

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.12.2019

CORAM :

The Hon'ble Mr.A.P.SAHI, THE CHIEF JUSTICE

AND

The Hon'ble Mr.JUSTICE SUBRAMONIUM PRASAD

W.P.No.34277 of 2019

and

W.M.P.No.34910 of 2019

Thol. Thirumavalavan

.. Petitioner

-vs-

1.State of Tamil Nadu,
Rep. by the Chief Secretary,
Secretariat, Fort St. George,
Chennai 600 009.

2.The State of Tamil Nadu,
Rep. by its Secretary (FAC),
Law Department, Fort St. George,
Chennai 600 009.

3.The State of Tamil Nadu,
Rep. by its Secretary,
Municipal Administration & Water
Supply Dept., Secretariat,
Fort St. George,
Chennai 600 009.

4.Tamil Nadu State Election Commission,
Rep. by its Commissioner,
No.208/2, Jawaharlal Nehru Road,
Opp.CMBT, Arumbakkam,
Chennai 600 106.

.. Respondents

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of Declaration to declare that the Tamil Nadu Ordinance No.8 of 2019 called as the Tamil Nadu Municipal Laws (Fifth Amendment) Ordinance, 2019, dated 19.11.2019, as unconstitutional.

For Petitioner

: M/s.Parventhan for
Ms.S.Deepika

For Respondents

: Mr.S.R.Rajagopal
Addl. Advocate General
assisted by Mr.V.Jayaprakash
Narayanan, Govt. Pleader
for RR 1 to 3

: Mr.AR.L.Sundaresan
Sr.Counsel, assisted by
Mr.B.Nedunchezian
for R-4

ORDER

(Made by The Hon'ble Chief Justice)

We heard Ms.S.Deepika, learned counsel for the petitioner.

2.The petition seeks to question the legality of Tamil Nadu Ordinance No.8 of 2019 named as 'The Tamil Nadu Municipal Laws (Fifth Amendment) Ordinance 2019', dated 19.11.2019. The petition has been presented by an advocate claiming himself to be the President of Viduthalai Chiruthaigal Katchi, which is a political party. The relief is sought by way of a Public Interest Litigation challenging the method of indirect election of the election of Mayors in the City Municipal Corporations in Tamil Nadu.

3.The challenge raised basically is to the system of indirect elections in the Municipalities on the ground that elections on a direct basis have been held in the past and therefore, to switch over to indirect elections is unconstitutional, apart from being undemocratic. Various instances of different types of elections have been detailed in the petition to contend that keeping in view the nature of the responsibilities of a Mayor, the impugned Ordinance, without taking note of the high democratic principles and the nature of the responsibilities of such a high office, introduced a system of election that eliminates the possibility of a contest by an individual, if he or she does not belong to a political party. The confining of the elections in the manner as it has been done through the impugned Ordinance, therefore, stifles the right of a person to get elected and to represent the cause of the people. It is, therefore, a petition seeking enforcement of a right to be chosen in a particular way.

4.This, in our opinion, cannot be termed as a justiciable cause, inasmuch as we find no infringement of the fundamental rights guaranteed under Part III of the Constitution of India, more so, when the right to seek elections or right to vote are merely constitutional rights/statutory rights and not

fundamental rights guaranteed under the Constitution. Reference may be had to the judgment of the Apex Court in *Rajbala vs. State of Haryana*, reported in (2016) 2 SCC 445. The mode and manner of election whether direct or indirect or with limited participation particularly with regard to Municipalities is now no longer a subject matter of a speculation, but rather a matter of clear provision as provided under Part IX and Part IX-A of the Constitution of India. What is being contended is that the explanatory statement in paragraph 2 of the impugned Ordinance that has been reproduced in the petition has been drafted motivatedly introducing a mischief so as to ensure the elections of certain chosen people and to eliminate a wide based democratic participation. The petitioner also apprehends horse-trading in such elections. We have not been able to locate any such provision on the basis of which it can be said, with any sense of certainty, that the impugned Ordinance will foster any unethical activity.

5. We do not find any such limitations or any legal provision hedging the manner in which the said elections to the post of Mayor can be contested, particularly, the issue raised through this petition while challenging the impugned Ordinance. The contention that it is violative of Article 243-R of the Constitution of India does not, therefore, fall within the folds of the tests and the parameters which are to be invoked for the purpose of testing the judicial immunity of such provisions.

6. The contention that the Ordinance is misconceived or is otherwise unconstitutional is not borne out from the pleadings that have been placed on record and even otherwise, merely because there could be a better system of election, the same cannot be a ground to declare the system adopted under the impugned Ordinance to be unconstitutional. We find no such allegation of disharmony or any violation of fundamental rights or any statutory rights either way so as to entertain this petition for striking down the impugned Ordinance. The right of participation, therefore, being regulated and controlled by a law, which otherwise is not unconstitutional, cannot be interfered with on the grounds raised in the writ petition.

The writ petition is misconceived and is, accordingly, dismissed. There shall be no order as to costs. Consequently, W.M.P.No.34910 of 2019 is also dismissed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sra

To

1.The Chief Secretary to Govt. of Tamil Nadu,
Secretariat, Fort St. George,
Chennai 600 009.

2.The Secretary (FAC) to Govt. of Tamil Nadu,
Law Department, Fort St. George,
Chennai 600 009.

3.The Secretary to Govt. of Tamil Nadu,
Municipal Administration & Water
Supply Dept., Secretariat,
Fort St. George, Chennai 600 009.

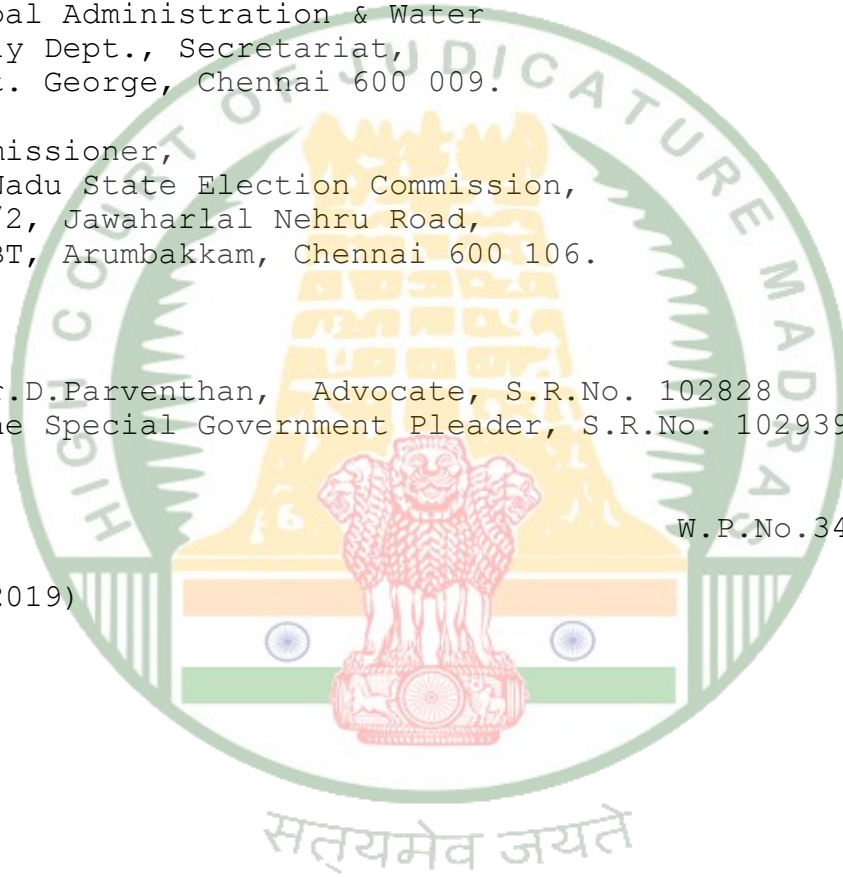
4.The Commissioner,
Tamil Nadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Opp.CMBT, Arumbakkam, Chennai 600 106.

+lcc to Mr.D.Parventhan, Advocate, S.R.No. 102828

+lcc to the Special Government Pleader, S.R.No. 102939

W.P.No.34277 of 2019

RP(CO)
GN(13/12/2019)



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