



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.01.2022
CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

W.P.No.27258 of 2017

Mr.Nalaperumal

... Petitioner

Vs.

1. The Chief Election Commissioner
Election Commission of India,
Nirwatchan Southern,
Ashoka Road, New Delhi.

2. The AIADMK Party Head Office,
rep. by its Co-ordinator,
AIADMK Office,
Royapettai,
Chennai-14.

... Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Mandamus, to direct the 1st respondent to consider the representation of the petitioner dated 16.08.2017 and pass orders that may deem fit and proper in the circumstances of the case.

For Petitioner : Mr.M.Govindaraju
for Mr.B.Vijayasankar

For Respondents : Mr.R.Niranjan Rajagopalan
for M/S.G.R.Associates for R1

: Mr.C.Thirumaran for R2

O R D E R

This Writ Petition has been filed by the petitioner, praying to issue a Writ of Mandamus, to direct the 1st respondent to consider the representation of the petitioner dated 16.08.2017 and pass orders that may deem fit and proper in the circumstances of the case.

2. The petitioner claims to be a Member of AIADMK party. According to the petitioner, there was no election for the post of General Secretary of the 2nd respondent/AIADMK party after the demise of the then General Secretary and later, a General Body Meeting was convened on 29.12.2016, wherein, Mrs.Sasikala was elected as the General Secretary, who was also later convicted



and sent for jail. In such circumstances, the petitioner made a representation dated 29.06.2017 to Mrs.Sasikala, who was the General Secretary, requesting her to conduct election to elect a new General Secretary and Office Bearers of AIADMK Party. He also made similar representation dated 14.08.2017 to the 2nd respondent. Thereafter, on 16.08.2017, the petitioner made a representation to the 1st respondent/Election Commission, to direct the 2nd respondent/AIADMK Party to conduct party election and elect the General Secretary and Office Bearers to the 2nd respondent. The grievance of the petitioner is that there was no response evoking despite his representation to the 1st respondent. According to the petitioner, 1st respondent is having power to regulate the administration of political parties. According to the petitioner, on 12.09.2017, a General Body Meeting was convened by the 2nd respondent and abolished the post of General Secretary without following the rules and regulations and even the General Body Meeting held on 12.09.2017 was not valid under the rules and regulations of the party. Therefore, since the no action was forthcoming despite his representations, the petitioner has come forward with the present Writ Petition.

3. A counter affidavit has been filed on behalf of the 2nd respondent, wherein, it is stated that pursuant to the appointment of Tmt.V.K.Sasikala as interim General Secretary in the General Council Meeting held on 29.12.2016, an election dispute was raised by two parties, viz., AIADMK (Amma) and AIADMK (Puratchi Thalaivi Amma) and during the pendency of the said dispute, both parties have merged and consequently the Executive Council and General Council meeting was convened jointly after the merger and held on 12.09.2017, wherein, various resolutions and amendments to bye-laws of the Party were passed and approved.

4. It is further stated that in the meeting held on 12.09.2017, the appointment of V.K.Sasikala as the Interim General Secretary made on 29.12.2016 was annulled as well as the various appointments made by her were also cancelled vide Resolution No.8. Similarly vide Resolution No.7, the post of the General Secretary of the Party has been abolished and accordingly the Rule 20 and Rule 43 of the Bye-laws of the party has been suitably amended and approved in the said meeting. Further, in the said meeting the post of Co-ordinator and Joint Co-ordinator are created in the place of General Secretary by introducing Rule 20-A Part i-xiii of the Bye-laws of the party and according to this amendment, the post of Co-ordinator and Joint Co-ordinator shall be elected by the Members of the General Council.

5. It is also stated that the above said resolutions, amendments made in the Bye-laws in the meeting held on



12.09.2017 are duly communicated to the Election Commission of India and the same has been acknowledged. By order dated 23.11.2017, the Election Commission of India has passed an order in Dispute Case No.2/2017, thereby rejecting the claim made by the Tmt.V.K.Sasikala and Thiru.T.T.V.Dinakaran. The Election Commission of India, made this order based on the claim of the Co-ordinator and Joint Co-ordinator and as well as accepted all the resolutions, amendments made to the Bye-laws of the party, which took place on 12.09.2017. Thereafter, the Co-ordinator and Joint Co-ordinator have exercised their powers and duties in accordance with the Bye-laws of the Party till today.

6. It is further stated that though the aggrieved parties approached the High Court of Delhi as well as the Hon'ble Supreme Court, against the order of the Election Commission dated 23.11.2017, the same are ended in dismissals. Thereafter on 24.09.2019, the General Council Meeting as well as the Executive Council Meeting was held and various resolutions were passed by the party under the leadership of Co-ordinator and Joint Co-ordinator. On 01.12.2021, the Executive Council meeting of the party is held and passed various resolutions as well as amendments to Rule 20(A) Part-ii, Rule 43 and Rule 45 of the Bye-laws of the party. According to these amendments, the post of the Co-ordinator and the Joint Co-ordinator shall be elected by the primary members of the Party jointly by single vote. Consequently, a detailed communication along with a report has been sent to the Election Commission of India with regard to the meeting held on 01.12.2021 and the same has been duly acknowledged by the 1st respondent. Thereafter, the Election for the post of Co-ordinator and Joint Co-ordinator has been notified on 02.12.2021 in the Election Schedule, two Election Commissioners were appointed by the Party. On completion of the Election process, the said two Election Commissioners declared the result of the Election for the post of Co-ordinator and Joint Co-ordinator on 06.12.2021 at 4.15 P.M. and necessary certificates were also issued. Hence, the entire Election process has been completed in accordance with the amended Bye-laws of the party as on 01.12.2021 and the same has been communicated to the Election Commission of India as required to be furnished as per Section 29(A)-Sub-Section (9) of the Representation of the People Act 1951 and the same has been acknowledged by the Election Commission of India. Therefore, it is stated that the 2nd respondent is discharging its duties and functions in accordance with bye laws of the party without any deviation. With these averments, the 2nd respondent sought for dismissal of the Writ Petition.

7. Heard the learned counsel for the petitioner and the respondents and perused the entire materials available on record.



8. At the outset, the Writ Petition itself is not maintainable. The grievance of the petitioner is that there was no election as regards the election of General Secretary and new Office bearers and despite his representations to the 1st respondent, there was no response. As could be seen from the counter affidavit filed on behalf of the 2nd respondent, in the Executive Council and General Council Meeting held on 12.09.2017, it has been resolved to abolish Rule 20 of the Bye-laws of the Party, which relates to the General Secretary of the Party and accordingly, it has been abolished in view of the fact that all the members and the cadres of the party had expressed that only Puratchi Thalaivi Dr.J.Jayalalitha shall be the eternal General secretary of the party and no person shall be elected or appointed/nominated to that post, in as much as she sacrificed her life for the party and in order to give due respect to her, the post of the General Secretary has been rescinded. It was the decision taken unanimously by the members of the the 2nd respondent/Party and approved the same in the Meeting and for the purpose of continuing the administration of the Party, the post of Co-ordinator and Joint Co-ordinator were created who would assume all the powers of the General Secretary as embodied in the rules and regulations of the Party. Therefore, after giving effect to the decisions taken in the Meeting by brining the same as amendment to the Bye laws of the Party, the 2nd respondent has communicated to the 1st respondent/Election Commission of India, which also acknowledged the same. When such being the situation, the grievance of the petitioner cannot be sustained.

9. All the political parties, when they commenced as a political party, they come into public domain on their own will and wish under the guise of doing some public activities and as such, they would not acquire any statutory status. If the rights are purely of a private character, no mandamus can be issued. Therefore, this Court is of the view that the conduct of election within a political party to chose their General Secretary or political functionaries and any amendments to the Bye Laws/Constitution of the party or internal matters within the political party, do not fall within the ambit of public duty to attract the jurisdiction under Article 226 of the Constitution of India. Merely because a political party registered under Section 29-A of the Representation of the People Act, 1951, does not crave any Superintendence by the Chief Election Commissioner over the in-house administration of the political party and the first respondent has no duty cast upon it to oversee the in-house activity of the political party. As such, the jurisdiction of the High Court under Article 226 of the Constitution of India, cannot be invoked for the in-house activities of a political party and the question of directing the Chief Election Commissioner to dispose of the representation



made by the petitioner, does not arise. When the Chief Election Commissioner has no role to monitor the internal activity of a political party, no Mandamus can be issued to the Chief Election Commissioner to dispose of the representation of the petitioner. It is settled law that the Election Commissioner of India (ECI) is not authorised under any law to interfere with the internal elections of political parties recognized by it or registered with it, or find out whether or not the office-bearers had been elected by following a democratic process.

10. In fact, during the pendency of the present Writ Petition, pursuant to the amended Bye Laws of the 2nd respondent Party, on 06.12.2021, AIADMK leaders O Panneerselvam and K Palaniswami were elected unopposed as party Coordinator and Joint Coordinator respectively. This was challenged in a Writ Petition before this Court in W.P.No.26171 of 2021, which was dismissed by the First Bench of this Court, vide order dated 14.12.2021, with the following observation:

"15. In the case on hand, the second respondent is not discharging duties of the nature discussed by the Apex Court in the case of Board of Control for Cricket in India (supra) or even in the case of Zee Telefilms Ltd v. Union of India (supra). In view of the above, the ratio propounded by the Apex Court in the case of Board of Control for Cricket in India (supra) would not have any application to the facts of this case.

"16. In the light of the discussion made above, we do not find the writ petition to be maintainable against respondent Nos.2 to 6 and no direction can be issued to the Election Commission of India in reference to the internal election of the parties. Hence, the writ petition would not be maintainable in the present case. It is more so when despite an opportunity to learned counsel for the petitioner, he could not refer to any provision of the Act of 1951 empowering the Election Commission of India to look into the internal elections of the political party."

11. In the light of the above discussion, the Writ Petition is dismissed as not maintainable. No costs.

Sd/-

Assistant Registrar (CS VIII)

/true copy/

Sub Assistant Registrar



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To

1. The Chief Election Commissioner
Election Commission of India,
Nirwatchan Southern,
Ashoka Road, New Delhi.

2. The Co-ordinator,
AIADMK Party Head Office,
AIADMK Office,
Royapettai,
Chennai-14.

+1cc to Mr.C.Thirumaran, Advocate Sr.No.416

+1cc to Mr.B.Vijayasankar, Advocate Sr.No.282

W.P.No.27258 of 2017

PMK(CO)
KM(01/02/2022)