



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2022

CORAM :

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

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.3255 OF 2022

AND

W.M.P.NO.3388 OF 2022

S.Senthilkumar

.. Petitioner

vs

1. The Tamil Nadu State Election
Commission, Rep. by its Secretary,
No.208/2, Jawaharlal Nehru Salai,
Arumbakkam, Chennai.

2. The Assistant Election Officer IV,
Corporation of Thanjavur,
Thanjavur.

.. Respondents

Prayer: Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 2nd respondent relating to the rejection of petitioner's nomination by his proceedings dated 08.02.2022 and quash the same and direct the respondents to include the name of the petitioner as one of the candidates for the post of Councillor in Ward No.32 and permit the petitioner to contest the election for the said post.

For the Petitioner : Mr.N.Umapathi

For the Respondents : Mr.S.Sivashanmugam
Stdg. Counsel for R-1

: Mr.R.Shumugasundaram
Advocate General
Assisted by Mr.P.Muthukumar
State Govt. Pleader for R-2.



ORDER

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

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The writ petition has been filed on rejection of the petitioner's nomination for the ensuing election of local body on 19.02.2022.

2. The learned counsel for the petitioner submits that a challenge to the rejection of nomination is maintainable even during the process of election as the Court is clothed with powers under Article 226 of the Constitution of India to exercise the said jurisdiction. To support the argument, reference of a judgment of this Court in a batch of writ petitions in W.P.No.7526 of 2018, taking W.P. (MD) No.7620 of 2018 (P.Sakkarapani vs. State of Tamil Nadu) as a lead case, decided on 03.08.2018 was given. A further reference of the judgment of this Court in the case of All India Anna Dravida Munnetra Kazhagam vs. State Election Commissioner reported in (2007 (1) CTC 705) has been given. The prayer is, accordingly, to set aside the rejection of nomination with a direction to the respondents to allow the petitioner to contest the election.

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

4. The judgments referred by the petitioner are not in reference to the maintainability of the writ petition if the nomination was rejected, rather the judgment in the case of All India Anna Dravida Munnetra Kazhagam (supra) was altogether on different facts and as an exception, the writ petition was entertained. In the said case, the allegation was against the ruling party for mass booth capturing in all the Wards of which election was to be held and looking into the seriousness of the allegation, and not to a particular ward and a candidate, appropriate directions were given.

5. Same way, the judgment of this Court in R.Sakkarapani (supra) was also rendered on its own facts. The allegation in the batch of writ petitions was of similar nature as was made in reference to the involvement of the ruling party. Various allegations were made which includes non-acceptance of the nominations other than of the candidates belonging to the ruling party and it was analysed in reference to the conduct of election in 18465 co-operative societies out of which in 16344 societies, there was no contest and in 447 co-operative societies, no nomination papers were filed, yet polling was permitted in 1084 co-operative societies. The election in the



co-operative societies was either cancelled or postponed in 590 constituencies, 81 by reason of complaints and 509 by reason of law and order problems. Taking into consideration the glaring facts and serious allegations, the judgment was rendered with appropriate directions in the given facts and circumstances having no general application as otherwise a writ petition to challenge the rejection of nomination once the process of election has commenced is not maintainable in view of the judgment of the Apex Court in the case of Laxmibai v. Collector, Nanded and others, reported at (2020) 12 SCC 186.

The writ petition is, accordingly, dismissed, in view of the bar for challenge to the election other than by way of election petition imposed under Article 243ZG of the Constitution of India. However, the petitioner is at liberty to take remedy of filing an election petition, if he so chooses. No costs. Consequently, W.M.P.No.3388 of 2022 is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

sra

To:

1. The Tamil Nadu State Election
Commission, Rep. by its Secretary,
No.208/2, Jawaharlal Nehru Salai,
Arumbakkam, Chennai.
2. The Assistant Election Officer IV,
Corporation of Thanjavur,
Thanjavur.

+1cc to M/s.N.Umapathi, Advocate, S.R.No.10124

+1cc to the Government Pleader, S.R.No.10799

W.P.No.3255 of 2022

NK(CO)
RLP(23/02/2022)