election in 2016 and in 2017, contested in Tamil Nadu bye-election for Dr.Radha Krishnan Nagar (R.K.Nagar) Constituency, Chennai, as a candidate of his earlier political party, namely 'Anaithulaga MGR Makkal Munnetra Kazhagam.

2. According to the Petitioner/Party-in-Person, he filed the nomination papers to contest in two constituencies, namely, (i) 2, North Chennai Parliamentary general constituency and (ii) 12, Perambur Assembly Chennai constituency. Last date for filing of the nominations, was 26.03.2019, at 3 p.m. Petitioner/Party-in-Person has contended that the Returning Officer of the above constituencies, received his nomination papers but did not receive the deposit amount of Rs.25,000/- and Rs.10,000/-, respectively, instead they asked him to wait for some time beyond 3 pm.

3. About 4 pm, the Returning Officer, No.2 North Chennai, Zone 5, Chennai Corporation, Chennai, the fourth respondent herein, has issued Token No.11 to the Petitioner/Party-in-Person and thereafter, about 4.45 pm, the Returning Officer, refused to accept his deposit amount, without assigning any reasons.

4. Being aggrieved, the Petitioner/Party-in-Person has sent a complaint dated 26.03.2019 to the Chief Election Commissioner, Tamil Nadu.

5. On the above averments, Petitioner/Party-in-Person has sought for a Writ of Mandamus, directing the respondents, to accept his election nomination deposit amounts and permit him to contest the election in No.2, North Chennai Parliamentary general constituency and in No.12, Perambur Assembly Chennai constituency, respectively.

6. Petitioner/Party-in-person made submissions.

7. Based on the decision in N.P.Ponnuswami vs. Returning Officer, Namakkal Constituency and others. Union of India, reported in AIR 1952 SC 64, Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India, submitted that writ petition is not maintainable against the rejection of nomination papers. There is also a bar under Article 329 of the Constitution of India. However, this Court directed the learned counsel for Election Commission of India, to ascertain on the facts pleaded.

8. Reverting, on the basis of written instructions in R.O.C.No. Elections/Spl/2019, dated 29.03.2019, Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India submitted that on the last day of presentation of the nomination papers i.e.26.03.2019 at 3.00 pm., 22 people were given tokens who were present at the Returning Officer's Office for filing nomination papers. At the time of issue of tokens, all documents including the nomination papers were collected from the candidates and tokens were issued. They were asked to wait to take pre scrutiny work, that is mandated to be done by the Returning Officer, while accepting the nomination papers. Petitioner/Party-in-Person was issued with Token No.11 and his nomination papers and documents, were received at 3.00 p.m.

9. After completing the pre-scrutiny of 10 previous token numbers/nomination papers, Petitioner/Party-in-Person's papers with Token No.11, was taken up. He was asked to produce the receipt of payment of security deposit amount at which time, he informed the Returning Officer that he has not paid the security deposit and he has sent somebody to take the money from ATM.

10. Learned counsel for Election Commission of India, further submitted that, instructions in the Returning Officer's handbook 5.21.3 clearly states that every candidate presenting the nomination paper has an option to make the security deposit either in cash with the Returning Officer or by depositing in RBI or Government Treasury (through Challan).

11. Reference is also made to Section 34 of the Representation of People Act, 1951, stated as follows:-

34. Deposits.-3 [(1) A candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited,-

(a) in the case of an election from a Parliamentary constituency, 4 [a sum of twenty-five thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of twelve

thousand five hundred rupees] ; and

(b) in the case of an election from an Assembly or Council constituency, 1 [a sum of ten thousand rupees or where the candidate is a member of a Scheduled Caste or Scheduled Tribe, a sum of five thousand rupees] : Provided that where a candidate has been nominated by more than one nomination paper for election in the same constituency, not more than one deposit shall be required of him under this sub-section.]

(2) Any sum required to be deposited under sub-section (1) shall not be deemed to have been deposited under that sub-section unless at the time of delivery of the nomination paper 2 [under sub-section (1) or, as the case may be, sub-section (1A) of section 33] the candidate has either deposited or caused to be deposited that sum with the returning officer in cash or enclosed with the nomination paper a receipt showing that the said sum has been deposited by him or on his behalf in the Reserve Bank of India or in a Government Treasury."

12. Learned counsel for Election Commission of India further submitted that the Petitioner/Party-in-Person left from the Returning Officer's room hastily making objections, and even without receiving the acknowledgment of receipt of the nomination paper. However, when his nomination paper was taken up for scrutiny on 27.03.2019 at 11.00 am (Nomination paper Sl.No.46/PC 02/2019/RO), Petitioner/Party-in-Person was not present at the time of scrutiny and his nomination paper was scrutinized and on the ground of non-payment of security deposit, his nomination paper was rejected.

13. In so far as 12, Perambur Assembly Chennai Constituency is concerned, learned counsel for Election Commission of India submitted that nomination papers were not even filed, for the above constituency.

14. Heard Mr.R.Viswanathan@MGR Viswanathan (Party-in-Person) and Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India and perused the materials available on record.

15. Article 329 of the Constitution of India, reads thus:-

"329. Bar to interference by courts in electoral matters Notwithstanding anything in this Constitution

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be

made under Article 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

16. In *N.P.Ponnuswami vs. Returning Officer, Namakkal Constituency and others*. Union of India, reported in AIR 1952 SC 64, after considering the election rules framed under Government of India Act, 1935, Constitution of India and catena of decisions, the Hon'ble Supreme Court affirmed the view of the Madras High Court and 7 other High Courts, which held that they have no jurisdiction under Article 226 of the Constitution of India, to entertain writ petitions, regarding improper rejection of nomination papers.

17. In the complaint dated 26.03.2019, addressed to the Chief Election Commissioner of Tamil Nadu, Chennai, Petitioner/Party-in-Person has stated that after 3.00 p.m., the Returning Officer, gave tokens to candidates, who had filed nomination forms for the election to North Chennai and while his token No.11 was called, the Returning Officer, No.2, Chennai North Parliamentary Constituency and Regional Deputy Commissioner (North) refused to receive the deposit amount.

18. Per contra, it is the statement of the Returning Officer, No.2, Chennai North Parliamentary Constituency and Regional Deputy Commissioner (North), Chennai, after completing the pre-scrutiny of 10 previous token numbers/nomination papers, case of the petitioner/Party-in-Person with Token No.11, was taken up, he was asked to produce the receipt of payment of security deposit amount, at that time he informed the Returning Officer that he has not paid the security deposit and sent somebody to take money from ATM.

19. Petitioner/Party-in-Person/Party-in-person, submitted that he was not informed by the Returning Officer that, he should make the deposit immediately.

20. As per instructions in the Returning Officer's handbook it clearly states that as per clause 5.21.3, every candidate presenting the nomination paper has an option to make the security deposit either in cash with the Returning Officer or by depositing in RBI or Government Treasury (Through Challan).

21. Though it is the contention of the Petitioner/Party-in-Person/party-in-person that he was not informed by the Returning Officer that he should make the deposit amount and therefore he could not do so, we are not inclined to accept the said contention, for the reason that even as per the Petitioner/Party-in-Person's own version, he has contested elections on two occasions and therefore, inference can be made that he knows the procedure to be followed when nomination papers, are submitted. Petitioner/Party-in-Person has experience in contesting in elections.

22. It is not for the Returning Officer to inform each and every person who intends to contest the elections the procedure regarding nomination. A person who intends to be the representative of the people in the constituency, where he intends to contest is expected to know the procedure. Moreover, in the case on hand, ever as per the version of the petitioner/party-in-person, he has contested in two elections. Admittedly, the Petitioner/Party-in-Person has not deposited the security deposit amount when his token was taken up.

23. In the case on hand, version of the Petitioner/Party-in-Person vary with the stand of the Returning Officer, No.2, Chennai North Parliamentary Constituency and Regional Deputy Commissioner (North), Chennai. There are disputed facts with regard to allowing the petitioner/party-in-person to make the deposit. It is the stand of the Returning Officer that the Petitioner/Party-in-Person did not deposit the security deposit, whereas, the Petitioner/Party-in-Person has stated that the Returning Officer, has refused to receive the security deposit. Petitioner/Party-in-Person has not produced any material to prove, that he had tendered the security deposit at 3.00 p.m. As per the version of the Returning Officer, Petitioner/Party-in-Person has sent somebody to take money from ATM.

24. Writ petition cannot be entertained when there is disputed question of facts. Insofar as, No.12 Perambur Assembly Chennai Constituency, is concerned, it is the submission of the learned counsel for Election Commission of India, that Petitioner/Party-in-Person has not submitted any nomination paper for contesting the election. Even in the complaint dated 26.03.2019, addressed to the Chief Election Commissioner of Tamil Nadu, Chennai, Petitioner/Party-in-Person has not stated anything about Perambur Assembly Chennai Constituency.

25. For the reasons stated supra, writ petition is not maintainable, both in facts and law. No costs. Consequently, the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-IV)

//True Copy//

dm

Sub Assistant Registrar

To

1. Secretary to Government
Union of India
Election Commission of India,
Nirvachan Sadan,
New Delhi - 110001.
2. The Chief Election Commissioner
Election Commission of India,
Nirvachan Sadan
New Delhi - 110001.
3. The Chief Electoral Officer
Tamil Nadu State Election Commission
208/2, Jawaharlal Nehru Road,
Arumbakkam (Opp to Koyambedu)
Chennai-600 108.
4. The Returning Officer
2, North Chennai,
Zone 5, Chennai Corporation,
Chennai-79.
5. The Returning Officer
12, Perambur Assembly Constituency,
Chennai Zone 5, Chennai Corporation,
Chennai-39.

+1cc to M/s.G.R.Associates, Advocate, S.R.No.30564

+1cc to Mr.R.Viswanathan, party in person, S.R.No.30560

W.P.No.9571 of 2019
and
W.M.P.No.10189 of 2019

BS (CO)
SSM(02/04/2019) .