



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 20.12.2019

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P(MD)No.27150 of 2019

and

W.M.P(MD)Nos.23462, 23463 & 23464 of 2019

V.Nirmala

... Petitioner

Vs.

1.The Commissioner,
Tamil Nadu Election Commission,
Chennai.

2.The District Election Officer,
Karur District.

3.Sagunthala Rani

4.M.Arockiyamary

... Respondents

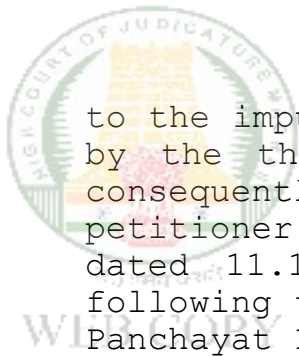
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned list of Validly Nominated Candidates (Form-6) issued by the third respondent dated 17.12.2019 and quash the same as illegal and consequently direct the third respondent herein to permit the petitioner to correct the error pertaining to her nomination paper dated 11.12.2019 and to conduct the election in a fair manner following the procedures of law, pursuant to the Election of Village Panchayat President, Kalaiyapatti Village, Kadavur Panchayat Union, Karur District.

For Petitioner : Mr.N.Anandakumar
For R - 1 : Mr.Raja Karthikeyan
For R - 2 : Mr.K.Chellapandian
Additional Advocate General
Assisted by
Mr.VR.Shanmuganathan,
Special Government Pleader.

ORDER

(Order of the Court was made by **M.DURAI SWAMY, J.**)

The petitioner has filed the above Writ Petition to issue a Writ of Certiorarified Mandamus, to call for the records pertaining



to the impugned list of Validly Nominated Candidates (Form-6) issued by the third respondent dated 17.12.2019 and to quash the same consequently directing the third respondent herein to permit the petitioner to correct the error pertaining to her nomination paper dated 11.12.2019 and to conduct the election in a fair manner following the procedures of law, pursuant to the Election of Village Panchayat President, Kalaiyapatti Village, Kadavur Panchayat Union, Karur District.

2.The petitioner herself had admitted that she had made some mistakes in the nomination form, which resulted in rejection of her nomination.

3.The learned counsel appearing for the petitioner submitted that the respondents 1 and 2 should have given an opportunity to the petitioner to correct the mistakes in the nomination form.

4.Mr.K.Chellapandian, learned Additional Advocate General appearing for the second respondent submitted that only after scrutinizing, the second respondent had rejected the application in the petitioner's nomination form for the reason that the petitioner has not given correct details. Further, the learned Additional Advocate General submitted that the list of eligible candidates for the Local Body Elections were already published and therefore, the remedy open to the petitioner is only to file an Election Petition under Section 259 of the Tamil Nadu Panchayats Act, 1994.

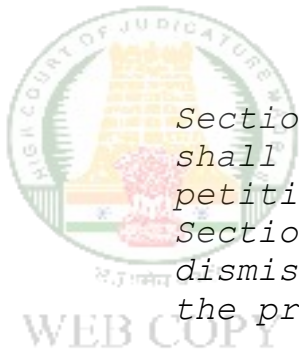
5.The learned Additional Advocate General in support of his contention relied upon the unreported **Judgment of the Hon'ble Supreme Court dated 24.08.2018 made in Civil Appeal No.8515 of 2018 (West Bengal State Election Commission and others Vs. Communist Party of India and others)**, wherein the Hon'ble Supreme Court has held in paragraph Nos.25 to 27 as follows:

'25.Any dispute regarding the election has to be pursued in the manner which is provided in Part VII of the Panchayat Election Act.

Under Section 79(1):

"79. (1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-Section (1) of Section 93 and Section 94

(a) before the Civil Judge having jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti, (b) before the District Judge of the District, where such election is in respect of a Zilla Parishad or the Siliguri Mahakuma Parishad.



Section 80 stipulates that no election to a panchayat shall be called into question except by an election petition presented in accordance with Part VII. In fact, Section 84 (1) also stipulates that the Court shall dismiss an election petition which does not comply with the provisions of Section 79 or Section 80.

26.The Panchayat Elections Act is a complete code in regard to the conduct of the poll and for the resolution of disputes concerning the validity of the election. Article 243K entrusts the superintendence, direction and control over the conduct of all elections to the panchayats in the State Election Commission. Clause (b) of Article 243 O stipulates thus:

"243-O. Notwithstanding anything in this Constitution

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State.

27.There is merit in the submission that the discipline which is mandated by the provisions of the Constitution and enforced by the enabling state law on the subject must be maintained. Any dispute in regard to the validity of the election has to be espoused by adopting a remedy which is known to law namely through an election petition. It is at the trial of an election petition that factual disputes can be resolved on the basis of evidence. This principle has been consistently adhered to in decisions of this Court. In Boddula Krishnaiah (supra), a three Judge bench, adverted to the decisions of the Constitution Bench in NP Ponnuswami v Returning Officer, Namakkal Constituency (1952 SCE 218) and in Lakshmi Charan Sen v AKM Hassan Uzzaman (1985) 4 SCC 689. After referring to Ponnuswamy, it was observed:

In NP Ponnuswamy v Returning Officer, Namakkal Constituency a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no



significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed, while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the 'election; and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress. The binding principle must be followed.'

6.The ratio laid down by the Hon'ble Supreme Court is squarely applies to the facts and circumstances of the petitioner's case.

7.In these circumstances, for the reasons stated above, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed. However, it is open to the petitioner to file a Election Petition under Section 259 of the Tamil Nadu Panchayats Act, 1994. No costs. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar (crl.side)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

ps

To

1.The Commissioner,
Tamil Nadu Election Commission,
Chennai.

2.The District Election Officer,
Karur District.

+1 CC to M.N.ANANDAKUMAR, Advocate (SR-106247[F] dated 20/12/2019)
+1 CC to Mr.RAJA KARTHIKEYAN, Advocate (SR-106330[F] dated
20/12/2019)
+1 CC to SPL.GP (SR-106518[F] dated 27/12/2019)

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20.12.2019

MK (08.01.2020) 4P 6C

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