

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: .04.2019

CORAM:

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

W.P.No.11125 of 2019

V.Pugazhendi

.. Petitioner

Vs.

1. The Chief Secretary to Government
Government of Tamil Nadu,
St. George Fort,
Chennai- 600009.

2. The Chief Election Commissioner of India,
New Delhi-110 001.

3. The Director of General of Police,
Dr. Radhakrishnan Salai,
Chennai-600004.

4. The Returning Officer,
55- Hosur Assembly Constituency and
Revenue Divisional Officer, Hosur.

5. Balakrishna Reddy,
S/o Papi Reddy
No.H-132, Avalapalli Hudco,
Basthi Road, Hosur - 635109.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Mandamus, directing the respondents 1 to 4 herein to prohibit the 5th respondent herein from participating and canvassing in favour of his Wife, Smt.Jothy, in the ensuing Assembly elections to be held on 18-04-2019 for the Hosur Constituency.

For Petitioner : Mr.N.G.R.Prasad
for M/s.Row and Reddy

For Respondents: Mr.Niranjan Rajagopal
Standing Counsel for ECI

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

An independent candidate, contesting from 55. Hosur Assembly Constituency under the symbol of Gift Pack, allotted by the Chief Election Commissioner of India, New Delhi, 2nd respondent herein, has filed the instant writ petition, for a Mandamus, directing the respondents 1 to 4 herein to prohibit Mr.Balakrishna Reddy, 5th respondent herein, from participating and canvassing in favour of his Wife, Smt.Jothy, in the ensuing Assembly elections to be held on 18.04.2019 for Hosur Constituency.

2. The petitioner has submitted that in the ensuing Assembly elections, one Mrs.Jyothi, w/o. Mr.P.Balakrishna Reddy, residing at No. H-132, Avalapalli Hudco, Basthi Road, Hosur-635109, Krishnagiri District, Tamil Nadu, is contesting in the same Constituency, sponsored by the ruling party, as its candidate, under the symbol of Two Leaves. Mr.P.Balakrishna Reddy, husband of Mrs.Jyothi, was elected as MLA, in the last General Assembly Elections in the Tamil Nadu Legislative Assembly, but he was convicted under Sections 341, 147 of IPC and Section 3 of Tamil Nadu Property (Prevention of Damage & Loss Act 1992) by the Special Court, Chennai, constituted for hearing cases, instituted against MPs and MLAs and he was sentenced to undergo imprisonment for 3 years and with a fine of Rs.10,000/-. SLP Criminal Nos.1571 and 1572 of 2019, has been filed against the conviction, before the Hon'ble Supreme Court. The Hon'ble Supreme Court has exempted Mr.P.Balakrishna Reddy from surrendering. The Hon'ble Supreme Court has suspended the sentence imposed on the accused, Mr.P.Balakrishna Reddy, 5th respondent herein.

3. It is the further case of the petitioner that as per Section 8 of the Representation of Peoples Act 1951, an accused who has been already convicted for the Criminal offence shall not be permitted to contest in the elections. In order to defeat the process of law, the 5th respondent has made his wife, Mrs.Jyoti, to stand as a MLA Candidate, to contest from Hosur Assembly, from his own Party. Although the 5th respondent is not an official candidate from his Party, he is posing like the official candidate nominated from his party. He has been actively participating in the elections activities, commencing from filing of nomination and also in canvassing, along with his wife I Candidate.

4. According to the petitioner, though the Police Department and Election Commission are watching all the activities of Balakrishna Reddy, they have miserably failed to take any action and that the people of the constituency hardly know about the present candidate, ie., wife of the convict. It is alleged that taking advantage of the innocence of the general public, Mr. Balakrishna Reddy, is misleading the Public. It is stated that active campaigning and active participating of the convicted person, seeking mandate for his wife, giving a unhealthy signal to the process of electioneering and affects the purity of the election process.

5. The petitioner has further submitted that if the high handed action of the 5th respondent is not restrained, it would cause great loss and hardship to the general public. On the other hand, there would be no loss or injury caused to the official respondents, if a convicted accused is restrained from misleading the poor and illiterate public, to exercise his/her franchise in a free and fair election. Since the 5th respondent is carrying out his improper and illegal activities with the blessings of the ruling party, none of the respondents are paying any heed to curtail the same. Therefore, without any alternative, the petitioner has prayed for the relief, as stated supra.

6. On the above averments, Mr. N.G.R. Prasad, learned counsel for the petitioner made submissions. He further submitted that as long as the conviction stands, the 5th respondent cannot canvass in the elections, as if, he is the candidate. He invited the attention of this Court to few photographs, enclosed in the typed set of papers, where the 5th respondent, is with his wife, the contesting candidate for Hosur constituency. He rely on the case of Om Prakash Chautala, to contend that the 5th respondent should not be permitted to canvass for his wife.

Heard Mr. N.G.R. Prasad, learned counsel for the petitioner and perused the materials available on record.

7. Section 8 of the Representation of the People Act, 1951, dealing with disqualification on conviction for certain offences and the said Act, is extracted hereunder:

"(1) A person convicted of an offence punishable under-

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of

undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or

(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; or

(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991; or

(k) section 2 (offence of insulting the Indian

National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971), or

(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or (m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002), shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or

(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years other than any offence referred to in sub-section (1) or sub-section (2) shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

(4) Notwithstanding anything in sub-section (1), sub-section (2) or sub-section (3) a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

Explanation:— In this section, —

(a) "law providing for the prevention of hoarding or profiteering" means any law, or any order, rule or notification having the force of law, providing for—

(i) the regulation of production or manufacture of any essential commodity;

(ii) the control of price at which any essential commodity may be bought or sold;

(iii) the regulation of acquisition, possession, storage, transport, distribution, disposal, use or consumption of any essential commodity;

(iv) the prohibition of the withholding from sale of any essential commodity ordinarily kept for sale;

(b) "drug" has the meaning assigned to it in the Drugs and Cosmetics Act, 1940 (23 of 1940);

(c) "essential commodity" has the meaning assigned to it in the Essential Commodity Act, 1955 (10 of 1955); (d) "food" has the meaning assigned to it in the Prevention of Food Adulteration Act, 1954 (37 of 1954)."

8. No rule or regulation from the model code of conduct has been pointed out by the learned counsel for the petitioner, prohibiting a convicted person from canvassing a candidate in an election. Representation of the People Act, 1951, only speaks about disqualification from contesting in an election.

9. In Om Prakash Chautala's case, there was a failure of bail condition and therefore, the Election Commission of India moved an application for cancellation of bail. In the case on hand, from the photographs produced and perused, we could only deduce that the 5th respondent was standing along with the candidate and there are no other concrete material, indicating that he was canvassing. Further, as stated, no provision in the Representation of the People's Act, 1951 or the Model Code of Conduct, has been pointed out, prohibiting the convicted person, canvassing on behalf of other candidate. In the case on hand, wife of the 5th respondent.

10. In the light of the above, we are not inclined to issue any direction, as prayed for.

11. Hence, the Writ Petition is dismissed. However, for future governance, the Election Commission of India to look into the issue. No costs.

Sd/-

सत्यमेव जयते Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

skm

To

1. The Chief Secretary to Government
Government of Tamil Nadu,
St. George Fort,
Chennai- 600009.

2. The Chief Election Commissioner of India,
New Delhi-110 001.

3. The Director of General of Police,
Dr. Radhakrishnan Salai,
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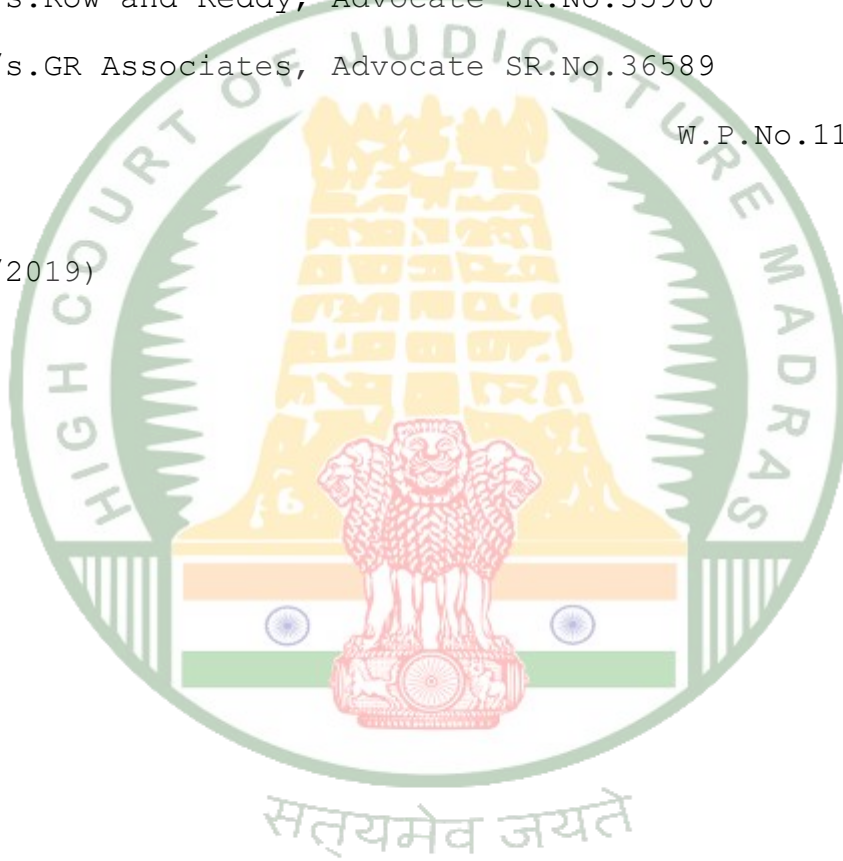
4. The Returning Officer,
55- Hosur Assembly Constituency and
Revenue Divisional Officer, Hosur.

+1cc to M/s.Row and Reddy, Advocate SR.No.35900

+1cc to M/s.GR Associates, Advocate SR.No.36589

W.P.No.11125 of 2019

LN(CO)
GMY(22/05/2019)



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