
(2015) 07 MAD CK 0292

In the Madras High Court

Case No : W.P (MD) No. 13360 of 2014, M.P (MD) Nos. 1 to 3 of 2014 and 1 of 2015

M. Kamatchi Sundaram

APPELLANT

Vs

The District Collector and Others

RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Citation : (2015) 7 MLJ 37 : (2015) WritLR 1006

Hon'ble Judges : R. Mahadevan, J

Bench : Single Bench

Advocate : D. Geetha, for the Appellant; S. Chandrasekar, Government Advocate, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Mahadevan, J—This writ petition is filed seeking a writ of Certiorarified Mandamus to quash the notice dated 30.07.2014, affixed in the notice board of the fourth respondent with the election schedule and consequently, direct the first respondent to proceed with the Elections notified as per the Notification dated 30.06.2014 and issue the Certificate of Election of Thamaraikulam Channel Water User Association, Thamaraikulam Village, Palani Taluk, Dindigul District, to the petitioner as per Rule 19 of the Tamil Nadu Farmers Management of Irrigation Systems Election Rules, 2003.

2. Heard both sides.

3. Necessary facts leading to the filing of this writ petition, are thus:

3.1. The first respondent issued a notification under Form 2 of the Tamil Nadu Farmers Management of Irrigation System Election Rules, 2003, announcing the election to the offices of members of Territorial Constituencies and Presidents of Water Users Associations in Amaravathy Sub Basin at Dindigul District. The election date was notified for 52 Associations on 07.07.2014 and the receipt of nominations was fixed on 21.07.2014. Polling and Counting were on 30.07.2014.

3.2. The petitioner, who is one of the members of the Thamaraikulam Channel Water Users Association, filed his nomination to the post of President of the said Association, along with two others. On scrutiny of the nominations, which was held on 22.07.2014, the third respondent rejected the nomination of one Chandrasekaran, as he is the President of Thamaraikulam Village Panchayat and one Panneer Selvam withdrew his nomination on 22.07.2014. Therefore, the petitioner was only the eligible candidate for the post of the President of the said Association. According to the petitioner, the third respondent orally declared him as elected for the post of President of the said Association.

3.3. When he approached the second respondent for issuance of the Certificate of Election as per Rule 19 of the Rules, it was denied and hence, he approached the fourth respondent, who informed that the Member of the Legislative Assembly of Palani Legislative Constituency recommended for postponing of the elections, scheduled to be held on 30.07.2014. Further, the fourth respondent sent a communication dated 29.07.2014, to the second respondent stating that the date of the election was not properly advertised, due to which, there will be a law and order problem and the same was put to challenge by filing W.P(MD)No. 12803 of 2014 and this Court, by order dated 05.08.2014, dismissed the same, observing that since the elections were only postponed, it is open to him to pursue his claim when the fresh date is announced by the respondents.

3.4. However, instead of announcing the fresh date of election, the fourth respondent affixed a fresh election schedule in his office, giving a complete go-by to the earlier election notification issued under Form 2 on 30.06.2014. According to the petitioner, the fourth respondent was not justified in doing so, as per Rule 19 of the Rules, which mandated the procedure when there is only one validly nominated candidate. Hence, the petitioner is before this Court seeking the above relief.

4. Ms.D.Geetha, learned Counsel for the petitioner made the following submissions:

4.1. The election to the offices of members of Territorial Constituencies and Presidents of Water Users Associations in Amaravathy Sub Basin at Dindigul District, is governed by the Tamil Nadu Farmers Management of Irrigation System Election Rules, 2003.

4.2. Though the petitioner and two others filed their nominations for the post of President of Thamaraikulam Channel Water Users Association, the third respondent rejected the nominations filed by the said two persons and hence, the petitioner was the eligible candidate for the said post.

4.3. The reasons assigned by the fourth respondent stating that Member of the Legislative Assembly of Palani Legislative Constituency recommended for postponing of the elections, scheduled to be held on 30.07.2014, as the date of the election was not properly advertised, which may cause law and order problem, are untenable.

4.4. This Court has already observed in W.P(MD)No. 12803 of 2014 that since the elections were only postponed, it is open to him to pursue his claim when the fresh date is announced by the respondents.

4.5. Since the fourth respondent announced a fresh election, it is contrary to Rule 19 of the Rules and when the petitioner being the validly nominated candidate, the fourth respondent ought to have issued the Certificate of Election, but, rejected the election of the petitioner.

4.6. The election postponed, ought to be continued from where it is adjourned, as per Rule 35 of the Rules, but, the respondents had totally given a go-by to the earlier election, which caused great prejudice to the petitioner.

4.7. Therefore, the fresh election notice issued by the fourth respondent is not sustainable in law and warrants interference.

5. Mr.S.Chandrasekar, learned Government Pleader appearing for the respondents, placing reliance on the counter affidavit filed by the third respondent, contended thus:

5.1. The first respondent issued the notification for the election of the Members and the Presidents of Water Users of 54 Associations in Amaravathi Sub-Division at Dindigul District, on 07.07.2014 and the last date for filing nominations was on 21.07.2014 and the date of polling and counting was on 30.07.2014.

5.2. Meanwhile, some of the agriculturists requested the first respondent to postpone the election, for the election notification was not properly propagated to the members of the associations, besides there were many discrepancies in the electoral list.

5.3. In such circumstances, it is not proper to conduct the election as scheduled and hence, it was postponed.

5.4. The contention of the petitioner that he was declared as the President of the said Association on 22.07.2014 at 04.00 p.m., is denied.

5.5. The Election Officer is authorised to announce fresh election for the Associations as per the above Rules.

5.6. Hence, the relief sought for by the petitioner is not maintainable and prayed for the dismissal of this writ petition.

6. Mr.B.Saravanan, learned Counsel for the petitioner in M.P(MD)No. 1 of 2015, who seeks to implead himself as fifth respondent in the writ petition, made the following submissions:

6.1. The impleading petitioner/proposed fifth respondent is a necessary party to the present writ petition as the outcome of this writ petition would have a bearing on his rights.

6.2. He filed his nomination for the post of President of the above said

Association, but, the Returning Officer rejected his nomination, by proceedings dated 22.07.2014, without any valid reasons.

6.3. Since the earlier election was cancelled, he refrained from challenging the rejection of his nomination by the Returning Officer.

6.4. When the earlier writ petition filed by the petitioner was dismissed by this Court, on 05.08.2014, the petitioner is not justified in approaching this Court once again by way of this writ petition and it is not maintainable in law.

6.5. No cause of action arisen for the petitioner to move before this Court by filing the present writ petition and hence, prayed for impleading himself as party respondent in the writ petition.

7. I have considered the rival submissions and perused the materials available on record.

8. At the outset, this Court finds it appropriate to analyse the circumstances that necessitated the respondents to postpone the earlier election scheduled to be held on 30.07.2014 and they are:

8.1. On 30.06.2014, the Notice for Election has been published as per Rule 13(1) of the Rules, informing about the schedule of election and the notice of Election was issued on 07.07.2014.

8.2. On the very same day, the Notification of Programme of Election has also been published in terms of Rule 11(1) of the Rules.

8.3. Later, they were published in the Dindigul District Gazette (Extraordinary) on 02.07.2014.

8.4. The date of receipt of the nominations was on 21.07.2014 and the date of polling and counting, was on 30.07.2014.

8.5. Three candidates including the petitioner, have filed their nominations for the post of President of the said Association.

8.6. Among them, the nomination filed by the impleading petitioner in M.P(MD)No. 1 of 2015, namely, Kumar @ R.Chandrasekaran, was rejected by the Returning Officer on 22.07.2014, on the ground that he is serving as the President of Thamaraikulam Village Panchayat.

8.7. The other candidate, namely, K.Panneer Selvam, withdrew his candidature on 22.07.2014.

8.8. In such circumstances, the petitioner, namely, M.Kamatchi Sundaram, was the only one validly nominated candidate and as per Rule 19 of the Rules, the petitioner ought to have been declared as "elected" in Form-24 and Certificate of Election has to be given to him under Form-26.

8.9. However, the fourth respondent, by communication dated 29.07.2014,

informed the Election Officer that since the notice of election was not properly published, there would be a likelihood of law and order problem at the time of election and therefore, the Member of the Legislative Assembly of Palani Legislative Constituency, recommended for postponing the election and prayed for taking appropriate action in this regard. Subsequently, the election was postponed.

8.10. Rule 35 of the Rules clearly contemplates as to the procedures to be adhered to, when the poll is adjourned.

8.11. Later, the fourth respondent, issued a notice dated 30.07.2014, in and by which, a fresh election was notified, which is being put to challenge in the present writ petition.

9. Admittedly, in the case on hand, the petitioner is the only one validly nominated candidate. Rule 19 of the Rules, makes it very clear as to the procedure where there is a only one validly candidate and it is relevant to reproduce the same, as under:

"19. Procedure where there is only one validly nominated candidate.- If there is only one validly nominated candidate in an election, he shall be declared to have been elected for the office of member of Territorial Constituency or President of Water Users Association, as the case may be, in Form-24. A certificate of election in Form-26 shall be issued to him."

10. A close reading of the above provision would amply make it clear as to the procedures to be followed when there is only one validly nominated candidate.

11. Also, this Court, while dismissing the earlier writ petition filed by the petitioner, has given liberty to pursue his claim, when the fresh date is announced by the respondents. However, it is the main contention of the petitioner that the respondents ought to have announced the fresh date of election, instead, they announced the fresh election, which is contrary to Rule 19 of the Rules.

12. It is seen that this Court, by order dated 13.08.2014, has also granted the interim order of injunction, restraining the respondents from conducting any election, pursuant to the impugned notification, for the Thamaraikulam Channel Water User Association alone. It is also not in dispute that the previous date of election has been postponed, stating that the fresh date would be announced for election, but, the respondents have announced the fresh election itself, which, in the opinion of this Court, is bad in law.

13. As per Rule 35 of the Rules, the respondents ought to have assigned the reasons for postponing the earlier election scheduled to be held on 30.07.2014, but, without doing so, they are trying to conduct a fresh election, in the absence of valid reasons, which is not permitted in law. Moreover, the respondents failed to adhere to the procedures as contemplated under the Rules while postponing the election and in issuing the impugned notice of fresh election as well and in

that event, the impugned notice issued by the fourth respondent, contrary to the provisions of the said Rules, warrants interference.

14. Insofar as M.P(MD)No. 1 of 2015 filed by the impleading petitioner is concerned, this Court is of the view that the nomination filed by the impleading petitioner was rejected by the Returning Officer on certain grounds and he has to challenge the same in the manner known to law and he could not seek to testify his rejection in the present writ petition and therefore, the same is liable to be rejected.

15. In the result, this writ petition stands allowed and the impugned notice dated 30.07.2014, [affixed in the notice board of the fourth respondent with the election schedule], is quashed and accordingly, the first respondent is directed to proceed with the Elections notified as per the Notification dated 30.06.2014, in respect of Thamaraikulam Channel Water User Association, Thamaraikulam Village, Palani Taluk, Dindigul District and declare the results, within a period of four weeks from the date of receipt of a copy of this order. Consequently, M.P(MD)Nos. 1 to 3 of 2014 are closed and M.P(MD)No. 1 of 2015 is dismissed. No costs.