

(1996) 04 MAD CK 0019

In the Madras High Court

Case No : Writ Petition No. 4522 of 1996

B. Saravan Satish Kumar @ Jayachandran

APPELLANT

Vs

Government of India and Another

RESPONDENT

Date of Decision : 19-04-1996

Acts Referred:

Constitution of India, 1950 — Article 226, 327, 329
Representation of the People Act, 1951 — Section 14

Citation : (1996) 2 CTC 297

Hon'ble Judges : AR. Lakshmanan, J

Bench : Single Bench

Advocate : Party in Person, for the Appellant;

Final Decision : Dismissed

Judgement

AR. Lakshmanan, J.—The petitioner appeared in person and argued the case. He is the Editor and Proprietor of "Indian Jaya" news

magazine. He is a voter in South Madras Parliament and also T. Nagar Assembly Constituencies. He filed the above writ petition for the following

relief:

To issue a writ of mandamus directing the respondents to issue two colours of Election Slips (one for electing and another for bi-election) to the

public for the coming election and pass such further orders as this court may deem fit and proper under the circumstances of the case.

2. It is the grievance of the petitioner that the candidates who contest the election give various promises to the people at the time of election and

request the people to vote for them. The people, on the basis of such premises, elect those candidates. According to the petitioner, the elected

candidates fail to fulfill their promises given at the time of election. Therefore he

requests that the voters, who are given the right to elect a candidate, should be given the right to recall the candidates if they commit any corruption or fail to fulfil their promises, and inform the same to the

Parliament or the concerned Assembly that an M.P., or and M.L.A. is not entitled to continue as the representative of the constituency in question.

The petitioner in his affidavit has made some suggestions in order to give the right to the voters to recall the elected candidate and that even at the

time of election, the voters must be given two voting slips in different colours, one for electing a candidate to the Parliament or State Assembly and

the other to recall the candidate by the electorates. In paragraph 14(f) of the affidavit, the petitioner has made the following suggestion:

The public used one colour voting Slip to elect the M.P. or M.L.A., and retained another colour voting slip with them; if the elected M.P. or

M.L.A. does not fulfil their promises and committed defaults, the public has to be put their respective signature in the retained slip quoting the

Election Booth Number and Voting Slip Number with a covering letter and sent the same to the District Office. The District Officer has put the

same in the empty voting boxes and count the same with the officials appointed by the Government. If the number of Get Back slips are higher than

the elected votes, he informed it to the Chief Election Commission and the Chief Election Commission may declare the bi-election through the

court order which is prayed for.

3. The suggestion made by the petitioner is not only unworkable but is also very difficult to implement. From a reading of the entire affidavit of the

petitioner, this court is not in a position to understand as to the real grievance of the petitioner. The petitioner has also argued the matter in Tamil. In

my opinion, such a writ petition is not maintainable in law. Article 329 of the constitution excludes the jurisdiction of Courts to entertain any matter

relating to election, which can be questioned only by an election petition under the law prescribed by the appropriate Legislature. Hence, the

present writ petition seeking some relief after the process of election started would not lie. Clause (b) of Article 329 of the Constitution ousts the

jurisdiction of Courts with regard to matters arising between the commencement of the polling and the final election. Different stages of the election

process and the remedies for the wrongs committed during the process are

governed by the different provisions of the Representation of Peoples

Act Outside these provisions, the Court or the Election Tribunal has no jurisdiction to grant relief on general principles.

4. As already seen, Article 329(b) of the Constitution is a blanket ban on legal proceedings including a petition under Article 226, to challenge

electoral steps taken by the Election Commission and its officers for carrying forward the process of election starting from the notification by the

President u/s 14 of the Representation of the People Act, to its culmination in the formal declaration of the result of the election. There is no

remedy provided at any intermediary stage, even though the dispute relates to a step anterior to the holding of the election. In this case, the

petitioner has not alleged any violation of the code of conduct by any candidate but has made some suggestions, which cannot be looked into at

this stage. Since the process of election had commenced, it is not appropriate for this Court to entertain this writ petition.

5. Article 327 of the Constitution deals with the power of Parliament to make provisions with respect to elections to Legislature, with respect to all

matters relating to or in connection with elections to either House of Parliament or to the House or either House of the Legislature of a State

including the preparation of electoral rolls, etc., and all other matters necessary for securing the due constitution of such House or Houses. The

grievance now expressed and the suggestion now made by the petitioner cannot at all be countenanced at this stage as the electoral law stands it

cannot be agitated in this forum.

6. For all the foregoing reasons, the writ petition is dismissed in limine.