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C.R.P.(MD)NO.586 OF 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 20.09.2024

PRONOUNCED ON : 19.03.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

C.R.P.(MD)No.586 of 2024

R.Arunagiri

... Petitioner / Petitioner

Vs.

1. E.Iyyappan (Died)
2. C.Radhakrishnan
3. P.Mariappan
4. V.Pathrakali

5. The Executive Officer,
Sambavarvadakarai Town Panchayat,
Sambavarvadakarai,
Kadayanallur Taluk,
Tenkasi District – 627 856.

6. The Additional Director of Town Panchayat,
Tirunelveli.

7. The District Returning Officer / Election Officer/
District Collector,
Collectorate,
Tenkasi.

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

9. The State rep. through,
Its District Collector,
Collectorate, Tenkasi.



10. Isakiammal

(R-10 is *suo motu* impleaded as LR of the deceased R1

WEB COPY vide order dated 04.09.2024)

... Respondents / Respondents/Respondents

Prayer: Civil Revision petition filed under Article 227 of the Constitution of India, to set aside the order dated 19.01.2024 made in El.O.P.No.65 of 2022 on the file of the Additional District Judge(FTC), Tenkasi and allow this civil revision petition.

For Petitioner : Mr.Karthikeya Venkatachalapathi,
for Mr.A.Sankara Ramasubramanian.

For R1 : Mr.R.Iyappan

For R-5 to R-9 : Mr.K.Balasubramani,
Special Government Pleader.

* * *

ORDER

The revision petitioner herein challenged the election of Thiru.E.Iyyappan as councilor for the 11th ward of Sambavar Vadakarai Town Panchayat. The election was held on 19.02.2022 and results were declared on 22.02.2022. The El.OP was filed before the Principal District Judge, Tirunelveli and it was later transferred to the file of the Additional District Judge, Tirunelveli and renumbered as El.O.P.No.65 of 2022. The revision petitioner



examined himself as P.W.1 and marked Ex.P.1 to Ex.P.9. The winning candidate neither adduced any evidence nor marked any document.

The executive officer of the local body(R5) examined herself as R.W.

1. After considering the evidence on record, the learned Additional District Judge, Thenkasi vide order dated 19.01.2024 dismissed El.O.P.No.65 of 2022. Challenging the same, this civil revision petition came to be filed.

2.During the pendency of this revision petition, it was reported that the first respondent passed away. His legal heir (wife), Isakkiammal, was *suo motu* impleaded vide order dated 04.09.2024. The learned counsel appearing for the revision petitioner impugned the reasons assigned by the Court below for dismissing the election petition. One of the reasons for dismissal is that the petition was not filed under the relevant provisions of the Tamil Nadu District Municipalities Act. The learned counsel submitted that a mere wrong quoting of a legal provision is only a curable irregularity and it would not go to the root of the matter. He pointed out that the claim of the revision petitioner that the winning candidate had filed a false affidavit had been proved. The nomination form filed by the first

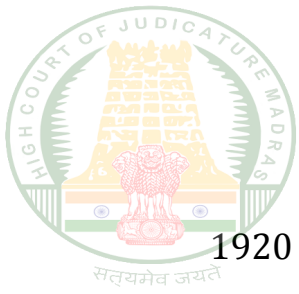


respondent before the returning officer ought not to have been accepted. According to the learned counsel, this was a case of improper acceptance of the nomination form. He called upon this Court to set aside the impugned order and declare the revision petitioner as the winning candidate place of the deceased first respondent.

3.Per contra, the learned Special Government Pleader as well as the other counsel submitted that the impugned order is well reasoned and that it does not call for any interference.

4. I carefully considered the rival contentions and went through the materials on record.

5. At the very outset, it must be noted that the election was in respect of a ward in Sambavarvadakarai Town Panchayat. As per Section 1(2) of the Tamil Nadu Panchayats Act, 1994, the said Act does not apply to the town panchayats. The town panchayats are governed by the provisions of the Tamil Nadu District Municipalities Act, 1920. Section 51-A of the Tamil Nadu District Municipalities Act,



1920 states that no election of a chairman or a councilor shall be called in question except by an election petition presented to the District Judge of the District within forty-five days from the date of publication of result of the election under Section 27. Section 51-A(2) of the Act states that an election petition may be presented on one or more of the grounds specified in Section 51-B.

6.Rule 118 of the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules, 2006 (hereinafter referred to as “Elections Rules 2006”) reads that no election held under the Tamil Nadu District Municipalities Act, 1920 **shall** be called in question except by an election petition presented in accordance with the relevant section of the Act and Elections Rules 2006. Rule 120 of the Elections Rules 2006 states that an election petition shall be presented on one or more grounds specified in the Act. Rule 124(2) of the Elections Rules 2006 states that if the provisions of Rules 119 to 122 are not applied, the Election Court **shall** dismiss the petition.



7.The Hon'ble Supreme Court in the decision reported in

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2023 SCC OnLine SC 573 (Kanimozhi Karunanidhi V. A.Santhana

Kumar) had held that an election petition is a serious matter and it

cannot be treated lightly or in a fanciful manner. Further, in **Dharmin**

Bai Kashyap v. Babli Sahu, (2023) 10 SCC 461, the Hon'ble Supreme

Court held as follows :

“13. It is well-settled principle of law that where a right or a liability is created by a statute, which gives a special remedy for enforcing it, the remedy provided by the statute must be availed of. It is also well-settled salutary principle that if a statute provides for doing a thing to be done in a particular manner, then it has to be done in that manner and in no other manner. In *Cherukuri Mani v. State of A.P.* [*Cherukuri Mani v. State of A.P.*, (2015) 13 SCC 722 : (2016) 2 SCC (Cri) 345] , it is observed that : (SCC p. 727, para 14)

“14. Where the law prescribes a thing to be done in a particular manner following a particular procedure, it shall be done in the same manner following the provisions of law, without deviating from the prescribed procedure.”

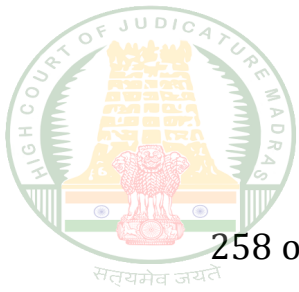


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17. There is hardly any need to reiterate the trite position of law that **when it comes to the interpretation of statutory provisions relating to election law, jurisprudence on the subject mandates strict construction of the provisions** [*Laxmi Singh v. Rekha Singh*, (2020) 6 SCC 812] . Election contest is not an action at law or a suit in equity but purely a statutory proceeding, provision for which has to be strictly construed....."

8.The election result represents the collective will of the people in a democratic polity. It cannot be unsettled or dislodged lightly. The challenge procedure has to be rigorously followed. When Rule 118 of the Elections Rules 2006 states that no election held under the Act **shall** be called in question except by an election petition presented in accordance with the relevant section of the Act and the Elections Rules 2006, it has to be mandatorily complied with. Section 51-A of the Tamil Nadu District Municipalities Act, 1920 is the relevant provision under which the election petition has to be filed. Rule 118 of the Elections Rules 2006 has to be treated as a mandatory provision. The revision petitioner chose to file a petition under Section 258 of the Tamil Nadu Panchayats Act, 1994. Section



258 of the Tamil Nadu Panchayats Act is not a relevant section under which El.O.P. could have been filed. In fact the Court Registry ought not to have been even numbered the El.O.P. The Court below had dismissed the El.O.P. for this reason also. In my view, the approach adopted by the Court below is justified.

9. Section 51-A(2) of the Tamil Nadu District Municipalities Act, 1920 states that the election petition calling in question may be presented on one or more of the grounds specified in Section 51-B of the Act. Section 51-B(1) of the Act is as follows:-

“51-B. Grounds for declaring elections to be void.— (1) Subject to the provisions of subsection (2), if the District Judge is of opinion —

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as chairman or councillor under this Act, or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or

(c) that any nomination paper has been improperly rejected, or

(d) that the result of the election, in so far as



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it concerns a returned candidate, has been materially effected —

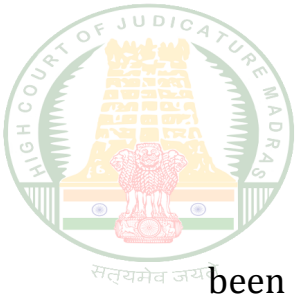
(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void, or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the District Judge shall declare the election of the returned candidate to be void.”

10. From a reading of the averments set out in El.O.P., one can come to the conclusion that the petitioner felt aggrieved by the improper acceptance of nomination submitted by the first respondent who eventually became the winning candidate. According to the petitioner, the wealth particulars have not been correctly spelt out in the nomination form. The revision petitioner has admitted that he had not raised any written objection to the fifth respondent at any time till the election results were declared. More over, there is no definite pleading that the result of the election has



been materially affected by improper acceptance of the nomination.

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On account of the absence of this pleading, one has to hold that no case for declaring the first respondent's election to be void has been made out. In this view of the matter, the order impugned in this civil revision petition is sustained. This civil revision petition stands dismissed. No costs.

19.03.2025

NCC : Yes / No
Index : Yes / No
Internet : Yes/ No
PMU

To:

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G.R.SWAMINATHAN, J.

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