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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.12.2021
DELIVERED ON : 14.12.2021

CORAM :

THE HON'BLE MR.MUNISHWAR NATH BHANDARI,
ACTING CHIEF JUSTICE
AND
THE HON'BLE MR.JUSTICE P.D.AUDIKESEVALU

W.P.NO.26171 OF 2021

J.Jayachandran

...Petitioner

Vs

- 1.The Election Commissioner of India,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi- 110 001.
- 2.The All India Anna Dravida Munnetra Kazhagam (AIADMK)
rep. by its Coordinator O.Pannerselvam and
Joint-coordinator Edapadi K.Palanisamy
Head Office - No. 226 Avvai Shanmugam Salai,
Royapettah, Chennai - 600 014.
- 3.O.Paneerselvam
Coordinator
The All India Anna Dravida Munnetra Kazhagam (AIADMK)
No.226, Avvai Shanmugam Salai,
Royapettah,
Chennai- 600 014.
- 4.Edapadi K.Palanisamy
Joint Coordinator
The All India Anna Dravida Munnetra Kazhagam (AIADMK)
No.226, Avvai Shanmugam Salai,
Royapettah,
Chennai- 600 014.
- 5.C.Ponnaiyan
Election Commissioner-cum-Organizational Secretary
All India Anna Dravida Munnetra Kazhagam
Head Office - No.226, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014.



6.Munnaivar Pollachi V.Jayaram, MLA
Election Commissioner-cum-
Secretary of the Constituency
Electoral Division
India Anna Dravida Munnetra Kazhagam
Head Office - No.226, Avvai Shanmugam Salai
Royapettah, Chennai - 600 014.

...Respondents

Prayer : Petition filed under Article 226 of the Constitution of India praying for a writ of mandamus forbearing the first respondent from according its approval for the newly elected post of Coordinator and Joint Coordinator of AIADMK party pursuant to the Election Notice dated 02.12.2021.

For the Petitioner : Mr.N.G.R.Prasad
for M/s.R.Thirumoorthy

ORDER

MUNISHWAR NATH BHANDARI, ACJ

The writ petition has been filed seeking a writ of mandamus to forbear the first respondent from according its approval for the newly elected posts of Coordinator and Joint Coordinator of All India Anna Dravida Munnetra Kazhagam (AIADMK) pursuant to the election notice dated 2.12.2021. An interim injunction is also sought to restrain the fifth and sixth respondents from announcing the election result for the posts of Coordinator and Joint Coordinator pursuant to the election notice, pending disposal of the writ petition.

2. Learned counsel submits that the petitioner is a loyal and sincere member of the second respondent political party for more than thirty years, who rendered dedicated service for upliftment of the people of the Tamil Nadu at large. The second respondent political party came into existence at the instance of M.G.Ramchandran and was approved by the first respondent in the name of All India Anna Dravida Munnetra Kazhagam (AIADMK) and allotted a symbol.

3. Learned counsel further submits that recently a resolution dated 1/2.12.2021 was flashed in the press/media relating to election to the posts of Coordinator and Joint Coordinator of AIADMK, from which it came to light that the rule relating to election of Coordinator and Joint Coordinator was amended by providing for direct election by primary members through a single ballot. The third and fourth respondents jointly announced the election notice on 2.12.2021, where the date of election to the posts of Coordinator and Joint Coordinator was mentioned to be on 7.12.2021 and, accordingly,



the fifth and sixth respondents were appointed as Election Commissioners. As per the schedule given therein, the counting of votes and results are scheduled on 8.12.2021. The third and fourth respondents ignored the mandatory requirement of issuance of notice 21 days prior to the announcement of the elections and the attempt of the respondents was only to allow two nominations excluding others.

4. Learned counsel also submits that when the petitioner made an effort to enter into the party office, he was physically prevented and brutally manhandled. The third and fourth respondents along with the fifth and sixth respondents did not allow any member to submit their nomination papers and, as a consequence, the third and fourth respondents would definitely get elected pursuant to the elections. The petitioner knowing about the schedule of election and denial of nomination by none other than the third and fourth respondents is left with no option but to prefer this writ petition to safeguard the democratic values of the party and the country. The petitioner seeks conduct of free and fair election even if it is for the post in the political party for the reason that the members of the political party are elected as Members of Legislative Assembly and Members of Parliament after the election conducted by the Election Commission of India. In view of the above, the petitioner challenged the election notice dated 2.12.2021 and, presently, even the result of the election conducted after sacrificing the democratic value for which the country is known.

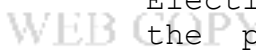
5. Learned counsel submits that the writ petition would be maintainable as directions have been sought against the Election Commission of India. It is in view of the fact that every election is to be monitored by the Election Commission under the Representation of the People Act, 1951 (for brevity, "the Act of 1951"). As all the political parties are registered with the Election Commission of India, the Election Commission of India is under an obligation even to monitor the internal elections of the parties to maintain the democratic values. The Election Commission of India failed to intervene in the internal elections of the second respondent political party despite such elections being conducted in an unfair manner depriving any of the members of the party to participate in the election and, therefore, the relief as sought should be granted.

6. Referring to the judgment in the case of All India Anna Dravida Munnetra Kazhagam v. State Election Commissioner, 2007 (1) CTC 705, learned counsel for the petitioner submits that a public interest litigation would be maintainable whenever injustice is meted out to large number of people. The court need not insist on alternative remedy, rather in exceptional and extraordinary situations, it can exercise the jurisdiction under



Article 226 of the Constitution of India. The democracy can function only if there are free and fair elections. The right to vote is a constitutional right and exercise of such right is accomplishment of freedom of expression of voters. The failure on the part of the State Election Commission to ensure free and fair elections may require exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India by this Court. It is for the reason that democracy can function only if there are free and fair elections and duty of the Election Commission is to ensure the same. Taking aforesaid into consideration, the writ petition has been filed when the Election Commission failed to exercise its powers to maintain the democratic values and save the valuable right of the voter when it is otherwise a constitutional right. A reference to paragraphs 147 and 148 of the said judgment was given, apart from the direction in paragraph 253 of the judgment, to impress upon the Court not only to entertain the writ petition, but to issue appropriate direction on the Election Commission not to accord approval for the newly elected posts of Coordinator and Joint Coordinator, rather to pass appropriate orders to nullify the internal elections of the second respondent political party.

7. Learned counsel for the petitioner has given further reference of the judgment of the Apex Court in the case of Board of Control for Cricket in India v. Cricket Association of Bihar and others, (2015) 3 SCC 251, wherein also the objection to the maintainability of the writ petition against the BCCI was raised. The Apex Court did not accept the objection, rather the writ petition was maintained keeping in mind the affairs of the BCCI not only to select the cricket team to represent the country, but even other functions of the BCCI. Those functions were taken to be public functions and thereby the writ petition was held maintainable. The expression "State" appearing in Article 12 of the Constitution of India was given meaning. It is the case of the petitioner that the said judgment is squarely applicable to the present case. The second respondent political party, AIADMK, represents the public in the elections and thereby the writ petition would be maintainable against it. A further reference to an earlier judgment in the case of Zee Telefilms Ltd v. Union of India, (2005) 4 SCC 649, has been given in paragraph 30 of the judgment in Board of Control for Cricket in India (supra), where the scope of Article 12 of the Constitution of India was elaborately discussed and held that if the function of a body is of public nature or State function, the writ petition would be maintainable and, accordingly, the prayer is made not only to maintain the writ petition, but to issue appropriate direction nullifying the election to the posts of Coordinator and Joint Coordinator of the second respondent political party.



9. The writ petition has been filed by impleading the Election Commission of India as a party respondent, apart from the political party (AIADMK) and other private parties as respondents to the litigation. The petitioner sought directions against the Election Commission of India not to accord its approval to the newly elected posts of Coordinator and Joint Coordinator of the second respondent political party. The prayer aforesaid is made without showing or referring to a provision under the Act of 1951, which obligates the Election Commission to approve the internal elections of the political party. Learned counsel for the petitioner could not specify the role of the Election Commission in the internal elections of the political party. It is apart from the fact that no provision could be referred to approve or given cognizance to the result of internal party elections. Thus, learned counsel for the petitioner could not clarify as to why Election Commission of India has been impleaded as a party respondent. The issue aforesaid is quite relevant for the reason that all other respondents are private parties in reference to which question of maintainability of the writ petition needs to be examined.

11. As per Article 324 of the Constitution of India the superintendence, direction and control of elections is vested in the Election Commission. It is not for internal election of a political party. Section 29A of the Act of 1951 pertains to registration with the Election Commission of associations and bodies as political parties. However, there is nothing in Section 29A that requires an enquiry to be conducted into the fairness and validity of the internal elections held for the posts in a political party. The objection raised by the petitioner that the elections to the posts of Coordinator and Joint Coordinator of the second respondent political party were held without adopting democratic procedure cannot be countenanced, as the Election Commission is not empowered to go into the internal elections of a political party. All that Section 29A(9) of the Act of 1951 contemplates is that after an association or body has been registered as a political party, any change in its name, head office, office-bearers, address, etc., shall be communicated to the Election Commission of India without any delay. Such power does not confer any corresponding duty on the Election Commission of India to enter into the



14. The other judgment referred by learned counsel for the petitioner is in the case of Board of Control for Cricket in India (supra), wherein also an objection was raised about the maintainability of writ petition. The Apex Court threadbare considered the facts of the case, and especially the functions of the BCCI, to record its finding with reference to Article 12 of the Constitution of India holding that the BCCI is selecting



the cricket team to represent India and is discharging many other functions of public nature and thereby discharging public duties, thus it would fall within the ambit of Article 12 of the Constitution of India.

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15. In the case on hand, the second respondent is not discharging duties of the nature discussed by the Apex Court in the case of Board of Control for Cricket in India (supra) or even in the case of Zee Telefilms Ltd v. Union of India (supra). In view of the above, the ratio propounded by the Apex Court in the case of Board of Control for Cricket in India (supra) would not have any application to the facts of this case.

16. In the light of the discussion made above, we do not find the writ petition to be maintainable against respondent Nos.2 to 6 and no direction can be issued to the Election Commission of India in reference to the internal election of the parties. Hence, the writ petition would not be maintainable in the present case. It is more so when despite an opportunity to learned counsel for the petitioner, he could not refer to any provision of the Act of 1951 empowering the Election Commission of India to look into the internal elections of the political party.

For the foregoing reasons, the writ petition fails and is dismissed finding it to be not maintainable. No costs. Consequently, W.M.P.No. 27625 of 2021 is closed.

Sd/-
Assistant Registrar

// True Copy //

Sub Assistant Registrar

sasi

To:

The Election Commissioner of India,
Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi- 110 001.

+1cc to M/s.R.Thirumoorthy, Advocate SR.No.66562
+1cc to M/s.G.R.Associates, Advocate SR.No.66570

W.P.No.26171 of 2021

KSM(CO)
RVM(21/12/2021)