



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2022

CORAM :

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

AND

THE HON'BLE MR.JUSTICE P.D.AUDIKESSAVALU
W.P.NO.25222 OF 2021

D.Senthamarai

.. Petitioner

Vs

1. The Tamil Nadu State Election Commission,
Jawaharlal Nehru Road,
Koyambedu, Chennai.
2. The District Collector,
District Collectorate Office,
Villupuram District.
3. The Assistant Director (Panchayat's),
District Collectorate Office,
Villupuram District.
4. The Returning Officer,
Olakkoor Block Development Office,
Olakkoor Panchayat Union,
Tindivanam Taluk,
Villupuram District.
5. The Assistant Returning Officer,
Block Development Office,
Olakkoor Block Development Office,
Tindivanam Taluk,
Villupuram District.

.. Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India praying for a writ of certiorarified mandamus to (a) call for the records of the fourth respondent dated 27.10.2021 vide Na.Ka.No.Aa2/1368/2021 and quash the same as illegal, arbitrary and non-est in law and (b) directing the respondents to publish



the petitioner's name in the Official Gazette as Vice President of Andampattu Village as per the election conducted on 22.10.2021 which was also recorded in the Minutes book of Andampattu Panchayat.

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For the Petitioner : Mr.G.Mohammed Aseef

For the Respondents : Mr.S.Sivashanmugam
for respondent No.1

: Mr.C.Harsha Raj
Addl. Government Pleader
for respondent Nos.2 to 5

ORDER

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

The writ petition has been filed to challenge the letter dated 27.10.2021 issued by the Returning Officer/Regional Development Officer, Panchayat Union, Olakur.

2. The facts of the case given by the petitioner show that after his election as Ward member, the election for the post of Vice President was announced and held on 22.10.2021. The petitioner has submitted his nomination for the election and he secured majority votes out of valid votes. Accordingly, he was declared elected as Vice President vide the proceedings dated 22.10.2021. After the declaration of the result in favour of the petitioner, the Returning Officer subsequently took a u-turn to nullify the election for re-election, without having any authority. Once the result of the election was declared, the Returning Officer becomes functus officio, having no authority under the relevant Rules to notify re-election, unless the result of the election is challenged by the defeated candidate by following the due process of law. In view of the above, the impugned letter dated 27.10.2021 has been challenged.

3. Learned Additional Government Pleader appearing for the respondents 2 to 5 submitted that the election held on 22.10.2021 was not as per the procedure. As per the relevant Rules, the signatures of the voters is required, which does not exist in the present case and furthermore, the President of the Panchayat has not cast vote in the election, though he has been elected by an indirect election. But as per the Rules, he has right to vote. Keeping in mind the irregularities in the election, where even the President has not signed the declaration of the result, the Returning Officer took a decision



to re-notify the election and, accordingly, the impugned letter was issued on 27.10.2021. The prayer is not to cause interference in the letter impugned in this writ petition.

4. We have considered the rival submissions and perused the records.

5. The facts which are not in dispute are that the election for the post of Vice President of Andapattu Panchayat was held on 22.10.2021 where the petitioner secured three votes out of six and one vote was found to be invalid and, accordingly, the petitioner was declared as elected on the post of the Vice President. A council meeting was held on 22.10.2021 and resolution was passed where the petitioner was declared elected as Vice President. After declaration of the result, the Returning Officer could not have notified re-election even if it is assumed for the sake of argument that certain irregularities were found in the election. It is for the defeated candidate to challenge the result of the election and, in that eventuality, the issue about the alleged irregularities have to be considered by the competent court. Without resorting to such measure, the Returning Officer, on his own, has issued the impugned letter dated 27.10.2021 having no authority to do so after the declaration of the result of the post.

6. The impugned letter dated 27.10.2021 does not refer any irregularities in the election, but states that it was not properly held. The letter aforesaid is not legally sustainable in the absence of competence of the Returning Officer to issue the letter after the declaration of the result to re-notify the election, as he has become functus officio. It is apart from the fact that the result of the election cannot be nullified in the manner as was done by the Returning Officer. Rather, it can be on a challenge to the result of the election by a defeated candidate by following the due process of law.

7. Accordingly, the impugned letter dated 27.10.2021 is set aside and the writ petition is allowed with the aforesaid observation. No costs. Consequently, W.M.P.No.26596 of 2021 is closed. It is, however, made clear that the judgment herein would not take away the right of the defeated candidate to challenge the result of the election by following the due process of law.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

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Sub Assistant Registrar



To:

1. The Tamil Nadu State Election Commission,
Jawaharlal Nehru Road,
Koyambedu, Chennai.

2. The District Collector,
District Collector Office,
Villupuram District.

3. The Assistant Director (Panchayat's),
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5. The Assistant Returning Officer,
Block Development Office,
Olakkoor Block Development Office,
Tindivanam Taluk,
Villupuram District.

+1cc to Mr.G.Mohammed Aseef, Advocate, S.R.No.7146

+1cc to the Government Pleader, S.R.No.7668

W.P.No.25222 of 2021

NRL (CO)
PM/10/02/2022