

(2017) 12 MAD CK 0107
In the Madras High Court
Case No : 35080 of 2017

Dravida Munnetra Kazhagam

APPELLANT

Vs

Election Commission of India

RESPONDENT

Date of Decision : 13-12-2017

Acts Referred:

Constitution of India, Article 324, Article 329(b) - Superintendence, direction and control of elections to be vested in an Election Commission - Bar to interference by courts in electoral mat

Citation : (2017) 12 MAD CK 0107

Hon'ble Judges : T.S. Sivagnanam, K. Ravichandrababu

Bench : DIVISION BENCH

Advocate : T.S. Sivagnanam, K. Ravichandrababu

Judgement

1. This miscellaneous petition is filed to reopen the writ petition, wherein an order was passed by the Hon'ble First Bench on 21.11.2017, disposing the same as infructuous.

2. The petitioner herein as the writ petitioner filed the said writ petition for a mandamus as follows: To direct the respondents to carry out purification of voters lists of the No.11, Dr.Radhakrishnan Nagar Assembly Constituency on the basis of which the by-election is to be conducted by deleting "Double Entries", Absent," "Multiple Entries", "Shifted", "Multiple voters with same voter identification numbers", "Dead" voters, etc., in respect of No.11, Dr. Radhakrishnan Nagar Assembly Constituency , by constituting a special team under the first respondent before conducting the by-election to the said Assembly Constituency.

3. The grievance of the petitioner in the writ petition was that in respect of No.11, Dr. Radhakrishnan Nagar Assembly Constituency, there were various discrepancies/errors such as "Double Entries", Multiple Entries", "Multiple voters with same voter identification numbers", "non-deletion of shifted voters" (Which

are not deleted) "non-deletion of dead voters", which was published on 05.01.2017 along with Supplementary List I followed by the Supplementary List published on 23.03.2017.

4. It was the case of the petitioner in the writ petition that subsequently another draft voters list dated 03.10.2017 was published by the Election Commission of India and the same was also replete with the same number of bogus voters. Thus, it was stated by the petitioner that as their repeated representations given to correct the mistakes/errors in the voters list were not considered, they approached this Court and filed the writ petition.

5. The said writ petition was heard by the Hon"ble First Bench of this Court. After hearing both sides, the Hon"ble First Bench disposed the writ petition on 21.11.2017, wherein at paragraph Nos.3 to 8, it has been observed as follows: "3. The District Election Officer, had, after conducting field verification of the list received from the petitioner-Party, submitted the following report:

SI.No.

Details

Nos.

1.

Total names in the ASD list submitted by the DMK Party

44,999

2.

Names without SI.No., Part No., or EPIC Number

3,754

3.

Entry made in the Database

41,245

(i) As per BLO verification names to be deleted

17,510

(ii) As per BLO verification names to be retained

23,735

4. Thereafter, the petitioner-Party again represented, after which it was proposed to conduct 100% door-to-door verification at No.11, Dr.Radhakrishnan Nagar Assembly Constituency. By a letter dated 21.11.2017, that is to-day, the District Election Officer and Commissioner, Greater Chennai Corporation, has informed the Chief Electoral Officer and Principal Secretary to the Government, Public

(Elections-I) Department, that verification of the list of bogus/ineligible voters submitted by the DMK Party had been completed and a total of 45,819 names had been deleted. This had been done after 100% field verification by 256 Booth Level Officers, further super-checked by 25 Supervisors and cursory verification by the Assistant Electoral Registration Officer of No.11, Dr.Radhakrishnan Nagar Assembly Constituency. As per the aforesaid communication from the District Election Officer and Commissioner, Greater Chennai Corporation to the Chief Electoral Officer and Principal Secretary to the Government, Public (Elections-I) Department, the large scale deletion occurred due to the frequent migration of urban public and also death of electors. The break-up as given in the said letter is as follows:

Shifted

-

38,319

Dead

-

3,818

Double Entry

-

3,682

Total

-

45,819

5. Action has, apparently, been taken on the complaint of the petitioner-Party as against 44,999 voters in the draft electoral list that had been objected to and 45819 voters names have been deleted, as the complaint made by the petitioner- Party was found to be substantially correct.

6. Mr.Niranjana Rajagopal, learned Standing Counsel appearing on behalf of the respondents, submits that the deletions shall be put up in the website by tomorrow (22.11.2017).

7. No further order need be passed on the writ petition, which is disposed of as infructuous. No costs. Consequently, W.M.P.No.29662 of 2017 is closed.

8. It is expected that the Election Commission will announce the election dates at the earliest and conduct the elections preferably within 31.12.2017, as directed by this Bench by its order dated 18.09.2017 in W.P.No.24083 of 2017 (K.K.Ramesh v. Government of India and Ors.) "

6. Now the present miscellaneous petition is filed by complaining that after verification of the list uploaded in the website on 21.11.2017, the petitioner came to know that still about 5,117 voters have to be deleted, which were in the petitioner's original list submitted on 23.10.2017. Thus, it is stated by the petitioner that the statement made by the Election Commission of India before this Court while hearing the writ petition was untrue. It is further stated that the petitioner made further representation on 28.11.2017 along with proof of non deletion of 5000 voters. Based on the above said contentions, the petitioner now seeks to reopen the above writ petition, which was disposed of on 21.11.2017 as extracted supra.

7. The second respondent filed an affidavit dated 11.12.2017, wherein it is stated as follows: The petitioner seeks to raise an issue pertaining to electoral roll. When electoral process has already commenced and in view of the express constitutional bar, no petition can be entertained by any Court of law. In line with the submission made in the main writ petition, a total of 45,836 electors were deleted from the electoral roll and the same was uploaded in the website. Section 23(3) of the Representation of the People Act, 1950 prohibits any alteration or correction in the electoral roll, after making the last date for electing nomination. The electoral rolls enclosed along with the representations of the petitioner are only from the draft rolls released on 03.10.2017. The Election Commission of India has issued detailed instructions regarding the prevention of impersonation of voters from time to time. Among the usual measures such as production of identity card and application of indelible ink, to tackle the issue of absentee/ shifted and electors of similar nature, the instructions are also issued by the first respondent on 04.04.2014 to take the following steps:

"i) List of ASD voters are prepared, polling station wise and each presiding officer of a polling station is provided with a list.

ii) On date of polling, any elector whose name appears in such a list, shall have to produce the Electoral Photo Identity Card or any other alternate documents permitted for the said purpose. The presiding officer shall verify the identification document personally and is registered in Form 17A (Register of Electors).

iii) Whenever, an ASD elector comes to vote, his name is announced loudly with the view of informing the polling agents.

iv) The thumb impression of such electors shall also be obtained in addition to signature.

v) A declaration to the effect that, he/she is the person whose name appears at the particular serial number of the electoral roll and that he/she is aware that impersonation at elections is an electoral offence is obtained.

vi) The Presiding Officer of a polling station shall maintain a record and give a certificate as to the number of voters allowed to vote from the ASD list.

vii) All such electors will be videographed/photographed.

viii) The presiding officers are specially briefed about these procedures to be followed in the polling station, and micro observers who are present are also mandated to ensure that these instructions are strictly followed."

There are sufficient safeguards to ensure that there is no impersonation of voters and the aforesaid instructions will be strictly followed to ensure that there is no impersonation on account of multiple entries. The list of such multiple entries identified as 1947 and included as part of the ASD list, has already been circulated to political parties and has also been put up in the website.

8. The third respondent filed a separate affidavit dated 11.12.2017, wherein it is stated as follows: The petitioner political party has given representations on multiple entries and certain discrepancies in the electoral roll. In the representation given recently on 23.03.2017, about 44,999 names were pointed out as multiple entries and shifted/dead voters, which was brought to the notice of the third respondent office and consequently, a door to door verification of the same was done. After 100% verification by 256 booth level officers, super checking by 25 supervisors and cursory verification by the Assistant Electoral Registration Officer and Electoral Registration Officer, a total of 45,836 voters were deleted on 24.11.2017, including the 45,819 voters, as submitted before this Hon'ble Court on 21.11.2017. The list of deleted voters was also uploaded in the website. The list of deleted names was also provided to all recognised political parties on 22.11.2017. The 45,836 electors were identified as multiple entries, shifted or dead. Only after issuing 7 days notice as required under Section 22 of the Representation of People Act 1950, the 45,836 have been deleted. Pursuant to the applications for inclusions, totally 8842 electors have also been included which also is comprised on 685 electors out of the deleted list, who had filed appeal under Section 24. The total strength of electoral roll for R.K.Nagar Assembly Constituency as on 04.12.2017 is 2,28,234 electors. The petitioner gave a representation on 28.11.2017 that a further 5177 names are to be deleted. Those names were verified by Booth Level Officers and Supervisors and randomly verified by Assistant ERO and ERO and out of the above 5177 entries, it was found that 2220 names have already been deleted as part of the earlier exercise. However, a further 1947 names were found to be cases of multiple entries and were proposed to be deleted. However, the day viz., 04.12.2017 being the last date for nomination and in view of the provision under Section 23(3) of the 1950 Act, no alteration could be made for the electoral roll for the said constituency, as no opportunity can be afforded to such proposed deletions, as per the statute before the said date. However, those 1947 names were decided to be included in the absentee/shifted/dead elector list, to be dealt with in accordance with the instructions laid down by the Election Commission of India viz., Instructions No:646/INST/2014-EPS dated 04.04.2014.

9. The petitioner filed additional affidavit of 10.12.2017, praying for removal of 1788 bogus voters from the electoral list or to put ASD seal in the main electoral roll against those bogus voters by circulating the same to all polling station.

10. Mr.Wilson, learned Senior Counsel appearing for the petitioner submitted that as per Sections 17 and 18 of the Representation of the People Act, 1950, no person could be registered in more than one Constituency and no person could be registered more than once in any Constituency. He further pointed out that under Section 62 of the Representation of People Act, 1951, no person shall vote at an election in any constituency, if he is subject to any of the disqualification referred to in Section 16 of the Representation of the People Act, 1950. Therefore, he submitted that ASD votes (absentee/shifted/dead) will have to be prevented by affixing some seal against their names in the voter list. He further invited this Court's attention to the guide for voters issue by the Election Commission of India to indicate that under paragraph 4.1, the voters are informed that they can register their names only at one place and registering in more than one place is an offence. He relied on the decisions of the Hon''ble Apex court reported in 2003 (8) SCC 319, Ram Chandra Singh v. Savitri Devi and Others and 2005(6) SCC 149, State of A.P. v. T.Suryachandra Rao, to contend that fraud vitiates entire proceedings and therefore, this Court can interfere.

11. Per Contra, Mr.Niranjan Rajagopal, learned counsel appearing for the respondents submitted that once the electoral process is commenced, no further direction can be given in respect of any stage of the process of election and therefore, the present miscellaneous petition filed by the petitioner itself is not maintainable. He further submitted that in view of the statutory bar imposed under Section 23(3) of the 1950 Act, no amendment of electoral roll can be made after commencing the electoral process. The learned counsel further contended that however by invoking the power conferred under Article 324 of the Constitution of India, the Election Commission is taking all possible steps by giving suitable instructions, as stated in the affidavit filed by the second respondent to deal with the ASD voters. As no voters can be removed without notice, the multiple entries will also be dealt with as the category under "Shifted" by including such multiple entry also under ASD category, which can be suitably managed by following the aforesaid instructions issued by the first respondent dated 04.04.2014. The learned counsel further submitted that the dispute raised herein by the petitioner at the best may be one of the ground for declaration of election to be void as contemplated under Section 100(1)(d)(iii) of the 1951 Act, that too, by filing an election petition as required under Article 329(b) of the Constitution of India. Thus, he submitted that as the Election Commission will take all steps to conduct the election in a free and fair manner, by strictly following those instructions as well referred to supra, the petitioner need not have any apprehension.

12. Heard both sides.

13. The point for consideration is as to whether the writ petition, which was already disposed of on 21.11.2017, is to be reopened at the instance of the petitioner on the reason that there are some more bogus voters, which according to the petitioner, is numbering 5117.

14. It is true that the petitioner has approached this Court and filed the writ petition before the announcement of the election notification. The petitioner, at that time, raised a complaint that there were about 45,000 bogus/ineligible voters. The Election Commission, after conducting field verification of the list received from the petitioner political party, submitted a report before this Court by specifically stating that a total of 45,819 names had been deleted by conducting 100% field verification by Booth Level Officers, Supervisors. The said report was taken on record and the Hon'ble First Bench of this Court, after finding that 45819 voters have been deleted from the voters list, disposed the writ petition as infructuous, as no further order need be passed in the writ petition. It was also further observed in the said order that the Election Commission to announce election dates and conduct elections preferably within 31.12.2017, as directed by this Court earlier on 18.09.2017 in W.P.No.24083 of 2017 dated 18.09.2017.

15. It is not in dispute that the deleted voters list was already published in the website on 21.11.2017. But the grievance of the petitioner before this Court now is that still 5117 voters have to be deleted for which, they have given further representation on 28.11.2017 along with proof. The third respondent in his affidavit has clearly stated that the names of those 5177 voters were verified by Booth Level Officers and Supervisors and out of such 5177 entries, it was found that 2220 names have already been deleted as part of earlier exercise and a further 1947 names were found to be cases of multiple entries and were proposed to be deleted. It is seen that as the last date for filing the nomination fell on 04.12.2017 and in view of bar under Section 23(3) of the 1950 Act, further deletion of those 1947 voters could not be effected, as reasonable opportunity to those members as required under section 22 of the Representation of the People Act, 1950, could not be given in the meantime. However, as the respondents themselves have now come forward and categorically stated before this Court that even in respect of these 1947 names, the instructions issued by the first respondent dated 04.04.2014 would be followed strictly by treating those persons under the category "shifted" and by placing them under ASD, this Court is of the view that the petitioner need not have any apprehension, as the respondents would follow those instructions strictly in respect of those voters also. At the risk of repetition, the above instructions of the first respondent dated 04.04.2014 is extracted once again hereunder: "i) List of ASD voters are prepared, polling station wise and each presiding officer of a polling station is provided with a list. ii) On date of polling, any elector whose name appears in such a list, shall have to produce the Electoral Photo Identity Card or any other alternate documents permitted for the said purpose. The presiding officer shall verify the identification document personally and is registered in Form 17A (Register of Electors). iii) Whenever, an ASD elector comes to vote, his name is announced loudly with the view of informing the polling agents. iv) The thumb impression of such electors shall also be obtained in addition to signature. v) A declaration to the effect that, he/she is

the person whose name appears at the particular serial number of the electoral roll and that he/she is aware that impersonation at elections is an electoral offence is obtained. vi) The Presiding Officer of a polling station shall maintain a record and give a certificate as to the number of voters allowed to vote from the ASD list. vii) All such electors will be videographed/photographed. viii) The presiding officers are specially briefed about these procedures to be followed in the polling station, and micro observers who are present are also mandated to ensure that these instructions are strictly followed."

16. At any event, if the petitioner or any other party is aggrieved still against casting some votes which according to them are bogus, the remedy, as rightly pointed out by the learned counsel appearing for the respondents, would only fall under Section 100(1)(d)(iii) of the Representation of the People Act, 1951, which deals with the grounds for declaring the election to be void. The relevant clause in the said provision of law is extracted hereunder: "100.Grounds for declaring election to be void:-(1) Subject to the provisions of sub-section (2), if (the High Court) is of opinion- (d)that the result of the election, insofar as it concerns a returned candidate, has been materially affected- (iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or"

17. It is also to be noted at this juncture that any such dispute can be raised only by way of an election petition, as contemplated under Article 329(b) of the Constitution of India, which reads as follows: "329 Bar to interference by Courts in electoral matters:

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature."

18. The decisions of the Apex Court relied on by the learned Senior Counsel for the petitioner to contend that fraud vitiates entire proceedings, cannot be pressed into service at this stage, as the petitioner has to establish the allegation of "fraud" by leading evidence in the appropriate proceedings as to what and how fraud has been committed by the other party. In our considered view, such exercise has to be done only in the election petition by the aggrieved party and therefore, those two decisions are not relevant at this stage, more particularly, in view of clear bar under Article 329(b) of the Constitution of India as well as Section 100(1)(d)(iii) of the Representation of the People Act, 1951 as discussed supra.

19. At this juncture, we would like to record our deep anguish and concern about the deleted entries originally made in the voters list like multiple voters either with the same name and person with different address or different name with same person with same voter ID or same person with different age and different address or same person with same address but with double entry. These sort of

entries, if not found and corrected at the appropriate time, would have resulted in bogus voting, as rightly contended by the petitioner. It is evident that but for the repeated representations made by the petitioner political party, it is doubtful whether these sort of so called voters would have been deleted at all from the electoral roll. Admittedly, taking note of the complaint made by the petitioner, the election commission has deleted 45836 voters after exercising 100% door to door verification and further now it is stated before this court that another 1947 voters still were found to be cases of multiple entries. However, these 1947 voters could not be deleted in view of statutory time constraint/bar, as enumerated under Section 23(3) of 1950 Act. It is also stated by Election Commission that total strength of electoral roll for this particular constituency as on 04.12.2017 is 2,28,234 electors. Evidently, this total strength arrived is after deletion of 45836 of so called voters or "bogus voters". Yet another 1947 voters are not deleted as a matter of record. These figures undoubtedly shock our judicial conscience as the total number of voters deleted so far itself is alarmingly very high in numbers. In other words, equal to 1/5th numbers of the present eligible voters, 45836 voters were found to be not eligible to vote and were deleted. These deleted figures are not minimal or negligible. Needles to say that even a single vote may change the result. Therefore, while we appreciate the steps taken by the petitioner in setting the electoral roll in order, we do expect the election commission to take severe action not only against such deleted voters (unless there are justifiable and genuine reasons to conclude that they are not at fault) and also against the person/persons/ political party or parties who were instrumental in effecting such inclusion of those illegal entries. The punishment against those persons must be of severe in nature even to an extent of banning them from voting or contesting the election permanently forever. Unless such strong measures are taken and messages are sent, these sort of evil attempts will continue, which would only result in mockery on democracy. We strongly believe that the Election Commission will take all effective steps and ensure the people that a free and fair election will never be compromised on any account and the same will be achieved at any cost, as the election is the sole lifeline of democracy.

20. Considering the above stated facts and circumstances and the developments made after the order passed in the writ petition and also by taking note of the submissions made by the Election Commission before this Court with facts and figures as discussed supra, we find no reason to entertain this miscellaneous petition any more. However, we make it clear that the respondents would strictly follow the instructions No.646/INST/2014/2014-EPS dated 04.04.2014 issued by the first respondent in respect of the disputed voters by making notable mark or affixing seal with prominence against these voters in the electoral rolls and circulating the same to all polling stations. The respondents will also supply the same to all contestants and conduct the election in a free and fair manner. Hence, the miscellaneous petition is disposed of accordingly with the above observations.