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BEFORE THE MADURAI BENCH OF THE MADRAS HIGH COURT

DATE : 12.06.2019

CORAM

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE B.PUGALENDHI

W.P. (MD) NO. 13167 OF 2019

AND

M.P. (MD) NO. 9810 OF 2019

K.K.Ramesh

.. Petitioner

- Vs -

1. The Government of India
rep. by its Home Secretary
Ministry of Home Affairs
North Block, New Delhi.
2. The Government of India
rep. by its Secretary
Ministry of Law & Justice
Union Secretariat, New Delhi.
3. The Chief Election Commissioner
Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi 110 001.
4. The Chief Election Officer (CEO)
Tamil Nadu, Fort St. George
Secretariat, Chennai - 600 009.
5. State of Tamil Nadu
rep. by its Chief Secretary
Secretariat, Chennai - 600 009.



6. State of Tamil Nadu
rep. by its Secretary
Revenue Secretary, Secretariat
Chennai - 600 009.

7. The Government of Tamil Nadu
rep. by its Assembly Secretary
Secretariat, Chennai 600 009.

8. Thiru H.Vasanthakumar

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying this Court to issue a writ of mandamus directing respondents 1 to 4 to instruct respondents 5 to 6 to take appropriate action to recover the money spent for the 227 Nanguneri Assembly constituency in General Assembly Election 2016 from the 8th respondent in order to save the people tax money by considering the petitioner's representation dated 28.5.2019.

For Petitioner : Mr. K.K.Ramesh
Party-in-Person

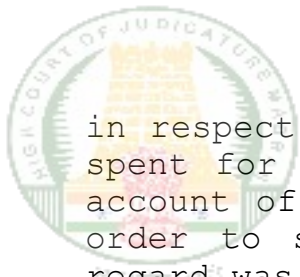
For Respondents : Mr. V.Malaiyendran
CGSC for RR-1 & 2
Mr. K.K.Senthil for
Mr.Niranjan Rajagopal for RR-3 & 4
Mr. J.Gunaseelan Muthaiah, AGP for RR-5 to 7

ORDER

(Order of the Court was made by M.Sathyanarayanan, J.)

The petitioner claims to be a public interest litigant and according to him, the 8th respondent was a sitting Member of the Tamil Nadu Legislative Assembly and was representing the Nanguneri Assembly Constituency. In the recently concluded Parliamentary elections, he stood as a candidate for election to the Lok Sabha from Kanyakumari constituency and got elected and as a consequence thereof, he has also resigned from the membership of the Tamil Nadu Legislative Assembly.

2. It is the case of the petitioner that the Government of Tamil Nadu is reeling under severe financial crisis and the 8th respondent, without completing the full term in the Tamil Nadu Legislative Assembly representing Nanguneri constituency stood for the Parliamentary election and was successful and consequent upon his resignation, the Legislative Assembly seat of Nanguneri fell vacant for which a fresh election has to be held and as such the amount of money that had been incurred for conducting the election



in respect of Nanguneri constituency as well as money that would be spent for the conducting election to the very same constituency on account of resignation of the 8th respondent has to be recovered in order to save the tax payers money and a representation in this regard was given on 28.5.2019, which did not evoke any response and, therefore, the petitioner has come forward with the present petition.

3. Heard the submissions of the petitioner/party-in-person and he is unable to come to the aid of this Court by quoting the relevant statutory provisions and the legal position. It is also to be noted at this juncture that the petitioner is regularly in the habit of filing very many public interest litigations as party-in-person. Therefore, he is supposed to be aware of the minimal requirement as to the assistance he is to render to this Court. Unfortunately, he has failed to render the necessary assistance to the Court.

4. Mr.Senthil, learned counsel appearing for Mr.Niranjan Rajagopal for respondents 3 and 4, drawing the attention of this Court to the Representation of People Act, 1951, and the Conduct of Election Rules, 1961, submitted that there is no express or implied bar on the part of the 8th respondent for filing nomination and participating in the Parliamentary election and in the absence of such a bar, the writ petition filed by the petitioner/party-in-person, styled as 'Public Interest Litigation' is wholly misconceived and he is also guilty of wasting the precious judicial time of this Court.

5. Attention of this Court was also drawn to Part-II of the Representation of People Act, 1951, which speaks about the qualification and disqualification and a perusal of the provisions would disclose that there is no disqualification attached as to the conduct of the 8th respondent in filing nomination in respect of Kanyakumari Parliamentary constituency. No doubt, the 8th respondent was a sitting Member of the Tamil Nadu Legislative Assembly representing Nanguneri Constituency and on getting elected as a Member of the Parliament representing Kanyakumari Constituency, he has given up his position as Member of the Tamil Nadu Legislative Assembly by way of resignation to the Speaker of the Tamil Nadu Legislative Assembly and the said resignation was also accepted.

6. It is also relevant to extract Rule 91 of the Conduct of Election Rules :-

"91. Resignation of seats in case of election to more seats than one in a House-. (1) The time within which a person may resign all but one of the seats in either House of Parliament or in the House or either House of the Legislature of a State, to which he has been declared elected shall be--

(a) fourteen days from the date of his election under section 67-A; or



(b) where the dates of his election are different in respect of different seats, fourteen days from the last of those dates.

(2) Such resignation shall be addressed --

(a) to the Speaker or the Chairman of the House concerned; or

(b) where the office of the Speaker or Chairman is for the time being vacant or is, or is deemed to be, in abeyance, to the Deputy Speaker or the Deputy Chairman of the House concerned; or

(c) where the post of the Deputy Speaker or Deputy Chairman is also for the time being vacant or is, deemed to be, in abeyance, to the Election Commission.

(3) Where the resignation has been addressed to the Election Commission under sub-rule (2) the Election Commission shall, as soon as may be after the receipt of the resignation, send a copy thereof to the Secretary of the House concerned."

7. From the above, it is clear that in the absence of any statutory bar, the 8th respondent is well within his right to participate in the election process and, accordingly, he stood as a candidate for election as a Member of the Parliament (Lok Sabha) in respect of Kanyakumari Constituency and also got elected.

8. The primordial submission of the petitioner/party-in-person is that the Election Commission would have spent money for conducting the election in respect of Nanguneri constituency, from where the 8th respondent got elected as Member of the Legislative Assembly and on his resignation, the said seat has been declared as vacant and fresh election has to be conducted by the Election Commission and as such expenses would be incurred and, therefore, the expenses already incurred and the expenses to be incurred with regard to the conduct of the election have to be recovered.

9. In the considered opinion of this Court, the said argument advanced by the petitioner/party-in-person is without any legal basis and based upon mere surmises and conjectures. The petitioner/party-in-person, who is a seasoned public interest litigant is expected to do some homework/research before filing the writ petition and unfortunately he has failed to do so and it also appears that the endeavour of the petitioner/party-in-person is to gain publicity.

10. For the reasons aforesaid, the writ petition is devoid of merits and is liable to be dismissed *in limine*. Accordingly, this writ petition is dismissed at the admission stage itself. Consequently, connected miscellaneous petition is also dismissed. This Court while not imposing any cost on the petitioner in the above backdrop, hopes and trusts that atleast in future the petitioner/party-in-person, before filing any public interest



litigation, would carry out necessary research and place materials in support of his contention before the Court. Consequently, connected miscellaneous petition is closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar(CS)

To

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 6. The Revenue Secretary
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Secretariat, Chennai - 600 009.
 7. The Assembly Secretary
Government of Tamil Nadu
Secretariat, Chennai 600 009.
- +1cc to Mr.K.K.RAMESH, Advocate, SR.No. 68103
+1cc to Mr.V.MALAIYENDRAN, Advocate, SR.No. 68351
+1cc to Mr.K.K.SENTHIL, Advocate, SR.No. 68609
+1cc to M/s.Special Government Pleader,SR.No. 68496

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