



C.R.P.(MD)No.1565 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2024

CORAM

THE HON'BLE MR.JUSTICE G.ILANGO VAN

C.R.P.(MD)No.1565 of 2023

Sivaleelavathi

... Petitioner/Petitioner

Vs.

1.The State Election Commissioner,
Tamil Nadu Election Commission,
Chennai.

2.The District Election Officer/District Collector,
Virudhunagar District,
Virudhunagar.

3.The Returning Officer,
The Commissioner,
Sivakasi Panchayat Union,
Virudhunagar District.

4.M.Muthuvalli

5.M.Ramalakshmi

6.R.Thanga Radha

7.A.Kaleeswari

8.D.Dhanalakshmi

... Respondents/Respondents

PRAYER : Civil Revision Petition is filed under Article 227 of



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Constitution of India, to set aside the fair and decreetal order in E.O.P.No.75 of 2021 dated 31.01.2023 on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

For Petitioner : Mr.S.Surya

For Respondents : Mr.A.Sivanupandian for R1 to R3
Government Advocate (Civil)

Mr.R.Senthil Kumar for R4

No appearance for R5 to R8

ORDER

This revision has been filed against the the fair and decreetal order passed in Election O.P.No.75 of 2021 dated 31.01.2023 on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.

2.The facts in brief:

The Election for the post of Thevarkulam Panchayat President was held on 27.12.2019, in which, the petitioner and the respondents 4 to 8 contested for the post. Counting was conducted on 02.01.2020 at S.H.N.V.Boys Higher Secondary School, Sivakasi and it



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commenced at 12.00 p.m. and completed at 8.00 p.m. In the Election, the petitioner was defeated. Challenging the above said Election, she filed the Election petition, which came to be dismissed by the Election Court. Against which, this revision has been preferred.

3.The contention of the Election petitioner is that the petitioner and her agents were permitted inside the counting booth only at 06.00 p.m., whereas the fourth respondent's husband namely Machakalai was very much available in the counting booth from 06.00 a.m. The respondents 3 to 4 replaced the original ballot papers with bogus ballot papers. The petitioner and her agents were not permitted to verify the genuineness of the votes. The votes counted were not shown to them. Absolutely, there was no transparency in the counting of the votes.

4.The petitioner made objection stating that the fourth respondent forged the signature of the Polling Officer and replaced the ballot original papers with fake. The signature of the Polling Officer found in Form No.20 was not tallied with the signatures found in other documents. That was objected by the revision petitioner. Moreover, the



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valid votes, which were polled in favour of her were treated as invalid votes. Objection petition was filed by the petitioner seeking recounting. But, the third respondent in a hurried manner declared the results. The Returning Officer failed to see the booth seal affixed on the back side of the ballot papers.

5. With these allegations, she filed the Election petition. That was resisted by the official respondents 1 to 3. 4th respondent has also filed a separate counter. In the counter filed by the third respondent it has been stated that the counting was conducted in a proper manner. There was no petition from any candidate. Total number of votes polled in that election including the postal votes were 3506. Among the votes polled 80 votes were found to be invalid.

6. The ballot papers and as well as ballot counting sheets were signed by the agents of the respective candidates. At that time there was no objection by any one. In the Election, the fourth respondent won the Election by margin of 25 votes. Absolutely, there was no mal-practice.



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7.The very same averments also made by the fourth respondent in his counter.

8.Before the Election Court two witnesses were examined on the side of the petitioner and 12 documents were marked. On the side of the respondents 1 to 3, the third respondent was examined as RW1 and three documents were marked.

9.Heard both sides.

10.Now coming to the allegations, now the main allegation on the part of the Election petitioner is that neither the petitioner nor her agent were permitted before 06.00 p.m. in the counting Centre. But, whereas, the fourth respondent's husband was very much available and permitted to be present in the Centre from 06.00 a.m. onwards.

11.With regard to the above said allegations, the finding of the Election Court is, it is the unfounded. The Election Court also extracted the evidence of PW1, which is also extracted hereunder.



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“4ம் எதிர்மனுதாரர் கணவர் காலை 6 மணிக்கு வாக்கு எண்ணும் மையத்திற்கு சென்றார் என்பதை நான் நேரில் பார்க்கவில்லை. ஆனால் எனக்கு முன்பு அவர் அங்கு இருந்தார்”

So, the first allegation that husband of 4th respondent was permitted to go inside the counting centre at 06.00 a.m. found not correct.

8)The second contention was that she was not allowed to go inside the counting centre till 06.00 p.m. even though the counting was commenced at 12.00 p.m. The petitioner herself stated in para 8 of the election petition itself that,

“The respondents from the inception had not allowed the counting agents to verify the genuineness of the counting of votes.”

So, it is shown that from the beginning of the counting, the agent of the petitioner was present at the counting centre. Unless they were present at the counting centre, the petitioner cannot say in the election petition that from the inception of counting they are not allowed to verify the votes. So, she herself has admitted that they were inside the counting centre from the beginning.”



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12. Reading of this findings of the Election Court shows that the revision petitioner was not aware of the presence of the fourth respondent's husband even from 06.00 a.m. This allegation is made with a view to substantiate her plea that he was permitted to be present in the counting Centre right from 06.00 a.m., for the purpose of facilitating or arranging the mal-practice that allegedly took place during the counting.

13. This allegation is shortly denied by the third respondent during the course of evidence. He stated in the evidence that in the presence of the petitioner, the respondents 4 to 8 and their agents were present only in their presence, the ballot boxes were opened. But, on the side of the revision petitioner, absolutely, no independent witness, except a supporting witnesses were examined to show that they were not permitted inside the counting centre during the relevant time. Without any basis, it appears that this sort of allegations are levelled. It is admitted by the petitioner that no written objections were made on 02.01.2020. It is also admitted that she was also present when the votes were segregated. After segregation, votes were shown to the agents. But the allegation is that votes were not shown clearly. So, this part of



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evidence shows as mentioned above, the allegations of presence of fourth respondent even from 06.00 a.m. is not true.

14. She made those allegations as mentioned above to show that the ballot papers were replaced by bogus papers. Even for that her evidence is not clear. In an ambiguous manner, she has spoken about the allegation. It is admitted that the replacement of votes by the fake votes were not known to her. It is nothing but, serious allegation. Had it been so she would have been immediately brought to the notice of the second respondent namely the District Collector, who is also District Election Officer. Had it been so the other representatives, agents or the candidates were present at the time of counting would have made strong objections, but, nothing has happened. So, this allegation also absolutely baseless. So, the evidence of the petitioner that the genuine votes were replaced by the bogus votes is completely out of place and without any basis. Therefore, this ground also falls as rightly done by the Election Court. This is absolutely baseless and not a genuine one. So the Election Court has rightly rejected the evidence, on this aspect the Election Court recorded a finding.



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15.The next allegation is that valid votes, which were polled in her favour were invalidated. For that purpose, she would say that objection was made by her immediately in writing. But, orally that was objected. If it so, she ought to have been made objections at the time of counting. Neither the petitioner nor her agent had made any such objections at the time of counting. So the trial Court has recorded a finding that this is also baseless and not established.

16.PW2 who is the agent of the petitioner has also given evidence that they made objection orally. But, he would say that replacement of the valid genuine ballot papers by bogus papers by the Officers were made in his presence. But, absolutely, no written objection were made at that time. So, the evidence of PW2 is not supporting the allegations, naturally, being the agent of the petitioner, he cannot be expected that he will give true facts. When absolutely, there is no basis for this allegations, the findings recorded by the Election on these two aspects requires no interference at all.



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17.The trial Court has also relied upon the written objections or representation that was sent by the revision petitioner, which was marked as Ex.P5 on her side. Wherein, some other facts were mentioned; Not even a single word has been dedicated to the replacement of the genuine ballot papers with fake ballot papers; But, in the representation, it has been stated that the agents were not properly permitted. Only at the fag end of the counting more number of agents were permitted; At first, she was informed by her agents that she won by 18 votes difference; But, later she was informed that she was defeated by 14 votes and malpractice also took place in the postal polling. Those postal ballot papers were not shown to them. These allegations were not brought to the notice of the second respondent. The District Collector instructed the Assistant District Collector to conduct recounting. But they refused. But these allegations were made much after the counting was over. As mentioned above, had it been so, that her allegation are true she would have immediately lodged a complaint with the District Collector, who is the Election officer or the Assistant Returning Officer.

18.Even at the time of declaration of results, it found that no



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objection was made by the revision petitioner. As found by the Election Court, the allegation were absolutely baseless and only after thought.

19. At the time of hearing the revision, the counsel for the revision petitioner submitted that there is a difference between the Part I of Form No.20 and Part II of the Form No.20 and the total votes mentioned in Form No.20 Part No.I. does not tally with that of the Form No.22. To verify the same, he wanted to call for the entire records from the Assistant Returning Officer. The learned Additional Government Pleader has also produced the records. He also produced a tabulation. When we compare the tabulation in the presence of the learned Additional Government Pleader with that Part I and Part II of the Form No.20, I find that it found tallies. There is no difference between the total votes mentioned in Form No.20 Part II and Form No.22.

20. The revision petitioner has submitted that the total number of ballot papers received for the polling along with the Panchayat President post do not tally. The Election were held for various other posts also. So, naturally the ballot papers that were received by the Assistant Returning



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Officer includes those ballot papers also. This fact is also clarified by the learned Additional Government Pleader. When I made enquiry, he clarifies that absolutely, there is no difference with votes polled and votes counted. The total number of votes polled were 3056. They were also properly counted. The invalid votes also properly tallies. Objection with regard to the invalid votes is also not established by the Election petitioner.

21. In the written arguments, the Election petitioner has mentioned so many facts, which were not canvassed before the Election Court, this was first time raised before the revision Court, which cannot be taken into account at all. The main allegation mentioned by the revision petitioner were not established by her. Therefore, she cannot take the loops and holes on her imagination.

22.Hence, I find absolutely, no reason to interfere with the findings of the Election Court. This revision petition deserves to be dismissed.



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23. Accordingly, this civil revision petition stands dismissed. No costs. The order passed in E.O.P.No.75 of 2021, dated 31.01.2023, on the file of the learned Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur, is confirmed.

25.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
TM

To

1. The Principal District and Sessions Judge, Virudhunagar District at Srivilliputhur.
2. The State Election Commissioner,
Tamil Nadu Election Commission,
Chennai.
3. The District Election Officer/District Collector,
Virudhunagar District,
Virudhunagar.
4. The Returning Officer,
The Commissioner,
Sivakasi Panchayat Union,
Virudhunagar District.
5. The Section Officer,
E.R. Section/V.R. Section,
Madurai Bench of Madras High Court, Madurai.



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G.ILANGO VAN,J.

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