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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2020

CORAM

THE HONOURABLE MR.JUSTICE M.DURAISWAMY

AND

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

W.P (MD) No. 904 of 2020

and

W.M.P (MD) Nos. 688, 1194, 1196 & 1197 of 2020

S.Kaleeswari

... Petitioner

Vs.

1.The State Election Commissioner,
208/2, Jawaharlal Nehru Salai,
Arumbakkam, Chennai - 106.

2.The District Collector and the District Election Officer,
Virudhunagar,
Virudhunagar District.

3.The Returning Officer,
Union Ward Member Election,
Narikudi Panchayat Union,
Virudhunagar District.

4.Panchavarnam

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 to 3 to conduct the draw of lot in accordance with Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995, for the election of the post of Chairman and Vice Chairman in Narikudi Panchayat Union Council in Virudhunagar District under the superintendence and monitoring by an Advocate Commissioner/Observer or by any independent District Level I.A.S., or I.P.S., Officer from Virudhunagar District or neighbouring District with videographing within the premises of the office of the second respondent.

For Petitioner : Mr.Veera Kathiravan
Senior Counsel
for M/s.Veera Associates



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For Respondents:

Mr.Raja Karthikeyan for R.1

Mr.K.Chellapandian
Additional Advocate General
assisted by

Mr.VR.Shanmuganathan
Special Government Pleader for R.2 & R.3

Mr.M.Ajmal Khan
Senior Counsel
for Mr.E.Marees Kumar for R.4

* * * * *

ORDER

[Order of the Court was made by **M.DURAISWAMY, J.**]

The petitioner has filed the above writ petition to issue a writ of Mandamus directing the respondents 1 to 3 to conduct the draw of lot in accordance with Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995, for the election of the post of Chairman and Vice Chairman in Narikudi Panchayat Union Council in Virudhunagar District under the superintendence and monitoring by an Advocate Commissioner/Observer or by any independent District Level I.A.S., or I.P.S., Officer from Virudhunagar District or neighbouring District with videographing within the premises of the office of the second respondent.

2. The petitioner belonged to D.M.K., Party and the fourth respondent belonged to A.I.A.D.M.K., Party. It is the case of the petitioner that she contested for the post of Chairman for Narikudi Panchayat Union, Virudhunagar District in the election held on 11.01.2020 by the respondents 1 to 3. Out of the 14 elected Union Council Ward members, who had cast their votes on 11.01.2020, the petitioner as well as the fourth respondent secured 7 (seven) votes each. Since both the candidates have secured equal number of votes, as per Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995, the Returning Officer should proceed with drawing of lot. Further, when the Returning Officer was about to proceed with the drawing of lot as per Rule 88(1) of the said Rules, some miscreants entered into the counting room and also attacked the Deputy Superintendent of Police, Aruppukkottai with weapon and caused injuries.

3. According to the petitioner, all the vandalism were captured in the C.C.T.V. The Returning Officer/third respondent had informed the petitioner as if the election was countermanded due to vandalism. However, the petitioner objected to the decision



of the Returning Officer and requested to proceed with the declaration of results as stated in Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995. However, the third respondent refused to proceed with the election process. Though she gave representations to the second respondent, the second respondent also did not proceed to declare the results following Rule 88(1) of the said Rules.

4. The official respondents are not disputing that both the petitioner as well as the fourth respondent had secured 7 (seven) votes each. The Honourable Supreme Court in various judgments held that the election process cannot be questioned by an aggrieved party by way of a writ petition under Article 226 of the Constitution of India. But, in the case on hand, the Assistant Returning Officer, by name, M.Subramanian, himself, who is the Block Development Officer, Union Office, Narikudi, Thiruchuli Taluk, Virudhunagar District, has given a police complaint to the Sub Inspector of Police, Narikudi Police Station, at 03.00 p.m., on 11.01.2020 and a First Information Report (F.I.R.) was also registered wherein he has specifically stated that the petitioner and the fourth respondent had secured 7 (seven) votes each and that he was proceeding to elect the successful candidate by drawing of lot and at that time, one Ravichandran had torn the ballot papers and some other persons have ransacked the room by damaging two computers and one printer and that they have also tried to attack the Government Officers and also scolded them using filthy language.

5. From the complaint given by the Assistant Returning Officer, it is clear that the petitioner as well as the fourth respondent have secured equal number of votes in the election for the post of Chairman of Narikudi Panchayat Union. As per Rule 88 (1) of the Tamil Nadu Panchayats (Election) Rules, 1995, in the event of there being an equality of votes between two candidates and the addition of one vote to any one of such candidates will entitle him to be declared duly elected, the Returning Officer shall draw lot in the presence of the Ward members and the candidate whose name is drawn shall be deemed to have the additional vote and shall be declared to have been duly elected.

6. When the votes were counted and both the candidates had secured equal number of votes, the Returning Officer should have proceeded to draw lot in the presence of Ward members and declare the result of the election as per Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995.



7. Since the Assistant Returning Officer himself has stated that both the candidates have secured equal number of votes, we have no reason to disbelieve or reject the said statement. Even in the case of statement made by the petitioner or the fourth respondent with regard to the votes secured by them, this Court can reject their contention and ask them to face re-election. But, in the case on hand, when the Assistant Returning Officer himself has stated that both of them had secured equal number of votes, this case cannot be equated with other election matters. The statement made by the Assistant Returning Officer amounts to declaration of number of votes secured by the candidates. Therefore, we are of the considered view that re-election to the post of Chairman of Narikudi Panchayat Union is unwarranted. The Returning Officer should proceed to draw lot in the presence of Ward members as contemplated under Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995 and declare the results. It is rather unnecessary exercise to conduct re-election in respect of Narikudi Panchayat Union for the said post.

8. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 2 and 3 submitted that after completion of the counting, the ballot papers were torn and taken away by the persons who had entered into the counting room on 11.01.2020. Since the ballot papers were torn and taken away by the persons after completion of counting process and when the Assistant Returning Officer has stated that both the candidates have secured equal number of votes, which amounts to declaration of counting, there is no necessity for conducting re-election except to proceed to declare the results by drawing of lot as contemplated under Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995.

9. In these circumstances, we direct the respondents 1 to 3 to declare the results for the post of Chairman of Narikudi Panchayat Union, Virudhunagar District, by drawing of lot in the presence of Ward members as contemplated under Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995, on 30.01.2020 at 11.00 a.m. We also make it clear that but for the statement made by the Assistant Returning Officer as to the equal votes secured by both the candidates, this Court would not have granted the relief sought for in this writ petition.

10. With these observations, this writ petition is disposed of. No costs. Though the petitioner has filed W.M.P(MD)No.1194 of 2020 seeking to amend the prayer to challenge the notification to



conduct re-election for the post of Chairman of Narikudi Panchayat Union, the learned Senior Counsel appearing for the petitioner has not made any submissions in that regard and therefore, all the connected writ miscellaneous petitions are closed.

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Sd/-

Assistant Registrar

// True Copy //

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Sub Assistant Registrar (CS)

rsb

To

1.The State Election Commissioner,
208/2, Jawaharlal Nehru Salai,
Arumbakkam,
Chennai - 106.

2.The District Collector and the District Election Officer,
Virudhunagar,
Virudhunagar District.

3.The Returning Officer,
Union Ward Member Election,
Narikudi Panchayat Union,
Virudhunagar District.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-3567[F] dated
29/01/2020)

+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-3535[F] dated
29/01/2020)

+1CC TO MR.RAJA KARTHIKEYAN, Advocate Sr. No. 3605

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No. 3642

W.P (MD) No. 904 of 2020

and

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28.01.2020

ns (CO)

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