



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.04.2022

CORAM :

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

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.NO.9576 OF 2022

M.Babu
S/o.D.Mabbu Reddy
11th Ward Councillor
Kallakurichi Municipality
No.9/20-A, Raja Nagar
Gandhi Road, Kallakurichi- 606 202
Kallakurichi District.

.. Petitioner

Vs

- 1 The State Election Commissioner
Tamilnadu State Election Commission
No.208/2, Jawaharlal Nehru Road
Arumbakkam
Chennai- 600 106.
- 2 The District Election Officer/
District Collector, Office of the
District Collector, Kallakurichi
Kallakurichi District.
- 3 The District Election Observer
Office of the District Collector
Kallakurichi,
Kallakurichi District.
- 4 The Superintendent of Police
Kallakurichi, Kallakurichi District.
- 5 The Returning Officer/Municipal Commissioner
Kallakurichi Municipality,
Kallakurichi- 606202
Kallakurichi District.



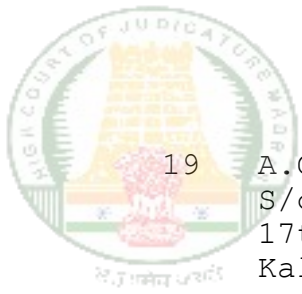
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- 6 R.Subburayalu
S/o.Ramasamy
2nd Ward Councillor
Kallakurichi Municipality
residing at No.135B
VOC Nagar, Kallakurichi
Kallakurichi District - 606 202.
- 7 A.K.Ramesh
S/o.Kuppusamy
1st Ward Councillor
Kallakurichi Municipality
residing at No.90/B
Kachirapalayam Road,
Kallakurichi
Kallakurichi District - 606 202.
- 8 T.Ashwinkumar
S/o.Natarajan
3rd Ward Councillor
Kallakurichi Municipality
residing at No.146A,
Kesavalu Nagar
Kallakurichi, Kallakurichi District - 606 202.
- 9 A.Sameembanu
W/o.Abdul Rasak
4th Ward Councillor
Kallakurichi Municipality
residing at 54-K,
Maamanandhal Road
Kallakurichi,
Kallakurichi District - 606 202.
- 10 R.Yuvarani
W/o.Raja,
5th Ward Councillor
Kallakurichi Municipality
residing at No.165, Kulathumettu Street
Kallakurichi,
Kallakurichi District - 606 202.
- 11 M.Seenivasan
S/o.Muniyan,
6th Ward Councillor
Kallakurichi Municipality
residing at 128/8, Voikkalmettu Street
Kallakurichi, Kallakurichi District - 606 202.



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- 12 K.Meenatchi
W/o.Kesavan,
7th Ward Councillor
Kallakurichi Municipality
residing at No.22K/1/189, Kottaimedu
Kallakurichi, Kallakurichi District - 606 202.
- 13 Vimala
W/o.Vijaymanoj,
8th Ward Councillor
Kallakurichi Municipality
residing at No.143/64C, Siruvangur Road
Kallakurichi, Kallakurichi District - 606 202.
- 14 C.Paulraj
S/o.Chinnathambi,
9th Ward Councillor
Kallakurichi Municipality
residing at No.189/B, New Colony, Karunapuram
Kallakurichi,
Kallakurichi District - 606 202.
- 15 A.Fathimabeevi
W/o.Abiubakkar,
10th Ward Councillor
Kallakurichi Municipality
residing at 14, MNR Nagar,
Durugam Road Kallakurichi,
Kallakurichi District - 606 202.
- 16 R.Selvam
S/o.Radhakrishnan,
13th Ward Councillor
Kallakurichi Municipality
residing at No.52/25, Agaratgabjikkau Street
Kallakurichi, Kallakurichi District - 606 202.
- 17 T.Vijayakumari
W/o.Kalaiselvan,
14th Ward Ward Councillor
Kallakurichi Municipality
residing at No.83, Vilanthangal Road
Kallakurichi, Kallakurichi District - 606 202.
- 18 S.Devaraj
S/o.Sundaramurthy,
15th Ward Councillor
Kallakurichi Municipality
residing at No.32/B, Manikoundu Road
Kallakurichi, Kallakurichi District.- 606 202.



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- 19 A.Gnanvel
S/o.Arumugam
17th Ward Councillor
Kallakurichi Municipality
residing at 16/19, EB Colony,
Anna Nagar, Kallakurichi,
Kallakurichi District.- 606 202.
- 20 V.Uma
W/o.Venkatesan,
20th Ward Councillor
Kallakurichi Municipality
residing at 23/12A, Mariamman Koil Street
Yemappair, Kallakurichi,
Kallakurichi District - 606 202.
- 21 S.Sumathi
W/o.Selvaraj,
21st Ward Councillor
Kallakurichi Municipality
residing at Yemappair Colony
Kallakurichi,
Kallakurichi District - 606 202.

.. Respondents

Prayer :

Petition filed under Article 226 of the Constitution of India praying for a writ of declaration declaring the process of election held on 04.03.2022 for the post of Chairman of Kallakurichi Municipality in contravention of the Rules 102, 107, 108 read with Rules 49 (2) and 52 (3) of the Tamil Nadu Town Panchayats, Third Grade Municipalities and Municipal Corporation Councils (Elections) Rules, as null and void non-est-in-law.

For the Petitioner : Mr.K.Prabakar

For the Respondents : Mr.S.Sivashanmugam
Standing Counsel
for 1st respondent
: Mr.P.Muthukumar
State Government Pleader
assisted by
Ms.E.Ranganayaki
Additional Government Pleader
for respondents 2, 3 and 5



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: Mr.Hasan Mohamed Jinnah
State Public Prosecutor
assisted by Mr.A.Gopinath
Government Advocate
(Criminal Side)
for 4th respondent

ORDER

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

By this writ petition, a challenge is made to the process of the election held on 04.03.2022 for the post of Chairman of Kallakurichi Municipality. Allegations of contravention of the Rules 102, 107, 108 read with Rules 49(2) and 52(3) of the Tamil Nadu Town Panchayats, Third Grade Municipalities and Municipal Corporation Councils (Elections) Rules, 2006 have been made.

2. Before taking the facts into consideration, learned counsel for the petitioner was called upon to address the case on maintainability of the writ petition, in view of the provision under Article 243-ZG of the Constitution of India. The provision aforesaid does not permit the challenge to the election save otherwise than by way of an election petition.

3. Learned counsel for the petitioner has referred to the judgment of this Court in the case of All India Anna Dravida Munnetra Kazhagam v. State Election Commissioner and others, reported in 2007 (1) CTC 705. A specific reference of paragraph 253 of the said judgment was given to show that despite a bar under Article 243-ZG of the Constitution of India, a writ petition was held to be maintainable. Learned counsel for the petitioner has also referred to the judgment of the Punjab and Haryana High Court in the case of Prithvi Raj v. State Election Commission and others, reported in AIR 2007 P&H 178, to buttress his argument on the maintainability of the writ petition.

4. At the outset, it is necessary for us to consider the issue of maintainability of the writ petition.

5. A bar exists for interference by the Courts in electoral matters under Article 243-ZG of the Constitution of India, which is quoted hereunder:

"Article 243-ZG. Bar to interference by Courts in electoral matters.-

Notwithstanding anything in this Constitution,-

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to



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be made under article 243-ZA shall not be called in question in any Court;

(b) no election to any Municipality 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."

6. The issue of maintainability of the writ petition was decided by this Court recently in (i) S.Ananthi v. The State Election Commissioner and others [W.P.No.25551 of 2021, decided on 02.12.2021] and (ii) R.Nagaraj and others v. The Tamil Nadu State Election Commission and others [W.P.No.8563 of 2022, decided on 07.04.2022], by distinguishing the judgment in the case of All India Anna Dravida Munnetra Kazhagam (supra) on facts. In the case of All India Anna Dravida Munnetra Kazhagam (supra), the writ petition was entertained by this Court by giving specific reasons. It was a case where serious allegation of booth capturing of all wards at the instance of the political party in power was levelled. Taking into consideration the extraordinary situation, the writ petition was entertained. It was not a petition challenging the election of one ward, but filed in the extraordinary circumstances where the allegation was of wholesale rigging and booth capturing of all the wards at the instance of the political party in power. While rendering judgment, it was found that there exist extraordinary circumstances to entertain the writ petition. After taking note of the facts made available to the Court, the writ petition was entertained. However, in the instant case, such extraordinary or exceptional circumstances do not exist. A perusal of paragraph 253(2) of the judgment in the case of All India Anna Dravida Munnetra Kazhagam (supra) shows that the Larger Bench categorically held that the exercise given by the High Court in the said judgment should be applied in rarest of rare cases. The case on hand, in our considered opinion, does not fall under the said category.

7. Moreover, the Apex Court in a catena of decisions, for instance in Harnek Singh v. Charanjit Singh and others, reported in (2005) 8 SCC 383 and Laxmibai v. Collector, Nanded and others, reported in (2020) 12 SCC 186, emphatically held that election disputes must be determined only by way of election petition and a writ petition should not be entertained. Paragraphs 16 and 17 of the judgment in Harnek Singh (supra) are relevant and are quoted hereunder:

"16. Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic



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structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases where a writ petition would be entertained but in this case we are not concerned with the said question.

17. In *C. Subrahmanyam* [(1998) 8 SCC 703] a three-Judge Bench of this Court observed that a writ petition should not be entertained when the main question which fell for decision before the High Court was non-compliance with the provisions of the Act which was one of the grounds for an election petition in terms of Rule 12 framed under the Act."

8. The aforesaid view of the Apex Court was reiterated by a Larger Bench of the Apex Court in *Laxmibai* (supra), wherein the law on the point in question has been reiterated as under:

"43. Section 10-A of the 1959 Act and Section 9-A of the 1961 Act read with Articles 243-K and 243-O, are *pari materia* with Article 324 of the Constitution of India. In view of the judgments referred, we find that the remedy of an aggrieved person accepting or rejecting nomination of a candidate is by way of an election petition in view of the bar created under Section 15-A of the 1959 Act. The said Act is a complete code providing machinery for redressal to the grievances pertaining to election as contained in Section 15 of the 1959 Act. The High Court though exercises extraordinary jurisdiction under Article 226 of the Constitution of India but such jurisdiction is discretionary in nature and may not be exercised in view of the fact that an efficacious alternative remedy is available and more so exercise restraint in terms of Article 243-O of the Constitution of India. Once alternate machinery is provided by the statute, the recourse to writ jurisdiction is not an appropriate remedy. It is a prudent discretion to be exercised by the High Court not to interfere in the election matters, especially after declaration of the results of the elections but relegate the parties to the remedy contemplated by the statute. In view of the above, the writ petition should not have been entertained by the High Court. However, the order of the High Court that the appellant has not furnished the election expenses incurred on the date of election does not warrant any interference."

(emphasis supplied)



9. In the light of the finding recorded in the judgments supra, we do not find a writ to be maintainable. With due respect to the judgment of the Punjab and Haryana High Court in the case of Prithvi Raj (supra), we hold that the jurisdiction under Article 226 of the Constitution of India cannot be exercised as a matter of course ignoring Article 243-ZG and the view expressed by us is supported by the judgments of the Apex Court. Referring to the judgments quoted in the previous paragraphs, the writ petition is not maintainable in the light of the provision under Article 243-ZG of the Constitution of India. Finding no exception on the facts so as to entertain the writ petition, the same is dismissed. There will be no order as to costs. Consequently, W.M.P.Nos.9314 and 9316 of 2022 are closed.

Sd/-

Assistant Registrar(CS IV)

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Sub Assistant Registrar

To:

- 1 The State Election Commissioner
Tamilnadu State Election Commission
No.208/2, Jawaharlal Nehru Road
Arumbakkam, Chennai- 600 106.
- 2 The District Election Officer/
District Collector, Office of the
District Collector, Kallakurichi
Kallakurichi District.
- 3 The District Election Observer
Office of the District Collector
Kallakurichi, Kallakurichi District.
- 4 The Superintendent of Police
Kallakurichi, Kallakurichi District.
- 5 The Returning Officer / Municipal Commissioner
Kallakurichi Municipality, Kallakurichi- 606202
Kallakurichi District.

+1cc to Government Pleader, SR.NO.27317(15/06/2022)

W.P.No.9576 of 2022

PA (CO)
PM/26/04/2022