

(2011) 04 MAD CK 0186

In the Madras High Court

Case No : Writ Petition No. 8439 of 2011 and M.P. No. 1 of 2011

M. Shanmugasundaram

APPELLANT

Vs

The Chief Election Commissioner and Others

RESPONDENT

Date of Decision : 01-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 327, 328, 329
Representation of the People Act, 1950 — Section 23

Citation : (2011) 4 CTC 766

Hon'ble Judges : M.Y. Eqbal, C.J.; T.S. Sivagnanam, J

Bench : Division Bench

Advocate : R. Subramaniam for R. Sivaraman, for the Appellant; G. Rajagopalan, SC for G.R. Associates for RR-1 to 3 and R-5 and J. Raja Kalifulla, GP for R-4, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—In this writ petition, the Petitioner seeks issuance of a writ of certiorarified mandamus calling for

the records of the proceedings of the 5th Respondent dated 28th march, 2011, quash the same insofar as it relates to the Petitioner and to further

direct the 5th Respondent to accept the nomination of the Petitioner for Nanguneri Constituency.

2. The ground of rejection so far as the Petitioner is concerned is that the election registration officer certificate was not produced. Further Form 2-

B also was not produced before the Returning Officer.

3. Learned Counsel appearing for the Petitioner mainly contended that the ground of rejection of the nomination paper is the non-production of

election registration officer certificate, which document is not of a substantial character. Learned Counsel further submitted that the Petitioner

earlier filed writ petition being W.P. No. 7908 of 2011 seeking a direction upon the Respondent to include the name of the Petitioner in the

electoral rolls of the Assembly Constituency and this Court, by order dated 25th march, 2011, directed the Respondents to consider the

application of the Petitioner and to pass appropriate orders. According to the learned Counsel, in view of the aforesaid order, the 1st Respondent

ought to have accepted the nomination paper.

4. On the other hand, learned Counsel appearing for the Respondent-Election Commission drew our attention to Section 23 of the

Representation of People Act, 1950 and submitted that no amendment or deletion of entry in the electoral roll could be made after the last date for

making nomination for an election in that constituency. According to the learned Counsel, in the earlier writ petition the counsel for the Petitioner

vehemently made a prayer to the Court for an order of entry of his name in the electoral roll, but that was not granted.

5. We have perused the order passed by the learned single Judge in W.P. No. 7908 of 2011. A perusal of the order shows that there is no such

direction given by the Court to make entry of the name of the Petitioner in the electoral rolls. Further, the direction was to consider his application.

6. Be that as it may. The question that arises for consideration is whether this Court has jurisdiction under Article 226 of the Constitution to

entertain the writ petition and decide the legality of the impugned order.

7. Before proceeding further, we would like to refer to Article 329 of the Constitution of India, which reads as under:

329. Bar to interference by Courts in electoral matters.- (Notwithstanding anything in this Constitution)

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be

made under Article 327 or Article 328, shall not be called in question in any court;

(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.

8. Clause (b) of Article 329 is very clear on this point. It is manifest that no election to either House of Parliament or to the House or either House

of the Legislature of State shall be called in question except by an election petition presented before the authority empowered under the law.

9. Section 100 of the Representation of People Act, 1950, lays down the ground for declaring the election to be void. One of the grounds for

declaring election to be void is the rejection of the nomination improperly.

10. In our opinion, the instant case is squarely covered by the Constitution Bench judgment of the Supreme Court in the case of N.P. Ponnuswami

Vs. Returning Officer, Namakkal Constituency and Others, .

11. After giving our anxious consideration, we are of the definite opinion that the question regarding the improper rejection of nomination cannot be

gone into by this Court in exercise of writ jurisdiction under Article 226 of the Constitution.

Hence, no relief can be granted and, accordingly, this writ petition is dismissed. Consequently, connected miscellaneous petitions are also

dismissed. However, there shall be no order as to costs.