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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.2.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.(MD).NO.2951 OF 2022 &
W.M.P.(MD) NOS.2584 & 2585 OF 2022

R.Prakash

.. Petitioner

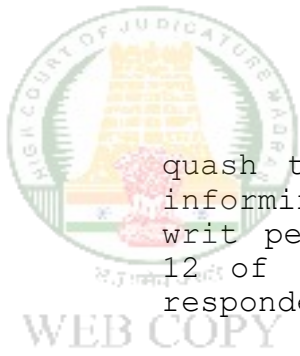
vs

1. The Chief Electoral Officer (CEO) &
Principal Secretary to Government
Public (Elections) Department
Secretariat, Fort St. George
Chennai 600 009.
2. The District Electoral Officer &
The District Collector
Thanjavur District, Thanjavur 613 010.
3. The Electoral Officer & Commissioner
Kumbakonam Municipal Corporation
Kumbakonam 612 001.
4. The Asst. Electoral Officer No.2 &
The Town Health Officer
Kumbakonam Municipal Corporation
Kumbakonam 612 011.

.. Respondents

Prayer:

Petition filed under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records of the Original Application dated 04.02.2022 of this writ petitioner submitted on the file of the 4th respondent Assistant Election Officer No.2, Kumbakonam Municipal Corporation herein as deemed to be accepted of the application of this writ petitioner as said above and



quash the same in respect of the oral order dated 04.02.2022 informing of the rejection of the application submitted by this writ petitioner for contesting for the Councilor Post for ward 12 of the Kumbakonam Municipal Corporation issued by the 4th respondent herein.

For Petitioner	: Mr.V.Raghavachari For Mr.G.Ravi Sankar
For Respondents	: Mr.S.Sivashamugam, Standing Counsel for R1 Mr.R.Shunmugasundaram, Advocate General Assisted by Mr.P.Muthukumar State Government Pleader for R2 to R4

ORDER

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

We have heard the learned counsel appearing for the respective parties.

2. The writ petition has been filed challenging the rejection of nomination submitted by the petitioner to contest to the post of councilor for ward No.12 of Kumbakonam Municipal Corporation.

3. It is submitted by the learned counsel for the petitioner that pursuant to the Notification of election dated 28.1.2022, the petitioner submitted his nomination to the Returning Officer on 04.2.2022 complete in all respects. The acknowledgment was also received by the petitioner on 05.2.2022. However, his nomination was rejected, ignoring the provisions of the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules 2006 (for short, the Rules of 2006) for curing the defects in the application.

4. Learned counsel for the petitioner submits that the rejection of nomination has been made arbitrarily and while doing so, even the provisions of Rule 26(4) of the Rules of 2006 were not complied. The Returning Officer was even under an obligation to inform the person presenting the same about the date, time and place fixed for the scrutiny of nominations and shall enter on the nomination paper its serial number and shall sign thereon a certificate stating the date on which and the



hour at which the nomination paper has been presented to him. But, the Returning Officer failed to comply with even Rule 26(2) of the Rules of 2006.

5. In view of the above, the cancellation of the nomination, which was complete in all respects and in the absence of compliance of the Rules of 2006, the act of the Returning Officer has become illegal. If the form attached to the nomination form was having any discrepancy, it should have been cured after calling for the petitioner to do the needful, as the same is permissible under the Rules of 2006. The failure of the Returning Officer in not adhering to the mandate of the Rules of 2006 led to the challenge to the rejection of nomination.

6. We have carefully considered the submissions made by the learned counsel for the petitioner, with the assistance of the learned Standing Counsel appearing for the State Election Commission and the learned Advocate General appearing for the State.

7. The matter was heard on 17.2.2022 and was ordered to be posted today with a direction to the respondents to get instructions. Pursuant to the directions of this Court, the learned Advocate General has produced the original nomination form submitted by the petitioner. On perusal of the same, we find that in Form 3, at page 1, the petitioner had given the required information and signed the document and otherwise, page 1 of Form 3 was submitted with the details of the proposer with signature. But, the next page i.e. page No.2 is left blank and the signature, in acceptance of the proposer, is also not there. In the same way, Form C is also left blank and has not been signed by the petitioner. Therefore, the nomination of the petitioner was cancelled.

8. The issue that arises for consideration is whether those defects are curable or not.

9. Rule 24 of the Rules of 2006 deals with the presentation of nomination paper and for ready reference, it is extracted as under:

"(1) The nomination of every candidate shall be made by means of a nomination paper in Form 3. Copies of the form can be had from the offices specified in the notice of election on any working day.

(2) On the date or dates specified in the election notice for the presentation of nomination papers, each candidate qualified to contest the election shall, either in person or by his proposer, deliver to the



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Returning Officer at the place and during the hours specified in that behalf, a nomination paper completed in Form-3 and signed by the candidate and by a proposer who shall be an elector in the ward of the Panchayat Town or Transitional Area or Municipality or Corporation in the election of councillors Provided that no nomination paper for election shall be delivered to the Returning Officer on a day which is a public holiday. Explanation.-The candidate for a ward of a Panchayat Town or Transitional Area or Municipality or Corporation need not be an elector of that ward. However, he should be an elector in that Panchayat Town or Transitional Area or Municipality or Corporation.

(3) If the seat is reserved for Scheduled Caste or Scheduled Tribe a candidate shall furnish a declaration in the nomination form made by him specifying the particular caste or tribe of which he is a member and the area in relation to which that caste or tribe is notified as a Scheduled Caste or Scheduled Tribe of the State.

(4) On the presentation of a nomination paper, the Returning Officer shall satisfy himself that the names and roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the roll: Provided that the Returning Officer shall permit any misnomer or inaccurate description or clerical or printing error in the nomination paper in regard to the said names or numbers to be corrected or to bring them in conformity with the corresponding entries in the electoral roll and wherever necessary, direct that any clerical or printing error in the said entries shall be overlooked.

(5) Nothing contained in this rule shall prevent any candidate from being nominated by more than one nomination paper for any one election: Provided that not more than four nomination papers shall be presented by or on behalf of any candidate for any one election.

(6) Subject to the provisions contained in the Act, any person wishing to stand as a



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candidate for election to more than one ward, shall be nominated by separate nomination papers.

(7) An elector for whom nomination papers as a candidate are presented for an election shall not sign any nomination paper as a proposer for that election."

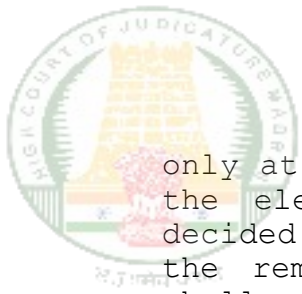
10. Rule 24 of the Rules 2006 mandates the presentation of nomination paper by the candidate either in person or through his proposer in Form 3 and signed by the candidate and the proposer to make a valid tender of nomination.

11. The defects found in the nomination form submitted by the petitioner are not said to be curable because Rule 24(4) of the Rules of 2006 permits removal of discrepancies like inaccurate description or clerical or printing error in the nomination paper in regard to the names or numbers to be corrected or to bring them in conformity with the corresponding entries in the electoral roll and wherever necessary directs that any clerical or printing error in the said entries shall be overlooked. The perusal of the nomination form shows that the second page is lying blank and has not been signed by the candidate and same is the position of third page.

12. In view of the above, we find that the nomination paper submitted by the petitioner, which is stated to be complete in all respects, does not have any curable defect. Rather, the defects contained therein are incurable. In such circumstances, the rejection of nomination made by the petitioner cannot be said to be illegal.

13. It is the fact that the nomination paper was shown to have been received on 05.2.2022 - the date, on which, scrutiny was to be made. In the affidavit filed in support of the writ petition, it is stated that the bona fide mistake in putting the date and that too, when the petitioner submitted the nomination at the 11th hour, cannot be said to be a lapse, which needs to be taken note of for addressing the mistake committed by the petitioner in not submitting the nomination form in proper manner. It is admitted that the receipt was given on 4th February 2022 itself.

14. So far as the argument with reference to Rule 26(2) of the Rules of 2006 is concerned, we do not find any pleading that the nomination papers submitted by the petitioner were not affixed in Form 4 on the same day of nomination and it being a factual issue, the said argument cannot be accepted or discussed by this Court in the absence of any pleadings so as to be controverted or to be admitted. It is to be made clear that



only at the instance of the petitioner, the issue, pertaining to the election, raised in the present writ petition has been decided on facts and otherwise, the petitioner would have taken the remedy as available to him, in accordance with law, to challenge the election and this Court would have dismissed the writ petition summarily as withdrawn with liberty to file an election petition.

15. For all the above reasons and finding no merit in the arguments advanced, 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. The Chief Electoral Officer (CEO) &
Principal Secretary to Government
Public (Elections) Department
Secretariat, Fort St. George
Chennai 600 009.
2. The District Electoral Officer &
The District Collector
Thanjavur District, Thanjavur 613 010.
3. The Electoral Officer & Commissioner
Kumbakonam Municipal Corporation
Kumbakonam 612 001.
4. The Asst. Electoral Officer No.2 &
The Town Health Officer
Kumbakonam Municipal Corporation
Kumbakonam 612 011.



Copy To

- 1 The Advocate General
High Court,
Madras.
- 2 The Section Officer,
ER Section, High Court,
Madras.

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With a direction to return the original nomination papers filed
by the petitioner to the Advocate General

+3ccs to Mr.G.Ravi Sankar, Advocate, SR.NO.10550
+1cc to the Government Pleader, S.R.No.10792

W.P.(MD).No.2951 of 2022 &
W.M.P.(MD) Nos.2584 & 2585 of 2022

NRL (CO)
PM/24/02/2022