



CRP No.2202 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.08.2024

CORAM

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

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P.Tamilarasu

.. Petitioner

-VS-

1. The Tamil Nadu State Election Commissioner,
No.208/2, Jawaharlal Nehru Road,
Opp: CMBT, Arumbakkam,
Chennai 600 106.
2. The District Election Officer cum
District Collector, Kancheepuram District,
Kancheepuram.
3. The Returning Officer cum
Block Development Officer,
Sriperumbudur Taluk,
Kancheepuram District.

.. Respondents

Prayer: Petition filed under Article 227 of the Constitution of India against the order dated 13.10.2023 in I.A.No.4 of 2023 in El.O.P.No.72 of 2021 on the file of the District and Sessions Court No.II, Kancheepuram.

For Petitioner : Mr.K.Ashok Kumar



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For Respondents : Mr.Sivashanmugam
Stdg. Counsel for R-1
: Mr.C.Satish,
Govt. Advocate for RR 2 and 3

* * * * *

ORDER

This civil revision petition arises against the order passed in I.A.No.4 of 2023 in Election O.P.No.72 of 2021 on the file of District and Sessions Court at Kancheepuram.

2. The election petitioner is the civil revision petitioner. He had filed the petition challenging the election that had been held to the post of President of the Village Panchayat, Panrutti, Sriperumbudur Taluk, Kancheepuram District. The election was held on 09.10.2021, counting of votes took place on 12.10.2021 and declaration of results also happened on the same date.

3. According to the petitioner, during the process of counting, he was leading at all stages. He would state that at the end of counting, the third



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respondent abruptly announced that the petitioner secured 555 votes and the fourth respondent secured 563 votes and declared the fourth respondent as elected. He would plead in paragraph 9 of the election petition that on 12.10.2021 itself, he invoked Rule 66 of the Tamil Nadu Panchayats (Elections) Rules, 1995 seeking for recounting of votes. He would state that the third respondent did not consider the same and avoided issuing an acknowledgement of the said representation. He would state that he sent the further representation on 13.10.2021, which was acknowledged on 18.10.2021. He would plead that the said acknowledgement suppressed the previous representation dated 12.10.2021. He would further assert that his representation dated 13.10.2021 was also sent to the first respondent, Tamil Nadu Election Commission as well as to the District Collector, who is the District Election Officer. On these pleadings, he would seek for a declaration that the counting and the results declared on 12.10.2021 is null and void and for a consequential direction to direct the Election Officer to order recounting of votes for the election held on 09.10.2021 and to declare the results afresh.



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4. Pending the proceedings, he took out an application in I.A.No.41 of 2021 seeking for a direction to the State respondents to produce the votes polled, the counter-foils of the votes and the CCTV footages that had been recorded at the time of counting. The said application came to be dismissed by the learned District and Sessions Judge No.II at Kancheepuram on 18.11.2022. Aggrieved by the same, a civil revision petition came to be presented before this Court in C.R.P.No.50 of 2023.

5. After hearing of the parties, this Court granted liberty to the petitioner to file an application to produce the aforesaid articles and had concluded that if the Court, so directs, the respondents are duty bound to produce the same. In that very order, liberty was granted to file an appropriate application to mark the same as evidence before the trial Court.

6. On the strength of the order passed in C.R.P.No.50 of 2023, the petitioner moved a fresh application in I.A.No.4 of 2023. He sought for the following directions:

" 3. .. 3வது எதிர்மனுதாரரின் கட்டுப்பாட்டில் உள்ள பண்பூட்டி



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கிராம பஞ்சாயத்து தலைவர் தேர்தலுக்காக பயன்படுத்தப்பட்ட வாக்குசீட்டுகளையும் வாக்கு சீட்டுகளுக்கான கவுண்டர் ஃபைல்களையும் வாக்கு எண்ணிக்கையின் CCTV Footage-யும் இந்த நீதிமன்றத்தின் முன்பு ஒப்படைக்க ஆணையிடுமாறும், மேலும் அவற்றை ஆவணமாக குறியீடு செய்யவும், அவற்றை பற்றி வாய்மொழி சாட்சி அளிக்கவும் மற்றும் மனுதாரர் தரப்பு சான்றாவணமாக குறியீடு செய்ய உத்தரவு"

7. This application was opposed by the Returning Officer by way of a counter. The learned Judge, on receipt of the petition and counter, came to the conclusion that the relief sought for in the petition is the same as sought for in the main election OP and granting the said relief would amount to decreeing the election petition at the interlocutory stage and therefore, dismissed the same. Hence, this revision.

8. The civil revision petition came up for admission on 22.08.2024. I directed Mr.K.Ashok Kumar to serve notice on Mr.S.Sivashanmugam, the learned standing counsel for the State Election Commission and Mr.C.Satish, learned counsel for respondents 2 and 3. The papers have been served and the petition is taken up for final disposal today.



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9. Mr.Ashok Kumar would submit that at the earliest point of time, namely, on 12.10.2021 itself, the civil revision petitioner had called upon the third respondent to recount the votes. This was in terms of Rule 66 of the Tamil Nadu Panchayats (Elections) Rules. He would point out that the said document has been filed along with the election petition itself as Document No.5. During the course of evidence, it has been exhibited as Ex.A.5.

10. He would add that disputing the contents of Ex.A.5, the fourth respondent had taken out an application in I.A.No.3 of 2023 seeking for a direction that the said document be sent to Forensic Science Laboratory at Santhome, Chennai, for the purpose of verifying the genuineness of the signature of the civil revision petitioner with that of the one found in Ex.A.5. The said application having been allowed, he would state that a report has also been received from the Forensic Science Laboratory confirming the genuineness of the signature.

11. He would point out that his prayer is not only for recounting of the



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votes but also to declare the counting and the results declared on 12.10.2021 as null and void. He would point out that the learned Judge had misconstrued the prayer made by the petitioner in I.A.N.4 of 2023 with the relief sought for in the election petition and therefore, he would submit that this order is required to be revised by this Court.

12. Representing the State Election Commission, Mr.Sivashanmugam would submit that the petitioner had not made an application in terms of Rule 66 of the Tamil Nadu Panchayats (Elections) Rules before the Returning Officer seeking for recounting of votes and therefore, he forfeits the right to seek for recounting at the time of trial of the election petition. He would rely upon two judgments of this Court - 1) ***K.Ashokan vs. S.Kunasekaran, 1998 MLJ Suppl. 217*** and 2) ***Dhanalakshmi vs. Muthulakshmi, 1999 I MLJ 246***. Relying on these judgments, Mr.Sivashanmugam would submit that the petition in I.A.No.4 of 2023 is not maintainable and no exception can be taken to the order passed by the learned trial Judge.

13. Mr.C.Sathish appearing for respondents 2 and 3 would submit that



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the civil revision petitioner had already marked Exs.A-1 to A-9 and it is only at the time of final disposal, the Court can come to a conclusion as to the genuineness of the same and the present application is unnecessary.

14. I have carefully analysed the submissions of both sides and have gone through the records.

15. A perusal of the election petition would show that the petitioner, in clear and categorical terms, has pleaded that the manner in which the counting had gone on is itself improper. He would point out that the Returning Officer/3rd respondent had taken into consideration 15 votes, which the petitioner pleads were cast in his favour, as invalid. The difference in votes between the petitioner and the fourth respondent is about 8 votes. The petitioner had secured 555 and the fourth respondent had secured 563. Since the difference between the votes is negligible, according to the petitioner, the third respondent had colluded with the fourth respondent and declared him as elected. In other words, the plea is, not only the counting has been irregular, but there is also an element of fraud in the



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process of election since valid votes were declared as invalid and the votes polled in favour of the successful candidate were boosted by the Returning Officer. Whether this allegation is true or not can only be found at the time of final disposal. I am referring to this allegation in paragraph 7 in order to come to a conclusion that the petitioner had pleaded the manner of counting of votes itself as improper.

16. Now turning to the submission of Mr.Sivashanmugam that the objection itself was given by the civil revision petitioner only on 13.10.2021 and not in terms of Rule 66 on the date of counting. Hence, I will refer to paragraph 9 of the election petition. In clear and categorical terms, the petitioner had pleaded that he gave an objection to the third respondent on 12.10.2021 itself and the same had not been considered by the Returning Officer. The said letter has been enclosed along with the election petition at the earliest point of time, namely, at the time of filing, as Document No.5. Hence, the plea of Mr.Sivashanmugam that no such objection was given by the civil revision petitioner has to fall to the ground. In fact, Mr.Ashok Kumar would state that this very letter was marked as Ex.A-5 and his client



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was cross-examined by the successful party and other respondents at length on the document.

17. I have to take note of the order passed in I.A.No.3 of 2023 whereunder this very document (Ex.A-5) had been sent for examination by an expert in the Forensic Science Laboratory. A positive report has been secured. When the Court has stretched itself to send Ex.A-5 for examination and a report has been secured, prima facie it satisfies the requirement of Rule 66. This Court in C.R.P.No.50 of 2023 had granted liberty to the petitioner to file an appropriate application before the Election Court in order to mark the same as evidence before the trial Court. The liberty having been granted by this Court, the learned trial Judge should have taken into consideration the order passed in the said revision while disposing of I.A.No.4 of 2023. The attention of the learned trial Judge has been drawn to the order as is clear from paragraph 9 of the order, but unfortunately while discussing the merits of the case in paragraph 10, the learned Judge has not taken this into consideration.

18. Now turning to the two judgments that have been relied upon by



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Mr.Sivashanmgam, the first of those judgments in *Ashokan*'s case (supra) was a situation where no application had been filed by the election petitioner invoking Rule 66. Hence, by way of an order in paragraph Nos.10 and 11, the Court came to the conclusion that the petitioner is not entitled to seek for a direction to recount the votes. In fact, in paragraph 9 of the said judgment, the learned Judge records that there was no allegation in the election petition that he had made a request in terms of Rule 66 to the Returning Officer. This situation does not prevail in the present case. Hence, this judgment is factually distinguishable in the present case.

19. With respect to the judgment in *Dhanalakshmi vs. Muthulakshmi*, (supra), the learned Judge had viewed that the pleading was lacking with respect to recounting of votes and hence, he had held that the Court must not *suo motu* pass an order directing recount. As pointed out above, the entire case of the election petitioner is that invalid votes had been counted valid and valid votes had been counted as invalid. When specific averments are found in the election petition, I am not in a position to apply the view taken by the learned Judge in *Dhanalakshmi*'s case to the facts of



20. Finally, Mr.Sivashanmugam would submit that there is no specific provision under the Tamil Nadu Panchayats (Elections) Rules enabling the Court to order recount. I only have to refer to Rule 127 of the Tamil Nadu Panchayats (Elections) Rules, 1995, in order to reject the argument. Under Rule 127, the Court not only has the power to declare the election of any returned candidate as void but it also possess the further power to declare that the election petitioner or any other candidate as duly elected. This pre-supposes not only the power in the Court to set aside the election but also grant a declaration that a person who has been declared, as having been defeated, is wrong and the election had actually gone in favour of the petitioner or any other candidate. This rule pre-supposes the power available in an Election Court to order recount of votes in order to come to a conclusion whether the election petitioner had, in fact, got the majority of votes. To reach that conclusion, the Court would necessarily have to order recount and hence, I am not with Mr.Sivashanmugam on this submission.



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21. In the light of the above discussion, the civil revision petition stands allowed. The order passed by the Election Court in I.A.No.4 of 2023 dated 13.10.2023 is set aside. There shall be no order as to costs. The third respondent shall produce the votes, the counter-foils and the CCTV footages before the Court at the time of his examination before the Court.

22. Before I conclude, I make it clear that I have dealt only with the scope of the application for summoning the records. I am not and I cannot enter into any finding on the merits of the case and that is for the learned Election Court to decide at the time of final disposal.

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Index : Yes/No

Neutral Citation : Yes/No

sra

To

The District and Sessions Court-II,
Kancheepuram.



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V.LAKSHMINARAYANAN, J.

(sra)

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