



W.P.(MD)No.26006 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 31.10.2023

CORAM:

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

AND

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

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M.M.Gaffar Hasan

... Petitioner

Vs.

- 1.The Election Commissioner,
Tamilnadu State Election Commission,
208/2, Jawahar Nehru Road,
Koyambedu Bus Stand Opp,
Arumbakkam,
Chennai.
- 2.The District Collector cum District Election Officer,
Thoothukudi District.
- 3.The Municipal Commissioner,
Kayalpattinam Municipality,
Thoothukudi District.
- 4.The Superintendent of Police,
Thoothukudi District,
Thoothukudi.

5.K.A.S.Muthu Mohammed

...Respondents



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PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 2 and 3 to take immediate action on the basis of the proceedings issued by the first respondent in Na.Ka. 4382/2023/ME1 dated 7.9.2023 and take necessary action in accordance with law against the said Muthu Mohammed within the time stipulated by this Hon'ble Court.

For Petitioner : Mr.A.Shajahan

For Respondents : Mr.S.P.Maharajan,
Special Government Pleader for R1 & R2

Mr.Veeranthiran,
Government Advocate for R4

ORDER

(Order of the Court was made by **V.LAKSHMINARAYANAN, J.**)

The petitioner seeks for a Writ of Mandamus, directing the second and third respondents to initiate proceedings as against the fifth respondent.

2. The reason for seeking such a direction is that the State Election Commission / first respondent had passed an order in Na.Ka.4382/2023/ME1, dated 7.9.2023, directing the respondents 2 and 4 to invoke the provisions under Rule 30 (3) (h) of the Tamil Nadu Urban Local Bodies Rules of 2023. It is on the



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strength of the letter issued by the Election Commission, the present Writ Petition has been filed.

3. On a perusal of the aforesaid Rules, it is clear that the said Rules came into force only on 13.04.2023. During the relevant time, the Rules that were applicable were framed under the Tamil Nadu District Municipalities Act, 1920. In case of a false nomination, the remedy was to raise an Election Petition under Rule 118 of the said Rules. The period of limitation to file such Election Petition is 45 days from the date of publication of the result under Rule 119.

4. By giving a representation to the State Election Commission, the writ petitioner cannot get over the period of limitation, which has already gone by. Apart from that, the Tamil Nadu Urban Local Bodies Rules not being retrospective in operation, it will not apply to the elections which were held on 31.05.2022. Therefore, the petitioner does not have a legal right, having foregone to file Election Petition under the old Act. Consequently, he has no legal right to convert an Election Petition into a representation made to the State Election Commission, the first respondent.



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5. The remedy of the petitioner is to approach the concerned District Court by way of an Election Petition and that not having been done, the petitioner is not entitled to a Mandamus. Consequently, the Writ Petition is dismissed. No costs.

(S.M.S., J.) & (V.L.N., J.)
31.10.2023

NCC : Yes / No

Index : Yes / No

SJ

To

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AND

V.LAKSHMINARAYANAN, J.

SJ

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