



W.P.No.21330 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.12.2022

CORAM :

THE HON'BLE MR.T.RAJA, ACTING CHIEF JUSTICE

AND

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

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S.Jeeva

..

Petitioner

v.

1. The Chief Electoral Officer of Tamil Nadu
Public (Election) Department
Government of Tamil Nadu
Secretariat, Fort St.George
Chennai

2. The District Electoral Officer/
District Collector
Villupuram, Villupuram District

3. The Returning Officer/Tahsildar
Ward No.5, Vallam Union
Eachur Village & Post, Gingee Taluk
Villupuram District

4. Mr.Sudhakaran

..

Respondents



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Petition under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the 3rd respondent to take appropriate action on the representation of the petitioner dated 03.02.2022 seeking to declare the election of the 4th respondent is null and void for the post of Ward Member of Eachur Village & Panchayat, Gingee Taluk, Villupuram District conducted on 09.10.2021 within a stipulated time.

For Petitioner :: Mr.S.Manikandan

For Respondents :: Mr.P.Muthukumar
 State Government Pleader
 for R1 to R3
 Mr.T.Elumalai for R4

ORDER

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

Mr.S.Jeeva, Son of Mr.Sivaraj, a resident of Eachur Village, Gingee Taluk, Villupuram District, has filed this writ petition for issuance of a mandamus directing the third respondent to take appropriate action on the representation of the petitioner dated 03.02.2022 seeking to declare the election of the fourth respondent as null and void for the post of Ward Member in Eachur Village & Panchayat, Gingee Taluk, Villupuram District.



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2. Learned counsel appearing for the petitioner submitted that the fourth respondent was born on 22.02.2002 and his original age was 19 years on the date of issuance of the notification by the second respondent. But the fourth respondent contested in the local body election at the age of 19 years against Section 33 of the Tamil Nadu Panchayats Act, 1994. When the fourth respondent is not a competent person to participate in the local body election, as per Section 33 of the Tamil Nadu Panchayats Act, 1994, suppressing his original age of 19 years at the time of notification, he participated in the local body election for the post of 5th Ward Member in Eachur Village Panchayat and succeeded on 16.10.2021. Therefore, the petitioner has given a representation on 03.02.2022 to the respondents 1 to 3 to enquire into the entire affairs and pass an order. The said representation till date has not been considered. Hence, the petitioner has been advised to come to this Court.

3. Mr.P.Muthukumar, learned State Government Pleader appearing for the respondents 1 to 3, referring to Article 243-O(b) of the Constitution



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of India, which reads as follows,

"(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.",

submitted that no election to any Panchayat shall be called in question except by an election petition presented to such authority.

4. In reply, learned counsel appearing for the petitioner submitted that the petitioner being not a contesting candidate, he cannot present any election petition.

5. But we find that the contention of the petitioner's counsel completely runs contrary to sub-sections (1) & (2) of Section 258 of the Tamil Nadu Panchayats Act, 1994, which read as follows:-

"258(1). No election of a president or a chairman or a member shall be called in question except by an election petition presented to the District Judge of



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the district in which the panchayat is situated, within forty five days from the date of the publication of the result of the election under this Act.

(2) An election petition calling in question any such election may be presented on one or more of the grounds specified in section 259 by any candidate at such election, by any elector of the ward concerned or by any member."

Therefore, when Article 243-O of the Constitution of India says that 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 and sub-sections (1) & (2) of Section 258 of the Tamil Nadu Panchayats Act, 1994 also state this Court has no jurisdiction to entertain a petition like this, the writ petition is liable to be dismissed as not maintainable.

6. Moreover, in similar circumstances, when Writ Petition No.16460 of 2010 was filed by one Mr.M.R.Kannan for issuance of a writ of declaration declaring that the election conducted to Ward No.17 of



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Thiruvarur District Panchayat on 22.07.2010 as invalid for violation of the mandatory provisions contained in Rules 62 and 66 of the Tamil Nadu Panchayats (Election) Rules, 1995 and consequently to hold fresh election as per law, the single Bench presided over by one of us (T.R.,ACJ), by order dated 23.12.2010, while dismissing the writ petition by virtue of Article 243-O of the Constitution, has held thus:-

"The Apex Court on considering the bar imposed by Article 243-O(b) as absolute and explicit in the case of Jaspal Singh Arora Vs. State of M.P. (1998 9 SCC 594) has ruled that no election of president can be challenged by filing writ petition under Article 226 of the Constitution of India. A mere cursory look at the non obstante clause embedded in Article 243-O viz; notwithstanding anything in this Constitution, increasingly clear the doubt that inspite of Article 226, no election petition can be entertained by the High Court. Therefore, I am of the view that the constitutional embargo imposed by Article 243-O does not permit the High Court to entertain any election petition under Article 226 of the Constitution of India, hence, I dismiss the writ



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petition as barred by Article 243-O."

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Even the prayer of the petitioner therein to grant time beyond the period of forty five days prescribed in the statute to file the election petition on the ground that he was a contesting candidate, has also been rejected, in the light of the ratio laid down by the Hon'ble Apex Court in Jaspal Singh Arora's case holding that it is the duty of the Court to respect the legislative intent and there is no power to condone the delay after the expiry of forty five days from the date of publication of the results as provided in the statute.

7. For all the aforementioned reasons, this writ petition stands dismissed as not maintainable. There shall be no order as to costs.

Speaking/Non speaking order

(T.R.,A.C.J.) (D.B.C.,J.)

Index : yes/no

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