



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 16.2.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.2958 OF 2022 &
WMP.NOS.3119 AND 3120 OF 2022

Mrs.T.Sangeetha

.. Petitioner

vs

1. Tamil Nadu State Election
Commission, Kamadenu Super
Market Building, No.273,
Scheme Road, Subbarayan
Nagar, Teynampet, Chennai-18.
2. The Public (Elections) Department,
rep.by its Secretary, the State
Government of Tamil Nadu,
Secretariat, Chennai-9.
3. The Returning Officer, Perambalur
Municipality Officer, Perambalur.
621212.
4. The Electoral Registration Officer,
and Commissioner, Madharasa
Road, Super Nagar, Perambalur.
621212.
5. The District Election Officer and
District Collector, Collectorate,
Perambalur-621212.

.. Respondents



Prayer:

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the 4th respondent in Supplemental Electoral Roll (Voters List) 2022 in respect of Ward No.7 Perambalur published on 05.2.2022 insofar as it includes the voters of Ward No.10 and to quash the same as illegal incompetent and without jurisdiction and to further direct the respondents to conduct elections for Ward No.7 as per the residence of each voter.

For Petitioner : Mr.V.Raghavachari

For Respondents : Mr.S.Sivashanmugam for R1

Mr.R.Shanmugasundaram,
Advocate General
assisted by
Mr.P.Muthukumar, State
Government Pleader for R2
to R5

ORDER

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

We have heard the learned counsel for the parties.

2. The writ petition has been filed seeking to call for the supplemental electoral roll (voters list) from the file of the fourth respondent in respect of ward No.7 for the ensuing elections to the urban local bodies scheduled to be held on 19.2.2022 and quash the same, as certain voters who should have been shown in the voters list of ward No.10 have now been shown in the voters list of ward No.7.

3. The outcome of the aforesaid would be nothing but affecting the elections, as, in the absence of preparation of the voters list in the manner prescribed under the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules 2006, the fairness of the elections cannot be ensured.



4. It is submitted by the learned counsel appearing for the petitioner that the voters, whose names were given in paragraph 4 of the affidavit filed in support of the writ petition, were shifted from ward No.10 to ward No.7 in ignorance of the voters list of the Legislative Assembly and despite, the mandate of Rule 15 of the said Rules. The reason to shift the voters from ward No.10 to ward No.7 was nothing but to help or to benefit the candidate, who is contesting the elections, as all the six persons, the names of whom are given in paragraph 4 of the affidavit, are the relatives of the person contesting the elections. This may be prohibited as the election has to be conducted with the voters, who deserve to be placed in ward No.7, instead of those who do not belong to ward No.7.

5. The learned counsel for the petitioner has made a reference to several wards to focus illegality of similar nature with reference to the voters list of the Legislative Assembly and shifting of the voters from one ward to another in ignorance of Rule 15 of the said Rules. Rule 15 of the said Rules mandates preparation of electoral roll based on the voters list of the Legislative Assembly.

6. Referring to the voters list of the Legislative Assembly, the learned counsel for the petitioner submits that those voters now shown to be the voters in ward No.7 should have been otherwise the voters in ward No.10. Reiterating the allegation of mala fides against a particular candidate, it is submitted that it is at her behest, the names of some voters, whose names were given in paragraph 4 of the affidavit, were included in the voters list of ward No.7, as they are the relatives of that particular candidate. The prayer is made to look into the glaring illegality in the action of the fourth respondent, which is in violation of Rule 15 of the said Rules and to grant the relief, as otherwise a challenge to the election cannot be made based on the voters list or any illegality therein.

7. We have carefully considered the submissions made by the learned counsel for the petitioner and perused the records.

8. The writ petition is basically to challenge the supplemental electoral roll alleged to have been published on 05.2.2022, which includes the names of certain voters in ward No.7 though they should have been retained in ward No.10. The names of six persons have been given in paragraph 4 of the affidavit with the allegation that they are all relatives of one particular candidate, who is contesting the elections against the petitioner. Their relationship with the candidate has also been given.



9. To analyze the allegations, we tried to find out the name of the candidate. The name of that particular candidate, as given in paragraph 3(ii) of the affidavit filed in support of the petition, is one Mrs. Shalini. Though the name of the candidate has been given and certain allegations have been made against her, she is not a party respondent to this writ petition. At the threshold, the allegations made by the petitioner against her cannot be examined in the light of the fact that she is not a party to the writ petition. If allegations are made against the candidate, she was required to be impleaded as a party respondent, despite the allegation that her relatives were shifted from one ward to another. In the light of the above, the writ petition suffers from non joinder of necessary parties.

10. The issue will not end here because if the relief as prayed for is granted, it would affect the persons who have been shown to be the voters of ward No.7. They are also not impleaded as party respondents to the writ petition though effectively relief has been claimed against them and they would be directly or indirectly affected by the outcome of the writ petition, if the relief is granted. In view of non impleadment of them as party respondents, despite the relief sought to quash the supplemental electoral roll in so far as it includes them in the voters list of ward No.7, the writ petition again suffers from non joinder of necessary parties.

11. The learned counsel for the petitioner has made a reference to various provisions to submit that an illegality in preparation of the voters list has been committed by including the names of many persons of one particular ward to another ward, in violation of Rule 15 of the said Rules.

12. Firstly, if inclusion of names of voters in a particular ward has been made in another ward, it is for the individual voters to raise an objection as and when the electoral roll is published. In case the shifting of voters from one particular ward to another ward is to the benefit of a candidate, voter may not raise any objection. But, if an allegation is made with regard to the inclusion of names of voters in a particular ward to another ward, they are required to be impleaded as party respondents.

13. As we have already stated that the persons, who are going to be affected by the outcome of the writ petition, are not made as party respondents, no purpose remains to examine the issue any further with reference to Rule 15 of the said Rules vis-a-vis the voters list of the Legislative Assembly as no relief can be granted in the absence of a necessary party. The writ petition can be entertained only if it is not suffering



from non joinder of necessary parties. The issue could have been examined at the threshold with reference to the facts if the parties, against whom the allegations were made, would have been impleaded as party respondents. In the absence of it, the exercise to consider the matter on merits with reference to Rule 15 of the said Rules would be a futility because this Court cannot pass an order against the person, who is not before it.

14. Accordingly, we find that the prayer made in the writ petition cannot be granted for the reasons given above. The writ petition suffers from non joinder of necessary parties and otherwise, the allegation of mala fides cannot be examined in the absence of necessary parties. Rather, they need to be made as parties eo nomine to contest the allegation of mala fides.

15. For the foregoing reasons, the writ petition is dismissed. Consequently, the connected WMPs are also dismissed. There will be no order as to costs.

Sd/-

Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

RS

To:

1. Tamil Nadu State Election
Commission, Kamadenu Super
Market Building, No.273,
Scheme Road, Subbarayan
Nagar, Teynampet, Chennai-18.
2. The Secretary,
The Public (Elections) Department,
The State Government of Tamil Nadu,
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Municipality Officer, Perambalur.
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4. The Electoral Registration Officer,
and Commissioner, Madharasa
Road, Super Nagar, Perambalur.
621212.

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5. The District Election Officer and
District Collector, Collectorate,
Perambalur-621212.

+1cc to Mr.V.Raghavachari, Advocate, S.R.No.10031
+1cc to the Government Pleader, S.R.No.10308

W.P.No.2958 of 2022 &
WMP.Nos.3119 and 3120
of 2022

PA (CO)
PM/25/02/2022