

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2020

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THE HON'BLE MR. JUSTICE P.D. AUDIKESAVALU

W.P. No. 718 of 2020

and

W.M.P. Nos. 870 and 871 of 2020

R.Gomathy

... Petitioner

Vs.

1. The Tamil Nadu State Election Commission,
Rep. by its Secretary,
No. 208/2, Jawaharlal Nehru Road,
Opp.to CMBT, Arumbakkam,
Chennai - 600 106.

2.The District Election Officer,
Thiruvannamalai District.

3.The Returning Officer/ Block Development Officer,
For the Election to the Post of Ward Councillor,
Panchayat Union Council Ward No.4,
Javvadhupalai Panchayat Union,
Thiruvannamalai District.

4.Kavitha

... Respondents

Prayer:- Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the First to Third Respondents to re-count the votes in respect of the post of Union Ward Councillor, Ward No.4, Javvadhupalai Panchayat Union and Thiruvannamalai District.

For Petitioner : Mr. R.Rajaraman

For Respondents: Mr.AR.L.Sundaresan,
Senior Counsel assisted by
Mr.B. Neduchezhiyan,
Standing Counsel (for R1)

: Mr. V. Jayaprakash Narayanan
Government Pleader (for R2 and R3)

O R D E R

Heard Mr. R.Rajarajan, Learned Counsel for the Petitioner, Mr. B. Neduchezhiyan, Learned Standing Counsel appearing for the First Respondent and Mr. V. Jayaprakash Narayanan, Learned Government Pleader appearing for the Second and Third Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Petitioner, who was unsuccessful in the election held in December 2019 for the post of Ward Union Councillor (Ward No.4), JavvadhuMalai Panchayat Union, Thiruvannamalai District, has filed this Writ Petition for directing the First to Third Respondents to re-count the votes in respect of that post within a reasonable time to be fixed by this Court.

3. Having regard to the aforesaid relief sought, it requires to be at once pointed out that Article 243-O(b) of the Constitution of India, 1950 reads as follows:-

"243-O(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."

In the exercise of that power conferred, Section 258 of the Tamil Nadu Panchayats Act, 1994, provides as follows:-

"258. Election petitions.- (1) No election of a President or a Chairman or a member shall be called in question except by an election petition presented to the District Judge of the district in which the Panchayat is situated, within [forty-five days] from the date of the publication of the result of the election under this Act.

(2) An election petition calling in question any such election may be presented on one or more of the grounds specified in Section 259 by any candidate at such election, by any elector of the ward concerned or by any member.

(3) A petitioner shall join as respondents to his petition all the candidates at the election.

(4) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (Central Act V of 1908) for the verification of pleadings.

[(5) The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day-to-day until its conclusion, unless the District Judge finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(6) Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the District Judge for trial.]”

Further, Rules 122 and 123 of the Tamil Nadu Panchayats (Elections) Rules, 1995, are extracted below:-

“122. Election petitions.- Save as otherwise provided, no election held under the Act, shall be called in question except by an election petition presented in accordance with Section 28 of the Act or the Rules, to the District Judge under whose jurisdiction the Panchayat or the Planning Committee or other statutory Committees fall, by any Candidate or elector against the Candidate who has been declared to have been duly elected. Explanation.- In this Rule ‘elector’ means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election, or not.

123. Time-limit for presenting election petitions.-

(1) An election petition shall be presented within 30 [forty-five days] from the date of publication of the result of the election, under the Act.

Explanation.- If the Court of the District Judge is closed on the last day of the forty five days aforesaid, the petition may be presented on the next following day on which the said Court is open. (2) Every election petition shall be accompanied by as many copies as there as Respondents mentioned therein with three more additional copies and every copy including the additional copies should be attested either by the petitioner under his own signature or by

his counsel to be the true copy of the petition. Any Schedule or annexure to the petition shall also be signed either by the petitioner or his counsel and enclosed with each copy of the petition."

It is clear from the aforesaid statutory provisions that the Petitioner is entitled to file election petition before the jurisdictional District Court for the relief that has been sought in this Writ Petition within the period of limitation prescribed therein, but instead, she has sought to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India, 1950. There is conspicuously no explanation from the Petitioner in the affidavit filed in support of the Writ Petition for not having resorted to the statutory remedy or as to how the same is not efficacious for granting that relief to the Petitioner in an election petition.

4. In this context, it would have to be re-called here that in CCE -vs- Dunlop India Limited [(1985) 1 SCC 260] the Hon'ble Supreme Court of India has succinctly explained the legal position relating to the exercise of discretionary powers under writ jurisdiction, as follows:-

"3. Article 226 is not meant to short-circuit or circumvent statutory procedures. It is only where statutory remedies are entirely ill-suited to meet the demands of extraordinary situations as for instance where the very vires of the statute is in question or where private or public wrongs are so inextricably mixed up and the prevention of public injury and the vindication of public justice require it that recourse may be had to Article 226 of the Constitution. But then the Court must have good and sufficient reason to bypass the alternative remedy provided by statute. Surely matters involving the revenue where statutory remedies are available are not such matters. We can also take judicial notice of the fact that the vast majority of the petitions under Article 226 of the Constitution are filed solely for the purpose of obtaining interim orders and thereafter prolong the proceedings by one device or the other. The practice certainly needs to be strongly discouraged."

The same view has been reiterated in respect of election disputes in the following decisions of the Hon'ble Supreme Court of India:-

- (i) C. Subrahmanyam -vs- K. Ramanjaneyullu [(1998) 8 SCC 703];
- (ii) S.K. Mahaboob Bee (SMT) -vs- State Election Commissioner [(2000) 10 SCC 512];
- (iii) K. Venkatachalam -vs- A. Swamickan [1999 (4) SCC 526];
- (iv) Election Commission of India -vs- Ashok Kumar [(2000) 8 SCC 216];

- (v) P. Manjula -vs- Government of A.P [(2003) 3 LW 610]; and
(vi) Harnek Singh -vs- Charanjit Singh [(2005) 8 SCC 383].

5. That apart, the very nature of disputes raised by the Petitioner certainly require recording of evidence on the rival contentions of the parties, which cannot be decided in a summary manner in proceedings under Article 226 of the Constitution of India.

6. In the result, as there is no justification to entertain the Writ Petition, the same is dismissed. It is made clear that no view has been expressed by this Court on the correctness or the entitlement on the merits of the claim made by the Petitioner. Consequently, the connected Miscellaneous Petitions are closed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

das

To

1. The Secretary,
Tamil Nadu State Election Commission,
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+1cc to Mr.R.Rajaraman, Advocate, S.R.No.9720

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GMV (27/05/2020)

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