

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.03.2021

CORAM :

THE HON'BLE MR.SANJIB BANERJEE, CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P.No.6707 of 2021

Dr.S.F.Mohamed Gaddaffe

.. Petitioner

Vs

1.The Election Commission of India,
rep. by its Chief Election Commissioner,
Having Office at Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.

2.The Tamil Nadu State Election Commission,
rep. by its State Election Commissioner,
Cum Chief Electoral Officer,
Having Office at No.208/2,
Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari calling for the records of the first respondent vide impugned order dated 26.7.2018 vide No.76/TN-LA/2016/359 published in the Official Gazette and quash the same unconstitutional and null and void and non-est in law as it is contrary to Sub-Sections (5) to (8) of Section 89 of the Representation of People Act, 1950.

For Petitioner : Mr.E.Prabu

For Respondents : Mr.Niranjana Rajagopalan
for M/s.G.R. Associates
for respondent No.1

ORDER

(Order of the Court was made by The Hon'ble Chief Justice)

The writ petitioner, who contested the 2016 elections to the Legislative Assembly from Mudukulathur Constituency, seeks to challenge an order of July 26, 2018 and the perceived failure of the Election Commission to consider the petitioner's representation of January 28, 2020.

2. By the order dated July 26, 2018, the Election Commission held that the persons named therein, including the petitioner herein, were disqualified for being chosen as a member of either House of Parliament or the Legislative Assembly or the Legislative Council of any State or Union Territory for a period of three years from the date of the order. The reason for this, as specified in the relevant order, was the failure on the part of the petitioner to lodge his accounts of election expenses.

3. For a start, upon the Court's query as to why the writ petition should be entertained nearly three years after the issuance of the said notice, it is submitted on behalf of the petitioner that the order was forwarded to the authorised election agent of the petitioner, but such election agent did not make it over to the petitioner contemporaneously. It is the further submission that the relevant election agent was seriously unwell and has since expired. It, however, does not appear that such facts may have been incorporated in the petition or the affidavit in support thereof. It also appears that the petitioner may have been aware of the order of July 26, 2018 in January, 2020, as the petitioner claims that his representation of January 28, 2020 has not been considered. In the petitioner's letter to the Election Commission dated January 28, 2020, the petitioner complained that he had submitted his accounts relating to the relevant election in the constituency to the Election Officer of the constituency, but such officer refused to receive the same.

4. It is the petitioner's contention now that since the petitioner has a right under Section 11 of the Representation of People Act, 1951 to seek removal or reduction of the period of disqualification upon a disqualification order being passed under Section 10-A thereof, the Commission's order of July 26, 2018 should be kept in abeyance and the petitioner's representation under Section 11 of the Act considered by the Election Commission so that the petitioner may contest in the ensuing election which is slated to be held on April 6, 2021.

5. The petitioner also claims that the petitioner's accounts are ready and it is only because the Election Officer in the constituency did not accept the same that the petitioner could

not file such accounts. The petitioner says that unless the petitioner is permitted to stand in the ensuing elections, the petitioner will suffer irreparable injury and prejudice.

6. No fault can be attributed to the Election Commission in the present case. It appears to be the fairly admitted position that the petitioner's accounts for the 2016 election in the relevant constituency have not been submitted yet. Whether or not there was any genuine ground or the petitioner was prevented by sufficient cause from depositing the accounts, is a question of fact that requires to be assessed. If the petitioner knew of his obligation and the petitioner wrote to the Election Commission in January, 2020, the petitioner ought to have followed it up within reasonable time. In any event, the letter of January 28, 2020 appears to betray the petitioner's knowledge of the order of disqualification.

7. The petitioner has not been able to demonstrate anything in support of the petitioner's assertion that his previous election agent has expired or that the election agent had not communicated the order of disqualification to the petitioner earlier. The petitioner arrives at the last minute to seek an extraordinary order and the legal argument which is put forth is that the disqualification prohibits a person from being an MP or an MLA or an MLC, but it does not prohibit any person from standing in any election.

8. The argument of the petitioner in such regard is fallacious and cannot be accepted. It is well known that conducting an election, even in any single Assembly Constituency, costs considerable expenses. It is inconceivable that the provision as to disqualification has to be so construed to imply that even a disqualified member would be entitled to stand for election, but only that he would not be a member of either House of Parliament or of the Legislative Assembly or the Legislative Council if he stood disqualified. To allow a disqualified person to participate in the election by offering his candidature would amount to doing violence with the provision of the Act and may result in a futile election being conducted upon crores of rupees being expended only to come up with no result, since the disqualified member, if elected from the constituency, cannot be given the appointment. It is quite strange to see that the petitioner, a fringe candidate, had chosen not to take appropriate steps at the relevant time upon receiving the order of July 26, 2018 or on being made aware thereof. This last-minute attempt appears to be a desperate move to squeeze in without being accountable and, without even till date, handing over the accounts pertaining to the previous election.

9. The only relief that can be granted to the petitioner is to permit the petitioner to apply afresh under Section 11 of the Act by making a new representation to the Election Commission within a fortnight from date. The Election Commission will have four weeks therefrom to consider the representation and communicate a decision thereon to the petitioner.

W.P.No.6707 of 2021 is disposed of without any order as to costs. Consequently, W.M.P.No.7261 of 2021 is closed.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To:

- 1.The Chief Election Commissioner,
Election Commission of India,
Having Office at Nirvachan Sadan,
Ashoka Road,
New Delhi - 110 001.
- 2.The State Election Commissioner-Cum-Chief Electoral Officer,
Tamil Nadu State Election Commission,
Having Office at No.208/2,
Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.

+2cc to M/s.G.R.Associates, SR.NO..18556

AKM/31.03.21/4P-5C/

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