



CRP No.399 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 21.02.2024

PRONOUNCED ON : 11.03.2024

CORAM

THE HONOURABLE MR.JUSTICE V.SIVAGNANAM

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and

CMP.Nos.3361 & 3364 of 2023

- 1.Mohammed Rafi Uddin
- 2.A.Samsul Kutha
- 3.Dilshath Ahamed
- 4.K.Abdul Rahuman
- 5.Ibrahim

...

Petitioners

VS.

- 1.The Chairman
Tamil Nadu Waqf Board
Waqf House, No.1,Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 2.The Chief Executive Officer,
Tamil Nadu Waqf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai – 600 001.
- 3.The Waqf Superintendent /Election Officer
Dasthagir Sahib Jamia Masque Waqf,
Waqf Superintendent Office,
Dr.Anni Besant Road, Ice House,
Chennai – 600 005.



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4.T.Ansar Basha

5.T.Sulthan

6.S.M.Shajahan

7.K.Mohammed Ismail

8.H.Sikkander Abba Kani

9.Mohamed Abubuker

10.Buto Mohideen

...

Respondents

PRAYER : This civil revision petition has been filed under Article 227 of the Constitution of India to set aside the Fair and Decreetal order as made in O.A.No.101 of 2021 dated 12.01.2023 on the file of the Tamil Nadu Waqf Tribunal at Chennai.

For Petitioners

...

Mr.M.Aravind Subramaniam
Senior Advocate
for Mr.S.Vediyappan

For Respondent
Nos.1 to 3

...

Mr.Haja Mohideen Gisthi

For Respondent
Nos.5, 7 to 10

...

Mr.L.Gavaskar

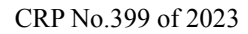
Respondents 4 & 6

...

Set exparte before Lower Court

ORDER

This civil revision petition has been filed to set aside the Fair and Decreetal order made in O.A.No.101 of 2021 dated 12.01.2023 on the file of the Tamil Nadu Waqf Tribunal at Chennai.



(i).The Waqf, namely, Dasthagir Jamia Mosque is managed by a committee elected once in three years by way of secret ballot. As per proceedings No.4879/05/A6/SA issued by the third respondent dated 06.02.2020 and the order of High Court of Madras in CRP (NPD) No.504 and CMP.No.4362 of 2021 dated 16.04.2021, the election was held on 10.10.2021. Counting of votes was done on the same day and the third respondent's officials got signature from the agents of the petitioners stating that the petitioners are successful candidates of the election but later, they declared that the respondents 4, 6, 7, 8 and 9 are the successful candidates. When the petitioners' agents questioned about the same, they are refused to answer.

(ii).The third respondent was not patient enough in counting the votes and was hurry in declaring the respondents 5, 7, 8, 9 and 10 as the winners of the election and the third respondent did not give an opportunity to other candidates to mark their number of votes. The



petitioners and other contested candidates were not permitted to submit their complaints before the third respondent. The third respondent has not conducted a fair and genuine election counting. The petitioners' votes were not counted properly and some of the members' votes were also made bogusly by unknown persons. The 5th respondent, who was declared unsuccessful, was subsequently declared as a successful candidate.

(iii).The action of the third respondent in counting the ballot of votes is unfair. Two ballot boxes votes were counted separately but the result was declared totalling both ballot boxes votes and the petitioners' votes were not counted in a proper manner and they were made bogusly to the other candidates.

(iv).In this regard, the petitioners immediately submitted their complaint to the third respondent on 11.10.2021 but no action was taken. The entire counting process of the above election was videographed by the Election Officer and if it is produced, it would prove the allegations made against the third respondent. Finally, the third respondent vide proceeding



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dated 10.10.2021 declared that the respondents 4 to 10 are as successful candidates. The application dated 21.10.2021 was sent with regard to the above unfair election counting conducted on 10.10.2021 to the respondents 1 to 3 and requested them for recounting of the ballot votes of the above election but after receipt of the above letter, the respondents did not take any steps for the same. Hence, the petitioners filed an application in O.A.No.101 of 2021 before the Tribunal but the same was dismissed by the Tribunal, against which, the present civil revision petition has been filed.

3.The main contention of the learned counsel for the petitioners is that counting of ballots pertaining to election for the management committee of Dasthagir Sahib Jamia Mosque Waqf, Saidapet Chennai, held on 10.10.2021 is not proper. Further, contended that the polled votes were in the two ballot boxes, which were counted separately and they noted down the number of votes obtained by each candidate in each ballot box. The representatives of the petitioners also noted down the number of votes obtained by each candidate in each ballot box. There is a difference between the votes noted by the petitioners' representatives and noted by the



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Election Officer. In this regard, they gave a complaint immediately.

Therefore, they filed an application to appoint an Advocate Commissioner to recount the ballot votes and also produced the video graphs recorded at the time of counting. The Tribunal not ordered in the application filed by the petitioners for producing the videographs taken during the counting of votes. If the video is produced, it will be made easy for the petitioners to prove their case. The Tribunal failed to order for that and thus pleaded to set aside the impugned order dated 12.01.2023 passed in O.A.No.101 of 2021 and to allow the civil revision petition.

4.To support his argument, the learned counsel for the petitioners relied upon the following judgments:

- 1.Special Leave to Appeal (C) .No.2998 of 2024.
- 2.The judgement of the Hon'ble Supreme Court ***dated 28.01.2020 in Civil Appeal No.780 of 2020 (Chandeshwar Saw Vs. Brij Bhushan Prasad & Ors.)***
- 3.The judgment of the Hon'ble Supreme Court in ***Bhabhi Vs. Sheo Govind and others*** reported in ***(1976) 1 Supreme Court Cases 687.***



4.The Judgment of this Court dated 16.04.2021 in ***CRP.(NPD) No.504 of 2021 (S.B.Sheik Azeezuddin Vs.S.Feroz Khan, Secretary of Dasthagir Sahib Jamia and three others)***

5.The judgment of this Court ***dated 05.07.2023 passed in Election Petition No.2 of 2021 (S.Selva Mohandas Pandian Vs. S.Palani Nadar and 17 others)***

5.The learned counsel appearing for the respondents supported the order of the Tribunal. Further contended that no case is made out to direct recount, no evidence led by the petitioners before the Tribunal in support of their case for recounting. Therefore, petition for recounting was not entertained by the Tribunal and rightly dismissed. There is no ground to interfere with the finding of the Tribunal and pleaded to dismiss the civil revision petition.

6.I have considered the matter in the light of the submissions made by the learned counsel on either side and perused the materials available on record.



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7. On perusal of the records and the impugned order, it is noticed that an election was conducted for the management committee of the Dasthagir Sahib Jamia Mosque, on 10.10.2021 by the proceedings in No.73/SA/EO/2021, where, the Waqf Superintendent /Election Officer, declared the following candidates namely (i).T.Ansar Basha, (ii).T.Sulthan, (iii). S.M.Shajahan, (iv). K.Mohammed Ismail, (v).H.Sikkander Abba Kani (vi). Mohamed Abubuker, and (vii). Buto Mohideen are successful candidates for the management committee of Dasthagir Sahib Jamia Masque Waqf, Saidapet, Chennai.

8. I have considered the evidence led by both the parties before the Tribunal. On the petitioner's side, filed five documents i.e. Ex.P1 dated 30.09.2021 True copy of the Notice No.6 list of candidates, Ex.P2 dated 04.10.2021 True copy of the Notice No.8 list of candidates, Ex.P3 dated 10.10.2021 True copy of the proceedings of the 3rd respondent, Ex.P4 dated 11.10.2021 True copy of the Complaint made by the applicants to the 3rd respondent marking copy to the 2nd respondent and Ex.P5 dated



21.10.2021 True copy of the Complaint made by the applicants to the 3rd respondent marking copies to the respondents 1 and 2 and the respondents' side filed four documents i.e. Ex.R1 dated 10.10.2021 Original Pamphlet issued by the respondents team, Ex.R2 dated 10.10.2021 Original Pamphlet issued by the applicants team, Ex.R3 dated 29.06.2022 True copy of the letter given by Saidai Mosque Garden Islamic Trust to the President/Secretary of Dasthagir Sahib Jamia Mosque and Ex.R4 dated 01.11.2021 True copy of the Letter for appointment of Management Committee for the waqf in question. Admittedly, both the parties led no oral evidence. Recount depending upon the evidence led by the parties.

9.In this case, on scrutiny of the evidence led by the parties, it is noticed that the petitioners have not applied in writing for recounting of votes immediately. It is noticed that it was only subsequent development. An application for recounting in writing to the Election Officer was an essential pre-condition. In this case, they have filed only complaints alone, apart from this, the first document about the dissatisfaction of the petitioners with regard to counting Ex.P4 i.e. a complaint made by the



applicants to the election officer dated 11.10.2021 i.e. a day after, the election was conducted. It exposes the fact that the applicants have not given any complaint immediately after noting the difference between the counting of votes noted by the petitioners' representatives and the Election Officer, since simultaneously both are noting the polled votes. Further, it is noticed that there is a contradicting averment between the Ex.P4 and the Ex.P5 i.e. the complaint dated 21.10.2021 made by the applicants to the election officer. It is discussed by the Tribunal in para – 9, 10 and 11 of its order. For better appreciation, it is reproduced hereunder:

“9.The applicants who have come forward with this Original Application are duty bound to convincingly prove the alleged irregularities and illegalities pertaining to the counting of votes. The first document available on record with regard to the grievance of the applicants is Ex.P4 which has been preferred by them to the election officer namely the 3rd respondent on 11.10.2021 and the same has been received in the time mentioned in it as 4.20 by the 3rd respondent which can only be construed as 4.20 p.m., that is nearly a day after the election was conducted. The applicants have not let in any convincing evidence for not preferring



such a complaint immediately on the date of election itself. A careful scrutiny of the averments contained in Ex.P4 is totally contradicting to the averments contained in the original application and also to the averments contained in Ex.P5 which is the subsequent complaint preferred by the applicants to the respondents 1 to 3 on 21.10.2021.

10.In Ex.P4, the applicants have stated that the polled votes in the two ballot boxes were counted separately and they noted down the number of votes obtained by each candidate in each ballot box. The applicants have given an account of such number of votes obtained by each candidate in each ballot box by way of a tabular column in Ex.P4 which clinchingly establishes the fact that the applicants and their agents were afforded reasonable and sufficient opportunity to witness and note down such particulars during the counting of votes by the 3rd respondent. Further, the applicants have baldly stated in Ex.P4 that the voters assured them that they voted for them and that the act of the 3rd respondent in not declaring the results of each ballot box separately creates suspicion. But in Ex.P5 which is the



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subsequent complaint the applicant have not chosen to refer about the above said tabular column stated by them in Ex.P4 but they have chosen to invent various other reasons such as presence of Tmt.Ayisha, the erstwhile Waqf Superintendent in the election committee stating that they have doubt about the irregularity in counting of votes due to her presence since they had preferred complaints against her during the past. Surprisingly, such averments which are contained in Ex.P4 and P5 are not found in the original application and on the contrary, new grounds of threatening of votes and bogus votes are found. These aspects categorically establish the fact that the applicants have not approached this Tribunal with clean hands. A careful comparison of the allegations against the election officer and the mode of counting of votes found in Ex.P4, P5 and the averments of the original application, as discussed above, crystal clearly establishes the act of the applicants in making bald and inconsistent allegations against the 3rd respondent with regard to the irregularity and illegality in counting of votes.



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11.It is pertinent to state here that, admittedly as found in Ex.R1 and R2 two teams have been formed, each team containing seven candidates and have contested the said election. Two persons namely the respondents 4 and 6 who belong to the team in which the applicants form part have been declared successful and they have not complained about any irregularity or illegality in the counting of votes and they have remained exparte. Ex.R4 establishes the fact that the said respondents 4 and 6 have been appointed as the members of the managing committee based upon the result of the election in question. As rightly argued by the counsel for the respondents 5, 7 to 10, there is no possibility for the 3rd respondent to have counted the votes properly in respect of the respondents 4 and 6 and improperly in respect of the applicants who all belong to the same team.. . . .”

10.It is also not disputed that the respondents namely T.Ansar Basha and S.M.Shajahan are belongs to the petitioners' team. They have been declared as a successful candidate in the election. They have not



complained about any irregularity or illegality in the counting of votes.

Under these circumstances, production of videograph is not warranted.

Unless there is a suspicious circumstances, the videograph need not to be produced but on the fact of this case, there is no suspicious circumstances arising for the production of videograph with regard to counting of votes. Therefore, the Tribunal not ordered for that production of videograph. I find no fault upon the order of the Tribunal in this regard.

11.The judgment relied on by the learned counsel appearing for the petitioners with regard to recounting arising on different factual background such ground is not available in our case on hand for production of videograph and there is no ground made out for ordering of recount and further it is to be noted that there is no allegation of improper rejection and acceptance of ballot papers. There is no such complaint raised by the petitioners before the Election Officer. No strong ground is made out for recounting in the absence of allegations of improper rejection and acceptance of ballot papers. The allegation that the petitioners noted different numbers and Election Officers noted different numbers, while



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counting the ballot papers is not a sound ground for ordering recounting.

Therefore, the trial Court rightly dismissed the petitioners' petition for recounting. I find no ground to interfere with the impugned order passed by the Tribunal and I find no infirmity in the impugned order and no ground is made out for interference, hence, the revision fails.

In the result, the civil revision petition is dismissed. No costs.

Consequently, the connected miscellaneous petitions are closed.

Index : Yes/No
Internet : Yes/No
sms
To

11.03.2024

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V.SIVAGNANAM ,J.

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Pre-delivery Order made in
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