



C.R.P.(MD).Nos.1569 and 986 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 22.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD).Nos.1569 and 986 of 2023
and C.M.P.(MD).Nos.7695 and 4537 of 2023

C.R.P.(MD).No.1569 of 2023.

- 1.The State Election Commissioner,
TamilNadu State Election Commission,
No.208/2, Jawaharlal Nehru Road,
Opp. To Koyambedu Bus Stand,
Arumbakam, Chennai – 600 106.
- 2.The District Collector cum District Election Officer,
Karur District – 639 007.
- 3.The Returning Officer (RO),
Village Panchayat President Election,
Krishnarayapuram Panchayat Union Office,
Krishnarayapuram,
Karur District – 639 102.
- 4.The Assistant Returning Officer (ARO),
Village Panchayat President Election,
Krishnarayapuram Panchayat Union Office,
Krishnarayapuram,
Karur District – 639 102.
- 5.The Joint Director (Auditor),
Village Panchayat,
Collectorate, Karur.



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6.The Secretary,
Kallapalli Village Panchayat,
Kallapalli, Lalapettai PO,
Krishnarayapuram TK,
Karur District.

... Petitioners/Respondents 1 to 6

Vs.

1.Deepa

... 1st Respondent/Petitioner

2.Sakthivel

... 2nd Respondent/7th Respondent

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the entire records pertaining to the decretal order made in Election O.P.No.21 of 2020, dated 28.03.2023 on the file of the District Court, Karur and set aside the same.

For Petitioners : Mr.Veerakathiravan
Additional Advocate General
assisted by Mr.J.Ashok,
Additional Government Pleader

For Respondents : Mr.M.Saravanan for R1

Mr.D.Ramesh Kumar for R2

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Sakthivel

... Petitioner/7th Respondent

Vs.

1.Deepa

... 1st Respondent/Petitioner



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- 6.The Joint Director (Auditor),
Village Panchayat,
Collectorate, Karur.
- 7.The Secretary,
Kallapalli Village Panchayat,
Kallapalli, Lalapettai PO,
Krishnarayapuram TK,
Karur District. ... Respondents 2 to 7/Respondents 1 to 6

PRAYER : Civil Revision Petition is filed under Article 227 of the Constitution of India, to call for the records relating to the fair and decretal order dated 28.03.2023 made in Election O.P.No.21 of 2020 by the District Judge/Election Tribunal, Karur and set aside the same.



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For Petitioner : Mr.S.Deenadayalan

For Respondents : Mr.M.Saravanan for R1

Mr.Veerakathiravan for R2 to R7
Additional Advocate General
assisted by Mr.J.Ashok,
Additional Government Pleader

COMMON ORDER

These petitions have been filed against the fair and decretal order dated 28.03.2023 made in Election O.P.No.21 of 2020 by the District Judge/Election Tribunal, Karur.

2.Election for the Village Panchayat for Kallapalli Village, Krishnarayapuram Taluk, was held on 30.12.2019. Challenging the above said election, Election O.P.No.21 of 2020 was filed by one Deepa, who is the respondent herein.

3.The facts in brief:

The date of filing nomination was 16.12.2019, scrutiny was undertaken on 17.12.2019 at 10.00 a.m. Publication of Result of Election was effected on 03.01.2020. The Election Petitioner namely Deepa submitted nomination for the post of the President of Kallipalli Village



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on 14.12.2019. Second nomination was also filed on 16.12.2019. The respondent prepared the list of validly nominated candidates on 15.12.2019 excluding her name. It was prepared manually. But, the list was dated as 18.12.2019.

4. Without assigning any proper reason, she was informed that her nomination dated 14.12.2019 has been rejected. Enquiry made with the fourth respondent did not give any proper result. The respondents 3 and 4 illegally excluded the nomination of the Election Petitioner. Except the 7th respondent all other candidates withdrew their nominations. So the 7th respondent was elected uncontested.

5. A representation was made by the Election Petitioner to various Authorities. There was no reply or response. The representation was later forwarded to the second respondent for further action. That was also not properly considered. Several writ petitions have been filed by her seeking several reliefs. Only in pursuance of the order passed in W.P. (MD).No.362 of 2020, the third respondent gave the reply stating that there was an audit objection pertaining to the period 2014 – 2015. But,



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no surcharge proceedings have been initiated against her till the nomination papers were filed. So unless there is surcharge proceedings, disqualification under Section 37 of the Tamil Nadu Panchayats Act, 1994, will not arise. With these averments she filed the petition seeking the relief as stated above.

6.That was resisted by the official respondents and the elected candidate contending the following.

6.1. The Election Petitioner was the Panchayat President of Kallapalli Village during the period 2014 – 2015. During the audit, it found certain irregularities. In pursuance of the same, she was called upon to pay a sum of Rs.10,83,778/- on or before 05.08.2016 to the Panchayat. Till date that amount is not cleared.

6.2. On 17.12.2019, the other nominations namely Murali, Ananda Babu and Nagarajan made objections to the Assistant Returning Officer that the Election Petitioner is liable to pay the amount due to the Panchayat. On 17.12.2019, the Assistant Returning Officer asked the petitioner to submit her objections on or before 18.12.2019. Neither



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explanation or objection was made. So, the nomination was rejected under Section 37 of the Tamil Nadu Panchayats Act.

7.Before the Election Court, the Election Petitioner herself was examined as PW1 and 13 documents have been marked as Ex.P1 to Ex.P13. On the side of the respondents, three witnesses have been examined as RW1 to RW3 and 4 documents have been marked as Ex.R1 to Ex.R4. CW1 was examined as Court side witness.

8.At the conclusion of the enquiry process, the Election Court held that the rejection of the nomination paper of the Election Petitioner is improper and secondly the Election of the 7th respondent was declared to be void.

9.Against which, these two revisions are preferred, one by the Election Commission and other by the 7th respondent namely Sakthivel, who is the elected candidate.

10.Heard both sides.



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11.At the outset, the revision preferred by the Election Commission in C.R.P.(MD).No.1569 of 2023, can be rejected as not maintainable. Since the Election Commission is a neutral person, against the order of the Election Court, the Election Commissioner cannot have any grievance. If at all, only the contested candidates can have grievance. On that ground the revision preferred by the Election Commissioner is not appropriate and proper. Since the 7th respondent, who is the elected candidate also filed C.R.P.(MD).No.986 of 2023, we need not concentrate much upon the Election Commission's petition in C.R.P.(MD).No.989 of 2023.

12.Now short point arises for consideration is whether the rejection of the nomination paper of the Election Petitioner namely Deepa is valid under law.

13.Before that we will take up the proceedings that have been taken by the Election Petitioner in W.P.(MD).No.27151 of 2019. That petition was filed by her for directing the Election Officers and



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Returning Officer to accept her nomination paper dated 14.12.2019 and permitting her to contest in the Election. That was taken up for hearing on 19.12.2019. In that petition she stated that her nomination papers were wrongly rejected by the Authorities. The Election Officers informed the Court that the list was already published on 18.12.2019 and the petitioner has not stated the correct address in the nomination paper. So her application was rejected. Writ petition was dismissed granting liberty to the Election Petitioner to file proper petition. Later the election petition came to be filed making several allegations as to the nomination and scrutiny.

14.The first allegation is that even before the final scrutiny of nomination papers, a list was prepared manually on 15.12.2019. But it is dated 18.12.2019. So according to the Election Petitioner purposely her nomination has been deleted from the list in advance. But, with regard to these issue, there is no concrete proof. Moreover, it is not her case before the writ Court while filing W.P.(MD).No.27151 of 2019, that list was prepared in advance deleting her name. So this ground is unfounded and an after thought only.



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15. Now coming to the second issue of reason for rejection of nomination as stated above, while hearing the above said writ petition, the writ Court was not informed that her nomination was rejected due to the non payment of dues to the Panchayat. But, on the contrary, it was informed to the Court that as stated above due to the incorrect address, it was rejected. Now, the grievance of the petitioner is that at the time of rejecting the nomination no proper reason was given or explanation was sought from her.

16. Before that we will go to the relevant section. Section 37(3)(f) of the Tamil Nadu Panchayats Act is extracted hereunder.

“37. Disqualification of candidates.-

.....

3) (f) in arrears of any kind due by him (otherwise than in fiduciary capacity) to a Panchayat upto and inclusive of the previous year”

17. This is the ground of rejection according to the Returning Officer. The reason is that as mentioned in the preamble portion of the



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order audit objection was raised regarding the financial dealings of the Panchayat during the period of the Election Petitioner's tenure as President.

18.The Election Petitioner during the course of cross examination has denied that no notice was issued by the Joint Director of Rural Development Authority directing her to pay Rs.10,83,778/-, The Returning Officer has also not directed her to pay the amount on or before 10.00 a.m. on 18.12.2019.

19.Now, it is the case of the Returning Officer that such notice was issued to her. The documents were also marked on the side of the officials before the Election Court as Ex.R2. Reading of the above said notice shows that the amount mentioned in the notice must be paid on or before 18.12.2019, 10.00 a.m. Notice is dated 17.12.2019. This according to the Election Petitioner was not received by her. But, in that notice there is no acknowledgment of the Election Petitioner. So whether it was actually served upon the Election Petitioner or not could not found out. Had it been so, before the writ court while hearing W.P.(MD).No.



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27151 of 2019, the Assistant Returning Officer would have informed that notice was issued to the Election Petitioner to pay the arrear amount, that was not paid by her, So her nomination was rejected. As mentioned above, it is not the case of the Assistant Returning Officer before the writ Court.

20.Now, the question which arises for consideration is, whether on the basis of this document, service of notice can be believed. But I am of the considered view that because of the stand that was taken by the Assistant Returning Officer before the writ Court, no conclusion can be reached that the notice seeking the explanation was served upon the Election Petitioner.

21.Now, we will go to the findings of the Election Court. The Election Court has recorded a finding that no sur-charge proceedings is initiated. For that purpose, it relied upon the evidence of C.W.1. Since no final order has been passed, according to the Election Court, disqualification mentioned in Section 37 (3)(f) of the Act, is not attracted.



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22. But, this has been greatly commented by the elected candidate and the Government stating that dues to the Panchayat is enough. Whether sur-charge proceedings have been initiated or not is not a relevant fact. When due is placed on record, no further enquiry ought to have been made by the Election Court.

23. It is further contended that whether the amount was paid by this Election Petitioner or not was not informed to the Assistant Returning Officer, at the time of scrutiny of the papers. Had it been informed the nomination would not have been rejected. There was no occasion for the Assistant Returning Officer to verify whether the amount was due or not. Since it is within the knowledge of the Election Petitioner, she would have informed the Assistant Returning Officer. So according to them, no fault can be found out in rejecting the nomination papers by the Assistant Returning Officer.

24. Now, this argument is correct. But, the fact remains that it was not the case of the Assistant Returning Officer as repeatedly mentioned



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by me, in W.P.(MD).No.27151 of 2019. Even the explanation mentioned above does not bear the acknowledgment of the Election Petitioner. So when the service of the notice itself is not established to the conscience of the Court by the Assistant Returning Officer, the finding recorded by the election Court on those aspects does not assume any importance at all.

25.Next point is whether the nomination paper was rejected as per law.

26.There is a finding by the election Court that it is not validly rejected. We will go to Rule 29 of the Panchayats (Election) Rules. Rule 29(8) reads as under.

“29. Scrutiny of nomination.-

....

8.The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same. If the nomination paper is rejected, he shall record in writing, a brief statement of his reasons for such rejection. A copy of the same may be furnished to the



Candidate concerned, if any application in this behalf has been made to him.”

27.The next question is whether the above said mandatory provision has been duly complied by the Assistant Returning Officer. On that aspect we will go to the evidence. He is examined as RW2. But nothing has been stated by him with regard to the compliance of the Rule 29(8) of the Tamil Nadu Panchayats Election Rules, 1995.

28.Now we will go to the finding of the Election Court on those aspect. It has been found that nomination was not validly rejected. So as per the above said Rule in case of rejection of nomination, he must record the statement of reasons for such rejection. The copy must also be furnished to the candidate, if any application in this regard is made to him.

29.Even before the election court, the order passed by the Assistant Returning Officer is not placed. All those reasons came to be informed to the Election Petitioner only in pursuance of the order passed in the writ petition in W.P.(MD).No.362 of 2020, dated 08.01.2020.



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30. Section 259 (c) of the Tamil Nadu Panchayats Act reads as under.

“259. Grounds for declaring elections to be void.-

....

(c) that any nomination paper has been improperly rejected”

31. When the nomination paper has been improperly rejected, then the election can be declared to be void.

32. Perusal of the official records placed before this Court by the learned Additional Government Pleader shows that as on date of election to audit objections were not removed.

33. Clarification was sought with regard to two points. One is with regard to the non-compliance of Section 29(8) of the Act. The learned Additional Government Pleader has submitted that the rejection order was served upon the Election petitioner. But, perusal of the records does



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not indicate the above said serving of rejection order. Even the file that has been produced by the learned Additional Government Pleader does not contain the rejection order. As discussed above even before the writ Court in W.P.(MD).No.27151 of 2019, it was not the contention on the part of the Returning Officer that rejection was passed because of the non payment of the dues and it was also served upon the Election Petitioner. So, that ground is not available to the Returning Officer now.

34.The next point of clarification is with regard to the declaration filed by the Election Petitioner before the A.S.O at the time of filing of nomination papers. The receipt of audit objection notice was not mentioned. According to the learned counsel for the Election Petitioner, since no due was payable on that date, she did not mention the same. But, it is admitted that notice was received by the Election Petitioner. Whether surcharge proceedings has been initiated or not is only secondary. It is the duty of the Election Petitioner to mention all those facts at the time of filing the the nomination. Having suppressed those things now she filed the Election petition, stating that her nomination paper was rejected without proper reason, which cannot maintained.



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There was fault on both sides i.e., Election petitioner as well as the Returning Officer. By this length of time, it is not proper on the part of the Election Court to interfere into the Election process. Because of the non disclosure of the above said due in the nomination papers, the Election Petitioner is not entitled to any relief before the Election Court. But that point was not addressed by the Election Court. On that ground the order passed by the Election Court is interfered.

35.The order passed in the Election O.P.No.21 of 2020, dated 28.03.2023, on the file of the District Court, Karur, is hereby set aside and the Election O.P.No.21 of 2020 stands dismissed for the reasons stated above and the C.R.P.(MD).No.986 of 2023 is allowed. Similarly, C.R.P.(MD).No.1569 of 2023 filed by the Election Commission is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

22.03.2024

Index : Yes / No

Internet : Yes / No

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Note: Issue order copy on 25.03.2024.



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To

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Karur District.
- 8.The Section Officer, E.R.Section/V.R.Section,
Madurai Bench of Madras High Court, Madurai.

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