

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 27/4/2019
C O R A M
THE HON'BLE MR.JUSTICE S.MANIKUMAR
AND
THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.13057 of 2019

A.P.Geetha

... Petitioner

Vs

1. The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi 110 001.
2. The Chief Electoral Officer
Public Elections Department (TN)
Secretariat, Fort St. George
Chennai 600 009.
3. The Returning Officer
No.134 Aravakurichi Assembly Constituency
Aravakurichi
Karur District.
4. V. Senthil Balaji ... Respondents

Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the third respondent not to accept the nomination filed by the fourth respondent Senthil Balaji.V, for 134 Aravakurichi Assembly Constituency Bye Election to be held on 19th May 2019.

For petitioner ... Mr.T.Sivagnanasambandan

For respondents... Mr.Niranjan Rajagopalan
for R.R.1 to 3.

Mr.P.Wilson
Sr. Counsel
for Mr.R.Neelakandan
and Mr.K.Balasubramanian
for R.4.

O R D E R

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

Ms. A. P. Geetha, claiming herself to be a social activist
<https://hcservices.ecourts.gov.in/hcservices/>

and Women's Wing Secretary of Desiya Makkal Sakthi Katchi, a registered political party, has sought for a writ of mandamus, directing the Returning Officer, No.134 Aravakurichi Assembly Constituency, Aravakurichi, Karur District, not to accept the nomination filed by Mr.V.Senthil Balaji, fourth respondent, for 134 Aravakurichi Assembly Constituency, Bye Election scheduled, on 19/5/2019.

2. At paragraph No.4 of the supporting affidavit to this writ petition, Ms.A.P.Geetha, has contended that she has no personal interest in this case.

3. At paragraph No.6 of the affidavit, petitioner has contended that she was a candidate of Desiya Makkal Sakthi Katchi, in General Elections No.134, Aravakurichi Tamil Nadu Legislative Assembly Constituency, held on 19/11/2016.

4. At that time, Mr.V.Senthil Balaji, fourth respondent, contested as a political party candidate of All India Anna Dravida Munnetra Kazhagam, and declared elected by the Election Commission of India, New Delhi.

5. Being aggrieved, petitioner has filed Election Petition, in E.L.P.No.1 of 2017, against the declaration of results of Aravakurichi Assembly Constituency and that the same is pending. As against Election Petition No.1 of 2017, being entertained, fourth respondent is stated to have filed O.A.Nos.653 and 654 of 2017, to strike down the pleadings and to reject the Election Petition. According to the petitioner, O.A.Nos.653 and 654 of 2017 were dismissed and as against the same, Mr.V.Senthil Balaji, fourth respondent has filed S.L.P. (Civil) Nos.7219 and 7220 of 2018 and obtained an interim stay of further proceedings of the Election Petition No.1 of 2017.

6. Petitioner has further contended that earlier, Election Commission of India, notified elections for 134 Aravakurichi Tamil Nadu Legislative Assembly Constituency. As complaints of corrupt practices were received from two Constituencies, namely, 134 Aravakurichi and 174 Thanjavur, polling dates were post-poned to 23/5/2016, by the Election Commission of India. Thereafter, vide, proceeding, dated 27/5/2016, Election Commission of India, cancelled the elections for the said Constituencies.

7. At paragraph No.8 of the supporting affidavit to this writ petition, petitioner has referred to the Election Commission of India's decision, as hereunder:-

"In the Commission's considered opinion, allowing the electoral process to proceed and conduct the postponed poll in the constituencies on 13th June, 2016, as scheduled, in such vitiated atmosphere would severely jeopardize the conduct of free and fair election in the said

constituencies, and would not be reflective of the true choice of the electorate. If the Commission permits the election process to continue in such vitiated level playing field, it would be failing in its unconstitutional duty of ensuring free and fair elections for which it has been created as a specially empowered constitutional authority."

8. Subsequently, elections were conducted, on 19/11/2016 and fourth respondent has been elected. As stated supra, Election Petition has been filed.

9. Petitioner has contended that fourth respondent was also disqualified by the Speaker of Tamil Nadu Legislative Assembly. Fourth respondent is stated to have filed his nomination to 134 Aravakurichi Tamil Nadu Legislative Assembly Constituency, on 24/4/2019, as a candidate of Dravida Munnetra Kazhagam, a political party.

10. Petitioner has contended that Returning Officer, No. 134 Aravakurichi Tamil Nadu Legislative Assembly Constituency, should not accept the nomination of Mr.V.Senthil Balaji, the fourth respondent, on the grounds that due to the complaints of his corrupt practices, election in the said constituency was rescinded, in the year 2016. Fourth respondent has not challenged the cancellation of election, in the year 2016.

11. Petitioner has contended that when Election Petition No.1 of 2017 is pending before this Court, and one of the grounds of challenge is the alleged corrupt practices by the fourth respondent, his nomination should not be accepted, by the Returning Officer, No.134, Aravakurichi Assembly Constituency, Aravakurichi, Karur District, third respondent. Besides through media, fourth respondent has also induced the voters with three cents of lands, to the voters, without any proper data, which is again, a corrupt practice.

12. In sum and substance, petitioner has contended that allowing the nomination of a tainted candidate would become a bad precedent in future, and the elections will not be freely held.

13. On the above averments, Mr.T.Sivagnanasambandan, learned counsel for the petitioner made submissions and sought for the relief as stated supra.

14. At this juncture, inviting the attention of this Court to an earlier writ petition No.40565 of 2016, filed by Ms.A.P.Geetha, petitioner herein, as against acceptance of nomination, by the Returning Officer, No.134 Aravakurichi Assembly Constituency, Aravakurichi, Karur District, fourth respondent, and orders passed thereon, by a Hon'ble Division Bench of this Court, imposing a cost of Rs.3,000/- (Rupees Three thousand only), to be deposited by the writ petitioner

therein, Ms.A.P.Geetha, with the Tamil Nadu Mediation and Conciliation Centre, Madras High Court, Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India submitted that there is suppression of the filing of the earlier writ petition, in W.P.No.40565 of 2016 and the orders passed thereon, in the present writ petition No.13057 of 2019.

15. Mr.Niranjan Rajagopalan, learned Counsel for Election Commission of India, submitted that the only difference in both the writ petition, is that, in the earlier writ petition, acceptance of nomination was questioned, whereas, in the present writ petition, even before the nomination could be accepted, mandamus is sought for, not to accept the nomination of the fourth respondent, but the grounds of alleged disqualification with reference to the Election Commission's proceeding, dated 27/5/2016, is one and the same.

16. When attention of this Court was invited to the earlier writ petition No.40565 of 2016 and the orders passed thereon, we called for the entire records, from the Registry and perused the averments made in W.P.No.40565 of 2016.

17. At paragraph Nos.4 and 8 of the affidavit, in W.P.No.40565 of 2016, Ms.A.P.Geetha, petitioner has contended as hereunder:-

"4. I submit that the 5th and 6th respondents were candidates from Dravida Munnetra Kazhagam and All India Anna Dravida Munnetra Kazhagam, respectively. I crave leave of this Hon'ble Court to treat the findings by the first respondent in the proceedings dated 27/5/2016 as part and parcel of my submissions in this affidavit. I submit that fifth and sixth respondents committed electoral mis conduct and the first respondent has come to the conclusion that it cannot conduct a free and fair election because of the 5th & 6th respondents. I am constrained to submit that the election commission has held that they are tainted candidates.

8. I submit that free and fair election is the one of the basic structure of the constitution. The first respondent has held earlier that it cannot conduct free and fair election because of the conduct of 5th and 6th respondents. The first respondent has annulled the election earlier in Aravakurichi because of the large scale electoral mal practices adopted by 5th and 6th respondents. The fourth respondent ought to have rejected now the nominations of the 5th and 6th respondents."

2019), at paragraph No.8, petitioner has reproduced the proceeding, dated 27/5/2016, which we have extracted in the foregoing paragraphs of this judgment. Petitioner has filed Election Petition No.1 of 2017, wherein at paragraph Nos.5 to 7, has contended as hereunder:-

"5. The petitioner filed nomination papers before the fourth respondent for contesting in the 134, Aravakurichi Assembly Constituency, on 1/11/2016. The petitioner filed a representation dated 3/11/2016 before the fourth respondent stating that the fifth and sixth respondents having committed misconduct and purposely failed to reveal the above findings of election commission are not legally entitled to contest the 134 Aravakurichi Legislative Constituency, to be held on 19/11/2016 and therefore, requesting to disqualify the nominations of said 5th and 6th respondents. The scrutiny is on 3/11/2016. The fourth respondent accepted the candidature of 5th and 6th respondents at the time of scrutiny without considering in the objections of the petitioner in the representation dated 3/11/2016 and passed an order on 5/11/2016 that he has considered the representation of the petition dated 3/11/2016 and accepted the nomination stating those candidates has submitted correct records. The disposal of representation was done on 5/11/2016. The letter, dated 5/11/2016 was delivered to the petitioner only on 7/11/2016. (The petitioner already filed a writ petition before the Hon'ble High Court of Judicature at Madras in W.p.No.40565 of 2016 and it was dismissed on 18/11/2016 with cost of Rs.3,000/- payable to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras. The cost was paid on 9/12/2016. So, the petitioner is left with no other option except to file election petition before this Hon'ble High Court of Judicature at Madras to challenge the acceptance of nominations of 5th and 6th respondents.

6. The petitioner filed representations to fourth respondents on 17/11/2016 two representations, 19/11/2016, 20/11/2016, 22/11/2016 explaining that the fifth respondent committed electoral misconduct, corrupt practice and bribery to the electorate. The fourth respondent did not consider the representations. She submitted that the fifth respondent used Government vehicles for election campaign. The petitioner filed audio and video clippings to prove the allegations made in the representation by electronic mail to the fourth respondent. She

craves leave of the Court to treat the averments in the above representations as part and parcel of this petition.

7. The petitioner submits that the returned candidate was disqualified to be chosen to fill the said seat, that he has committed corrupt practice and the result of the election so far as it concerned to the fifth respondent has been materially affected by improper acceptance of his nomination, by corrupt practice and non compliance of by not disclosing the earlier order of the election commission for same constituency."

19. Election Petition, is filed under Section 80 of the Representation of the People Act, 1951. As per Section 98 of the Representation of the People Act, 1951, at the conclusion of the trial of an election petition, the High Court shall make an order -

- a. dismissing the election petition; or
- b. declaring the election of all or any of the returned candidates to be void; or
- c. declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

20. Section 99 speaks about Other orders to be made the High Court -

1. at the time of making an order under Section 98, the High Court shall also make an order -

a. where any charge is made in the petition of any corrupt practice having been committed at the election recording -

(i). a finding whether any corrupt practice has or has not been proved to have been committed at the election and the nature of corrupt practice; and

(ii). the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b). fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless -

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the

notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard.

(2). In this section and Section 100, the expression "agent" has the same meaning as in Section 123.

21. As per Section 106 of the Representation of the People Act, 1951, High Court has to transmit the order to the appropriate authority, etc., and its publication -

"As soon as may be after the receipt of any order made by the High Court under Section 98 or Section 99, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and shall cause the order to be published -

a. where the order relates to an election to a House of Parliament in the Gazette of India as well as in the Official Gazette of the State concerned; and

b. where the order relates to an election to the House or a House of the Legislature of the State, in the Official Gazette of the State.

22. Though the petitioner has contended that Mr.V.Senthil Balaji, fourth respondent, has already been disqualified, the said contention cannot be accepted, for the reason that Election Petition filed, on the grounds of alleged corrupt practice, is yet to be concluded by this Court. In the absence of any specific finding recorded by the Court and the order mandated to be transmitted by this Court to the Election Commission, for appropriate decision, contention that the fourth respondent, has already been disqualified, for his alleged corrupt practices, is untenable and in our considered view, is liable to be rejected.

23. Going through the supporting affidavit, we find that the petitioner has not referred to filing of the earlier writ petition No.40565 of 2016, on the very same grounds of alleged corrupt practices, by the fourth respondent and decision therein. Mr.T.Sivagnanasambandan, learned counsel for the petitioner submitted that petitioner was under the bonafide impression that when the copy of the Election Petition No.1 of 2017 was appended to the typed set of papers, filed along with this writ petition, alleged omission of the writ petitioner, to make a reference to the filing of earlier writ

petition No.40565 of 2016 and the orders passed thereon, was only a bona fide mistake, and not intentional. We are of the view that, petitioner cannot say that she is unaware of the averments made in W.P.No.40565 of 2016 and orders passed thereon, nor the learned counsel who had appeared for the petitioner therein. That apart, this Court, cannot also ignore and brush aside a fact, that the very same learned counsel had drafted the pleadings in both the writ petitions and as an Officer of this Court, duty bound to disclose all the facts of this Court. We are not inclined to accept the said contentions.

24. As rightly pointed out by Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India, the only difference between the two writ petitions, viz., W.P.No.40565 of 2016 and 13057 of 2017, is that earlier the writ petition was against the acceptance of nomination, and the instant writ petition is, for a mandamus not to accept his nomination.

25. Grounds and averments being the same, in both the writ petition, and to fortify our decision, we have incorporated the relevant proceeding of the Election Commission of India, dated 27/5/2016, referred to in both the writ petitions, as a cause for the postponement of the elections and subsequently, cancellation of the same.

26. Remedy under Article 226 of the Constitution of India is based on equity, good conscience, and fair play. In the case on hand, the petitioner was aware of dismissal of W.P.No.40565 of 2016, on the averments, made earlier, and she has not disclosed the same, in the supporting affidavit filed to this writ petition No.13057 of 2019, which is required under law, to disclose.

27. Going through the material on record, we hold that petitioner has suppressed the above material facts. When attention of the learned counsel was invited to the conduct of the petitioner, Mr.T.Sivagnanasambandan, learned counsel for the petitioner sought permission of this Court to withdraw the writ petition. We are not inclined to grant permission.

28. On the aspect of suppression of material facts, this Court deems it fit to extract few cases:-

(i) In Arunima Baruah v. Union of India reported in 2007 (6) SCC 120, the Supreme Court held as follows:

"12.It is also trite that a person invoking the discretionary jurisdiction of the court cannot be allowed to approach it with a pair of dirty hands. But even if the said dirt is removed and the hands become clean, whether the relief would still be denied is the question.

(ii) In *Moody v. Cox* [(1917) 2 Ch. 71: (1916-17) All ER Rep 548 (CA)], it was held: (All ER pp. 555 I-556 D)

"When one asks on what principle this is supposed to be based, one receives in answer the maxim that anyone coming to equity must come with clean hands. I think the expression "clean hands" is used more often in the textbooks than it is in the judgments, though it is occasionally used in the judgments, but I was very much surprised to hear that when a contract, obtained by the giving of a bribe, had been affirmed by the person who had a primary right to affirm it, not being an illegal contract, the courts of equity could be so scrupulous that they would refuse any relief not connected at all with the bribe. I was glad to find that it was not the case, because I think it is quite clear that the passage in *Dering v. Earl of Winchelsea* [(1787) 1 Cox Eq Cas 318: 2 Bos & P 270], which has been referred to, shows that equity will not apply the principle about clean hands unless the depravity, the dirt in question on the hand, has an immediate and necessary relation to the equity sued for."

(iii) In *Halsbury's Laws of England*, 4th Edn., Vol. 16, pp. 874-76, the law is stated in the following terms:

"1303. He who seeks equity must do equity.—In granting relief peculiar to its own jurisdiction a court of equity acts upon the rule that he who seeks equity must do equity. By this it is not meant that the court can impose arbitrary conditions upon a plaintiff simply because he stands in that position on the record. The rule means that a man who comes to seek the aid of a court of equity to enforce a claim must be prepared to submit in such proceedings to any directions which the known principles of a court of equity may make it proper to give; he must do justice as to the matters in respect of which the assistance of equity is asked. In a court of law it is otherwise: when the plaintiff is found to be entitled to judgment, the law must take its course; no terms can be imposed.

* * *

1305. He who comes into equity must come with clean hands.—A court of equity refuses relief to a plaintiff whose conduct in regard to the subject-matter of the litigation has been improper. This was formerly expressed by the maxim 'he who has committed iniquity shall not have equity', and relief was refused where a transaction was based on

the plaintiff's fraud or misrepresentation, or where the plaintiff sought to enforce a security improperly obtained, or where he claimed a remedy for a breach of trust which he had himself procured and whereby he had obtained money. Later it was said that the plaintiff in equity must come with perfect propriety of conduct, or with clean hands. In application of the principle a person will not be allowed to assert his title to property which he has dealt with so as to defeat his creditors or evade tax, for he may not maintain an action by setting up his own fraudulent design.

The maxim does not, however, mean that equity strikes at depravity in a general way; the cleanliness required is to be judged in relation to the relief sought, and the conduct complained of must have an immediate and necessary relation to the equity sued for; it must be depravity in a legal as well as in a moral sense. Thus, fraud on the part of a minor deprives him of his right to equitable relief notwithstanding his disability. Where the transaction is itself unlawful it is not necessary to have recourse to this principle. In equity, just as at law, no suit lies in general in respect of an illegal transaction, but this is on the ground of its illegality, not by reason of the plaintiff's demerits."

29. Mr.T.Sivagnanasambandan, learned counsel for the petitioner also tendered his apology, on behalf of the writ petitioner. As pointed out earlier, petitioner, at paragraph No.4 of the instant writ petition has stated that she has no personal interest in this writ petition. But, at paragraph No.8, she has contended that she was a candidate in 2016 elections. As a personal interest litigant, she has filed Election Petition No.1 of 2017, alleging corrupt practices by the fourth respondent, Mr.Senthil Balaji. Now, as a public interest litigant, she has filed the writ petition for a mandamus, directing the Returning Officer, No.134, Aravakurichi Assembly Constituency, Aravakurichi, Karur District, third respondent, not to accept the nomination filed by Mr.V.Senthil Balaji, fourth respondent, for 134 Aravakurichi Assembly Constituency Bye-Election to be held on 19th May 2019. From the above, we could deduce that purpose of the writ petitioner that fourth respondent should not contest. We do not appreciate the above.

30. As per the decisions of the Hon'ble Supreme Court, public interest writ petition, which are frivolous have to be dismissed, with exemplary costs. At this juncture, we deem it fit to extract the order of the Hon'ble Division Bench, made in W.P.No.40565 of 2016, dated 18/11/2016, in the matter of A.P.Geetha Vs. 1. The Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi and five others, as to why a Hon'ble Division Bench of this Court, imposed costs, in

W.P.No.40565 of 2016, dated 18/11/2016.

"The issue of acceptance of nomination of the candidates from the AIADMK and DMK party who were contestants in the earlier election which had been cancelled and the allotment of election symbol to them has been raised again and again in different proceedings and the Court has already answered this question in view of the Election Commission having accepted the nomination and allotted the symbol. Yet, this issue continues to be raised before this Court by different parties including the one by the petitioner, a candidate, now on the anvil of the election one day before.

2.We find, thus, such repeated endeavours a complete wastage of judicial time and consider it as a fit case where not only the petition should be dismissed but also costs should be imposed on the petitioner.

3.Writ petition is dismissed with costs of Rs.3,000/- (Rupees three thousand only) to be deposited with the Tamil Nadu Mediation and Conciliation Centre, Madras High Court Campus, within one (1) week. The connected miscellaneous petitions shall also stand dismissed."

31. Though, the petitioner was already imposed with a cost of Rs.3,000/-, to be paid to the Tamil Nadu Mediation and Conciliation Centre, High Court, Madras, going through the material on record, we are of the view that she does not appear to change her attitude. It cannot be said that she is unaware of the order passed by this Court, in W.P.No.40565 of 2016, dated 18/11/2016, nor by the learned counsel, an Officer of this Court. Therefore, while dismissing the instant writ petition No.13057 of 2019, we deem it fit to impose costs of Rs.30,000/- (Rupees Thirty thousand only), to be paid to the Tamil Nadu Juvenile Justice Fund, Ministry of Social Defence, Kellys, Chennai, within a period of fifteen days, from the date of receipt of a copy of this order, failing which, the District Collector, Chennai District, is directed to take proceeding against the petitioner under the Revenue Recovery Act, 1890.

32. In the forenoon, we dismissed the writ petition, by imposing a costs of Rs.30,000/- (Rupees Thirty thousand only), to be paid to the Tamil Nadu Juvenile Justice Fund, Ministry of Social Defence, Kellys, Chennai.

33. In the afternoon, Mr.T.Sivagnanasambandan, learned counsel appearing for the petitioner contended that the petitioner is poor, and hails from a very depressed community and therefore, sought for reduction in the quantum of cost. He submitted that on the above, pleaded to reduce the quantum of costs. Since Mr.T.Sivagnanasambandan, learned counsel for the petitioner has made a fervent request, to reduce the quantum of costs, for the reasons stated supra, we are

inclined to quantify the cost at Rs.10,000/- (Rupees Ten thousand only).

Sd/-
Asst. Registrar

//True Copy//

Sub Asst. Registrar

To

1. The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan
Ashoka Road
New Delhi 110 001.

2. The Chief Electoral Officer
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3. The Returning Officer
No.134 Aravakurichi Assembly Constituency
Aravakurichi
Karur District..MANIKUMAR, J

+1 CC to Mr. T.Sivagnanasambandan, Advocate SR.NO.41149
+1 CC to Mr. G.R.ASSOCIATES, Advocate SR.NO.42089

CO(SVI)
VC (08/06/2019)

Writ Petition No. 13057 of 2019

सत्यमेव जयते

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