

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 16.12.2019

DELIVERED ON : 03.01.2020

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN
AND
THE HON'BLE MRS.JUSTICE R.HEMALATHA

W.P.No.34819 of 2019
and WMP.No.35582 of 2019

Mr.P.A.Josseph .. Petitioner
Vs.

1.The State Election Commissioner,
The Tamil Nadu State Election Commission,
Inner Ring Road, Jay Nagar,
Koyambedu, Chennai-600 106.

2.The Managing Director,
MX Player, Video Streaming Operator,
2nd Floor, Wing "A" Kanakia Wall Street,
Village Chakala, Antheri Kurla Road,
Antheri East,
Mumbai-400 093.

3.Mr.Gowtham Vasudev Menon ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus directing the 1st respondent to prohibit the 2nd and 3rd respondents from in any way exhibiting, streaming the film namely "Queen" in any form including promotional posters, trailers or allied publications in all languages by considering the petitioner representation dated 09.12.2019 taking into consideration the order passed by the Election Commission of India invoking Article 324 of Constitution of India by their proceeding, vide No.491/MM/2019/Comm dated 10.04.2019 and its consequential proceedings vide No.437/6/CG/ECI/LET/FUNCT/MCC/2019 dated 10.04.2019 as the Model Code of Conduct in short MCG has come into operation in order to ensure free and fair Local Body Election.

For Petitioner : Mr.E.Vijay Anand

For Respondents: Mr.AR.L.Sundaresan, Senior Counseling
for Mr.Nedunchezian for R1

Mr.Sathish Parasaran, Senior Counseling
for Mr.A.R.Pradeep for R2 and R3

O R D E R

M.SATHYANARAYANAN, J.

The Writ Petition, styled as a Public Interest Litigation, is filed by a resident of Arumbakkam, Chennai-600106 and he would state among other things that a web serial/film namely, "QUEEN" directed and produced by the third respondent, sought to be released by the second respondent through free online web streaming and it claims to be a biopic of Former Chief Minister of Tamil Nadu Ms.J.Jayalalitha. The petitioner would state that Local Body Elections sought to be held in the State of Tamil Nadu and the contest is on party lines and if the web serial is allowed to be streamed, it would definitely have influence on the mind of the voters and also tend to disturb the level playing field during elections.

2. The petitioner would further state that Articles 243K and 243ZA r/w. Article 324 of the Constitution of India guarantee free and fair election and also pointed out that, with regard to the release of biopic of Mr.Narendra Modi - Hon'ble Prime Minister of India during Parliament Elections 2019, the Electional Commission of India, vide proceedings dated 10.04.2019 had prohibited such a telecast. The petitioner would further state that the intention of the producer as well as the director appear to be that the said biopic, which can be downloaded free in the internet, should reach people and thereby to influence their mind to vote in a particular pattern, that too in favour of a particular political party, which is also a ruling party. The petitioner would also state that there is no effective or alternative remedy available for the reason that the web serial do not undergo the process of censorship at the hands of the statutory body, namely, Central Board of Film Certification (CBFC) and as such, there is no mechanism to analyze the contents of the said film. The petitioner, in this regard, has also submitted a detailed representation dated 09.12.2019 to the first respondent and despite receipt and acknowledgment, no action whatsoever has been taken by the said authority and therefore, the petitioner has been constrained to approach this Court by filing this writ petition.

3. Mr.E.Vijay Anand, learned counsel appearing for the petitioner would submit that since the web serial "QUEEN" is a biopic of the Former Chief Minister of Tamil Nadu, namely Ms.J.Jayalalitha and that it can also be downloaded free from internet, there is bound to be wider audience and since the candidates nominated by the ruling party are also contesting in the ensuing Local Body Elections, free web streaming would definitely influence their mind and as such, it would also definitely affect the purity of election process and hence, prays for appropriate orders.

4. Mr.AR.L.Sundaresan, learned Senior Counsel assisted by Mr.Nedunchezian, learned counsel appearing for the first respondent / Tamilnadu State Election Commission would submit

that the representation of the petitioner is of recent origin and it would be examined and appropriate orders would be passed at the earliest and he would further add that the biopic "QUEEN" produced and directed by the third respondent and being telecasted by the second respondent is purely fictional and it is not going to affect the outcome of the election process and as such, the apprehension expressed by the petitioner is wholly unfounded and prays for dismissal of this writ petition.

5. Mr.Sathish Parasaran, learned Senior Counsel assisted by Mr.A.R.Pradeep, learned counsel appearing for the respondents 2 and 3 would submit that Deepa Jayakumar, who is the niece of the Former Chief Minister of Tamil Nadu Ms.J.Jayalalitha, has filed C.S.No.697 of 2019 against Tvl.A.L.Vijay, Vishnu Vardhan Induri and Gowtham Vasudev Menon / third respondent herein and pending disposal of the said Suit, prayed for ad-interim injunction in O.A.No.1102 of 2019 restraining the respondents 1 to 3 / defendants 1 to 3, their men, servants, agents etc., from in any manner whatsoever making, releasing, publishing, exhibiting publicly or privately selling, promoting or advertising or entering into film festival or otherwise producing in any format any film, drama, serial, teleserial, web serial or any other literary or artistic expression in respect of the life of Dr.J.Jayalalitha, the Former Chief Minister of Tamil Nadu and/or her family members and their direct descendants without the consent of the applicant/plaintiff, pending disposal of the Suit. The learned Senior Counsel appearing for the respondents 2 and 3 would submit that the said application came to be rejected subject to a rider that the respondents 1 and 2 therein shall adhere to the undertaking given in paragraph 13 of the counter affidavit of the second respondent therein and the third respondent therein/herein shall adhere to the commitment of providing a disclaimer that it is a work of fiction and that resemblance to real persons is coincidental and not intentional and also ensure that no character closely resembling the applicant is depicted in the web series pending adjudication of the Suit and the respondents 2 and 3, in compliance of the same, had also published a disclaimer. It is further pointed out by the learned Senior Counsel appearing for the respondents 2 and 3 that already 11 episodes of the said web serial have been uploaded and persons interested in seeing the same are entitled to make free download and the present writ petition is nothing but a publicity exercise with an oblique and malafide motive and that the protagonist of the web serial is called 'Sakthi Seshadri' and in any event, voters would exercise their franchise based on their preference and capability of the elected representatives to perform and discharge their public duties for the welfare of the people and hence, prays for dismissal of this writ petition with exemplary costs.

6. This Court paid it's best attention to the rival submissions and also perused the entire materials placed before it.

<https://hcservices.ecourts.gov.in/hcservices/>

7. A learned Single Judge of this Court in the order dated 12.12.2019 made in O.A.No.1102 of 2019 in C.S.No.697 of 2019 has

taken into consideration the stand of the third respondent herein that the web series would be based on the book titled "QUEEN" and that it would be a fictional rendition and the protagonist of the web serial is called 'Sakthi Seshadri'.

8. The learned counsel appearing for the petitioner has invited the attention of this Court to the order passed by the Election Commission of India dated 10.04.2019 prohibiting the exhibition of the film titled 'PM NARENDRA MODI', where the Election Commission of India took a stand that the materials available on record with regard to the said film being a biopic of Mr.Narendra Modi - Hon'ble Prime Minister of India and a prospective candidate in the current general elections to Lok Sabha cannot be exhibited. In the considered opinion of the Court, the said order of the Election Commission of India has no application to the facts of this case for the reason that it is a web serial wherein download is permitted free of cost and as directed in the order dated 12.12.2019 in O.A.No.1102 of 2019 in C.S.No.697 of 2019, disclaimer has also been published.

9. Assuming for the sake of arguments that the said web serial "QUEEN" depicts the life and glory of the Former Chief Minister of Tamil Nadu, it may not going to affect the choice of the people to elect their representatives in the ensuing Local Body Elections for the reason that choice of the people on candidates may not be purely on political affiliation but also on their capability to perform their duties to the public. It cannot be said that voters will exercise their franchise purely on the basis of political personality, who is no more and that apart, in the web serial, namely "QUEEN", the name of the main character is known as 'Sakthi Seshadri' and in the light of disclaimer that it is purely fictional and that any resemblance to real persons is coincidental and not intentional, this Court cannot pass an order of restraint.

10. It is also to be noted at this juncture that web serial is not a regular film and any person interested in seeing the episodes have to go to the website and download it and therefore, it may not be equated to a regular film, in respect of which, the Election Commission of India has passed the order dated 10.04.2019.

11. It is also the stand of the first respondent that the representation of the petitioner is of recent origin and it would be considered and early disposal will be given in accordance with law.

12. The powers of Election Commission of India are wide and the said power is complimentary and supplemental and being an important entity in the Scheme of the Constitution, it cannot be said that the first respondent may not exercise it's powers in fair and proper manner. If the first respondent comes across any infraction, duty is also cast upon them in ensuring free and fair election and also purity of the election process.

13. In the light of the reasons assigned above, this writ petition lacks merit and deserves dismissal.

14. In the result, this Writ Petition is dismissed. However, in the circumstances of the case, there shall be no order as to costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

Jvm

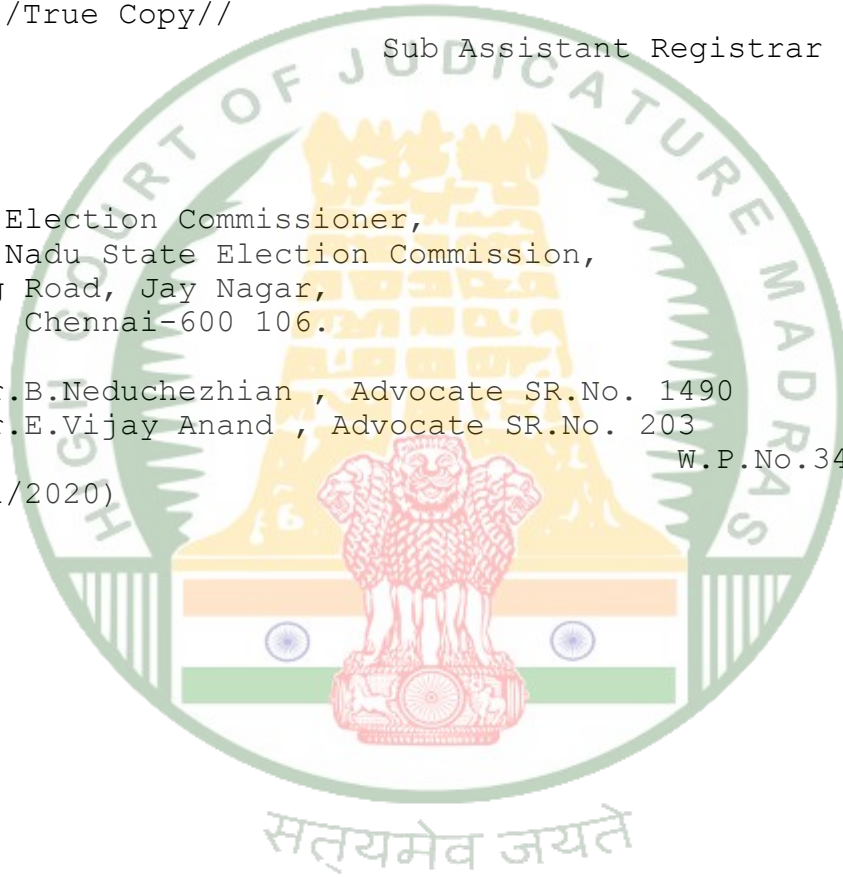
To
The State Election Commissioner,
The Tamil Nadu State Election Commission,
Inner Ring Road, Jay Nagar,
Koyambedu, Chennai-600 106.

+1cc to Mr.B.Neduchezhian , Advocate SR.No. 1490

+1cc to Mr.E.Vijay Anand , Advocate SR.No. 203

W.P.No.34819 of 2019

A.SK(30/01/2020)



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