



WEB COPY

W.P.No.19864 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 20.08.2024

PRONOUNCED ON : 20.09.2024

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.19864 of 2021

and W.M.P.Nos.21122, 21124 & 21209 of 2021

1. K.Sivakumar
2. R.Selvaraji

...Petitioners

-Vs-

1. The State of Tamil Nadu,
Rep. by its Principal Secretary,
Rural Development and
Panchayat Raj Department,
Fort St. George,
Chennai – 600 009.
2. The Tamil Nadu State Election Commission,
Rep. by its Commissioner,
No.280/2, Jawaharlal Nehru Road,
Arumbakkam,
Chennai – 600 106.
3. The District Collector,
Tirupthur District,
Tirupathur.
4. Madhanur Panchayat Union,
Rep. by its Executive Officer/
The Block Development Officer,
Madhanur, Ambur Taluk,
Tirupathur District.



W.P.No.19864 of 2021

5. P.Indumathi,
No.416/A, Periyar Street,
Periankuppam Panchayat,
Ambur Taluk,
Tirupathur District.
(R5 impleaded vide order
dated 11.11.2021 made in
W.M.P.No.24104 of 2021
in W.P.No.19864 of 2021)

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, calling for the records relating to the order of the first respondent dated 03.09.2021 in G.O.(Ms.)No.108, Rural Development and Panchayat Raj (PR-1) Department, published in the Tamil Nadu Government Gazette Extraordinary, Part-II, Section 2, dated 03.09.2021, and quash the same only insofar as it relates to the reservation for the post of President of the Nayakkaneri village panchayat, Madhanur panchayat union, Tirupathur district, for Scheduled Castes women.

For Petitioners : Mr.K.Selvaraj

For Respondents

For R1 & R3 : Mr.P.S.Raman, Advocate General
Assisted by Mr.V.Ravi,
Special Government Pleader

For R2 : Mr.S.Siva Shanmugam

For R4 : Mr.V.Manoharan
Additional Government Pleader

For R5 : Mr.N.G.R.Prasad
For Mr.K.C.Karlmarx



W.P.No.19864 of 2021

ORDER

WEB COPY

This writ petition has been filed challenging the order passed by the first respondent dated 03.09.2021, in G.O.(Ms.) No.108 Rural Development and Panchayat Raj (PR-1) Department, which relates to the reservation for the post of President of the Nayakkaneri Village Panchayat, Madhanur Panchayat Union, Thirpathur District, for Scheduled Castes women.

Facts of the case :-

2. The first petitioner is a former panchayat President. He was elected and functioned as President of Nayakkaneri village panchayat in the year 2011 to 2016. The second petitioner belongs to Scheduled Tribes community and his father was elected as President of Nayakkaneri village panchayat from 1986 to 1991. The second petitioner was also elected as Ward Member in the year 2006, of ward No.12 of Madhanur panchayat union, which reserved for Scheduled Tribes.

3. The Nayakkaneri village is situated in a mountain, 864 meters above the sea level. It consists nine wards and total population is



W.P.No.19864 of 2021

about 7000 in which, voters are 3440. Majority of population viz., 66% belong to Scheduled Tribes and the remaining 34% of the population to other communities. In the said panchayat, no one belongs to Scheduled Castes community in the entire village. Therefore, the government of Tamil Nadu has reserved the post of Ward Members viz., Ward Nos. 1 to 8 for Scheduled Tribes candidate from the year 1986 and the post of President was also reserved for Scheduled Tribes candidate from 1986 to 2011. In the year 2011, it has changed from the reservation for Scheduled Tribes to general by rotation. Only one ward viz., Ward No.9 alone was allotted for general and other wards were reserved only for Scheduled Tribes. It was continued for more than 25 years. Though the said panchayat was allotted for general woman in the year 2016, for the post of village panchayat President, no election was conducted from 2016 to 2021.

4. While being so, the first respondent issued the impugned order thereby reserved the post of President of Nayakkaneri village panchayat for Scheduled Castes women under Section 57 of the Tamil Nadu Panchayat Act, 1994 r/w. Rule 6 of the Tamil Nadu Panchayat



W.P.No.19864 of 2021

(Reservation of Seats and Rotation of Reserved Seats) Rules 1995.

(hereinafter referred to as “the Rules”). Aggrieved by the same, the petitioners filed the present writ petition.

Petitioners' counsel submissions:-

5. Mr.K.Selvaraj, learned counsel appearing for the petitioners submitted that the fifth respondent submitted nomination for the post of President and she is elected and declared as unopposed candidate for the post of Presidentm moreover, her name is not even found in the Ward No.9 of the Nayakkaneri village. Therefore, she is not qualified to contest in the election for the post of President as per Section 33 of the Tamil Nadu Panchayat Act, 1994. In fact, her application for inclusion of her name in ward No.9 of Nayakkaneri village panchayat has been rejected by the Assistant Returning Officer, after conducting field inspection on 21.09.2021.

5.1. Further, the Returning Officer/Block Development Officer of Madhanur panchayat union by its proceedings dated 23.09.2021, submitted a table before this Court consisting of eligible voters in each



W.P.No.19864 of 2021

ward of the Nayakkaneri village panchayat. As per the said table, there is no voters and zero elector/voter of Scheduled Castes candidate in the ninth ward of Nayakkaneri village panchayat. As on 23.09.2021, the name of the fifth respondent does not find place in the electoral roll of the ninth ward. The last date for the nomination was 22.09.2021. The election notification was issued on 15.09.2021 and the last date for the nomination was on 22.09.2021. As per the provision of Section 30(3) of the Tamil Nadu Panchayat Act, no amendment, transposition or deletion of any entry in the electoral roll made after the last date for making the nomination for the election in any district panchayat. Therefore, the fifth respondent is a disqualified person to contest for the post of President.

5.2. He further submitted that as per the provision of Rule 21 of the Tamil Nadu Panchayat (Elections) Rules, 1995, without any written orders from the Electoral Registration Officer of the Assembly Constituency for inclusion of any voters, the Panchayat Electoral Registration Officer viz., the Block Development Officer shall not amend the electoral roll of the panchayat. Therefore, the Block Development Officer ought not to have resorted to *Suo motu* revision of the rolls by



W.P.No.19864 of 2021

deletion or addition or modification. However, the Block Development Officer had *Suo motu* added the name of the fifth respondent in the electoral roll of the ninth ward of the Nayakaneri village panchayat on 05.10.2021 as Sl.No.553. In fact, in the said ward only 551 voters are there, as per the electoral roll dated 22.09.2021. Only in the year 2016, the post of President of Nayakanneri village panchayat was reserved for general women. As per the provision of Rule 7 proviso of the Rules, the seats reserved for women shall be allotted by rotation at the expiry of every ten years. Therefore, only after ten years viz., in the year 2026, the seat of President of Nayakkaneri village can be reserved to Scheduled Castes.

5.3. He further submitted that as per Rule 7 of the Rules, the reservation of seats or the office of President shall be made on the ward or in the panchayat, where the population of Scheduled Castes or Schedule Tribes for women, as the case may be, is comparatively large to the total population of the ward or territorial ward or panchayat. Therefore, the population of Scheduled Castes in the entire Nayakkaneri Village should be comparatively large than the other panchayat. Whereas



W.P.No.19864 of 2021

not even a single Scheduled Castes person available in the Nayakkaneri village panchayat, as per the proceedings of the Returning Officer and as per the voters list dated 31.08.2021. Therefore, the reservation for the post of President of Nayakkaneri village panchayat for Scheduled Castes women is against the provisions of Rule 7 of the Rules. As per the report submitted by the first respondent the total population in the Nayakkaneri village panchayat is 4270, in which total population of Scheduled Castes is 7 and the percentage of the Scheduled Castes population to the total population is 0.164% that is less than 0.50%. Therefore, reservation for Scheduled Castes women is against the judgment rendered by this Court.

5.4. Except the fifth respondent, no other Scheduled Castes candidate is available in the Nayakkaneri panchayat to contest for the post of President. Therefore, the entire population have been prevented from exercising their freedom of casting their vote in favour of one or other candidate, which is held to be an fundamental freedom under Article 19(1)(a) of the Constitution of India. In support of his contention he relied upon several judgments.



W.P.No.19864 of 2021

WEB COPY

Respondents' contentions:-

6. The first respondent filed counter and Mr.P.S.Raman, learned Advocate General submitted that the writ petition itself is not maintainable, since it is challenging the very reservation for the post of President of the Nayakkaneri village panchayat, Madhanur panchayat union, Tirupathur district, for Scheduled Castes women in G.O.Ms.No.108 Rural Development and Panchayat Raj (PR-1) Department, published in the Tamil Nadu Government Gazette Extraordinary, Part-II, Section 2 dated 03.09.2021. In fact, the petitioners did not even satisfy this court regarding maintainability of this writ petition questioning delimitation. Therefore, there is a bar under Article 243-O of the Constitution of India to challenge the delimitation of constituencies or the allotment of seats to such constituencies.

6.1. In support of his contention, he relied upon the judgment reported in **2019 SCC OnLine Mad 8588** in the case of **A.Karuppanan Vs. State of Tamil Nadu and ors.**, in which the Hon'ble Division Bench of this Court dealt with the similar issue in the present writ petition



W.P.No.19864 of 2021

challenging the notification with regard to reservation of seats in village panchayat as contrary to Rule 7 of the Rules. In the said writ petition mainly contended that the impugned notification curtails the right of the Scheduled Castes people belonging to other village panchayats, which are in general category and the petitioners are not able to contest in the election due to reservation. However, it is held that there is no scope of interference by the Court in the writ proceeding with the delimitation exercise.

6.2. He also relied upon the another judgment of the Hon'ble Madurai Division Bench of this Court, reported in **MANU/TN/8702/2019** in the case of **N.Pannerselvam Vs. The Secretary to Government and ors.**, in **W.P.(MD)No.25900 of 2019** dated 05.12.2019, which held that delimitation commission is vested with the power to rearrange the constituencies and the exercise of such power must be assumed that it was for good reasons. The reasons assigned by the commission for rearranging the constituencies after the public hearings does not smack of any arbitrariness for this Court to interfere in the matter nor would this Court interfere in the light of the Constitutional



W.P.No.19864 of 2021

bar. Further held that as per Rule 7 of the Rules, the State government should follow the rotation basis and declare a constituency as a general constituency.

6.3. Subsequently, the said Rule was amended and sub-rule (2) has been added vide government order in G.O.Ms.No.105, Rural Development (C4) Department, dated 01.09.2006. As per Rule 7(1)(a) of the Rules, the seats reserved for persons belonging to the Scheduled Castes and Scheduled Tribes in the wards or territorial wards, as the case may be, of the village panchayats, panchayat unions and district panchayats under sub-rule (1) shall subject to the change if any in the number of seats to be reserved in such wards for the persons belonging to the Scheduled Castes and Scheduled Tribes due to adoption of the population as ascertained at the last preceding census of which relevant figures have been published, continue to be reserved as such, until the government direct otherwise.

6.4. He further submitted that under Section 57 (1)(D) of the Tamil Nadu Panchayats Act, the government is empowered to ensure that



W.P.No.19864 of 2021

reservation of seats in the rural local bodies proportionately to the total population of Scheduled Castes and Scheduled Tribes. Out of total number of seats reserved for Scheduled Castes and Scheduled Tribes in whole, not less than 50% of seats shall be reserved for women belonging to Scheduled Castes and Scheduled Tribes. The government in exercise of power under sub-section (1) of Section 242 r/w. Sections 11, 20, 32 and 57 of the Tamil Nadu Panchayats Act, enacted the rules for reservation of seats and rotation of reserved seats under the Tamil Nadu Panchayats Rules.

6.5. After enactment of the said Rules, the reservation of seats and rotation of reserved seats were made based on the 1991 census population and first local body elections were conducted during the year 1996. The post of President in Nayakkaneri village panchayat was reserved for Scheduled Tribes (General) category. It was followed for the next election ie., in the year 2001. As per Rule 7 of the Rules, at the expiry of every ten years, reservation of offices shall be reallocated to other panchayats where the percentage of population of women or Scheduled Castes or Schedule Tribes, as the case may be, is the next



W.P.No.19864 of 2021

larger to the total population of panchayat by adopting a list of panchayats arranged in the descending order of the percentage of population of Scheduled Castes, Scheduled Tribes and women as per 2011 census. However, after completion of ten years, the election was not held during the year 2016-2019.

6.6. While being so, the Vellore district was trifurcated into Vellore, Ranipet and Tirupathur on 12.11.2019. The demarcation of the local bodies for the newly formed district were brought into force only during the local body elections, 2021. Insofar as the Thirupathur District is concerned, it has four municipalities, three town panchayats, six blocks, 208 village panchayats. The Madhanur block is one among the six blocks. It consists of 44 village panchayats in which Nayakkaneri village panchayat is also one among them. As per 2011 census population reservation was implemented under the Rule 7 of the Rules.

6.7. The total number of offices of the Presidents of village panchayat of Nayakkaneri is 12,525. As per the population, the number of panchayats to be reserved for Scheduled Tribes is 207 and for



W.P.No.19864 of 2021

Scheduled Castes is 3,084. As per the reservation of panchayat offices in Tirupathur district is concerned, the total population of 8,11,546 in which Schedule Tribes population is 35,298 and the Scheduled Castes population is 1,69,114. The total number of offices of the Presidents of the village panchayat is 208 in reservation for Schedule Tribes is zero and reservation for Scheduled Castes is 42. Insofar as the Madhanur block is concerned, the total population is 1,53,122 in which Scheduled Tribes population is 4,104 and the Scheduled Castes population is 54,702. The number of offices for village panchayat to be reserved for Scheduled Tribes is zero and for Scheduled Castes is 16. It has been reserved as per the population of the village panchayat and as per the report as contemplated under Rule 7 of the Rules.

6.8. Insofar as the Nayakanneri panchayat is concerned, so far the said panchayat was not reserved for Scheduled Castes. Therefore, as per the 2011 census population, the unreserved ten village panchayats were given reservation for Scheduled Castes, in which Nayakkaneri panchayat is one among them. Out of 16 village panchayat which were reserved for Scheduled Castes, the horizontal reservation of Scheduled



W.P.No.19864 of 2021

Castes women quota of 9 seats were allotted to Scheduled Castes women as per sub Section 1(D) of Section 57 of the Tamil Nadu Panchayats Act, 1994.

6.9. Insofar as the Nayakkaneri village panchayat is concerned, as per 2011 census population, there are 7 Scheduled Castes voters. It was reserved in the descending order based on the Scheduled Castes population, since the said panchayat was not earlier reserved for Scheduled Castes, it is mandatory to reserve the Nayakkaneri village panchayat for Scheduled Castes candidate as per Rules in vogue. Therefore, there is no violation of Rules. The reservation of seats and rotation of reserved seats for the election of 2021 was published accordingly. That apart, the petitioners did not even raise any malafide ground in order to bring the fifth respondent to contest for the post of President in the Nayakkaneri Village panchayat. Therefore, the writ petition itself is not maintainable and liable to be dismissed.

7. The second respondent filed counter and Mr.S.Siva Shamnugam, learned counsel appearing for the second respondent



W.P.No.19864 of 2021

submitted that the second respondent is nothing to do with the reservation of seats in the office of President of village panchayats, chairmen of panchayat union councils and district panchayats etc. It shall be made only by the government order or by any officer authorised by the government in this behalf as per Section 57(2) of the Tamil Nadu Panchayat Act, 1994. He further submitted that the last date for nomination for the post of President of Nayakkaneri Panchayat was 22.09.2021 and even before that, the fifth respondent was made as voter in the ward No.9 of Nayakkaneri panchayat.

8. The fifth respondent filed counter and Mr.N.G.R.Prasad, learned counsel appearing for the fifth respondent submitted that the writ petition itself is not maintainable and there is a bar under Article 243-O of the Constitution of India. The fifth respondent was elected as President of Nayakkaneri village panchayat. She got married on 14.04.2014 and she is residing in her matrimonial house situated at No.152/1, K.K. Nagar, Kamanoorthattu, Periyankuppam, Ambur Taluk, Tirupathur District. According to her, after her marriage, the fifth respondent is living within the Nayakkaneri panchayat and she is taking



W.P.No.19864 of 2021

steps to remove her name from her parents' family ration card. The fifth respondent has also tried to include her name in the voters list. However, it was delayed and as such she could not able to vote in the Assembly election which was held in the year 2021.

8.1. He further submitted that as per rotation, Nayakkaneri village panchayat reserved for Scheduled Castes category for the election 2021. Before that from the year 1996 to 2006, it was reserved for Scheduled Tribes category and from 2006 to 2016, it was reserved for general category. As per the rotation, the Nayakkaneri village panchayat was reserved for Scheduled Castes category. Therefore, there is no violation of Act and Rules.

9. Heard the learned counsel appearing on either side and perused the materials placed before this Court.

10. Considering the above submissions and on perusal of the records, the following points are arose for consideration:-

(i) Whether the writ petition is maintainable, when there is a bar



W.P.No.19864 of 2021

under Article 243-O of the Constitution of India?

WEB COPY

(ii) The petitioners can challenge the notification of the reservation for office of village panchayat?

(iii) If the writ petition is maintainable, the reservation notification dated 03.09.2021 in G.O.Ms.No.108 Rural Development and Panchayat Raj (PR-1) Department, insofar as it relates to reservation for the post of President of Nayakkaneri village panchayat can be sustainable?

11. This writ petition was filed on 14.09.2021 and it was taken up for admission on 20.09.2021. This Court directs the respondents to reply on 22.09.2021. However, this Court did not grant any interim order. Therefore, the petitioners filed writ appeal as against the order of notice in W.A.No.2580 of 2021 and the Hon'ble Division Bench of this Court by an order dated 07.10.2021 in C.M.P.No.16840 of 2021 in W.A.No.2580 of 2021 passed an interim order that the fifth respondent shall not take charge. In that writ appeal, final order was passed by the Hon'ble Division Bench of this Court on 18.01.2024 that the interim order shall continue till disposal the main writ petition and accordingly disposed the writ appeal. Though the fifth respondent has been declared



W.P.No.19864 of 2021

and elected unopposed for the post of President of Nayakkaneri village panchayat, in view of the interim order, she did not take charge of the President post of in Nayakkaneri Village Panchayat.

12. Insofar as the maintainability of this writ petition, it is relevant to extract the Article 243-O of the Constitution of India as follows :-

“243-O. Bar to interference by Courts in electoral matters – Notwithstanding anything in this Constitution -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K, shall not be called in question in any Court;

(b) no election to any panchayats 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.”

Accordingly, the Article 226 of the Constitution of India cannot be invoked when delimitation is questioned and the only remedy available is election petition.



W.P.No.19864 of 2021

WEB COPY

13. The learned counsel appearing for the petitioners relied upon the judgment reported in **(2000) 8 SCC 216** in the case of ***Election Commission of India Vs. Ashok Kumar & ors.***, in which the Hon'ble Supreme Court of India referred the judgment reported in **(1978) 1 SCC 405** in the case of ***Mohinder Singh Gill Vs. Chief Election Commissioner*** and held as follows :-

“20. Vide para 29 in Mohinder Singh Gills case, the Constitution Bench noticed two types of decisions and two types of challenges : The first relating to proceedings which interfere with the progress of the election and the second which accelerate the completion of the election and acts in furtherance of an election. A reading of Mohinder Singh Gills case points out that there may be a few controversies which may not attract the wrath of Article 329(b). To wit :

(i) power vested in a functionary like the Election Commission is a trust and in view of the same having been vested in high functionary can be expected to be discharged reasonably, with objectivity and independence and in accordance with law. The possibility however cannot be ruled out where the repository of power may act in breach of law or



W.P.No.19864 of 2021

arbitrarily or mala fide.

WEB COPY

(ii) A dispute raised may not amount to calling in question an election if it subserves the progress of the election and facilitates the completion of the election. The Election Commission may pass an order which far from accomplishing and completing the process of election may thwart the course of the election and such a step may be wholly unwarranted by the Constitution and wholly unsustainable under the law.

In Mohinder Singh Gills case, this Court gives an example (vide para 34). Say after the President notifies the nation on the holding of elections under Section 15 and the Commissioner publishes the calendar for the poll under Section 30 if the latter orders returning officers to accept only one nomination or only those which come from one party as distinguished from other parties or independents, which order would have the effect of preventing an election and not promoting it, the Courts intervention in such a case will facilitate the flow and not stop the election stream.”

In the case on hand also except the fifth respondent, no one was there to file nomination for the post of President of Nayakkaneri village panchayat which is reserved for Scheduled Castes women. Therefore, she was declared and elected as unopposed for the post of President of



W.P.No.19864 of 2021

Nayakkaneri village panchayat.

WEB COPY

14. In another judgment reported in **(2018) 12 SCC 61** in the case of ***Bharati Reddy Vs. State of Karnataka & ors.***, the Hon'ble Supreme Court of India dealt with the issue of maintainability of writ petition challenging the community of the President candidate for the reserved office for the panchayat president, which held that basic structure of the Constitution could not be altered by any constitutional amendment and unambiguous terms that one of the basic features is the existence of constitutional system in judicial review. Article 368 of the Constitution does not enable Parliament to alter the basic structure or frame work of the Constitution. Therefore, the power of judicial review under Articles 226 & 227 of the Constitution of India, is an essential feature which can neither be tinkered with nor eroded. Even the Constitution cannot be amended to erode the basic structure of the Constitution. Therefore, it cannot be said that the writ petition is not maintainable.

15. In the case of ***Dravida Munnetra Kazhagam Vs. Secretary,***



W.P.No.19864 of 2021

Governor's Secretariat and ors., reported in (2020) 6 SCC 548, the

Hon'ble Supreme Court of India held as follows :-

“14. The contention of the respondents that the present proceedings amount to “calling in question an election” and hence not being maintainable in view of the express constitutional embargos of Articles 243-O and 243-ZG does not impress us for the present proceedings are only to further the expeditious completion of pre-requisites of a fair election. Hence, the following ratio of a coordinate Bench in Election Commission of India v. Ashok Kumar and Others [2000 (8) SCC 216] squarely applies to the present case:

“(2) Any decision sought and rendered will not amount to “calling in question an election” if it subserves the progress of the election and facilitates the completion of the election. Anything done towards completing or in furtherance of the election proceedings cannot be described as questioning the election.

(3) Subject to the above, the action taken or orders issued by Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of mala fide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.



W.P.No.19864 of 2021

(4) Without interrupting, obstructing or delaying the progress of the election proceedings, judicial intervention is available if assistance of the court has been sought for merely to correct or smoothen the progress of the election proceedings, to remove the obstacles therein, or to preserve a vital piece of evidence if the same would be lost or destroyed or rendered irretrievable by the time the results are declared and stage is set for invoking the jurisdiction of the court.”

15. For the reasons aforesaid, these applications are allowed in part and disposed of with the following directions:

a. The Respondent authorities shall hold elections to all Panchayats at village, intermediate and district levels, except those in the following nine reconstituted districts:

i. Kancheepuram ii. Chengalpattu iii. Vellore iv. Thirupathur v. Ranipet vi. Villupuram vii. Kallakurichi viii. Tirunelveli ix. Tenkasi;

b. The Respondents (including the Delimitation Commission) are directed to delimit the nine newly constituted districts in accordance with law and thereafter hold elections for their panchayats at the village, intermediate and district levels within a period of four months;

c. There shall be no legal impediment against holding elections for Panchayats at the village,



WEB COPY



W.P.No.19864 of 2021

intermediate and district levels for rest of the districts; d.

State Election Commission shall notify elections for the panchayats at village, intermediate and district levels in respect of all districts except the nine reconstituted districts as per the details given in direction 'a' above.;

e. While conducting elections, the respondents shall provide proportionate reservation at all levels, in accordance with the Rule 6 of Tamil Nadu Panchayats (Reservation of Seats and Rotation of Reserved Seats) Rules, 1995.

16. Accordingly, the local body elections were not conducted for nine districts in the year 2019, including the district of Tirupathur, on the ground that the legal formalities were not completed. Therefore, the said writ petition was filed for expeditious completion of prerequisite of a fair election. Thus, it is clear that action taken or orders issued by the Election Commission are open to judicial review on the well-settled parameters which enable judicial review of decisions of statutory bodies such as on a case of malafide or arbitrary exercise of power being made out or the statutory body been shown to have acted in breach of law.

17. The learned counsel appearing for the petitioners also relied



W.P.No.19864 of 2021

upon the judgment of the Hon'ble Supreme Court of India reported in

(1999) 4 SCC 526 in the case of **K.Venkatachalam Vs. A.Swamickan &**

anr., which held as follows :-

“25. In the present case the appellant was not an elector in the electoral roll of Lalgudi Assembly Constituency. He, therefore, could not be elected as a member from that constituency. How could a person who is not an elector, from that constituency could represent the constituency? He lacked the basic qualification under Clause (c) of Article 173 of the Constitution read with Section 5 of the Act which mandated that a person to be elected from an Assembly constituency has to be elector of that constituency. The appellant in the present case is certainly disqualified for being a member of the Legislative Assembly of Tamil Nadu. His election, however, was not challenged by filing an election petition under Section 81 of the Act, Appellant knows he is disqualified. Yet he sits and votes as a member of the Legislative Assembly. He is liable to penalty of five hundred rupees in respect of each day on which he so sits or votes and that penalty is recoverable as debt due to the State. There has not been any adjudication under the Act and there is no other provision of the Constitution as to how penalty so incurred by the appellant has to be recovered as a debt due to the State. Appellant is liable to penalty nevertheless as he knows he is not



W.P.No.19864 of 2021

WEB COPY

qualified for membership of the Legislative Assembly and yet he acts contrary to law.

26. The question that arises for consideration is if in such circumstances High Court cannot exercise its jurisdiction under Article 226 of the constitution declaring that the appellant is not qualified to be member of the Tamil Nadu Legislative Assembly from Lalgudi Assembly Constituency. On the finding recorded by the High Court it is clear that the appellant in his nomination form impersonated a person known as 'Venkatachalam s/o Pethu', taking advantage of the fact that such person bears his first name. Appellant would be even criminally liable as he filed his nomination on affidavit impersonating himself. If in such circumstances he is allowed to continue to sit and vote in the Assembly his action would be fraud to the constitution."

18. In the case on hand, the fifth respondent is not a resident in ward No.9 of Nayakkaneri panchayat. She is residing outside the panchayat and her request for inclusion of her name in the ward No.9 of Nayakkaneri panchayat was also rejected by the revenue authority. However, her name was included after submission of nomination. Even before inclusion of her name in the ward No.9 of Nayakkaneri panchayat,



W.P.No.19864 of 2021

she had submitted her nomination and the same was accepted. Therefore in such circumstances, action of the fifth respondent would be a fraud on the constitution. Article 173(c) of the Constitution of India r/w Section 33 of the Tamil Nadu Panchayat Act, 1994, says that no person shall be qualified for election as a member or President of a panchayat unless the candidate name appears on the electoral roll of the concerned panchayat. Therefore, the fifth respondent was not even qualified to contest in the election for the post of President.

19. Admittedly, the fifth respondent got married and living in her matrimonial home situated at No.152/1, K.K.Nagar, Kamanoorhattu, Periyankuppam, Ambur Taluk, Tirupathur District. Even according to the fifth respondent, she had taken steps to include her name in the voters list and it got delayed and as such she was denied the right to vote in the assembly election held in the year 2021.

20. Further, the second petitioner obtained information under the Right to Information Act about the inclusion of the fifth respondent name in the ward No.9 of Nayakkaneri panchayat for the President



W.P.No.19864 of 2021

election. As per the information, the fifth respondent name was included in the voters list of ward No.9 as if she is residing in Door No.152/1, Ward No.9, Nayakkaneri village panchayat. On perusal of voters list of Nayakkaneri village, there was no Scheduled Castes women in the entire Nayakkaneri village. Further on 05.10.2021, the fifth respondent's name was included in the voters list in ward No.9. On perusal of the voters list dated 31.08.2021 of ward No.9 of Nayakkaneri village panchayat revealed that there are 551 voters in which the fifth respondent name was not included in that voters list. However on perusal of the nomination submitted by the fifth respondent dated 18.09.2021, she mentioned her voter electoral serial number as 552 in ward No.9 of Nayakkaneri village panchayat. She mentioned her address as Kamanoorhattu, Periyankuppam, Ambur Taluk, Tirupathur District. Therefore, on the date of her nomination, her name was not found in the electoral voters list. Only in the additional voters list for ward No.9 dated 05.10.2021, the fifth respondent name was included as a voter.

21. That apart, the Thasildar, Ambur Taluk, Tirupathur District by its proceeding dated 21.09.2021, rejected the request made by the fifth



W.P.No.19864 of 2021

respondent to include her name in ward No.9 of Nayakkaneri village panchayat for the reason that she is not residing within the jurisdiction of ward No.9 and as per her residential certificate, she is residing at Periyar Street, Periyankuppam village. That apart, from her community certificate also, it is evident that the fifth respondent is residing at Door No.416/A, Periyar Street, Periyankuppam village. Therefore, her request for inclusion of her name in the voters list was rejected by an order dated 21.09.2021. However, the fourth respondent Suo muto included the fifth respondent name in the voters list of ward No.9 of Nayakkaneri village panchayat.

22. In fact, the fifth respondent played fraud on the election. She submitted her nomination as if she resides at Kamanurthattu, Panagatteri, Periyankuppam post, Ambur, Nayakkaneri. She did not even disclose the door number of her house. Whereas, as per the voters list dated 05.10.2021, her residence was mentioned as Door No.152/1. On perusal of the voters list of entire Nayakkaneri village panchayat, there are only three Scheduled Castes women that too in ward No.1 and no Scheduled Castes woman in other eight wards including the ninth ward of



W.P.No.19864 of 2021

Nayakkaneri village. After receipt of the nomination from the fifth respondent, the fourth respondent included the fifth respondent's name in the voters list of 9th ward of Nayakkaneri village panchayat. It shows the malafie intention to bring the fifth respondent as President of Nayakkaneri village panchayat as per the reservation of office of panchayat President that too by rejecting the nomination of other candidate viz., Beula on the flimsy ground and elected the fifth respondent as unopposed candidate in the post of President. Therefore, the above judgments are squarely applicable to the case on hand and the writ petition is very much maintainable.

23. In fact, the petitioners immediately after the notification dated 03.09.2021, submitted detailed representation on 08.09.2021 alleging that the rotation in reservation as Scheduled Castes women in respect of Nayakkaneri village panchayat is completely wrong, since there are only 0.164% of Scheduled Castes population in the Nayakkaneri village panchayat. It is below 0.50% and as such even as per Rule 7 of the Rules, it has to be reserved on general category.



W.P.No.19864 of 2021

WEB COPY

24. On perusal of records also revealed that the fourth respondent rejected the nomination of one Beula on flimsy ground in order to elect the fifth respondent as unopposed to the post of President. It is clear violation of freedom of speech and expression as envisaged under Article 19(1)(a) of the Constitution of India. In this regard, the learned counsel appearing for the petitioners relied upon the judgment of the Hon'ble Supreme Court of India reported in **(2002) 5 SCC 294** in the case of ***Union of India Vs. Association for Democratic Reforms and anr.***, which held as follows :-

“.... Under our constitution, Article 19(1)(a) provides for freedom of speech and expression. Voter's speech or expression in case of election would include casting of votes, that is to say, voter speaks out or expresses by casting vote. For this purpose, information about the candidate to be selected is a must. Voter's (little man – citizen's) right to know antecedents including criminal past of his candidate contesting election for MP or MLA is much more fundamental and basic for survival of democracy. The little man may think over before making his choice of electing law-breakers as law-makers.”



W.P.No.19864 of 2021

WEB COPY

25. The voters speak or express by way of casting of vote. By rejecting the nomination of other woman candidate that too for flimsy reasons, the voters of the Nayakkaneri village panchayat were prevented from casting their votes. It is clear violation of Article 19(1)(a) of the Constitution of India. The casting of vote in favour of one or other candidate tantamounts to expression of opinion and preference and that final stage in the exercise of voting right marks the accomplishment of freedom of expression of the voter.

26. Insofar as the delimitation of constituencies and allotment of seats to such constituencies, the bar contained in Article 243ZG(a) operates together with the non-obstante clause contained therein to bar all courts from interfering with State statutes dealing with delimitation and allocation of seats, just as is the bar contained in Article 329(a) of the Constitution. The entire supervision and conduct of elections to municipalities is vested in a constitutional authority that is the State Election Commission which is to supervise and conduct elections by giving orders and directions to the State Government as well as



W.P.No.19864 of 2021

authorities that are set up under State statutes for the purpose of supervision and conduct of elections. Therefore, the State Election Commission can also approach the writ court.

27. Under Article 243 ZG(b) of the Constitution of India, no election to any municipality can be called in question except by an election petition presented to a Tribunal as is provided by or under any law made by the Legislature of a State. It would mean that from the date of notification of the election till the date of the declaration of result, the judicial hands-off is mandated by the non-obstante clause contained in Article 243ZG of the Constitution of India, debarring the writ court under Articles 226 and 227 from interfering once the election process has begun until it is over.

28. Therefore, the constitutional bar operates only during this period. It is therefore a matter of discretion exercisable by a writ court as to whether an interference is called for when the electoral process is “imminent” i.e, the notification for elections is yet to be announced. The non-obstante clause contained in Article 243ZG of the Constitution of



W.P.No.19864 of 2021

India, does not operate as a bar after the election tribunal decides an election dispute before it. Thus, the jurisdiction of the High Courts under Articles 226 and 227 of the Constitution of India is not affected as the non-obstante clause in Article 243ZG of the Constitution of India operates only during the process of election. Therefore, any challenge to orders relating to delimitation or allotment of seats including preparation of electoral rolls, not being part of the election process as delineated above, can also be challenged in the manner provided by the statutory provisions dealing with delimitation of constituencies and allotment of seats to such constituencies. Therefore, the writ petition is maintainable before this Court.

29. In fact while ordering notice, the petitioners were permitted to take private notice to the fifth respondent. The learned counsel appearing for the petitioners had sent private notice dated 12.11.2021 to the fifth respondent in the address of No.416/A, Periyar Street, Periankuppam Panchayat, Ambur Taluk, Tirupathur District and the same was duly received by the fifth respondent on 15.11.2021. It shows that the fifth respondent is not residing within the jurisdiction of ward



W.P.No.19864 of 2021

No.9 of Nayakkaneri village panchayat. As per the voters list of Nayakkaneri village panchayat, in the year 2021 population of Scheduled Castes was less than 0.50%.

30. As per Article 243-T of the Constitution of India, the reservation has to be provided based on the proportion of the total number of seats vis-a-vis the population of the category in whose favour reservation has to be given. The reservation depends on the population of the category. Thus for the population of the Scheduled Castes in Nayakkaneri village panchayat, did not provide reservation for Scheduled Castes. If a panchayat has no population of a particular category and still reservation has to be given, it would not only offend the requirement of ratio of population, but would also raise a question as to who would represent the said category when the required population does not exist.

31. In view of the above discussions, the impugned notification dated cannot be sustained and liable to be quashed. Accordingly, the notification dated 03.09.2021, in G.O.(Ms.) No.108 Rural Development



W.P.No.19864 of 2021

and Panchayat Raj (PR-1) Department, which relates to the reservation for the post of President of the Nayakkaneri Village Panchayat, Madhanur Panchayat Union, Thirpathur District, for Scheduled Castes Women, is hereby quashed. Consequently, the declaration of the fifth respondent elected as President of Nayakkaneri village panchayat as unopposed is also quashed. The first respondent is directed to reserve the office of President of Nayakkaneri village panchayat either under general women or Scheduled Tribes women category within a period of four weeks from the date of receipt of a copy of this Order and thereafter the second respondent is directed to conduct election for the post of President of Nayakkaneri village panchayat as expeditiously as possible in accordance with law.

32. With the above directions, the Writ Petition stands allowed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

20.09.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation : Yes/No
rts



WEB COPY



W.P.No.19864 of 2021

G.K.ILANTHIRAIYAN. J.

rts

To

1. The Principal Secretary,
State of Tamil Nadu,
Rural Development and
Panchayat Raj Department,
Fort St. George,
Chennai – 600 009.
2. The Commissioner,
Tamil Nadu State Election Commission,
No.280/2, Jawaharlal Nehru Road,
Arumbakkam,
Chennai – 600 106.
3. The District Collector,
Tirupthur District,
Tirupathur.
4. The Executive Officer/
The Block Development Officer,
Madhanur Panchayat Union,
Madhanur, Ambur Taluk,
Tirupathur District.

ORDER IN
W.P.No.19864 of 2021 and
W.M.P.Nos.21122, 21124 & 21209 of 2021

20.09.2024