

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.04.2019

CORAM:

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

W.P.No.10832 of 2019

P.Kaliammal

.. Petitioner

Vs.

1. The Election Commission of India,
Nirvachan Sadan, Ashoka Road, New Delhi - 110 001.

2.The Chief Electoral Officer,
Tamil Nadu, Secretariat, Fort St.George,
Chennai - 600 009.

3.The Returning Officer,
No.2, Chennai North Parliamentary
Constituency & Regional Deputy
Commissioner North, Greater Chennai Corporation,
Door No.61, Basin Bridge Road,
Chennai - 600 021.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents to consider the representation dated 03.04.2019 and specifically direct the 3rd respondent to print a symbol evenly on par with other symbol.

For Petitioner : Mr.V.Balu

For Respondents: Mr.Niranjan Rajagopalan
Standing counsel for ECI

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O R D E R
(Order of this Court was made by S.MANIKUMAR, J.)

A Party candidate of Naam Tamilar Katchi for No.2 Chennai North Parliamentary Constituency allotted with a symbol "Sugarcane Farmer" has filed the instant writ petition, for a mandamus to consider her representation dated 03.04.2019, to specifically, direct the Returning Officer, No.2, Chennai North

Parliamentary Constituency & Regional Deputy Commissioner North, Greater Chennai Corporation, Chennai, the 3rd respondent, to print the symbol, evenly on par with other symbol.

2. According to the petitioner, symbol 'Sugarcane Farmer' allotted to Naam Tamilar Katchi is vague, blurred, tone of ink is not bright, so as to enable the voters to realise the new symbol allotted to the said party and that the same has caused injustice, to the said party and therefore, the petitioner was constrained to send a representation dated 03.04.2019 to the Returning Officer, No.2, Chennai North Parliamentary Constituency & Regional Deputy Commissioner North, Greater Chennai Corporation, Chennai, the 3rd respondent, requesting him to print, the said symbol allotted to the party, on par, with other symbols. Contending inter alia that the said representation has not been disposed of, instant writ petition is filed for the relief, stated supra.

3. Mr.Niranjan Rajagopalan, learned counsel for the Election Commission of India, who takes notice on behalf of respondents 1 to 3, submitted that preparation and printing of ballot papers are already over and the representation is devoid of merits.

4. By way of reply, Mr.Balu, learned counsel for the petitioner submitted that nowadays, it is possible to reprint the entire ballot papers and that therefore, representation can be directed to be considered.

5. Heard the learned counsel for the parties and perused the materials available on record.

6. Contention that the symbol allotted by the Election Commission of India, New Delhi, is not bright, blurred, tone of ink is not bright, when compared to other symbols and therefore, voters may not be able to understand and realise the new symbol, allotted to Naam Tamilar Katchi and in such circumstances, representation dated 03.04.2019, should be directed to be considered by the Returning Officer, No.2, Chennai North Parliamentary Constituency & Regional Deputy Commissioner North, Greater Chennai Corporation, Chennai, the 3rd respondent, cannot be accepted, for the simple reason that if the party and the symbol allotted to the said party, are visible in the minds of voters, then voters would cast their votes in favour of the party, to which the petitioner belongs.

7. In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Hon'ble Apex Court held as follows:

10. ...Under the Constitution a

mandamus can be issued by the court when the applicant establishes that he has a legal right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is

to compel the performance of public duties prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

8. When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly

it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective." (emphasis supplied)

9. A prerogative writ, like, a Mandamus cannot be demanded ex debito justitiae, but it can be issued by the court in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority, for the failure of performance of a legal or statutory duty, by the authority against whom, the relief is sought for.

10. Though, in the case on hand, Naam Tamilar Katchi, has been allotted 'Sugarcane Farmer' symbol, merely because, the petitioner has contended that the symbol allotted is blurred, Election Commission of India or for the matter, Returning Officer, No.2, Chennai North Parliamentary Constituency & Regional Deputy Commissioner North, Greater Chennai Corporation, Chennai, the 3rd respondent, cannot be directed to print the symbol, on par with other symbols allotted to other political parties.

11. On the facts and circumstances of this case, we are of the view that there is no need to direct the Returning Officer, No.2, Chennai North Parliamentary Constituency & Regional Deputy Commissioner North, Greater Chennai Corporation, Chennai, the 3rd respondent, to consider the representation dated 03.04.2019, submitted by the writ petitioner. That apart, Election Commission of India, has already prepared and printed the ballot papers and sent to all the District Election offices to be put

in the Electronic Voting Machines. Contention of Mr.V.Balu, learned counsel for the petitioner that it can be reprinted, cannot be countenanced. Writ petition deserves to be dismissed. Accordingly, writ petition is dismissed. No costs.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The Election Commission of India,
Nirvachan Sadan,
Ashoka Road, New Delhi - 110 001.

2.The Chief Electoral Officer,
Tamil Nadu,
Secretariat, Fort St.George,
Chennai - 600 009.

3.The Returning Officer,
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Commissioner North,
Greater Chennai Corporation,
Door No.61, Basin Bridge Road,
Chennai - 600 021.

+1cc to Mr.Niranjan Rajagopalan, Advocate, S.R.No. 34985
+1cc to the Government Pleader, S.R.No. 35002

W.P.No.10832 of 2019

SR(CO)
GN(20/05/2019)

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