



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.01.2020

CORAM

**THE HONOURABLE MR.JUSTICE M.DURAI SWAMY
AND
THE HONOURABLE MR.JUSTICE T.RAVINDRAN**

W.P(MD)No.905 of 2020

and

W.M.P(MD)Nos.683, 1198, 1200 & 1201 of 2020

AND

W.P(MD)No.1652 of 2020

and

W.M.P(MD)Nos.1383 & 1384 of 2020

W.P(MD)No.905 of 2020:

S.Kannan

... 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,
Watrap Panchayat Election Officer,
Virudhunagar District.

4.Sindhu Murugan

... 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 record the name of the petitioner as Chairman for the Watrap Panchayat Union Council in the minutes book and also direct the respondents 1 to 3 to publish the same in the official gazette in accordance with Rule 88 of Tamil Nadu Panchayats (Election) Rules, 1995.

For Petitioner

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



WEB COPY

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 M/s.Ajmal Associates
for R.4

W.P(MD)No.1652 of 2020:

Latha ... 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,
Watrap Panchayat Election Officer,
Virudhunagar District.

4.S.Kannan

5.Sindhu Murugan

... Respondents

Prayer : Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorari calling for the records relating to the impugned notification issued by the first respondent vide Na.Ka.No.7361/2019/Oo.The.2., dated 21.01.2020 and quash the same as illegal as far as Serial No.26 under the caption of the Panchayat Union Chairman, Watrap, Virudhunagar District, is concerned.

For Petitioner : Mr.R.Viduthalai
Senior Counsel
for Mr.C.Gangai Amaran

For Respondents: Mr.Raja Karthikeyan for R.1



WEB COPY

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 M/s.Ajmal Associates for R.5

COMMON ORDER

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

W.P(MD)No.905 of 2020 has been filed by one S.Kannan, seeking to issue a writ of Mandamus directing the respondents 1 to 3 to record the name of the petitioner as Chairman for the Watrap Panchayat Union Council in the minutes book and also direct the respondents 1 to 3 to publish the same in the official gazette in accordance with Rule 88 of Tamil Nadu Panchayats (Election) Rules, 1995.

2. W.P(MD)No.1652 of 2020 has been filed by one Latha seeking to issue a writ of Certiorari to call for the records relating to the impugned notification issued by the first respondent vide Na.Ka.No.7361/2019/Oo.The.2., dated 21.01.2020 and quash the same as illegal insofar as Serial No.26 under the caption of the Panchayat Union Chairman, Watrap, Virudhunagar District, is concerned.

3. Heard the respective learned Senior Counsel appearing for the petitioners, the learned Additional Advocate General appearing for the State, the learned Counsel for the first respondent/State Election Commission as well as the learned Senior Counsel appearing for the private respondent(s).

4. It is the case of the petitioner in W.P(MD)No.905 of 2020/4th respondent in W.P(MD)No.1652 of 2020 that he belonged to D.M.K., Political Party and the fifth respondent in W.P(MD)No.1652 of 2020 belonged to A.I.A.D.M.K., Political Party. Further, it is the case of the petitioners that the writ petitioner in W.P(MD) No.905 of 2020, namely, S.Kannan, who is the fourth respondent in W.P(MD)No.1652 of 2020, secured 7 (seven) votes out of 13 (thirteen) votes. Whereas the fourth respondent in W.P(MD)No.905 of 2020/fifth respondent in W.P(MD)No.1652 of 2020, namely, Sindhu Murugan secured 6 (six) votes. Further, the petitioners contended that Sindhu Murugan had asked for recounting of votes two times and it was also done and however, the results remained unchanged. Further, the petitioners have stated that before declaring the petitioner in W.P (MD)No.905 of 2020, namely, S.Kannan as successful candidate, some



miscreants of the fourth respondent in W.P(MD)No.905 of 2020, namely, Sindhu Murugan, entered into the hall and started rioting by throwing chairs, etc. and they also tried to snatch the ballot box.

5. According to the petitioners, the Returning Officer failed to implement the results as per Rule 88(1) of the Tamil Nadu Panchayats (Election) Rules, 1995. Subsequently, the first respondent - State Election Commission, by their communication dated 21.01.2020 announced re-election on 30.01.2020 which is under challenge in W.P(MD)No.1652 of 2020.

6. Mr.R.Viduthalai, learned Senior Counsel appearing for the petitioner in W.P(MD)No.1652 of 2020 submitted that the writ petition is very much maintainable and in support of his contentions, relied upon the following judgments:

(i) In ***Bharati Reddy v. State of Karnataka and others*** reported in ***(2018) 6 Supreme Court Cases 162***, the Honourable Supreme Court held as follows:

"8. Being aggrieved by the dismissal of the writ petition, the writ petitioners (respondent Nos.6 to 9 herein) carried the matter in Writ Appeal No.101459 of 2016. The Division Bench reversed the judgment of the learned Single Judge and allowed the writ appeal vide judgment and order dated 05.06.2017. It remanded the matter to the learned Single Judge for fresh decision.

9. The appellant therefore, approached this Court by way of Special Leave Petition (Civil) No.17059 of 2017 (converted to Civil Appeal No.10587 of 2017) wherein the preliminary objection regarding the bar under Article 243-O of the Constitution of India and locus of the writ petitioners, as also the contention that the only remedy to challenge the election of the appellant would be an election petition, was reiterated. The two-Judge Bench of this Court disposed of the appeal preferred by the appellant on the finding that the voter of the Panchayat cannot be rendered remediless and if he is aggrieved by the election of the Adhyaksha of the Panchayat, it is open to him to seek the remedy of judicial review under Articles 226/227 of the Constitution of the India. In such proceedings, it is open to the High Court to undertake judicial review of the subject matter. In paragraph 13 of its judgment, this Court observed thus: [*Bharati Reddy v. State of Karnataka*, (2018) 12 SCC 61]

"13. It is thus clear that power of judicial review under Articles 226/227 of the Constitution is an essential feature of



WEB COPY

the Constitution which can neither be tinkered with nor eroded. Even the Constitution cannot be amended to erode the basic structure of the Constitution. Therefore, it cannot be said that the writ petition filed by respondent Nos.6 to 9 under Article 226 of the Constitution is not maintainable. However, it is left to the discretion of the court exercising the power under Articles 226/227 to entertain the writ petition."

Again in paragraph 15, the Court observed thus:

"15. As noticed above, though respondent Nos.6 to 9 are the voters are not the members of the Zila Panchayat. They are aggrieved by the election of the appellant to the office of the Adhyaksha. They cannot challenge the election of the appellant to the office of Adhyaksha by filing an election petition as they are not the members of the Zila Panchayat in question. In our view, a voter of the Zila Panchayat who is not a member cannot be denied an opportunity to challenge the election to the office of Adhyaksha under Articles 226/227 of the Constitution. Therefore, we hold that the writ petition filed by respondent Nos.6 to 9 before the High Court is maintainable."

10. After this decision, the preliminary objections regarding the maintainability of writ petition stood concluded. An attempt was made by the appellant to question the correctness of the view expressed by this Court in the aforesaid decision. Concededly, even if the arguments of the appellant may appear to be attractive, it cannot be entertained in relation to the decision *inter partes*."

(ii) In ***Bharati Reddy v. State of Karnataka and others*** reported in ***(2018) 12 Supreme Court Cases 61***, the Honourable Supreme Court held as follows:

"Leave granted. The appellant was elected as a member of Zila Panchayat, Bellary from 13-Badanahatti Constituency, which was reserved for General (Women) category in the election held on 20.2.2016. The State Government issued a Notification dated 15.4.2016 reserving the post of



Adhyaksha of Zila Panchayat, Bellary for Backward Class-B (Woman). The appellant contested for the said office and was declared as elected. Respondents 6 to 9 are residents of Bellary district and were voters in the election to the Zila Panchayat in question. They filed Writ Petition No.106417 of 2016 in the Dharwad Bench of Karnataka High Court challenging the election of the appellant as the Adhyaksha mainly on the ground that she does not belong to Backward Class (B) and that she has contested the election on the basis of a false caste certificate issued by the Tahsildar, Kurugodu, Bellary. The appellant raised objection as to the maintainability of the writ petition having regard to the bar contained in Clause (b) of Article 243-O of the Constitution of India. It was also contended that the aggrieved party has to challenge the election by way of election petition before the jurisdictional District Judge.

7. Part IX containing Articles 243, 243-A to 243-O was inserted by the Constitution 73rd Amendment Act, 1992. Article 243-O which is relevant for this case reads as under:

"243-O. Bar to interference by courts in electoral matters - Notwithstanding anything in this Constitution-

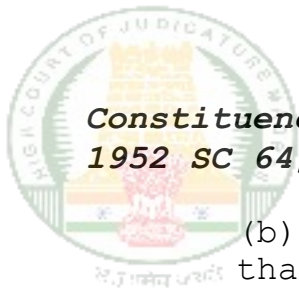
(a) The validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243K, shall not be called in question in any court;

(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."

7. Since the petitioner in W.P(MD)No.1652 of 2020 is challenging the Election Notification, dated 21.01.2020, Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 2 and 3, submitted that the writ petition in W.P (MD)No.1652 of 2020 is not maintainable in view of the judgments of the Honourable Supreme Court. In support of his contentions, he also relied upon the following judgments:

(i) In **N.P.Ponnuswami v. Returning Officer, Namakkal**

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



Constituency, Namakkal, Salem District and 4 others reported in **AIR 1952 SC 64**, the Honourable Supreme Court held as follows:

"17. It may be pointed out that Article 329 (b) must be read as complimentary to clause (a) of that article. Clause (a) bars the jurisdiction of the courts with regard to such law as may be made under Articles 327 and 328 relating to the delimitation of constituencies or the allotment of seats to such constituencies. It was conceded before us that Article 329(b) ousts the jurisdiction of the courts with regard to matters arising between the commencement of the polling and the final selection. The question which has to be asked is what conceivable reason the legislature could have had to leave only matters connected with nominations subject to the jurisdiction of the High Court under Article 226 of the Constitution. If Part XV of the Constitution is a code by itself, i.e., it creates rights and provides for their enforcement by a Special Tribunal to the exclusion of all courts including the High Court, there can be no reason for assuming that the Constitution left one small part of the election process to be made the subject-matter of contest before the High Courts and thereby upset the time-schedule of the elections. The more reasonable view seems to be that Article 329 covers all "electoral matters".

19. It will be useful at this stage to refer to the decision of the Privy Council in **Theberge v. Laudry (1876) 2 AC 102**. The petitioner in that case having been declared duly elected a member to represent an electoral district in the Legislative Assembly of the Province of Quebec, his election was after-wards, on petition, declared null and void by judgment of the Superior Court, under the Quebec Controverted Elections Act, 1875, and himself declared guilty of corrupt practices both personally and by his agents. Thereupon, he applied for special leave to appeal to Her Majesty in Council, but it was refused on the ground that the fair construction of the Act of 1875 and the Act of 1872 which preceded it providing among other things that the judgment of the Superior Court "shall not be susceptible of appeal" was that it was the intention of the legislature to create a tribunal for the purpose of trying election petitions in a manner which should make its decision final for all purposes, and should not annex to it the incident of



its judgment being reviewed by the Crown under its prerogative. In delivering the judgment of the Privy Council, Lord Cairns observed as follows :-

"These two Acts of Parliament, the Acts of 1872 and 1875, are Acts peculiar in their character. They are not Acts constituting or providing for the decision of mere ordinary civil rights; they are Acts creating an entirely new, and up to that time unknown, jurisdiction in a particular Court..... for the purpose of taking out, with its own consent, of the legislative Assembly, and vesting in that Court, that very peculiar jurisdiction which, up to that time, had existed in the Legislative Assembly of deciding election petitions, and determining the status of those who claimed to be members of the Legislative Assembly. A jurisdiction of that kind is extremely special, and one of the obvious incidents or consequences of such a jurisdiction must be that the jurisdiction, by whomsoever it is to be exercised, should be exercised in such a way that should as soon as possible become conclusive; and enable the constitution of the legislative Assembly to be distinctly and speedily known."

After dealing with certain other matters, the Lord Chancellor proceeded to make the following further observations :--

"Now, the subject-matter, as has been said, of the legislation is extremely peculiar. It concerns the rights and privileges of the electors and of the Legislative Assembly to which they elect members. Those rights and privileges have always in every colony, following the example of the mother country, been jealously maintained and guarded by the Legislative Assembly. Above all, they have been looked upon as rights and privileges which pertain to the Legislative Assembly, in complete independence of the Crown, so far as they properly exist. And it would be a result somewhat surprising, and hardly in consonance with the general scheme of the legislation, if, with regard to rights and privileges of this kind, it were to be found that in the last resort the determination of them no longer belonged to the Legislative Assembly, no longer belonged to the Superior Court which the Legislative Assembly had put in its place, but belonged to the Crown in Council, with the advice of the advisers of the Crown-at-home, to be determined without reference either to the judgment of the Legislative Assembly, or of that Court which the Legislative Assembly had substituted in its place."



The points which emerge from this decision may be stated as follows :-

(1) The right to vote or stand as a candidate for election is not a civil right but is a creature of statute or special law and must be subject to the limitations imposed by it.

(2) Strictly speaking, it is the sole right of the Legislature to examine and determine all matters relating to the election of its own members, and if the legislature takes it out of its own hands and vests in a Special Tribunal an entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it."

(ii) In an unreported judgment of the Honourable Supreme Court in Civil Appeal Nos.8515-8516 of 2018 [***West Bengal State Election Commission and others v. Communist Party of India (Marxist) and others***, decided on 24.08.2018], it is held as follows:

"19. Moreover, the election process had already been initiated. The last date for the filing of nominations was over. The directions issued by the High Court are in the teeth of the settled principle of self-restraint which governs the exercise of the jurisdiction under Article 226 once the election process commences. Moreover, such a direction would be contrary to the provisions of Article 243-O of the Constitution. In this view of the matter, we are of the view that the High Court was in error in issuing directions for the acceptance of nominations in the electronic form. The judgement of the High Court would accordingly have to be set aside.

20. While issuing notice in these proceedings on 10 May 2018, this Court directed that the election which was scheduled to take place on 14 May 2018 shall proceed in accordance with law and upon its conclusion, the results would be notified. However, the State Election Commission was directed not to notify the results in respect of constituencies where there was no contest, without the leave of the Court. On 3 July 2018, when the proceedings were taken up, this Court was informed by Mr.P S Patwalia, learned Senior Counsel appearing on behalf of the BJP - West Bengal Unit that at the Panchayat level as many as 16,860 seats have remained uncontested out of a total of 48,650 seats; for the Panchayat Samitis, 3,096 seats out of the 9,217 were uncontested while in the Zila Parishads 203 out of the 825 seats were

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



the data in relation to uncontested seats, on behalf of the State Election Commission. The data placed on the record indicates that out of a total of 58,692 seats combined for Gram Panchayats, Panchayat Samiti and Zila Parishads, 20,159 seats have been uncontested. 3,096 seats out of the 16,860 seats representing 36.1 per cent of the total seats for Gram Panchayats have been uncontested. In the case of the Panchayat Samitis, 33.5 percent of seats were uncontested while 24.6 percent seats for Zila Parishads were uncontested.

21. As regards the uncontested seats, the following submissions have been urged before this Court on behalf of the State Election Commission:

(i) The State Election Commission has been alive to the need to conduct a free and fair election and after the election took place on 14 May 2018, it ordered a re-poll in 572 booths where problems had occurred;

(ii) The State Election Commission had received only 1770 complaints and, as such, it would be incorrect to postulate that the elections of all the 20,159 uncontested seats have been vitiated.

22. These submissions have been supplemented on behalf of the State government by Mr Vikas Singh, learned senior counsel who urged that : (i) this Court should not exercise its jurisdiction to interfere with the declaration of the results of uncontested seats, once the process has been completed; (ii) under the provisions of Section 7 of the West Bengal Panchayat Act 1973 the term of the panchayats is only five years after which no extension is permissible; (iii) if the declaration of results to the uncontested seats are not allowed to be effected, it would be impossible to constitute the panchayats, resulting in a failure of allocation of funds for constitutional purposes; (iv) in the absence of any cogent complaint of obstruction in the filing of nominations a generalised presumption cannot be made in respect of each one of the nearly 20,000 seats. It has been submitted that as many as 3,170 panchayats are non-functional as a result of the stay on the declaration of results.

23. Mr Kalyan Bandopadhyay, learned senior counsel appearing on behalf of the All India Trinamool Congress submitted that: (i) the uncontested seats were not the subject matter of the



writ petition before the Hon'ble High Court; neither were there any pleadings, nor were there any prayers; (ii) interference of this Court in regard to the uncontested seats will result in setting the election process at naught in the absence of the affected parties; (iii) once the election process has commenced, it cannot be arrested and the only remedy is to challenge the outcome of the election by filing an election petition and (iv) under the provisions of Article 243-E, the term of every panchayat is five years and no longer. Article 243-O imposes a bar on the interference by the Court. At this stage, any interference would seriously impede the constitutional process of constituting the panchayats.

24. Section 64 of the Panchayat Elections Act lays down the procedure to be followed in the case by contested and uncontested elections. If at any election of a gram panchayat, panchayat samiti or zila parishad, the number of contesting candidates is less than the number of seats to be filled in a constituency, the panchayat returning officer shall forthwith declare all such candidates to be duly elected. Under Section 77, as soon as may be, after the result of an election has been declared, the panchayat returning officer must report the result to the District Panchayat Election Officer; to the Director of Panchayats and Rural Development and to the Commission. The Director is under a duty to cause the declarations of the names of the elected candidates to be published in the Official Gazette.

25. Any dispute regarding the election has to be pursued in the manner which is provided in Part VII of the Panchayat Election Act.

Under Section 79(1):

"79. (1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-section (1) of section 93 and section 94 -

(a) before the Civil Judge having jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti,



WEB COPY

(b) before the District Judge of the district, where such election is in respect of a Zilla Parishad or the Siliguri Mahakuma Parishad." Section 80 stipulates that no election to a panchayat shall be called into question except by an election petition presented in accordance with Part VII. In fact, Section 84(1) also stipulates that the Court shall dismiss an election petition which does not comply with the provisions of Section 79 or Section 80."

26. The Panchayat Elections Act is a complete code in regard to the conduct of the poll and for the resolution of disputes concerning the validity of the election. Article 243K entrusts the superintendence, direction and control over the conduct of all elections to the panchayats in the State Election Commission. Clause (b) of Article 243-O stipulates thus:

"243-O. Notwithstanding anything in this Constitution—

(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."

27. There is merit in the submission that the discipline which is mandated by the provisions of the Constitution and enforced by the enabling state law on the subject must be maintained. Any dispute in regard to the validity of the election has to be espoused by adopting a remedy which is known to law namely through an election petition. It is at the trial of an election petition that factual disputes can be resolved on the basis of evidence. This principle has been consistently adhered to in decisions of this Court. In Boddula Krishnaiah (supra), a three Judge bench, adverted to the decisions of the Constitution Bench in NP Ponnuswami v Returning Officer, Namakkal Constituency 1952 SCE 218 and in Lakshmi Charan Sen v AKM Hassan Uzzaman (1985) 4 SCC 689. After referring to Ponnuswamy, it was observed:

"In NP Ponnuswamy v Returning Officer, Namakkal Constituency a Constitution Bench of this Court had held that having



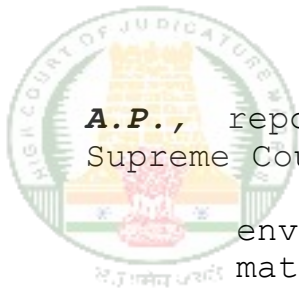
WEB COPY

regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are committed, while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the election; and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress. The binding principle must be followed."

28. The intervention of this Court has been sought on the basis that free and fair elections are a part of the basic feature of the Constitution. Mr Patwalia urged, the entire electorate vicariously is a party to the contest. Exercise of the jurisdiction by this Court has been sought on the ground that the process of election was polluted, there having occurred large scale obstructions to the filing of nomination papers by candidates. The submission is that as many as 20,159 seats have gone uncontested and an overwhelmingly large majority of them have been bagged by candidates supported by the ruling dispensation in the State of West Bengal. Mr Patwalia urged that there is contemporaneous material to indicate that as a result of obstruction and violence, candidates were prevented from filing their nominations. Mr Patwalia invoked the observations contained in the judgment of this Court in *Mohinder Singh Gill v The Chief Election Commissioner, New Delhi* (1998) 1 SCC 405, emphasising the need to maintain the purity of the election process."

(iii) In ***Boddula Krishnaiah v. State Election Commissioner,***

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



A.P., reported in **AIR 1996 Supreme Court 1595**, the Honourable Supreme Court held as follows:

"7. Article 243 (o) of the Constitution envisages bar on interference by Courts in election matters. Notwithstanding anything contained in the Constitution, under sub-clause (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'. Thus there is a constitutional bar on interference with the election process except by an election petition, presented to an Election Tribunal as may be made by or under law by the competent legislature and in the manner provided thereunder. Power of the Court granting stay of the election process is no longer *res integra*.

8. In *N.P.Punnuswami v. Returning Officer, Namakkal Constituency*, 1952 SCR 218 : (AIR 1952 SC 64), a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which under the law by which elections are governed, would have the effect of vitiating the "election"; and enable the person affected to call it in question, they should be brought up before a special Tribunal by means of an election petition and not be made the subject of a dispute before any Court while the election is in progress."

(iv) In **B.Pazhaniswamy v. The Tamil Nadu Chief Election Commissioner** reported in (1997) 1 MLJ 612, the Division Bench of this Court held as follows:

"1. In the light of the provisions contained in Article 243-O(b) of the Constitution of India, which provides that no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such

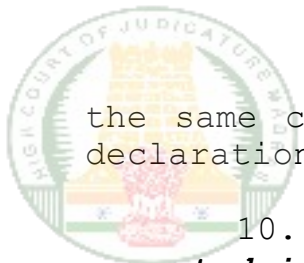


manner as is provided for by or under any law made by the Legislature of a State, we do not consider that it is permissible to interfere with the acceptance or rejection of the nomination papers for the election to Village Panchayat. The election process commences from the issuance of the calendar of events till the results of election are declared. As the acceptance or rejection of nomination is out of the stages in the process of election, the validity of it can only be challenged in an election petition and not under Article 226 of the Constitution. There was a controversy earlier to introduction of Part IX and Article 243-O of the Constitution, as to whether the principles underlying Article 329 of the Constitution could be extended to matters relating to the elections to the various local bodies. But, ultimately now the controversy is put an end to by the introduction of Article 243-O(b) of the Constitution. Hence, we are of the view that the jurisdiction under Article 226 of the Constitution cannot be exercised as against the order of acceptance or rejection of nomination paper or in respect of any of the stages of the election process."

8. Mr.M.Ajmal Khan, learned Senior Counsel appearing for Sindhu Murugan, in support of his contentions, relied upon the judgment in ***Avtar Singh Hit v. Delhi Sikh Gurdwara Management Committee and others*** reported in ***(2006) 8 Supreme Court Cases 487***, wherein the Honourable Supreme Court held as follows:

"21. In ***Mohinder Singh Gill v. Chief Election Commissioner, AIR 1978 SC 851***, it was held that if during the process of election, at any intermediate or final stage, the entire poll has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law."

9. On a careful consideration of the materials available on record and the submissions made on either side, it could be seen that the issue involved in the present writ petitions is with regard to the maintainability of the writ petitions, i.e., whether the petitioners can question the election process which had commenced on 21.01.2020 by issuance of a notification. In the above-referred judgments relied on by the respective learned Counsel for the respondents, it has been categorically held that once an election process had commenced, a party cannot challenge the same and that



the same can be challenged only after the conduct of election and declaration of results by way of election petition.

10. In ***Mohinder Singh Gill v. Chief Election Commissioner reported in AIR 1978 SC 851***, the Honourable Supreme Court held that even if the election has been wrongly cancelled and a fresh poll has been wrongly ordered, that is a matter which may be agitated after declaration of the result on the basis of the fresh poll, by questioning the election in the appropriate forum by means of an election petition in accordance with law.

11. In the judgment in ***Bharati Reddy v. State of Karnataka and others*** reported in ***(2018) 6 Supreme Court Cases 162***, relied upon by the learned Senior Counsel for the petitioners, the said writ petition which is the subject matter of Civil Appeal was filed by the respondents 6 to 9 therein for issuance of a writ of Quo Warranto and the writ petition was not filed by the contesting candidate. Since the respondents 6 to 9 in the Civil Appeal were only voters, it was contended by the appellant in the Civil Appeal that they had no *locus standi* to challenge the election of the appellant as Adhyaksha, Zila Panchayat, Bellary which is an indirect election under Article 243-O of the Constitution of India. Since the respondents 6 to 9 filed a writ of Quo Warranto directing the appellant to vacate the office of Adhyaksha, Zila Panchayat, Bellary, the Honourable Supreme Court held that the writ petition is maintainable.

12. In the case on hand, the writ petition in W.P(MD)No.1652 of 2020 has been filed by the petitioner challenging the election notification itself and therefore, the ratio laid down in the judgment relied upon by the learned Senior Counsel for the petitioners is not applicable.

13. Mr.K.Chellapandian, learned Additional Advocate General appearing for the respondents 2 and 3 submitted that the election was not concluded on 11.01.2020 and therefore, the first respondent - State Election Commission had issued notification for re-election on 30.01.2020. Since there is nothing on record produced before us to establish that the writ petitioner in W.P(MD)No.905 of 2020, namely, S.Kannan had secured 7 (seven) votes and that Sindhu Murugan had secured 6 (six) votes, this Court is not in a position to give any finding with regard to the same. That apart, the judgments relied upon by the respective learned Counsel for the respondents squarely apply to the facts and circumstances of the present case and therefore, in view of the repeated pronouncements of the Honourable Supreme Court to the effect that the election process cannot be challenged before this Court under Article 226 of the Constitution of India, we are not inclined to entertain both the writ petitions.



14. Accordingly, both the writ petitions are dismissed. No costs. Consequently, all the connected writ miscellaneous petitions are also dismissed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2020

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,
Watrap Panchayat Election Officer,
Virudhunagar District.

+2 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-3568 & 3569
+2 CC to M/s.RAJA.KARTHIKEYAN, Advocate (SR-3607 & 3608
+1 CC to M/s.SPL.GP (SR-3641 & 3643 [F] dated 29/01/2020)
+2 CC to M/s.VEERA ASSOCIATES, Advocate (SR-3534[F] dated
29/01/2020)
+2 CC to M/s.C.GANGAI AMARAN, Advocate (SR-3536

W.P (MD) No. 905 of 2020

and

W.M.P (MD) Nos. 683, 1198, 1200 & 1201 of 2020

AND

W.P (MD) No. 1652 of 2020

and

W.M.P (MD) Nos. 1383 & 1384 of 2020

28.01.2020

JMN (29.01.2020) 17P : 13C