

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26/4/2019

C O R A M

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

Review Application No.95 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.
 4. The Assistant Electoral Registration Officer
(AERO)
The Tahsildar
Vikkaravandi Assembly Constituency (75)
Villupuram Parliamentary Constituency (SC) (13)
Vikkaravandi (Taluk)
Villupuram District.
- ... Respondents

Petition filed under Order 47 Rule 1 read with Section 114 of CPC against the order made in W.P.No.10457 of 2019, dated 5/4/2019.

For petitioner ... Mr.L.Muthusamy

For respondents ... Mr.Niranjana Rajagopalan

ORDER

(Order of the Court was delivered by S.Manikumar, J)

Seeking review of the order, made in W.P.No.10457 of 2019, dated 5/4/2019, instant Review Petition is filed, on the grounds inter alia that

(A). Order of the High Court is contrary, to the Hon'ble Supreme Court judgment, made in Prakash Joshi vs. Election Commission of India {W.P.No.983 of 2017}. Because of the Hon'ble Supreme Court directed the first respondent herein not to post any officer/officials against whom the disciplinary proceedings has been initiated in any key position in any District based on the submission made by the counsel of first respondent herein. Contrary to the above submission

of the first and second respondents have been engaging

officers/officials who are facing disciplinary proceedings for grave charges. Hence the order to be reviewed.

(B). The order of the High Court is contrary to the first respondent Letter No.4/2008/JS/II dated 30/7/2008 issued by the first respondent as follows:-

(i). In the case of disciplinary cases arising out of violation of model code of conduct and the provisions of the law (Representation of People's Act, etc.,

(a). In cases involving senior level officers such as ERO, AERO, RO, ARO, DEO, ADM, SP, DSP, RCS, etc., the cases of violation of law should be treated differently as compared to the junior level functionaries.

2. Disciplinary action against officials representing the Election Commission of India (ECI)

(i). District Election Officer (DEO), Returning Officer (RO),

<http://www.judis.nic.in> Electoral Registration Officer (ERO), etc., have the most important

and sensitive statutory as well as managerial role in the conduct of free and fair elections. In case of violation of instructions, omissions and commissions by these officials, especially Ros and EROs, exemplary disciplinary action should be taken so as to ensure that the purity of the election process is upheld.

(C). The appointment of fourth respondent as AERO is in violation of Hon'ble Supreme Court and it is against the principles of people of Representation Act.

2. In so far as the charges framed against the fourth respondent, filing of writ petition No.1486 of 2018 by the said respondent and rejection, this Court has already considered the same, at paragraph No.5 of the order, made in W.P.No.10457 of 2019, dated 25/4/2019, sought to be reviewed.

3. In so far as reliance on the order of the Hon'ble Supreme Court, in ***Prakash Joshi vs. Election Commission of India in W.P.No.983 of 2017***, at paragraph No.15 of the order, made in W.P.No.10457 of 2019, dated 5/4/2019, this Court has considered the

4. In so far as the averment that no person, who has been charged should be appointed as an Officer, in the process of Elections, after hearing the learned counsel for Election Commission of India, that the fourth respondent was only an Assistant Electoral Registration Officer whose job is only to consolidate the Electoral Rules of the State and further submission that once the electoral roll has been finalised, he has no other election work. Taking note of Section 13 (b) and 22 of the Representation of People Act, 1951 and the nature of the charges, at paragraph Nos.14 and 16, in W.P.No.10457 of 2019, dated 5/4/2019, this Court observed thus:-

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.

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.

5. Thus, in the above lines, W.P.No.10457 of 2019 was disposed of, on 5/4/2019.

6. Review Petition is filed, on the very same averments, made in the writ petition. Once this Court has already considered the averments with reference to the statutory provisions and dismissed the writ petition and the only course is to file an appeal. Reference can be made to a decision in ***Kamlesh Verma v. Mayawati and Others***, reported in ***AIR 2013 SC 3301***, the Apex Court held:

"12. This Court has repeatedly held in various judgments that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. A mere repetition through different counsel, of old and overruled arguments, a second trip over ineffectually covered grounds or minor mistakes of inconsequential import are obviously insufficient....

19. Review proceedings are not by way of an appeal and have to be strictly confined to the scope and ambit of Order XLVII Rule 1 of CPC. In review jurisdiction, mere disagreement with the view of the judgment cannot be the ground for invoking the same. As long as the point is already dealt with and answered, the parties are not entitled to challenge the impugned judgment in the guise

that an alternative view is possible under the review jurisdiction."

7. In the light of the above discussion and decisions, we are not inclined to entertain the instant Review Petition and accordingly, the same is dismissed. No costs.

(S.M.K.,J) (S.P.,J)
26th April 2019

Index : Yes/No

Internet : Yes/No

Note: Issue order copy on 02.05.2019.

mvs.

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S.MANIKUMAR,J

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