



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:02.12.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.NO.25551 OF 2021

AND

WMP.NO.26967 OF 2021

S.Ananthi

.. Petitioner

Vs

1. The State Election Commissioner,
O/o State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Jai Nagar,
Koyambedu - 600 106.

2. The District Collector,
District Election Officer,
Villupuram District.

3. The Block Development Officer/
Election Officer of Panchayat,
President and Ward Members
Mailam Panchayat Union,
Villupuram District.

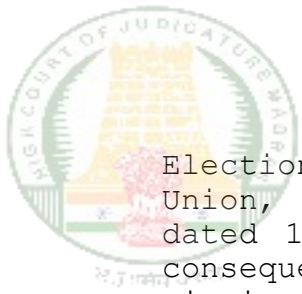
4. The Counting Officer,
Ward No.16, Mailam Block,
Villupuram District.

5.Jothilakshmi

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the District Collector, Villupuram District, The Block Development Officer, Election Officer of Panchayat President and ward members, Mailam Panchayat Union and the Counting Officer Ward No.16, Mailam Block, Villupuram District, the 2nd to 4th respondents to recount the votes polled on 9.10.2021 in the Panchayat President



Election of No.136, Kolliangunam Village, Mailam Panchayat Union, Villupuram District on the basis of the representations dated 12.10.2021, 13.10.2021 to the 2nd and 3rd respondents and consequently direct the respondents to declare the petitioner as winning President candidate for the Kolliangunam Panchayat, Mailam Union, Villupuram District.

For the Petitioner : Mr.K.Balakrishnan

For the Respondents : Mr.S.Siva Shanmugham
for respondent No.1

: Mr.P.Muthukumar
State Government Pleader
for respondent Nos.2 to 4

ORDER

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

The writ petition has been filed to seek a direction on the respondent Nos.2 to 4 for recounting the votes polled on 9.10.2021 in reference to Ward No.16 in the Panchayat President Election of No.136, Kolliangunam Village, Mailam Panchayat Union, Villupuram District based on the representations given by the petitioner.

2. It is submitted that pursuant to the notification for local body election, election for Ward No.16, Mailam Block, Villupuram District was held on 09.10.2021. The petitioner made an application for recounting of the votes, but the Returning Officer did not pass any orders despite a mandate under Rule 66 of the Tamil Nadu Panchayats (Election) Rules, 1995 (for short, '1995 Rules'). As per Rule 66 of the 1995 Rules, whenever an application is filed for recounting of votes, the Returning Officer has to decide it. He may allow the application in whole or in part. Learned counsel for the petitioner submits that no decision on the application was taken and thereby, without recounting the votes, the result of the election was declared. In view of the above, the present writ petition has been filed seeking a direction for recounting of votes as there is a statutory failure on the part of the Returning Officer to take a decision on the application submitted by the petitioner for recounting of the votes.

3. On the issue of maintainability, learned counsel for the petitioner has made a reference to the judgment of this Court in the case of Dravida Munnetra Kazhagam (DMK), through its



Secretary, Legal Wing and others v. The Tamil Nadu State Election Commissioner and others in W.P.No.24078 of 2011 etc., decided on 26.4.2012 [2012 SCC OnLine Mad 1720], wherein it was held that a writ petition questioning the election can be entertained and the writ petition is maintainable before the High Court if exceptional or extraordinary circumstances are established. In the said judgment, it has also been held that in the event a decision is called in question on fact not involving exceptional or extraordinary circumstances, the High Court would not be justified in entertaining the writ petition. The questions involving factual aspect could be resolved only in an election petition. In view of the judgment aforesaid, learned counsel for the petitioner submits that the writ petition to seek a direction on the Returning Officer for recounting of the votes is maintainable.

4. A reference of the judgment of this Court in the case of All India Anna Dravida Munnetra Kazhgam, through its Fisheries Wing Secretary v. The State Election Commissioner and others, reported at 2007 (1) CTC 705 has been given. Therein also, the writ petition was entertained questioning the process of election. The writ petition was found maintainable under Article 226 of the Constitution considering the extraordinary and exceptional circumstances of the case. The issue of alternative remedy of election petition was considered. This Court held that the alternative remedy would not deter the court to exercise the extraordinary jurisdiction in a situation which warrants such interference. The right to vote being a constitutional right, the writ petition is maintainable and it assumes the character of a fundamental right attracting Article 19(1)(a) of the Constitution of India which guarantees freedom of expression. The prayer is, accordingly, made to entertain the writ petition for issuance of a direction on the Returning Officer to recount the votes and thereafter to declare the results afresh.

5. We have considered the submissions made by learned counsel for the petitioner.

6. It is the case of the petitioner that after issuing notification for local body election, the petitioner and other parties participated in the election process. The votes were polled on 09.10.2021 and counting was held on 12.10.2021. The petitioner is said to have made an application for recounting of the votes and the same has not been considered by the Returning Officer and, therefore, it is alleged that Rule 66 of the 1995 Rules has not been complied with.

7. The first question for our consideration is as to whether a writ petition would be maintainable to seek a direction for



recounting of votes on an application alleged to have been submitted by the petitioner.

8. To answer the aforesaid issue, a reference to Article 243-O of the Constitution is necessary and the same is quoted hereunder:

"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."

9. As per the provision quoted above, 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. Article 243-O(b) imposes a bar on questioning the election of any Panchayat, except by way of an election petition. In view of the above, the writ petition under Article 226 of the Constitution would not be maintainable in the given circumstances. The view aforesaid is supported by a judgment of the Apex Court in the case of Harnek Singh v. Charanjit Singh and others, reported at (2005) 8 SCC 383. Paragraphs 16 and 17 of the said judgment are relevant and are quoted hereunder:

"16. Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.

17. In C. Subrahmanyam [(1998) 8 SCC 703] a three-Judge Bench of this Court observed that a writ petition should not be entertained when the main question which fell for decision before the High Court was non-compliance with the provisions of the



Act which was one of the grounds for an election petition in terms of Rule 12 framed under the Act."

10. The aforesaid view of the Apex Court was affirmed by a Larger Bench of the Apex Court in *Laxmibai v. Collector, Nanded and others*, reported at (2020) 12 SCC 186, wherein the law on the point in question has been reiterated as under:

"43. Section 10-A of the 1959 Act and Section 9-A of the 1961 Act read with Articles 243-K and 243-O, are *pari materia* with Article 324 of the Constitution of India. In view of the judgments referred, we find that the remedy of an aggrieved person accepting or rejecting nomination of a candidate is by way of an election petition in view of the bar created under Section 15-A of the 1959 Act. The said Act is a complete code providing machinery for redressal to the grievances pertaining to election as contained in Section 15 of the 1959 Act. The High Court though exercises extraordinary jurisdiction under Article 226 of the Constitution of India but such jurisdiction is discretionary in nature and may not be exercised in view of the fact that an efficacious alternative remedy is available and more so exercise restraint in terms of Article 243-O of the Constitution of India. Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the results of the elections but relegate the parties to the remedy contemplated by the statute. In view of the above, the writ petition should not have been entertained by the High Court. However, the order of the High Court that the appellant has not furnished the election expenses incurred on the date of election does not warrant any interference."

(emphasis supplied)

11. In view of the above, we are unable to accept the argument raised by learned counsel for the petitioner on the maintainability of the writ petition. More so, when the Supreme Court in *Harnek Singh (supra)*, had not accepted the prayer for recounting of votes, particularly, in reference to Article 243-O of the Constitution of India.

12. The petitioner further made a reference to the judgment of this court in the case of *Anna Dravida Munnetra Kazhagam*,

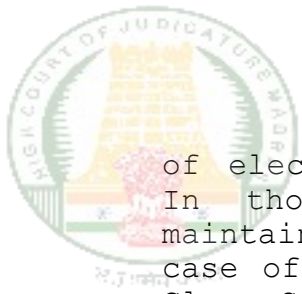


(supra), wherein the writ petition was entertained by this Court by giving specific reasons. It was a case where serious allegation of booth capturing of all wards at the instance of the political party in power was levelled. Taking into consideration the extraordinary situation, the writ petition was entertained. It was not a petition challenging the election of one ward, but filed in the extraordinary circumstances where the allegation was of wholesale rigging and booth capturing of all the wards at the instance of the political party in power. While rendering judgment, it was found that there exist extraordinary circumstances to entertain the writ petition. After taking note of the facts made available to the Court, the writ petition was entertained. However, in the instant case, such extraordinary or exceptional circumstances do not exist.

13. The present writ petition has been filed basically for violation of Rule 66 of the 1995 Rules. It is an undisputed fact that subsequent to the election, counting of votes took place and the result of the election was declared. In view of the above, now a direction for recounting of votes cannot be issued as the result of the election is not under challenge. Even otherwise, such a challenge cannot be made by way of a writ petition, but only by an election petition under Section 258 of the Tamil Nadu Panchayats Act, 1994 and the Rules framed thereunder.

14. It is to be noted that the judgment in the case of Anna Dravida Munnetra Kazhagam (supra) has taken note of the requirement of free and fair election, which is the very foundation of democratic institution. That apart, it was not a challenge to the result of the election to an individual Ward, but a serious allegation of wholesale booth capturing and rigging of all the Wards at the instance of the political party in power. Similar is the position in the case of case of Dravida Munnetra Kazhagam (DMK), (supra). Therein also, taking into consideration the facts, the writ petition was entertained with a rider that in case of disputed question of facts, the writ petition would not be maintainable. We find that when the Constitution itself imposes a bar to question an election save by an election petition, the other remedy would not be available in law in ordinary course. The aforesaid view was accepted by the Apex Court in the case of Harnek Singh and Laxmibai cases (supra).

15. Apart from the aforesaid, we find another reason not to entertain the writ petition. As per Section 258 of the Tamil Nadu Panchayats Act, 1994 and the Rules framed thereunder, an election petition was maintainable within 45 days of the declaration of the result. The writ petition questioning the election has been filed after the period of 45 days when remedy



of election petition was no more available to the petitioner. In those circumstances, the writ petition would not be maintainable in view of the judgment of the Apex Court in the case of Assistant Commissioner (CT) LTU, Kakinada and others v. Glaxo Smith Kline Consumer Health Care Limited, reported at 2020 SCC OnLine SC 440, therein it was held that once the statutory period expires, taking remedy by way of writ petition would not be maintainable. Thus, for both reasons, we do not find that the writ petition is maintainable.

16. In the result, the writ petition is dismissed. W.M.P.No.26967 of 2021 is closed. There will however be no order as to costs.

Sd/-

Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To:

1. The State Election Commissioner,
O/o State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Jai Nagar, Koyambedu - 600 106.
2. The District Collector,
District Election Officer, Villupuram District.
3. The Block Development Officer/Election Officer of Panchayat,
President and Ward Members
Mailam Panchayat Union,
Villupuram District.
4. The Counting Officer,
Ward No.16, Mailam Block, Villupuram District.

+1cc to Mr.K.Balakrishnan, Advocate, S.R.No.63144

+1cc to Government Pleader, in SR.No.63530

[08/04/2022]

W.P.No.25551 of 2021

AND

WMP.NO.26967 OF 2021

KSM(CO)
PM/08/12/2021