

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 5/4/2019

C O R A M

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

Writ Petition No.10457 of 2019

K. Mani ... Petitioner

Vs

1. The Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi.
 2. The Chief Electoral Officer of Tamil Nadu
Public (Elections) Department
Secretariat
Fort St. George
Chennai 600 009.
 3. The District Election Officer-cum-
District Collector
Villupuram District
Villupuram.
 4. The Assistant Electoral Returning Officer
(AERO)
The Tahsildar
Vikkaravandi Assembly Constituency (75)
Villupuram Parliamentary Constituency (SC) (13)
Vikkaravandi (Taluk)
Villupuram District.
- ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the second respondent not to utilise services of the fourth respondent herein and all such officers of comparative or equivalent government position as that of fourth respondent in the State of Tamil Nadu and who are facing disciplinary proceedings under Rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules as well as criminal cases for grave charges to ensure free and fair General Elections 2019 to be held on 18/4/2019 and consequently direct the second respondent

herein to give effect the order of Election Commission Letter No.437/6/2006/PLN-III dated 6/11/2006 regarding posting of officer.

For petitioner

... Mr.L.Muthusamy

For respondents

... Mr.Niranjan Rajagopalan

O R D E R

(Order of the Court was made by Subramonium Prasad,J)

Instant writ petition is for a certiorarified mandamus, directing the Chief Electoral Officer, Public (Elections) Department, Chennai, second respondent, not to utilise services of the Assistant Electoral Registration Officer (AERO), fourth respondent and all such officers of comparative or equivalent government position as that of fourth respondent, in the State of Tamil Nadu and who are facing disciplinary proceedings, under Rule 17 (b) of Tamil Nadu Civil Services (Discipline & Appeal) Rules, as well as criminal cases, for grave charges, to ensure free and fair General Elections 2019 to be held on 18/4/2019 and consequently, to direct the Chief Electoral Officer, Public (Elections) Department, second respondent to give effect the order of Election Commission Letter No.437/6/2006/PLN-III, dated 6/11/2006, regarding posting of officer.

2. Petitioner states that he is an active member of Indian National Real Estate Builder Developers Mediators Association (INREBDMA) and member of Tamil Nadu Land, House, Flat Mediators Welfare Association (TNLHFMTWA) and also a member of All India Anna Dravida Munnetra Kazhagam (AIADMK), which is a State level recognised political party.

3. Petitioner would state that the Election Commission of India had passed an order, on 6/11/2006, and the operative portion of the order, reads as under:-

"The Commission has in the past, issued various instructions, on transfer/posting of officer, for conduct of free and fair elections. These instructions have now been consolidated for the convenience of all concerned, which are as under:-

.....

(iv). The Commission also desires that the officers/officials against whom Commission has recommended disciplinary action or who have been charged or any lapse in any election or election related work or who were transferred under the orders of the Commission previously may not be assigned by any election related duty (ies).

(v). The Commission further desires that no officer/official against whom a criminal case is pending in any Court of law, be associated with the election work or election related duty.

vi). The Commission in the past has received complaints that while the State Government transfers officials in above categories in pursuance to the directions issued by the Commission, the individuals try to circumvent the objective by entering on leave and physically not moving out of the District from which they stand transferred. The Commission has viewed this seriously and desires that all such officials who stand transferred in pursuance to the instructions referred to above shall be asked to move physically out of the districts from which they stand transferred immediately on receipt of transfer orders.

4. The petitioner would state that one Mr.V.Sundararajan, has been served with a charge memo, containing 6 charges, which reads as follows:-

Charge No.1: Tr.V.Sundarajan formerly served as Special Tahsildar to the Social Welfare Scheme, Villupuram now serving as Special Tahsildar of land Acquisition to National Highways, Villupuram while you were in service as Special Tahsildar to the Social Welfare Scheme, Villupuram on 16/2/2017 in view of the transfer in service, and having released from the said service and joined in new place of service, yet you have not handed over the charge, user name, password regarding uploading in computed to the Special Tahsildar who has joined in the said post and in your own accord without conducting any enquiry had uploaded the new pension orders on the computer direction between 1/2/2017 to 28/2/2017 thereby you have failed in your duty as a responsible Government Servant.

Charge No.2: To issue order pertaining to the grant of aid under the Social Welfare Scheme, without conducting any prior enquiry without getting allocation of fund from the Commissioner of Revenue Administration, without proper documents, at the computer under the Social Welfare Scheme had prepared a list of 1263 beneficiaries in your own accord between 1/2/2017

to 28/2/2017 and uploaded it when it was put for field enquiry before the Sub-Collector, Revenue Divisional Officer - Deputy Collector, among which it was found that about 639 beneficiaries are ineligible persons. Through this you have uploaded the order of granting aid to the ineligible persons, thereby you have failed in your duty as Special Tahsildar to the Social Welfare Scheme.

Charge No.3: In the month of February 2017 alone to grant aid under the Social Welfare Scheme have not passed any order on the files, and directly have uploaded the pension orders to the 1263 beneficiaries, among the, no application has been received from 67 beneficiaries, without enquiring the Village Administrative Officer, Revenue Inspector, without any office files, had uploaded in the computer and thereby has passed order to grant aid to the unfit persons without following the procedures, hence you have failed in your duty as Special Tahsildar to the Social Welfare Scheme.

Charge No.4: In the month of February 2017 alone to grant aid under the Social Welfare Scheme have not passed any order on the files, and directly have uploaded the pension orders to the 1263 beneficiaries, without issuing any proceeding order, directly in the computer by granting such order you have attempted to create loss to the government through this, thereby you have failed in your duty as responsible official and violated the rules.

Charge No.5: While attempting to create the loss in the aforesaid manner before granting pension to substantiate a person eligible for the pension as per the Letter of the Commissioner, Revenue Administration in No.Rev.Service - 5 (1) - 5268-2015, dated 2/5/2015 without following the advise mentioned therein, you have acted suo motto and in fraudulent manner.

Charge No.6: While serving as Special Tahsildar to the Social Welfare Scheme at Villupuram Taluk, the order issued to the beneficiaries among them 274 of them are ineligible persons for the grant of pension aid

the order has been passed, through this you have caused loss to the Government to the tune of Rs.34,72,000/- this act of yours is in violation of rule 20 (1) of the Tamil Nadu Conduct and Appeal Rules, 1973.

5. Writ petition filed by the said Mr.V.Sundararajan, Assistant Electoral Registration Officer, (AERO), challenging the charge memo, was rejected by this Court, by an order, dated 6/2/2019, in W.P.No.1486 of 2018.

6. Petitioner would further state that W.P.No.7660 of 2018 has been filed by one M.Palavesam @ Palavesan, to direct the Inspector of Police, Vikkaravandi Police Station, Villupuram District, third respondent therein, to release Multi Axle Goods Vehicle, bearing Registration No.TN28AA 3786, dated 25/10/2006 and 21/1/2016, which was illegally seized by the Tahsildar, Vikkaravandi Taluk, Vikkaravandi Revenue Taluk Office, Villupuram District, second respondent therein, without following any procedure stipulated in law, on 5/3/2019 and keeping the above vehicle in illegal custody of the third respondent therein, without considering the representations given by the petitioner, in person, on 6/3/2019, as well as by speed post and courier, dated 12/3/2019, to the District Collector, Villupuram District, Villupuram, first respondent therein, to take necessary action, against the Tahsildar, Vikkaravandi Taluk, Villupuram District and the Inspector of Police, Vikkaravandi Police Station, Villupuram District, second and third respondents therein, for abuse of power. The said writ petition is still pending.

7. It is the submission of the petitioner that even though a charge memo has been issued to him and writ petition has been filed against him, for abuse of power, as Tahsildar, Vikkaravandi Taluk Villupuram District, the said Mr.V.Sundararajan, fourth respondent herein, is still being entrusted the task of working as Assistant Electoral Registration Officer (AERO).

8. Petitioner submits that a representation, dated 25/3/2019, has been submitted to the Election Commission of India, New Delhi; Chief Electoral Officer of Tamil Nadu, Public (Elections) Department, Secretariat, Chennai; and the District Electoral Officer-cum-The District Collector, Villupuram, respondents 1 to 3, respectively, requesting them not to allot any election duty to Mr.V.Sundararajan. Since the said representation has not been considered, instant writ petition has been filed for the relief stated supra.

10. Mr.L.Muthusamy, learned counsel for the petitioner

reiterated the contentions raised by him in the writ petition.

11. Mr.Niranjan Rajagopalan, learned counsel appearing for the Election Commission of India states that the 4th respondent is only an Assistant Electoral Registration Officer (AERO), whose job is only to consolidate the electoral roll of the State, as per Section 13 (B) of the Representation of the People Act, 1950 and once the electoral rolls are finalised, he has no other election work.

12. Section 13 (B) of the Representation of the People Act, 1950, reads as under:-

"Electoral Registration Officers - (1) The electoral roll for each Parliamentary Constituency in the State of Jammu and Kashmir or in a Union Territory not having a Legislative Assembly, each Assembly constituency and each council constituency shall be prepared and revised by an electoral registration officer who shall be such officer of Government or of a local authority as the Election Commission may, in consultation with the Government of the State in which the constituency is situated, designate or nominate in this behalf.

(2). An electoral registration officer may, subject to any prescribed restrictions, employ such persons as he thinks fit for the preparation and revision of the electoral roll for the constituency.

13. By inviting the attention of Section 22 of the Representation of the People Act, 1951, Mr.Niranjan Rajagopalan, further distinguished the work of Assistant Electoral Registration Officer (AERO) with that of Assistant Returning Officer (ARO). Section 22 of the said Act, reads as under:-

Assistant Returning Officers - (1) The Election Commission may appoint one or more persons to assist any returning officer in the performance of his functions:

Provided that every such person shall be [an officer of Government or of a local authority]

2. Every assistant returning officer shall, subject to the control of the returning officer, be competent to perform all or any of the functions of the returning officer:

Provided that no assistant returning officer shall perform any of the functions of the returning officer which relate to the scrutiny of nominations unless the returning officer is unavoidably

prevented from performing the said function.

14. A perusal of the functioning of the Assistant Electoral Registration Officer and Assistant Returning Officer, would show that the role of Assistant Electoral Registration Officer, comes to an end, when the electoral rolls are finalised. Perusal of the charges framed against the fourth respondent would show that the charges are not concerning moral turpitude.

15. Learned counsel for the petitioner, thereafter, relied on the judgment of the Hon'ble Supreme Court, in Prakash Joshi Vs. Election Commission of India {W.P.(C) No.983 of 2017}, but the same would have no application to the facts and circumstances of the instant writ petition.

16. Representation of the petitioner is still pending consideration with the respondents. Enumeration is now over and therefore, continuation of the said Officer, as Assistant Electoral Registration Officer, would not cause any adverse effect, in the conduct of elections, which act has to be performed by the Returning Officer. At this juncture, we do not find any necessity, to pass any kind of order, in the impugned writ petition, keeping in view of the fact that the role of Assistant Electoral Registration Officer (AERO) has already come to an end.

17. In view of the above observation, writ petition therefore, fails and the same is dismissed. No costs.

Sd/-

Assistant Registrar (CS-II)

//True copy// सत्यमेव जयते

Sub Assistant Registrar

mvs.

To

1. The Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi.

WEB COPY

2. The Chief Electoral Officer of Tamil Nadu
Public (Elections) Department
Secretariat
Fort St. George
Chennai 600 009.

3. The District Election Officer-cum-
District Collector
Villupuram District
Villupuram.

4. The Assistant Electoral Returning Officer
(AERO)
The Tahsildar
Vikkaravandi Assembly Constituency (75)
Villupuram Parliamentary Constituency (SC) (13)
Vikkaravandi (Taluk)
Villupuram District.

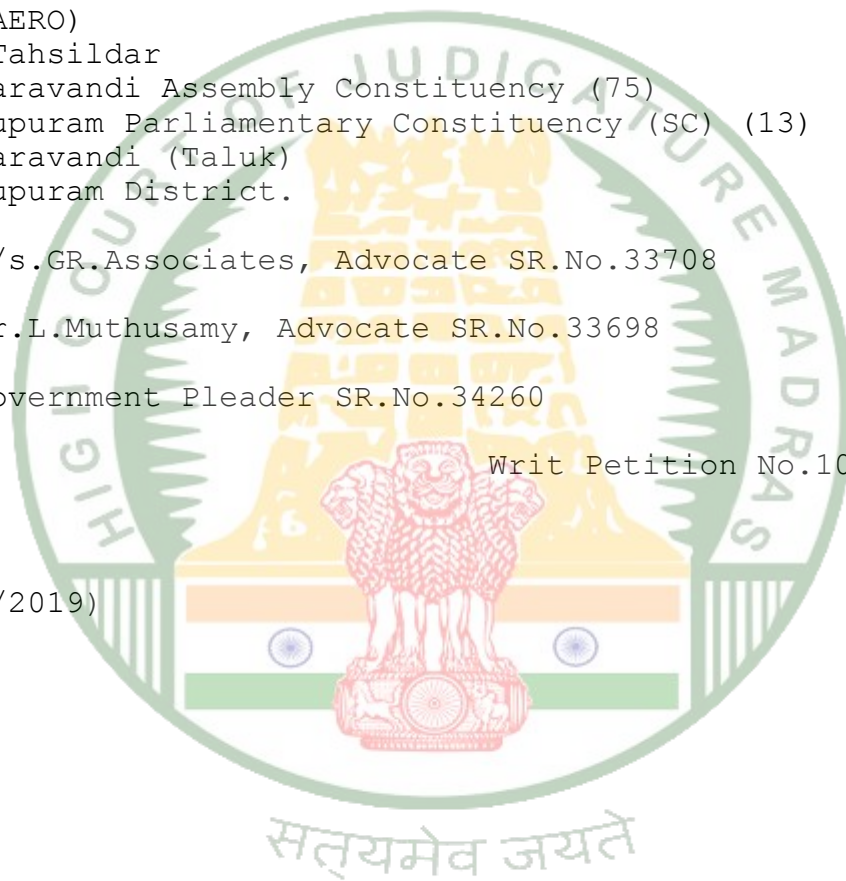
+1cc to M/s.GR.Associates, Advocate SR.No.33708

+1cc to Mr.L.Muthusamy, Advocate SR.No.33698

+1cc to Government Pleader SR.No.34260

Writ Petition No.10457 of 2019

BR(CO)
GMY(11/04/2019)



WEB COPY