

HON'BLE SRI JUSTICE ABHINAND KUMAR SHAVILI

WRIT PETITION No.3071 OF 2020

ORDER:

Heard the learned counsel for the petitioner and the learned Government Pleader for Cooperative Societies.

This writ petition is filed seeking the following relief :-

“.....Writ of Mandamus declaring the action of the respondent No.5 in rejecting the nomination filed by the petitioner for the 12th ward (B.C.-General) for the election of the 4th respondent society under Form-V, Rule 22(8-D) (V) dt.09.02.2020, as illegal, arbitrary, malafide and violation of principles of natural justice and consequently direct the respondent No.5 to receive the caste certificate and accept the nomination for the 12th ward (B.C.-General) for the election of the 4th respondent society and allow the petitioner to contest the elections of the 4th respondent society, in the interest of justice.....”

It has been contended by the petitioner that he belongs to BC community and is the member in the 4th respondent society. Since the 12th ward was reserved for BC (General) category, petitioner has filed nomination for the 12th ward under BC (General) category on 08.02.2020 and the Election Officer-5th respondent has received his nomination and also issued the acknowledgment receipt. The petitioner further contends that at the time of nomination i.e, at about 2:05 p.m, the 5th respondent has not insisted for caste certificate but later at 3:00 p.m, at the instance of local people, the 5th respondent asked him to produce the caste certificate on 09.02.2020 at 9:00 am and accordingly, he has approached the 5th respondent on 09.02.2020 i.e on Sunday to submit his caste certificate but the 5th respondent refused to

accept the same on the ground that he has not filed the caste certificate along with nomination. Petitioner further contends that he had submitted a detailed representation on 10.02.2020 to the 6th respondent requesting to accept his nomination stating that he admittedly belongs to the BC community.

Learned counsel for the petitioner contends that appropriate orders be passed in the writ petition directing the respondents to consider the case of the petitioner and permit the petitioner to participate in the Elections scheduled to be held on 15.02.2020.

Learned Government Pleader appearing for the respondents contends that the petitioner at the time of filing nomination on 08.02.2020 had requested the 5th respondent to grant one hour time so as to enable him to enclose the BC community certificate. Admittedly, petitioner has not turned up to submit his caste certificate and it is only on 09.02.2020, petitioner has approached the 5th respondent to submit his caste certificate. Since the petitioner has approached the 5th respondent on Sunday i.e., 09.02.2020 i.e., after scrutiny of the nominations, the 5th respondent refused to receive the same. When once the nomination is rejected, the 5th respondent has no power to accept the BC caste certificate submitted by the petitioner. Therefore, the 5th respondent has rightly rejected the nomination of the petitioner. He has also drawn the attention of this Court to the representation submitted by the petitioner to the 6th respondent on 10.02.2020, wherein the petitioner has clearly admitted that he has not submitted BC caste certificate along with the nomination and when the 5th respondent insisted for the same, petitioner

himself sought one hour time on 08.02.2020 to produce the same. As admittedly, petitioner failed to produce the caste certificate within one hour, the question of considering the case of the petitioner would not arise. He further contends that the contentions raised by the petitioner that the 5th respondent has not insisted for BC caste certificate at the time of receiving nomination is totally incorrect and contrary to the representation submitted by the petitioner himself. Therefore, he contends that there are no merits in the writ petition and the same is liable to be dismissed.

This Court, having considered the rival submissions of the learned counsel appearing for the respective parties, is of the considered view that no relief can be granted to the petitioner as admittedly petitioner has tried to mislead the Court by making submission in paragraph 5 of the affidavit stating that 5th respondent has not insisted for BC caste certificate whereas a perusal of the representation dated 10.02.2020 submitted by the petitioner would clearly establish that the petitioner himself has admitted on 08.02.2020 that he would submit BC caste certificate within one hour. As admittedly petitioner failed to submit the BC caste certificate within one hour, the nomination of the petitioner was rightly rejected by the 5th respondent.

Since Election Notification is already issued, this Court cannot interfere with the case in view of the law laid down by the Hon'ble Supreme Court in ***N.P.Ponnuswami vs. Returning Officer, Namakkal***¹ wherein the Supreme Court held as follows:

¹ AIR 1952 SC 64

“(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 and entirely new and unknown jurisdiction, that special jurisdiction should be exercised in accordance with the law which creates it.”

For the aforesaid reasons, this writ petition is dismissed. No order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

ABHINAND KUMAR SHAVILI, J

Date: 13-02-2020
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