

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 16.03.2020
CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P No.6496 of 2020
and W.M.P No.7706 & 7710 of 2020

1.Madhavi

2.C.Mohana

3.V.Kuppan

4.C.Thenmozhi

Petitioners

vs.

1. The State Election Commission,
Rep. by its Commissioner,
Jawaharlal Nehru Road, Jai Nagar,
Koyambedu, Chennai.

2. The Block Development Officer,
Vandavasi Taluk,
Thiruvannamalai District.

3. The Assistant Returning Officer,
Vandavasi Taluk,
Thiruvannamalai District.

4. Manivannan
Vice President,
Mampattu Panchayat Union,
Thiruvannamalai District.

Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the third respondents herein, the Retiring Officer, to recall the declaration certificate issued to the 4th respondent as Vice President of No.31, Mambattu Village Panchayat, Vandavasi Panchayat Union, Thiruvannamalai District for non-compliance of Rules of Tamil Nadu Panchayat Election Rules, 1995 and consequently direct the 1st respondent to conduct the said election afresh by strictly adhering to the mandatory Rules under Part VIII of the Tamil Nadu Panchayat Election Rules, 1995 by appointing another Retiring Officer in the place of the third respondent with an observer under the control of the second respondent and CCTV coverage for the entire process of election till the declaration of result and with adequate police protection to ensure free and fair election within a reasonable period to be fixed by this Court.

For Petitioner : Ms.Dakshayani Reddy
For Respondents: Mr.B.Nedunchezhiyan for R1
Standing Counsel

Mr.V.Jayaprakash Narayanan
State Government Pleader
for R2 to R4

O R D E R

This writ petition has been filed challenging the declaration certificate issued in favour of the 4th respondent declaring him as the Vice President of the Village Panchayat and consequently to direct the 1st respondent to conduct the election afresh.

2.The case of the petitioners is that the elections were notified for the post of President and six Ward Members to the Village Panchayat on 30.12.2019. The results of election was declared on 02.01.2020 and the 4th petitioner was declared elected to the post of President and rest of the petitioners were elected as Ward Members.

3.As per the Panchayat Election Rules, the post of Vice President is elected by indirect election. For the said post, the 2nd petitioner and the 4th respondent gave their nominations and the election was held on 11.01.2020. According to the petitioners, totally seven members participated and all the four petitioners had cast their votes in favour of the 2nd petitioner. Therefore, according to the petitioners, the 2nd petitioner, who had got the majority votes should have been selected as a Vice President. The grievance of the petitioners is that after the petitioners left the polling booth, the 3rd respondent had opened the ballot box and invalidated one of the ballot paper. Consequently, there was a tie between the 2nd petitioner and the 4th respondent. As per the Election Rules, in case of tie, the candidates will be chosen by draw of lots. It is alleged that the 3rd respondent has adopted this process and the 4th respondent was declared as elected by draw of lots. Aggrieved by the same, the present writ petition has been filed before this Court.

4.Mrs.Dakshayani Reddy, learned counsel appearing on behalf of the petitioners submitted that there was no scope to resort to draw of lots since four petitioners who are before this Court have voted in favour of the 2nd petitioner and therefore, the 4th respondent, at the best, could have secured only three votes. Therefore, the 2nd respondent automatically will become the Vice President. The learned counsel further submitted that the election process was vitiated due to non-adherence to the Election Rules and therefore, the entire election process was null and void. The learned counsel submitted that, when there is a patent illegality in the

election process and it is found that the 4th respondent could not have secured the majority vote, a writ petition can be filed before this Court and the same is maintainable.

5.The learned State Government Pleader appearing on behalf of the official respondents submitted that the writ petition is not maintainable before this Court. The learned counsel submitted that the aggrieved party will have to necessarily file an election petition under Section 258 of the Tamil Nadu Panchayats Act, 1994. The learned Government Pleader further submitted that out of the four votes that are said to have been cast in favour of the 2nd petitioner, one vote was invalidated since the seal was affixed for both the candidates viz., for the petitioner and the 4th respondent. The learned Government Pleader also submitted the entire files before this Court.

6.This Court has carefully considered the submissions made on either side and the materials available on record.

7.Under normal circumstances, no election can be challenged by way of filing a writ petition under Article 226 of the Constitution of India, since Section 258 of the Tamil Nadu Panchayats Act, 1994 specifically provides for filing an election petition within 45 days from the date of the publication of the results of the election. The only reason, why this writ petition was entertained was due to the fact that four of the petitioners, who claimed to have voted in favour of the 2nd petitioner for the post of Vice President, came before this Court and specifically stated that they had voted in favour of the 2nd petitioner. Totally seven members participated and therefore, if four petitioners had voted in favour of the 2nd petitioner, this Court was more curious to understand as to how the 4th respondent was elected to the post of Vice President. Therefore, this Court directed the learned Government Pleader to furnish the entire files.

8.On going through the files, it is seen that insofar as one of the vote that was cast, this Court finds the seal both for the petitioner as well as the 4th respondent. This vote had been invalidated by the 3rd respondent under the Rules. In view of the same, there was a tie between the petitioner and 4th respondent and therefore, the 3rd respondent had resorted to draw of lots to elect the candidate.

9.In view of the above, no further enquiry can be conducted in this writ petition with regard to the reasons for such invalidation or the draw of lots that was resorted to by the 3rd respondent. It is a matter for evidence and it has to be necessarily agitated by way of filing an election petition under Section 258 of the Tamil Nadu Panchayats Act, 1994.

10.In the result, this writ petition is dismissed and liberty is granted to the petitioner to file an election

petition under Section 258 of the Tamil Nadu Panchayats Act, 1994 read with Rules 122 and 123 of the Tamil Nadu Panchayats (Election) Rules, 1995 before the concerned District Court on or before 23.03.2020. It is made clear that the election petition will be entertained by the concerned District Court only if the same is filed within the time fixed by this Court. Any petition filed beyond the time, shall not be entertained by the concerned Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

ssr/vs

To

1. The State Election Commission,
Rep. by its Commissioner,
Jawaharlal Nehru Road, Jai Nagar,
Koyambedu, Chennai.
2. The Block Development Officer,
Vandavasi Taluk,
Thiruvannamalai District.
3. The Assistant Returning Officer,
Vandavasi Taluk,
Thiruvannamalai District.

+1 cc to Government Pleader Sr.No. 23716

+1cc to M/s.Dhakshayini Reddy , Advocate SR.No. 23722

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A.SK(18/03/2020)

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