

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.04.2019

CORAM:

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

W.P.No.11313 of 2019

B.Ajimon

.. Petitioner

Vs.

1. Chief Electoral Officer,
Fort St. George,
Chennai - 600 009.

2. The District Election Returning Officer,
Collectorate,
Kanchipuram District.

3. The Returning Officer,
Sriperumbudur Constituency,
Kanchipuram District.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents to include the petitioner's name in the electoral roll of Pallavaram State Assembly Constituency / Sriperumbudur Parliamentary Constituency and thereby permit the petitioner to cast his vote in the forthcoming parliamentary election 2019.

For Petitioner : Mr.Mohamed Ismail. A

For Respondents : Mr.Niranjan Rajagopalan (for R1 to R3)
Standing Counsel for ECI

ORDER

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

Petitioner was issued with an Electoral Identity Card and his name was included in the voter's list dated 01.09.2018 at Sl.No.64. Subsequently, in the revised electoral vote list published on 31.01.2019 for the Parliamentary Election with respect to Sriperumbudur Constituency, his name has been deleted. Hence, the petitioner approached the Returning Officer, Sriperumbudur Constituency, Kanchipuram District, the 3rd respondent herein, to include his name in the Electoral Roll. However, Returning Officer, Sriperumbudur Constituency, Kanchipuram District, the 3rd respondent, refused to acknowledge the receipt of Form No.6, from the petitioner. Hence, this writ petition, for a Writ of Mandamus, directing the respondents to include his name in the electoral roll of Pallavaram State Assembly Constituency / Sriperumbudur Parliamentary Constituency and thereby permit him to cast his vote in the forthcoming parliamentary election 2019.

2. By inviting the attention of this Court to Sub Section 3 of Section 23 of the Representation of People's Act, 1950, Mr.Niranjan Rajagopalan, learned counsel for respondents 1 to 3 submitted that no amendment to the electoral roll, can be done, after the last date of withdrawal of nomination. He further submitted that an appeal remedy is provided under Section 24 of the said Act.

3. Learned counsel for the respondents further submitted that Rule 23 of the Registration of Electors Rules, 1960 provides for an appeal as against the decision of the registration officer under Rule 20. Added further, he submitted that revision of electoral rolls is done annually and that there cannot be any assumption that the electoral rolls published in 2018 is final.

4. In the light of the above statutory provisions, Mr. Niranjan Rajagopalan, learned counsel for respondents 1 to 3 submitted that revision of electoral rolls cannot be done, after the last date of withdrawal of nominations, which is already over and thus, prayed for dismissal of the writ petition.

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

6. Sections 23 and 24 of the Representation of People's Act, 1950 reads thus,

"23. Inclusion of names in electoral rolls.— (1) Any person whose name is not included in the electoral roll of a constituency may apply to the electoral registration officer for the inclusion of his name in that roll.

(2) The electoral registration officer shall, if satisfied that the applicant is entitled to be registered in the electoral roll, direct his

name to be included therein:

Provided that if the applicant is registered in the electoral roll of any other constituency, the electoral registration officer shall inform the electoral registration officer of that other constituency and that officer shall, on receipt of the information, strike off the applicant's name from that roll.

(3) No amendment, transposition or deletion of any entry shall be made under section 22 and no direction for the inclusion of a name in the electoral roll of a constituency shall be given under this section, after the last date for making nominations for an election in that constituency or in the parliamentary constituency within which that constituency is comprised and before the completion of that election.]

24. Appeals.—An appeal shall lie within such time and in such manner as may be prescribed— (a) to the chief electoral officer, from any order of the electoral registration officer under section 22 or section 23

7. Rule 23 of the Registration of Electors Rules, 1960 reads thus,

"23. Appeals from orders deciding claims and objections.—(1) An appeal shall lie from any decision of the registration officer under rule 20, 3[rule 21 or rule 21A] to such officer of Government as the Election Commission may designate in this behalf (hereinafter referred to as the appellate officer):

Provided that an appeal shall not lie where the person desiring to appeal has not availed himself of his right to be heard by, or to make representations to, the registration officer on the matter which is the subject of appeal.

(2) Every appeal under sub-rule (1) shall be—

(a) in the form of a memorandum signed by the appellant, and

(b) presented to the appellate officer within a period of fifteen

days from the date of announcement of the decision or sent to that officer by registered post so as to reach him within that period.

(3) The presentation of an appeal under this rule shall not have the effect of staying or postponing any action to be taken by the registration officer under rule 22.

(4) Every decision of the appellate officer shall be final, but in so far as it reverses or modifies a decision of the registration officer, shall take effect only from the date of the decision in appeal.

(5) The registration officer shall cause such amendments to be made in the roll as may be necessary to give effect to the decisions of the appellate officer under this rule.

8. As rightly contended by the learned counsel for the respondents, the writ petitioner, whose name has been deleted as early as on 31.01.2019, ought to have made an appeal to the statutory authorities as provided therefor. Withdrawal of nomination is over.

9. In the light of the statutory provisions and the factual situation, we are constrained to hold that the prayer sought for, cannot be granted. Hence, writ petition is dismissed. No Costs.

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(S.M.K., J.) (S.P., J.)
12.04.2019

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S.MANIKUMAR, J.
AND
SUBRAMONIUM PRASAD, J.

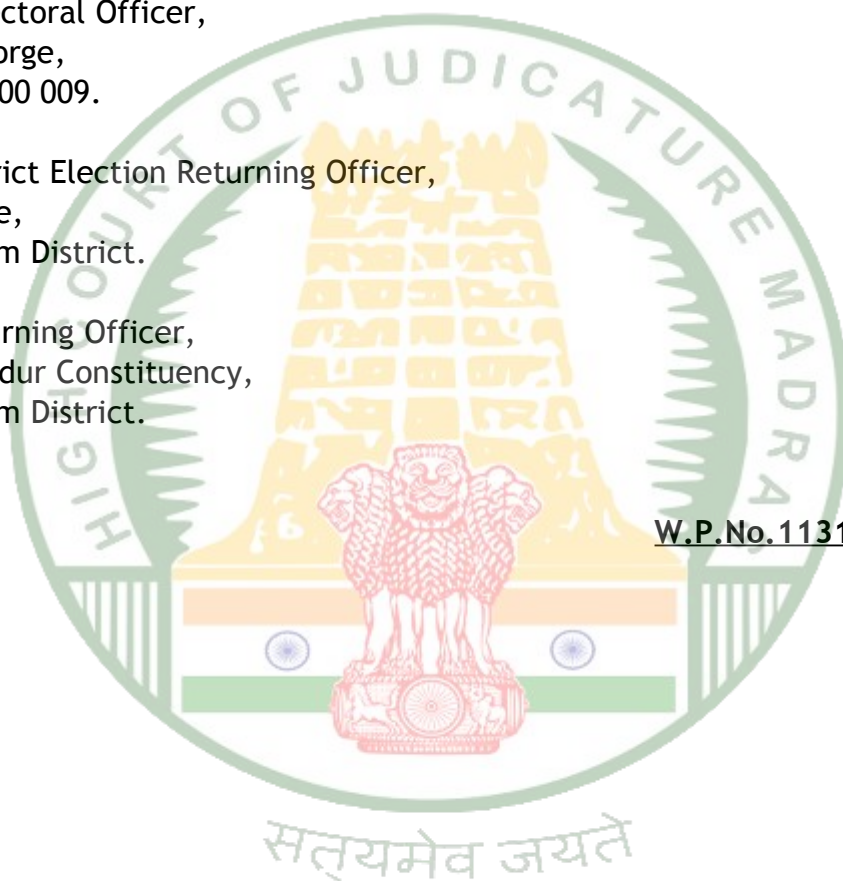
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To

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