



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
18.11.2021	13.12.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS.1820, 3443 & 3448 OF 2019

AND

W.M.P. NOS. 2018, 3739, 3746, 3742, 3744,
34251, 36620 & 36625 OF 2019

Dr. P.Balakrishnan ...Petitioner in WP 1820/2019
Dr. K.Prakasam ...Petitioner in WP 3443/2019
Dr. K.Thangamuthu ...Petitioner in WP 3448/2019

-Vs-

1.The State of Tamil Nadu
rep. By its Chief Secretary
Fort St. George, Secretariat
Chennai.

2.The State of Tamil Nadu
rep. By its Principal Secretary
Dept. of Health & Family Welfare
Secretariat, Chennai.

3.The Tamil Nadu Medical Council
rep. By its Registrar
New No.914, Old No.569
Poonamallee High Road
Arumbakkam, Chennai 600 106.

4.The Administrator/Election Officer
Tamil Nadu Medical Council
New No.914, Old No.569
Poonamallee High Road

5.Dr.Senthil

6.Dr.Jeyasingh

7.Dr.Thiyagarajan

8.Dr.Dhalapathy

9.Dr.Sadagopan

10.Dr.Ponnuraj

11.Dr.R.V.S.Surendran ...Respondents in all the petitions



Common Prayer : Writ Petitions filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the records and to quash the Letter No.10938/ZI/2018-14 dated 8.1.2019 issued by the 2nd respondent and consequently direct the Tamil Nadu Medical Council to conduct fresh and fair election under the supervision of the retired High Court Judge.

In all Petitions

For Petitioners : Mr.C.Kanagaraj

For Respondents : Mr.M.R.Gokulakrishnan, GA for RR-1 & 2
Mr.V.Ayyadurai, SC, for
Mr.G.Sankaran for R-3
M/s.S.Karthikabalan for R-4
Mr.P.Wilson, SC, for
Mr.P.Wilson Associates for RR-5 to 11

COMMON ORDER

All the three writ petitions have been filed by the respective petitioner challenging the rejection order passed by the 2nd respondent in and by which the appeal, which was directed to be considered by this Court in accordance with law, was rejected and questioning the sustainability of the said order and also for re-conduct of fresh elections to the Tamil Nadu Medical Council.

2. Pursuant to the intent to conduct election to the post of office bearers in the Tamil Nadu Medical Council, W.P. No.15073/17 was filed and this Court, vide order dated 28.6.2017, appointed a retired Judge of this Court as Administrator to conduct the election. Accordingly, the Judge-Administrator had conducted the elections and after counting of the votes, the results were declared.

3. However, after the announcement of the results on 16.8.18, spate of allegations have been levelled against the nominees and also the act of the Judge-Administrator and a series of writ petitions in W.P. Nos.4442, 5449 and 5450/18 and W.P. No. 20718/18 were filed resulting in orders being passed to keep the ballot boxes under lock and seal. Thereafter, direction was also issued to the 2nd respondent to pass orders on the representation filed by the petitioners on the allegations levelled not only against the eligibility of the contesting individuals but also against the Administrator to the effect that the Rules with regard to the postal ballots and their rejection was not followed and that the Administrator had acted



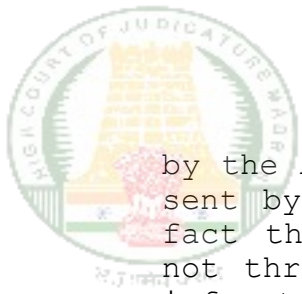
in an arbitrary manner. Pursuant to the said order of this Court dated 30.05.2018, the 2nd respondent, after hearing the parties and affording opportunity and also after scrutinizing the documents, has passed an order, aggrieved by which the present writ petitions have been filed.

4. Learned counsel appearing for the petitioners submit that the whole electoral process was rigged and fake and bogus votes were cast and, therefore, the whole election should be declared void. It is the further submission of the learned counsel for the petitioners that the Administrator, without appreciating the rule position with regard to the manner in which the votes are to be declared as invalid, has rejected votes, which are very much valid and the said act of the Administrator has prejudiced the whole election process and the election process has not been conducted in fair and proper manner.

5. It is the further submission of the learned counsel for the petitioners that two of the candidates, viz., respondents 10 and 11, relevant documents in support of their candidature have not been submitted, yet the Administrator, without proper application of mind, has accepted their nomination and allowed them to contest and had declared the results, which is wholly unsustainable. It is the submission of the learned counsel for the petitioners that while the 10th respondent has not submitted the no objection certificate from his employer for contesting the election, the 11th respondent has not filled the application properly and supportive documents have not been filed and for the said deficiency, the nominations of the said respondents ought to have been rejected. However, the Administrator, without appreciating the above, has accepted the nominations of respondents 10 and 11.

6. It is the further submission of the learned counsel for the petitioners that rejection of very many voters, who have cast their votes on the ground that there is mismatching of signatures or for very many other flimsy reasons, has resulted in a flawed election process, which is not in consonance with the Madras Medical Registration Act and the Rules and also the Manual appended thereto, which has gravely prejudiced the other candidates, who have contested in the elections and, therefore, the election process deserves to be set aside.

7. It is the further submission of the learned counsel for the petitioners that above all the contentions, advanced above, which renders the election process a farce, the main ground on which the election process needs to be set aside is the fact that though votes numbering more than 600, to be precise 617, have been received, however, the said votes have been rejected



by the Administrator on the ground that the said votes have been sent by Speed Post and not through Registered Post. The mere fact that the postal ballots have been sent by Speed Post and not through Registered Post would in no way be termed to be an infraction of the conditions stipulated in the Manual as Speed Post and Registered Post are equivalent modes of sending the postal ballots and, therefore, the unfair rejection of the votes is against the Tamil Nadu Medical Council Rules.

8. It is therefore submitted that though the above aspects have been highlighted in the representation submitted by the petitioners before the 2nd respondent, however, inspite of the specific direction of this Court in W.P. Nos.8560 to 8562 of 2018, the same has not been considered in proper perspective by the 2nd respondent and the impugned order suffers from lack of application of mind and, therefore, the same deserves to be set aside and a fresh election needs to be ordered.

9. Per contra, learned Government Advocate appearing for respondents 1 and 2 submitted that on the basis of the orders passed by this Court and after affording an opportunity to the petitioners and also the other respondents and also the Judge Administrator, who had filed a detailed reply and the process by which the election was conducted, the 2nd respondent has appreciated all the materials placed before it and had come to the conclusion that the election was conducted in a fair and proper manner and the allegations alleged against the election process and the Judge Administrator are baseless and, therefore, rejected the representations vide the impugned order. It is the further submission of the learned Government Advocate that at no point of time during the election process, any objection was raised by the petitioners and that being case, the present petitions filed by the petitioners is nothing but an after-thought to stop the office bearers from taking charge for reasons best known to them. The impugned order, in no way, suffers from any infirmity and, therefore, the present petitions deserve to be dismissed.

10. Learned senior counsel appearing for the 3rd respondent submitted that the present petition deserves to be dismissed in limine for the reason that the petitioners have already filed suit in O.S. No.1000 of 2018 before the City Civil Court, Chennai to declare the election conducted on 16.2.2018 as null and void. Therefore, invoking the jurisdiction of this Court under Article 226 of the Constitution parallely when the suit is pending is impermissible. It is the further submission of the learned senior counsel for the 3rd respondent that the petitioners have come to this Court with unclean hands by suppressing the filing of the suit and, therefore, the writ petitions deserves to be dismissed.



11. It is the further submission of the learned senior counsel for the petitioners that though orders have been passed in the earlier round of litigations in W.P. Nos.4442/2018, in which this Court had opined the prayer sought for by the petitioner could not be granted and that it was open to the petitioners to take recourse to the remedy available u/r 17 of the Madras Medical Registration Manual, which has been taken recourse to and which has resulted in the passing of the impugned order, the present petitions at the instance of the petitioners is nothing but an attempt to challenge the election, which was the subject matter in W.P. Nos.4442/2018. Further, when the petitioners have challenged the elections in a manner known to law, by filing suit in O.S. No.1000/2018, the present writ petition is an arm twisting tactic adopted by the petitioners to stall the functioning of the Tamil Nadu Medical Council.

12. It is the further submission of the learned senior counsel for the 3rd respondent that the procedural aspects in the matter of conduct of election relating to the number of votes, voters, nomination process, election process and the invalidation of votes, cannot be decided in a writ petition and for the said reason, these petitions deserve to be dismissed.

13. Learned senior counsel for respondents 5 to 11, while concurring with the submissions advanced by the learned counsel for the 3rd respondent, further submitted that the order of the 2nd respondent is categorical, in that the 2nd respondent has clearly held that Rule 17, which is relied on by the petitioners applies only to the first election and that the subsequent elections are governed by Rule 19. The 2nd respondent has further gone on to hold that the appeal filed by the petitioners lack any merit.

14. It is the further submission of the learned senior counsel for respondents 5 to 11 that the averments of the petitioners require material evidence, both oral and documentary for establishing the case. Such issues, being disputed questions of fact, cannot be gone into in the writ petition and requires extensive evidence and examination of witnesses and, therefore, the issues raised in this writ petition cannot be decided by this Court under Article 226 of the Constitution. Further, it is the submission of the learned senior counsel for respondents 5 to 11 that the petitioners having already filed suit in O.S. No.1000/2018, challenging the election, the petitioners are estopped from filing this writ petition and, as stated above, the issues raised in the present writ petition cannot be decided under the writ jurisdiction. No materials regarding the act of bribery or corrupt practice alleged by the petitioners have been tabled before this Court and those issues,



being disputed questions of fact, cannot be decided in this writ petition.

15. Apart from the above points, which have been filed by the respondents 5 to 11 by way of counter, it is the submission of the learned senior counsel for respondents 5 to 11 that the Tamil Nadu Medical Manual mandates receipt of the ballot votes through . However, the invalidated votes were sent through Speed Post. The main cause of rejection of the said votes is that the said votes have been sent through Speed Post and not through Registered Post as mandated in the manual. It is the contention of the learned senior counsel for respondents 5 to 11, Speed Post and Registered Post are not equivalent modes of sending the ballot papers, as the one sent through Speed Post, is only a deliverable post to the person to whom it is addressed, whereas, a post sent through Registered Post is a return post, which reverts back to the sender informing him that the said post sent by him has been delivered to the sender and acknowledgment thereof is given to the sender of the post. It is the submission of the learned senior counsel for respondents 5 to 11 that the Tamil Nadu Medical Manual mandates only sending of ballot papers by Registered Post and such being the case, sending of the ballot papers through Speed Post is not an agreeable form of receipt of the ballot papers and for the aforesaid reason, the Judge Administrator has rightly rejected the said votes, which were not received through Registered Post and, therefore, the grievance expressed by the petitioners that the Judge Administrator has invalidated votes, which were valid, does not deserve acceptance. On the above said contentions, learned senior counsel appearing for respondents 5 to 11 prayed for dismissal of the writ petitions.

16. This Court gave its careful consideration to the submissions advanced by the learned counsel on either side and perused the materials available on record.

17. Though very many decisions have been relied on by the learned counsel appearing for the petitioners and certain decisions have been relied on by the learned counsel appearing for the respondents, however, in view of the nature of dispute and the appreciation of facts leading to a decision to be arrived at by this Court in the present petitions, adverting to any of the decisions is not necessary and, accordingly, this Court is not dealing with any of the decisions.

18. The issue in the present writ petition is two-fold. On the one side, the conduct of the elections, the procedure followed, the invalidation of votes, the corrupt practices that have been followed during the election process and the approval of the nomination of respondents 10 and 11 are put to issue, on



the other side, the invalidation of votes received through Speed Post and not through Registered Post, which were against the rules framed under the Tamil Nadu Medical Manual is sought to be sustained on the sole ground that Speed Post and Registered Post are equivalent forms of sending of ballot papers and that the ballot papers can be sent in either of the forms.

19. From the above issues, it can be safely concluded that there are two sets of issues, one relatable to facts and one relatable to interpretation of a provision available in the Tamil Nadu Medical Manual.

20. Even at the very outset, it could safely be concluded that insofar as the issues relating to facts, this Court, sitting under Article 226 of the Constitution cannot decide issues relating to disputed questions of fact. In the case on hand, as submitted by the learned senior counsel for the respective respondents, the issues relating to the conduct of the elections, the alleged procedural violations, the alleged invalidation of votes, the corrupt practices that have been alleged to have occurred during the election process and the alleged approval of the nomination of respondents 10 and 11 are all issues relating to facts, which have to be proved by letting in oral and documentary evidence and the same cannot be agitated before this Court under Article 226 of the Constitution. Such being the case, the present petitions at the behest of the petitioners is not maintainable insofar as the aforesaid issues are concerned.

21. Further, it is not disputed by the parties that with regard to the election process, O.S. No.1000/2018 has been filed before the City Civil Court, Chennai, to declare the election as null and void and grounds similar to the one pleaded above have been raised. Such being the case, which submission of the respondents has not been disputed by the petitioner, the filing of the present parallel proceeding before this Court is wholly impermissible.

22. The issues, pointed out above, being factual in nature and which requires oral and documentary evidence, have to be agitated before the court below in the suit in O.S. No.1000/2018 filed by the petitioners and this Court cannot exercise its inherent powers to come to the rescue of the petitioners. Further, it is to be pointed out that the petitioners have not divulged the filing of the suit before the court below in their petition, which clearly shows that the petitioners have not come before this Court with clean hands and have suppressed material information before this Court.

23. Coming to the issue relating to the equivalency of the postal ballots sent through Speed Post and Registered Post, aid is taken of by the respondents to plead before this Court that



the ballot papers should be returned only through Registered Post and not through any other means and any ballot papers received through post other than Registered Post is bound to be rejected.

24. In this regard, advert is to be made to Rule 9 of the The Medical Registration Manual which provides for the manner in which the ballot paper should be sent. For better clarity, the relevant Rule 9 is extracted hereunder :-

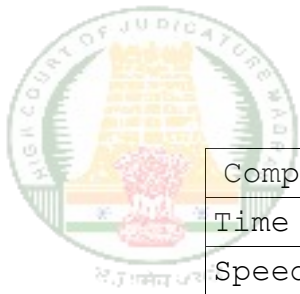
"9. Every elector desirous of recording his vote shall, after filling up the declaration paper and the voting paper according to the directions given in the letter of intimation, enclose the voting paper in the voting paper cover, stick it up, enclose the cover and the declaration paper in the outer envelope addressed to the Returning Officer and send it by registered post at his own cost to the Returning Officer so as to reach him not later than the day and the latest hour fixed for the poll. All envelopes received by unregistered post shall be rejected;

Provided that, at his option, the elector may in person or by messenger deposit the envelope in the ballot box which shall be provided at the office of the Returning Officer on the day and during the hours fixed for the poll."

25. To appreciate the necessity of receiving a ballot paper through registered post, which finds place in Rule 9, which is said to have been sent by the voters, which is alleged to have been held to be invalid votes by the Judge Administrator, it is but necessary to look at the difference between Speed Post and Registered Post to find out whether both or equivalent or different and in case of it being not equivalent, whether the rejection is in order.

26. A comparison of the mode of posting between Speed Post and Registered Post reveals the following :-

Comparison	Speed Post	Registered Post
Meaning	Speed Post is an India Post service that offers secured and time bound delivery of letters, parcel and gifts	Registered Post is also an India Post service similar to an ordinary post, but offers additional facilities like signature of the recipient, extra cover, a proof of delivery, etc.
Delivery	Address Specific	Addressee Specific



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Comparison	Speed Post	Registered Post
Time Taken	Normally 2 - 3 days	Normally 2 - 5 days
Speed	More	Comparitively Less
Record Keeping	Normal record keeping	Special record keeping with precautions and due care
Rates	Cheap	High

27. From the above, it is clear that while Speed Post is address-specific, in essence, the delivery of an article can be taken by the addressee or any other person at the address, but in the case of registered post, the same is addressee-specific, in that only the addressee is allowed to take delivery of the article. Further, normal record keeping is followed in Speed Post while in the case of Registered Post along with an acknowledgment card that needs to be signed by the recipient at the time of delivery. In addition to the above, certain other differences are there between the said two modes of post, with which this Court is not concerned.

28. In the backdrop of the above comparison between the two posts, a perusal of Rule 9 of the Medical Registration Manual, which has already been extracted above reveals that a procedure for sending the voting paper back to the Returning Officer is prescribed. In the said rule, it is clearly mentioned therein that the envelope should be addressed to the Returning Officer and sent by registered post to the Returning Officer. It is further mandated that all envelopes received by unregistered post shall be rejected.

29. From the above, it is implicitly clear that apart from registered post, no other form of posting is permitted and it is liable to be rejected. Moreover, what is more important in the said rule is the fact that the envelope should be addressed to the Returning Officer, meaning thereby that the envelope is addressee-specific and it is not address-specific. That being the case, as noted above in the tabulated form, registered post is the method of posting, which is addressee-specific, whereas speed post method of posting is address specific. The reasoning for the said rule being made addressee-specific is the fact that there should be no malpractice in the votes that are being submitted through posts. Only for the specific purpose, to avoid malpractice and to vest in an authority the control and duty to see that such unscrupulous acts are avoided, the rule has made the manner of posting addressee-specific.

30. When the rule mandates a particular manner in which the posting of the votes is to be done and further the same rule



also mandates that any posting other than in the manner that is mandated would be rejected, then it is incumbent on the authority to adhere to the rule and the mandate made under the rule. In the present case, it is the admitted case of the petitioners that postal votes numbering around 617, which were sent by Speed Post were rejected by the Judge Administrator as impressible to be accepted for the reason that the said votes have not been cast in the manner as mandated under Rule 9. The said act of the Judge-Administrator, by no means, could be termed to be bad or fallacious. In fact, appreciating Rule 9 in proper perspective, the Judge-Administrator has rightly rejected the postal ballots, which were not sent through registered post. Therefore, the contention of the petitioners that votes sent through speed post should also be deemed to be valid votes as speed post is also an equivalent form of posting as registered post, it wholly erroneous and the said contention is unsustainable and is liable to be rejected.

31. For the reasons aforesaid, the contentions raised in the writ petitions cannot be appreciated by this Court sitting under Article 226 of the Constitution of India and, accordingly, all the writ petitions are dismissed. However, liberty is granted to the petitioners to canvass the above factual points before the trial court in the suit. Consequently, connected miscellaneous petitions are closed. In the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

GLN

To

- 1.The Chief Secretary
Government of Tamil Nadu
Fort St. George,
Secretariat, Chennai.
- 2.The Principal Secretary to Government
Dept. of Health & Family Welfare
Government of Tamil Nadu
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4.The Administrator / Election Officer,
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Poonamallee High Road,
Arumbakka, Chennai - 600 106.

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+3ccs to M/s.C.Kanagaraj Associates, Advocates
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+1cc to Mr.G.Sankaran, Advocate Sr.No.66390

+1cc to Mr.P.Wilson Associates, Advocate Sr.No.66302

W.P.NOS.1820,3443 & 3448 OF 2019

GPL(CO)
RVM(27/12/2021)