



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 01.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE M.DURAI SWAMY

AND

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.18011 of 2021

and

W.M.P(MD)No.14879 of 2021

M.Bhavani

... Petitioner

Vs.

1.The Tamil Nadu State Election Commissioner,
Jawaharlal Nehru Road,
Koyambedu,
Chennai - 600 106.

2.The District Election Officer/
The District Collector,
Tirunelveli District,
Tirunelveli.

3.The Returning Officer/
Block Development Officer,
Valliyoor Panchayat Union,
Tirunelveli District.

4.The Assistant Returning Officer,
A.Thirumalapuram Village Panchayat Election,
Valliyoor Panchayat Union,
Tirunelveli District.

5.Kannan

6.Indira

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 to 4 to accept the petitioner's nomination and permit her to contest the election for the post of President of A.Thirumalapuram Village Panchayat to be held on 09.10.2021.

For Petitioner	: Mr.R.Subramanian
For R - 1	: Mr.B.Saravanan
For RR 2 to 4	: Mr.P.Thilak Kumar Government Pleader



ORDER

(Order of the Court was made by **M.DURAISWAMY, J.**)

The petitioner has filed the above Writ Petition to issue a Writ of Mandamus, directing the respondents 2 to 4 to accept her nomination and permit her to contest the election for the post of President of A.Thirumalpuram Village Panchayat to be held on 09.10.2021.

2.It is the case of the petitioner that the nomination submitted by the petitioner was wrongly rejected by the authorities and therefore, the authorities should be directed to accept her nomination and publish her name as the eligible candidate for the election.

3.Mr.B.Saravanan, learned Standing Counsel taking notice for the first respondent submitted that the prayer sought for in the Writ Petition itself is not maintainable for the reason that the petitioner has not challenged the eligible candidates list published on 25.09.2021.

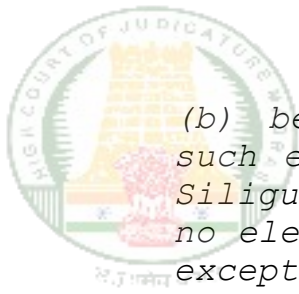
4.Mr.P.Thilak Kumar, learned Government Pleader taking notice for the respondents 2 to 4 submitted that the authorities, after scrutinizing the nomination form, have published the eligible candidates list on 25.09.2021. Further, the learned Government Pleader submitted that since the petitioner has not given the correct detail in the nomination form, her application was rejected by the authorities.

5.The learned Government Pleader in support of his contention relied on the unreported **Judgment of the Hon'ble Supreme Court dated 24.08.2018 made in Civil Appeal No.8515 of 2018 (West Bengal State Election Commission and others Vs. Communist Party of India and others)**, wherein the Hon'ble Supreme Court has held in paragraph Nos.25 to 27 as follows:

'25.Any dispute regarding the election has to be pursued in the manner which is provided in Part VII of the Panchayat Election Act.

Under Section 79(1):

"79. (1) If any dispute arises as to the validity of an election under this Act, any person entitled to vote at such election may, within thirty days after the date of declaration of the results of such election, file a petition, calling in question such election on one or more of the grounds specified in sub-Section (1) of Section 93 and Section 94 (a) before the Civil Judge having jurisdiction where such election is in respect of a Gram Panchayat or a Panchayat Samiti,

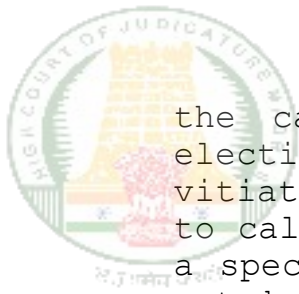


(b) before the District Judge of the District, where such election is in respect of a Zilla Parishad or the Siliguri Mahakuma Parishad. Section 80 stipulates that no election to a panchayat shall be called into question except by an election petition presented in accordance with Part VII. In fact, Section 84 (1) also stipulates that the Court shall dismiss an election petition which does not comply with the provisions of Section 79 or Section 80. 26. The Panchayat Elections Act is a complete code in regard to the conduct of the poll and for the resolution of disputes concerning the validity of the election. Article 243K entrusts the superintendence, direction and control over the conduct of all elections to the panchayats in the State Election Commission. Clause (b) of Article 243 O stipulates thus:

"243-O. Notwithstanding anything in this Constitution (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. 27. There is merit in the submission that the discipline which is mandated by the provisions of the Constitution and enforced by the enabling state law on the subject must be maintained. Any dispute in regard to the validity of the election has to be espoused by adopting a remedy which is known to law namely through an election petition. It is at the trial of an election petition that factual disputes can be resolved on the basis of evidence. This principle has been consistently adhered to in decisions of this Court. In Boddula Krishnaiah (supra), a three Judge bench, adverted to the decisions of the Constitution Bench in NP Ponnuswami v Returning Officer, Namakkal Constituency (1952 SCE 218) and in Lakshmi Charan Sen v AKM Hassan Uzzaman (1985) 4 SCC 689. After referring to Ponnuswamy, it was observed:

In NP Ponnuswamy v Returning Officer, Namakkal Constituency a Constitution Bench of this Court had held that having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognised to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over so that the election proceedings may not be unduly retarded or protracted. In conformity with the principle, the scheme of the election law is that no significance should be attached to anything which does not affect the 'election'; and if any irregularities are

<https://hcservices.ecm.mca.gov.in/esh/> while it is in progress and they belong to



the category or class which under the law by which elections are governed, would have the effect of vitiating the 'election; and enable the person affected to call it in question, they should be brought up before a special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress. The binding principle must be followed.'

6. On a perusal and consideration of the materials available on record and the submissions made by the learned counsel appearing on either side, it could be seen that the respondents have already scrutinized the applications and also published the list of eligible candidates for the forthcoming Local Body Elections. Under Article 243 (O) of the Constitution of India, no election to any Panchayats 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.

7. Further under Section 259(c) & (d) of the Tamil Nadu Panchayats Act, 1994, if the District Judge is of the opinion that the result of the election insofar as it concerns a returned candidate has been materially affected by the improper acceptance or rejection of any nomination may declare the election to be void.

8. The ratio laid down by the Hon'ble Supreme Court is squarely applies to the facts and circumstances of the petitioner's case. In these circumstances, for the reasons stated above, we are not inclined to entertain the Writ Petition. Accordingly, the Writ Petition is dismissed.

9. Mr. R. Subramanian, learned counsel appearing for the petitioner submitted that the respondents have not furnished the order of rejection to the petitioner.

10. The learned counsel appearing for the first respondent submitted that in the event of the petitioner filing an application seeking for a copy of the order, the same would be furnished to the petitioner. No costs. Consequently, connected Miscellaneous Petition is closed.

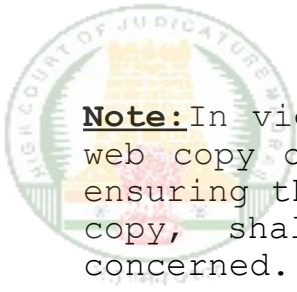
Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar (CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

WEB COPY

To

- 1.The District Election Officer/
The District Collector,
Tirunelveli District,
Tirunelveli.
- 2.The Returning Officer/
Block Development Officer,
Valliyoor Panchayat Union,
Tirunelveli District.
- 3.The Assistant Returning Officer,
A.Thirumalapuram Village Panchayat Election,
Valliyoor Panchayat Union,
Tirunelveli District.

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-30931[F] dated 01/10/2021)

+1 CC to M/s.B.SARAVANAN, Advocate (SR-31072[F] dated 04/10/2021)

+1 CC to M/s.SPL.GP (SR-31001[F] dated 04/10/2021)

W.P (MD) No.18011 of 2021
01.10.2021

SRK(CO)/RS (08.10.2021) 5P 7C