
(2011) 04 MAD CK 0013

In the Madras High Court

Case No : Writ Petition No. 8430 of 2011 and M.P. No. 1 of 2011

P.G. Paramesh Babu

APPELLANT

Vs

The Returning Officer and The Chief Electoral Officer

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226, 327, 328, 329

Citation : AIR 2011 Mad 223

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

Bench : Division Bench

Advocate : Selvi George, for P. Anandan, for the Appellant; G. Rajagopalan for G.R. Associates for R2 and J. Raja Kalifulla, Spl.G.P. for R1, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—The Petitioner who is the practicing lawyer had submitted his nomination form for contesting as

a candidate in the forthcoming Tamil Nadu State Assembly Election. The nomination form in Form 2B is stated to have been filed on 23.03.2011.

2. According to the Petitioner, he has filed the form with all necessary affidavits etc., as prescribed under the Representation of Peoples Act. The

application was taken up for scrutiny by the first Respondent on 28.03.2011 and the same was rejected on the ground that column No. 6, serial

Nos. (i) & (ii) were missing in the application, this order is impugned in the present writ petition.

3. The learned Counsel appearing for the Petitioner would submit that even assuming the relevant column was missing in the application, the defect

is not of substantial nature and therefore, the first Respondent should have permitted the Petitioner to rectify the same.

4. The learned Senior counsel appearing for the Election Commission would submit that the writ petition is not maintainable and the question

regarding improper rejection of nomination cannot be gone into by this Court under Article 226 of the Constitution of India. The learned Senior

counsel also produced the original of the application submitted by the Petitioner, in which column No. 6(i) &(ii) are missing.

5. 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.

6. 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.

7. 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.

8. 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.

9. 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, .

10. 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 petition is closed. However, there shall be no order as to costs.