



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 04.08.2021

PRONOUNCED ON : 07.09.2021

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THE HON'BLE MR.JUSTICE R.MAHADEVAN

WP (MD)No.4873 of 2021
and WMP (MD)No.3956 of 2021

J.Dhinakar Robertson

... Petitioner

Vs.

1.The Church of South India
The Diocese represented by its Bishop
No.5, Punithavathiyar Street,
Palayamkottai,
Tirunelveli District.

2.The Election Commission Tribunal,
Tirunelveli Diocese,
Tirunelveli.

3.The Pastorate Chairman,
Nallur Pastorate,
CSI, Tirunelveli Diocese,
Nallur, Tenkasi District.

4.H.Jesuharan Solomon

5.A.S.Sundar

6.A.S.Alexander

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a writ of Certiorarified Mandamus calling for records from the 2nd respondent in E.T.P.No.28 of 2021 dated 18.02.2021 and to quash the same as illegal and directing the respondents 1 and 2 to conduct the fresh election in a fair and transparent manner in respect of Nallur Pastorate, Tenkasi District.

For Petitioner

: Mr.S.Kumar

For Respondents

: Mr./s.Veera Associates (R1)

Mr.H.Arumugam (R3)

Mr.V.S.Kishok Kumar (R4 to R6)

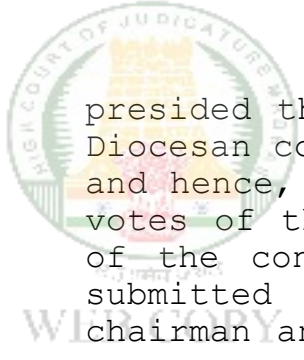


O R D E R

The prayer made in this writ petition is to issue a writ of Certiorarified Mandamus calling for the records pertaining to the order dated 18.02.2021 passed by the 2nd respondent in E.T.P.No.28 of 2021, quash the same and consequently, directing the respondents 1 and 2 to conduct fresh election in a fair and transparent manner in respect of Nallur Pastorate, Tenkasi District.

2.It is the case of the petitioner that earlier he was elected as a member of Pastorate Committee, Nallur in the years 2003 and 2007, however he failed to succeed in the election for the post of member of Diocesan Council held in the year 2011. After 10 years, pursuant to the notification issued with respect to conduct of election of CSI, Tirunelveli Diocese, he submitted his nomination to the post of member of Pastorate Committee. The election was conducted on 07.02.2021 and the respondents 4 and 5 were appointed as Tellers. The petitioner further stated that there were two groups contested for the posts of member of Diocesan council and Pastorate committee and one group is the petitioner's group and another is under the head of one Jeyaraj. It is alleged by the petitioner that the respondents 4 and 5, who are the supporters of Jeyaraj's group, were appointed by the third respondent without making any consultation with the petitioner's group members. During the course of election and counting, no video coverage was taken. The congregation members viz., (i)J.Stella (ii)A.Maragatham (iii) T.Mekala and (iv)D.Gnana Selvakumari went to cast their votes and requested the chairman of pastorate to cast his vote to their groups, but against their wishes, the fifth respondent himself made their votes as invalid. Similarly, the sixth respondent himself cast all votes in respect of Kuruvankottai Village. Such act of the respondents 5 and 6 is contrary to CSI election rule 7(3), according to the petitioner. It is further alleged by the petitioner that his group was not permitted to be present at the time of counting, whereas the respondents 4 and 5 belonging to opponent group, were present at the counting place. Thus, according to the petitioner, the third respondent was not conducting the election in a fair and transparent manner. Pointing out the same, the petitioner and others filed a Election petition dated 08.02.2021 before the second respondent and requested to conduct fresh election in respect of Nallur Pastorate. However, the second respondent dismissed the said Election petition, by order dated 18.02.2021, which is impugned herein.

3.Upon notice, the third respondent filed a detailed counter affidavit, wherein it is *inter alia* stated that the voters, who cannot mark, informed the third respondent and the polling was done in the presence of the tellers under the supervision of the observer, as per Chapter X rule 4(g)(III) of the Diocesan constitution. With respect to the allegations raised against the respondents 5 and 6, it is stated that the pastorate workers



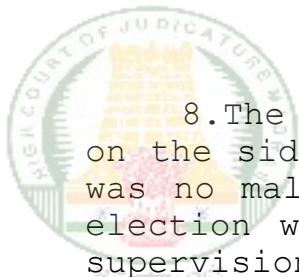
presided the meeting with prayer as per chapter X rule 4(c) of the Diocesan constitution and it was done as per the election guidelines and hence, neither the 5th respondent nor the 6th respondent cast the votes of the persons mentioned in the petition or the entire votes of the congregation members of Kuruvankottai Village. It is also submitted that as per the election guidelines, the pastorate chairman and tellers are alone permitted to count the votes in the presence of the election observer and accordingly, the respondents 4, 5 and 6 were permitted to be present at the time of counting. The counter affidavit further proceeds to state that the third respondent who is the pastorate chairman and is duty bound to obey the orders of the Administrators, has conducted the election under the supervision of the observer without any bias, whereas the petitioner who lost in the election, has come out with bald and vague allegations and is trying to get benefited out of the same. Thus, according to the third respondent, as per the directions of the Administrators appointed by this Court, the entire election process right from polling to counting was carried out under the supervision of the observers and the election results were declared and hence, there was no malpractice at the time of polling and counting, as alleged by the petitioner.

4. According to the learned counsel for the petitioner, though the petitioner was ready and willing to produce the videos to substantiate the allegations raised against the respondents 3 to 6, the second respondent refused to record the same and passed the order impugned herein by dismissing the petitioner's Election petition, on the ground that he has not established his case by producing evidence, which is arbitrary, illegal and against law and hence, the same is liable to be set aside.

5. Heard the learned counsel appearing for the respondents 3 and 4 to 6, who reiterated the averments made in the counter affidavit filed by the third respondent and submitted that the second respondent / Election Tribunal, after analysing the entire materials placed before the same, has passed the order impugned herein, thereby dismissing the Election petition filed by the petitioner and hence, the same warrants no interference at the hands of this court.

6. This court has also perused the documents enclosed in the typed set of papers.

7. It is the grievance of the petitioner that he filed Election Petition before the second respondent raising various allegations against the respondents 3 to 6 and requested to conduct fresh election in respect of Nallur pastorate. He was also ready to produce the videos recorded on his side with respect to the polling and counting of election. However, the second respondent failed to mark the same and dismissed the Election Petition by observing that the petitioner has not established his case by producing evidence.



8.The allegations so raised by the petitioner have been refuted on the side of the contesting respondents. According to them, there was no malpractice on the part of the respondents 5 and 6 and the election was conducted in a fair and transparent manner under the supervision of the election observers and according to the directions issued by the Administrators appointed by this court. Considering the said fact as well as the materials placed, the second respondent rightly dismissed the Election petition filed by the petitioner seeking re-election and the same requires no interference by this court.

9.It could be seen from the order impugned herein that the Election Tribunal, after having considered the contentions raised by the petitioner and others and upon perusal of the report of the observer, has found that the observers were appointed invariably in all the pastorates and in sensitive pastorate, more number of observers were deployed and that, video coverage was arranged in all the pastorates. It was further found that in order to avoid impersonation, the voters were directed to bring photo identity card and they were asked to sign the attendance register and that, identification ink was also affixed on their thumb. Placing reliance on the report of the observer, the Election Tribunal also pointed out that the observer was present throughout the election and he has not stated about any violation of rules; and that all precautionary measures were taken to avoid impersonation during polling of ballots and the mandatory rules were strictly adhered to. Thus, the Election Tribunal came to the conclusion that the allegations raised by the petitioner were not substantiated by acceptable evidence and hence, the petition was dismissed as not maintainable.

10.This Court finds no reason much less valid reason to disagree with the findings so rendered by the second respondent / Election Tribunal, in the absence of any concrete material produced by the petitioner either before the Election Tribunal or to this court to prove the allegations raised by him. It is settled rule of law that burden of proving his case is always on the plaintiff / petitioner who must adduce reliable and admissible evidence for the said purpose. Therefore, the order impugned herein does not require any interference by this court.

11.Accordingly, this writ petition stands dismissed. No costs. Consequently, connected miscellaneous petition is closed.

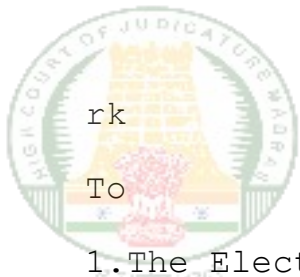
Sd/-

Assistant Registrar (Records)

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/ /2021

Sub Assistant Registrar(CS)



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To

1.The Election Commission Tribunal,
Tirunelveli Diocese,
Tirunelveli.

WP (MD) No. 4873 of 2021
and WMP (MD) No.3956 of 2021
07.09.2021

NSN (CO)
KB (16.09.2021) 5P 2C