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W.P.(MD) No.5642 of 2020

MIBEFOR THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.03.2020

CORAM:

THE HON'BLE MR.JUSTICE S.S.SUNDAR

and

THE HON'BLE MR.JUSTICE C.SARAVANAN

W.P. (MD) No.5642 of 2020

V.P.Ammavasai

... Petitioner

Vs.

- 1.The Secretary to Government,
Tamil Nadu Rural Development &
Panchayat Raj Department,
Secretariat,
Chennai - 600 009.
- 2.The State Election Commissioner,
Tamil Nadu State Election Commission,
Koyambedu, Chennai - 600 106.
- 3.The District Collector cum Inspector of Panchayat,
Madurai District.
- 4.The Revenue Divisional Officer cum
The Returning Officer cum The
Electoral Officer for Usilampatti
Assembly Constituency,
Usilampatti Union, Usilampatti,
Madurai District.
- 5.The Commissioner cum Electoral Officer,
Usilampatti Union, Usilampatti,
Madurai District.

6.Ranjani

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 3rd respondent herein to conduct enquiry and take necessary action to remove the 6th respondent from the post of 7th Ward Member and Chairman of the Usilampatti Panchayat Union, who does not possess necessary qualification contemplated in the Act to be elected for the above said post and also action against the respondents 4 and 5 for acting illegally in favour of the 6th respondent in compliance with the directions issued by the 2nd respondent vide through his proceedings in X.K..1582/2020/g[gp dated 11.02.2020, considering the representation dated 23.01.2020 as expeditiously within the time stipulated by this Court.



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For Petitioner : Mr.T.Ayngaraprabhu
For Respondents: Mr.K.Chellapandian, AAG Asst.
by D.Muruganantham, AGP
for RR1, 3, 4 and 5
Mr.Raja Karthikeyan,
standing counsel for R2
Mr.D.Sadiq Raja, for R6

ORDER

(Order of the Court was made by S.S.SUNDAR, J.)

This writ petition is filed for issuing a writ of mandamus, directing the 3rd respondent District Collector cum Inspector of Panchayat, to conduct enquiry and take necessary action to remove the 6th respondent from the post of 7th Ward Member and Chairman of the Usilampatti Panchayat Union, who does not possess necessary qualification contemplated under the Act to be elected for the above said post and further to take action against the respondents 4 and 5 for acting illegally in favour of the 6th respondent in compliance with the directions issued by the 2nd respondent.

2.The petitioner has earlier given representation on 23.01.2020, which are similar to the averments made in the affidavit filed in support of this petition. In substance, this petition is filed to consider the representation of the petitioner dated 23.01.2020. The petitioner is one of the candidate, who contested to the post of Ward Member of Ward No.8 of Usilampatti Panchayat Union. It is admitted that on 06.01.2020, the election results were declared and sixth respondent was elected as member of Ward No.7. The sixth respondent also contested for the post of Chairman of Panchayat Union of Usilampatti Panchayat Union and the election was conducted on 11.01.2020 and the sixth respondent was elected as Chairman. 12 days later, the petitioner submitted a representation, in which, the petitioner raised objection and submitted that the sixth respondent is not eligible to contest as she is not qualified to contest the election either as Member or Chairman of the Union as she is not residing in the village.

3.It is to be seen that the petitioner is also elected as Member of Ward No.8 and the petitioner did not contest the election for the Chairmanship. It is admitted before this Court that the qualification of 6th respondent was never challenged by any one at the time of scrutiny of nomination or thereafter, when she was elected as the Member of Ward No.7. Even her nomination for the post of Chairman was not questioned by any one on the ground that she is not a resident of any village within Usilampatti Panchayat Union. In the said circumstances, any one, who is interested in challenging the election of 6th



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respondent either as Member of a Ward or Chairman of Panchayat Union, has to approach the Tribunal to file an election petition as contemplated under Section 258 of Tamil Nadu Panchayat Act. Section 258 of the Tamil Nadu Panchayat Act specifically reads as follows:

"258.Election Petitions.- (1) No election of a President or a Chairman or a Member shall be called in question except by an election petition presented to the District Judge of the district in which the Panchayat is situated, within forty-five days from the date of the publication of the result of the election under this Act.

(2)An election petition calling in question any such election may be presented on one or more of the grounds specified in section 259 by any candidate at such election, by any elector of the ward concerned or by any member.

(3)A petitioner shall join as respondents to his petition all the candidates at the election.

(4)An election petition -

(a)shall contain a concise statement of the material facts on which the petitioner relies;

(b)shall, with sufficient particulars, set forth the ground or grounds on which the election is called in question; and

(c)shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908(Central Act V of 1908) for the verification of pleadings.

(5)The trial of an election petition shall, so far as is practicable consistently with the interest of justice in respect of the trial, be continued from day-to-day until its conclusion, unless the district judge finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

(6)Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the district judge for trial."

4.The learned counsel appearing for the petitioner referred to Section 41 of the Tamil Nadu Panchayat Act, which reads as follows:

"41.Authority to decide Questions of disqualification or cessation of members. - (1)If any question arises as to whether any person who has been elected as a member of a panchayat is not qualified or has become disqualified unde Section 33 or Section 34 or Section 35 or sub-section (3)



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of Section 38 or 38 A or cessation under Section 40, the question shall be referred by the Inspector to the Government whose decision shall be final.

(2) Before taking any such decision on such question, the Government shall obtain the opinion of the Tamil Nadu Election Commission and shall act according to such opinion."

5. The learned counsel appearing for the petitioner submitted that the 6th respondent though claimed she is not the resident of Nakkalapatti Village, which comes within the Panchayat Union of Usilampatti. The petitioner also belongs to the same Panchayat Union. As per Section 33 of the Tamil Nadu Panchayat Act, no person shall be qualified for election as a Member or President of a Panchayat unless his/her name appears on the electoral roll of the concerned Panchayat. It is not in dispute that the name of the 6th respondent is found in the electoral roll of the concerned Panchayat. In these circumstances, the petitioner has produced before this Court certain documents to show that the 6th respondent is not an assessee in respect of any building or property in the village. There is no other positive material to show that the 6th respondent was residing elsewhere and her name was included in the electoral roll of any other panchayats, so that, she may be declared disqualified to contest the election either to the post of Member or Chairman of Usilampatti Panchayat Union.

6. Be that as it may. The procedure contemplated under Section 41 of the Tamil Nadu Panchayat Act is a matter ultimately to be decided by the Government on the reference made by the Inspector of Panchayat viz., the District Collector. It is stated that the decision of the Government will be final. Section 41 (2) of the Act also requires the District Collector to apply to the prescribed judicial authority, whose decision shall be final.

7. Section 259 of the Panchayat Act is also relevant. Election of any candidate as Member or Chairman can be declared as void on the finding of learned District Judge as to the qualification of a person, who is elected as a Member under the Panchayat Act. Therefore, reading of the relevant provisions under the Act, this Court is of the view that the election petition will be the effective alternative remedy, which would also be preferred by any one including a person like the petitioner, who has grievances as it is expressed in the present petition.

8. In the said circumstances, it is not necessary that the petitioner should approach the respondents in terms of Section 41 of the Tamil Nadu Panchayats Act, when there is an effective alternative remedy of filing election petition challenging the election of sixth respondent. Section 258 of the Act contemplates the filing the election petition within 45 days



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from the date of publication of the results of the election. It is informed before this Court that election petition has already been filed in Election Original Petition in E.O.P.No.14 of 2020. Since, Section 258(3) of the Act require the election petitioner to join as respondent to his petition all the candidates at the election. It is also open to the petitioner to get himself impleaded as a party to the proceedings, so that, he may support the election petition on the ground, which he canvasses before this Court. In case, for any reasons, the petitioner is unable to get himself impleaded in the election petition for any technical reasons, it is open to the petitioner to submit his representation before the District Collector viz., the third respondent and the third respondent shall then pass appropriate orders as it is contemplated under the provisions of the Tamil Nadu Panchayats Act. If any decision as to the qualification of the 6th respondent is taken in the election petition filed by any member, that shall be final in terms of the provisions of the Tamil Nadu Panchayats Act and the petitioner cannot agitate further on the issue.

9. With the above observations, this writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (C.S.II)

/True Copy/

Sub Assistant Registrar

To

1. The Secretary to Government,
Tamil Nadu Rural Development & Panchayat Raj Department,
Secretariat, Chennai - 600 009.
2. The State Election Commissioner,
Tamil Nadu State Election Commission, Koyambedu, Chennai - 106.
3. The District Collector cum Inspector of Panchayat,
Madurai District.
4. The Revenue Divisional Officer cum The Returning Officer
cum The Electoral Officer for Usilampatti
Assembly Constituency,
Usilampatti Union, Usilampatti, Madurai District.
5. The Commissioner cum Electoral Officer,
Usilampatti Union, Usilampatti, Madurai District.

+1cc to Mr. Raja. Karthikeyan, Advocate Sr.No.12493
+1cc to The Special Government Pleader, SR.No.12672