

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.03.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.724 of 2020

G.Indhira

..Petitioner

.v.

1.The State Election Commissioner,
Local Body Election,
100 Feet Road, Opposite:Koyambedu Bus Stand,
Koyambedu, Chennai.

2.The Returning Officer/
Block Development Officer, (B.Pt),
Andimadam Panchayat Union,
Andimadam,
Andimadam Taluk,
Ariyalur District.

3.The Assistant Returning Officer,
Marudhur Village Panchayat,
Marudur, Andimadam Taluk,
Ariyalur District.

4.Saraswathi

.... Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, directing the 1st respondent to conduct enquiry and order for re-count the votes insofar relates to Marudhur Village Panchayat President Election, Andimadam Panchayat Union, Andimadam Taluk, Ariyalur District.

For Petitioner : Mr.C.Prakasam

For R 1 : Mr.B.Nedunchezian
Standing Counsel

For R 2 & R 3 : Mr.V.Jayaprakash Narayanan
State Government Pleader

For R 4 : Mr.R.Subramanian

O R D E R

This writ petition has been filed for the issue of a writ of mandamus directing the 1st respondent to order for recount of votes for the Election that was held on 30.12.2019, for the post of President at Marudhur Village Panchayat.

2.The case of the petitioner is that after the polling was completed on 30.12.2019, a representation was given to the Election Officer on 01.01.2020, by making certain complaints regarding the counting of votes on the ground that the postal votes have not been properly considered during the counting. The petitioner had given a representation in this regard on 02.01.2020 and according to the petitioner, the same was enquired by the Election Officer, who was the Block Development Officer of Andimadam Panchayat Union. Since no action was taken on the complaint given by the petitioner, one more representation was given on 07.01.2020. Since the same did not evoke any response, the present writ petition has been filed before this Court.

3.The 2nd respondent, who was the Returning Officer during the election has filed a counter affidavit in this writ petition. He has taken a specific stand at para 11 which is extracted as follows:

11.It is humbly submitted that, the 2nd respondent, the Returning Officer did not receive any re-counting application at counting centre on 02.01.2020 from the petitioner. So no question of considering the representation arose. The request of the petitioner is liable to be rejected as per the Sec.66 (5) of the Tamil Nadu Panchayats (Elections) Rules - 1995. It is further humbly submitted that there is no violation in counting of votes. All procedures are duly adhered to as per the rules stipulated in Tamil Nadu Panchayat (Elections) Rules 1935.

4.It will also be relevant to extract para 9, which is as follows:

9.It is humbly submitted that in para 3 of the affidavit that the petitioner made representation before the 1st respondent on 07.01.2020 and made request to recount the votes for the post of President for Marudhur Village Panchayat, andimadam Panchayat Union, Andimadam Taluk, Ariyalur District, may be correct. But the petitioner's averments that since he

election officers after declared the petitioner as successful candidate, inserted the postal votes on the instruction given by the political high hand and changed the result and declared the 4th respondent and successful candidate by adding the bogus postal votes, but no actions were taken are all denied as false. The above allegations were made without any truth or evidence.

5.The learned counsel for the petitioner submitted that the Election Officer has uttered falsity in the affidavit after having acknowledged the receipt of the representation made by the petitioner on 02.01.2020. The learned counsel submitted that as per Rule 66 of the Tamil Nadu Panchayat (Elections) Rules, 1995, where, an application is made to the Returning Officer after the announcement of the results of the counting and before the declaration of the result of the election, requesting for a recount, the same has to be allowed. The learned counsel submitted that the petitioner has complied with this procedure and in spite of the same, the 2nd respondent did not undertake the process of recounting.

6.The learned Government Pleader appearing on behalf of the 2nd respondent apart from reiterating the contentions made in the counter affidavit, submitted that the issue that has been raised by the petitioner cannot be gone into in this writ petition and the petitioner has to necessarily agitate only by filing an Election Petition under Rule 122 of the Tamil Nadu Panchayat (Elections) Rules, 1995. The learned Government Pleader submitted that the 2nd respondent has categorically denied the fact that any complaint was made to him on 02.01.2020 and this issue has to be decided only by way of a trial and it cannot be decided in this writ petition.

7.It is clear from the submissions made on either side and the stand taken by the respective parties that the issue raised requires appreciation of evidence which can be done only by filing an Election Petition. This Court cannot go into the issue as to whether the initial found in the letter dated 02.01.2020, was made by the 2nd respondent. The 2nd respondent denies receiving any such complaint on 02.01.2020. In view of the specific stand taken by the 2nd respondent, this Court is not in a position to probe into the fact as to whether any complaint was given by the petitioner on 02.01.2020 and whether the same was enquired by the 2nd respondent. By undertaking such an exercise, this Court will be exceeding its jurisdiction under Article 226 of the

Constitution of India. This is more so since there is an alternative remedy available to the petitioner under Rule 122 of the Tamil Nadu Panchayat Rules.

8. In view of the above, this Court is not inclined to entertain this writ petition and the same is accordingly dismissed, with a liberty to the petitioner to workout her remedy by filing an Election Petition and proceed further in accordance with law. No costs.

Sd/-

Assistant Registrar(CO-MDU)

//True Copy//

Sub Assistant Registrar

KP

To

1. The State Election Commissioner,
Local Body Election,
100 Feet Road, Opposite: Koyambedu Bus Stand,
Koyambedu, Chennai.
2. The Returning Officer/
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Andimadam Taluk,
Ariyalur District.
3. The Assistant Returning Officer,
Marudhur Village Panchayat,
Marudur, Andimadam Taluk,
Ariyalur District.

+1cc to Mr.C.Prakasam, Advocate, S.R.No.22625

+1cc to Mr.V.Jayaprakash Narayanan,
Advocate, S.R.No.23149

+1cc to the Government Pleader, S.R.No.22690

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LN(CO)

CB(22/07/2020)