

(2014) 09 MAD CK 0207

In the Madras High Court

Case No : W.P. (MD) Nos. 14906, 14949 of 2014 and M.P. (MD) Nos. 1, 2 of 2014

Syed Ali Fathima

APPELLANT

Vs

The District Collector

RESPONDENT

Date of Decision : 17-09-2014

Acts Referred:

Constitution of India, 1950 — Article 226, 243O, 243Q, 243ZG
Tamil Nadu District Municipalities Act, 1920 — Section 51A, 51B

Citation : (2014) 09 MAD CK 0207

Hon'ble Judges : T.S. Sivagnanam, J

Bench : Single Bench

Judgement

T.S. Sivagnanam, J.—The petitioner in both writ petitions is one Tmt. Syed Ali Fathima and though the relief sought for in both the writ petitions are different both pertain to the election to the post of Mayor of Tirunelveli City Municipal Corporation. With the consent of either side, both the writ petitions were heard and disposed of at this stage.

2. The petitioner filed nomination for the post of Mayor of Tirunelveli City Municipal Corporation, on 04.09.2014 as an independent candidate before the second respondent. By the impugned proceedings, dated 05.09.2014, the second respondent rejected the petitioner's nomination, stating that in terms of the provisions of Rule 24(4) of the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules, 2006, (hereinafter, referred to as "the Rules"), as per the proposal made by the proposer of the petitioner, the petitioner's name was not found in the Local Body Electoral Voters List-2014. The petitioner would submit that in her nomination, she has filled up the details as per the electoral roll published by the Election Commission of India and she has been issued an identity card and the second respondent rejected the petitioner's application on flimsy grounds. This order is impugned in W.P. (MD) No. 14906 of 2014.

3. In W.P. (MD) No. 14949 of 2014, the order impugned, dated 08.09.2014, is a

declaration issued by the second respondent under the provisions of Rule 30(2) and 91 of the Rules declaring the third respondent as the successfully elected candidate for the post of Mayor of Tirunelveli City Municipal Corporation. Thus, the challenge to the declaration in Form No. 27, dated 08.09.2014, is consequent to the challenge in W.P. (MD) No. 14906 of 2014.

4. When the writ petitions were posted for admission on 09.09.2014, Mr. K. Aayiram K. Selvakumar, learned Government Advocate accepted notice for the respondents 1 and 2 and the matter was posted on 16.09.2014 for filing counter affidavit and counter affidavit has been filed by the second respondent.

5. The learned counsel for the petitioner, after elaborately referring to the factual situation, submitted that in terms of Rule 24(4) of the Rules, the Returning Officer, on the presentation of a nomination paper, shall satisfy himself that the names and roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the roll. In the instant case, the petitioner had written the correct details as per the details given by the Election Commission of India and there is no error. Even assuming there was an error, it is a very negligible error and the second respondent by exercising power under the proviso to Rule 24(4) of the Rules could have directed the petitioner to correct the error. It is further submitted that the details given by the petitioner are correct and there is no relevant column to give the part number in the form and therefore the rejection of the petitioner's nomination is illegal.

6. It is further submitted that there were thirteen nominations and only three of them were held to be valid, of which two persons withdrew their nominations and therefore the third respondent has been declared as the successful candidate. In such circumstances, a situation has arisen as there was no election at all which cannot be permitted to prevail as the candidate has to be elected in a democratically conducted election. Further, it is submitted that though objection has been raised by the first respondent as regards the maintainability of the writ petitions, it is submitted that the Honourable Division Bench of this Court, in the case of All India Anna Dravida Munnetra Kazhagam Vs. The State Election Commissioner and Others, , exercised jurisdiction under Article 226 of the Constitution of India and the instant case is also one of the rarest of rare case, where this Court should exercise jurisdiction under Article 226 of the Constitution. Further, by referring to the said decision, it is submitted that the right of the voter, while casting the vote assumes great significant and therefore such right should be protected. Hence, it is submitted that this Court should consider the present case as one of the rarest of rare cases and exercise jurisdiction in the matter.

7. Mr. K. Aayiram K. Selvakumar, learned Government Advocate for the respondents 1 and 2, by referring to the counter affidavit, submitted that both the writ petitions are not maintainable as there is a constitutional bar under Article 243-Q of the Constitution of India and therefore the writ petitions are liable to be dismissed. It is further submitted that there were thirteen

nominations filed by the candidates. At the time of presenting the nomination papers, the ULB Electoral roll was available on the table of the Returning Officer. All the 13 Nominations were taken up for scrutiny on 05.09.2014 at 11.00 a.m., in presence of candidates concerned. Among the thirteen nominations, only seven nominations were found correct and rest of them are found invalid and rejected for various reasons. Further, it is submitted that the nomination of the petitioner was one among the invalid nomination which was also rejected on the ground that the part reasoning is that the part of electoral roll and serial number of ULB electoral roll pertaining to the proposer of the petitioner was nowhere found in the electoral roll published on 25.07.2014 and the rejection of nomination of the petitioner was effected through letter, dated 05.09.2014, of the second respondent. It was duly informed to the petitioner on the same day and therefore the act of the second respondent is legally correct. It is further submitted that the petitioner is the solely responsible to verify her name and name of the proposer, which were included in the ULB electoral roll prior to presenting her nomination paper before the second respondent and also to verify the part number, ward number pertaining to her and her proposer in ULB electoral roll 2014.

8. It is further submitted that the second respondent scrutinized the nomination of the petitioner in accordance with Rules specified in the Election Rules 2006. In fact, she had not submitted valid nomination paper in accordance with law and order of rejection was duly served upon the petitioner in writing. Further it is submitted that the proposer of the petitioner had given irrelevant particulars in the nomination regarding part number and serial number. It is also submitted that any particulars controversial in nature will not be allowed at any circumstances. It further submitted that on completion of scrutiny on 05.09.2014, only three candidates were nominated as contesting candidates as on 05.09.2014 and one of the contesting candidates by name Tmt. R. Beulah Sathya Nesi withdrawn her candidature on 06.09.2014, the other candidate Tmt. G.P.R. Vellaiammal, also withdrew her candidature. In this situation, since there was only one contesting candidate as on 08.09.2014, under the provisions of the Rule 91 of the Rules, it was declared that the candidate E. Bhuvaneswari has been duly elected as Mayor for Tirunelveli Corporation at 03:00 p.m. on 08.09.2014.

9. It is further submitted that the rejection of the nomination was made after careful scrutiny in accordance with the provisions under Section 24(4) of the Rules and as such there is no violation of the statutory provisions. It is submitted that the contention of the petitioners is not acceptable since she has not filled up the nomination form properly based on ULB Electoral Roll published on 25.07.2014. It is further submitted by the learned Government Advocate that out of thirteen candidates, who filed nominations, seven nominations were correctly filled up with the correct numbers as per the ULB Electoral Roll-2014, published on 25.07.2014, which was made available in the Office of the second respondent and the Municipal Corporation Office as well as on the table of the Returning

Officer. Therefore, nothing prevented the petitioner to correctly furnish the details and the details are very much available and even in these writ petitions, the petitioner is harping upon the notification of the Election Commission of India.

10. Further, it is submitted that there are no 229 Parts as per the number of the regions in the electorate and there are only eight parts. Further, the learned counsel submitted that earlier this Court has considered similar objections and dismissed the writ petitions as being not maintainable. Therefore, it is submitted that the only remedy available to the petitioners is to raise an election dispute.

11. Heard Mr. W. Peter Ramesh Kumar, learned counsel for the petitioner and Mr. K. Aayiram K. Selvakumar, learned Government Advocate for the respondents 1 and 2 and perused the materials placed on record.

12. Before we venture into the factual matrix, it would be first necessary to consider the scope and judicial review in the matters concerning election. The case on hand is a case where the petitioner's nomination was rejected on the ground of furnishing of improper information in the nomination form as filled in by the proposer of the petitioner.

13. Section 51-B of the Tamil Nadu District Municipalities Act, 1920, provides for grounds for declaring elections to be void and in terms of Clause (c) of sub-section (1) of Section 51-B one of the grounds for declaring election to be void is on the ground that any nomination paper has been improperly rejected. Therefore, it is clear that the ground raised by the petitioner is a ground for maintaining an election petition under Section 51-A of the Tamil Nadu District Municipalities Act, 1920.

14. Referring to sub-rule (4) of Rule 24 of the Rules, it is submitted that the Returning Officer has to satisfy himself that the names and roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered into the roll and then proceed with the matter and in the instant case, the Returning Officer was satisfied about the correctness of the information furnished based on the electoral roll published by the Election Commission of India and subsequently rejected the nomination on flimsy grounds. By referring to the proviso contained under Rule 24(4) of the Rules, it is submitted that the error could have been permitted to have been corrected by providing an opportunity to the petitioner since it is a flimsy ground.

15. Based on these submissions and the submission that the third respondent has been elected without any election, which does not augur well, it is all the more necessary for a direction to be issued in the instant case and it is a rarest of rare case and therefore the writ jurisdiction should be exercised. In fact, this very issue was considered by this Court in other writ petitions as well and one of them being W.P. (MD) No. 15151 of 2014 etc., batch dated 16.09.2014. An identical contention was raised by the petitioners therein regarding the maintainability of the writ petitions and several decisions were referred to. This Court took into consideration those decisions as well as the decision in the case

of All India Anna Dravida Munnetra Kazhagam (cited supra) and held as follows:

13. Before we venture into the factual matrix, it would be first necessary to consider the scope and jurisdiction of this Court to examine the correctness of the decision of the Returning Officer in holding that the petitioners' nominations have been withdrawn. It is not in dispute that the results of the election has been consequently declared and the private respondents in all these writ petitions have been declared as successful candidates. The legal issue, which could be culled out from the decisions commencing from the case of N.P. Ponnuswami (cited supra), is that the Honourable Supreme Court, while considering the very question pointed out that the law of elections in India does not contemplate that there should be two attacks on matters connected with election proceedings, (i) while they are going on by invoking the extraordinary jurisdiction of the High Court under Article 226 of the Constitution and (ii) after they have been completed by means of an election petition. It was further pointed out that any matter which has the effect of vitiating an election should be brought up only at the appropriate stage in an appropriate manner before a special tribunal and should not be brought up at an intermediate stage before any Court.

14. Following the above decision, the Honourable Supreme Court in the case of Boddula Krishnaiah (cited supra), which arose out of a controversy in respect of the election of a Gram Panchayat, wherein a writ petition was filed before the High Court, after the draft roll was prepared by the competent authority including the names of 94 persons, but subsequently their names were deleted and a direction was issued by the High Court to allow the 94 persons to participate in the election but on the date of the poll they could not exercise their franchise. Subsequently, they sought for further direction and the High Court directed not to declare the results of the election to the Gram Panchayat. The aggrieved parties moved for vacating the interim direction issued by the High Court and after hearing the parties, the High Court directed the revenue officials to scrutinize the claim of the respondents as to whether they are residing in the village and for which a report was submitted stating that only 20 persons eligible to be included in the voters' list as they were found living in the village during such enquiry. On those facts, the High Court passed an Order directing 20 persons, who were eligible to vote should be allowed to participate in the election. The said order passed by the High Court was challenged by the Honourable Supreme Court. The Honourable Supreme Court, after taking into consideration the decision in the case of N.P. Ponnuswami (cited supra) and the decisions in the cases of Lakshmi Charan Sen and Others Vs. A.K.M. Hassan Uzzaman and Others, and State of U.P. and others etc. Vs. Pradhan Sangh Kshettra Samiti and others etc., , held that once an election process has been set in motion, though the High Court may entertain or may have already entertained a writ petition, it would not be justified in interfering with the election processing giving direction to the election officer to stall the proceedings or to conduct the election process afresh and the only remedy is to raise an election dispute.

15. The Honourable Division Bench of this Court in the case of Vaikundaraj, M (cited supra), while considering the writ petition filed to quash the proceedings of an Election Officer, with regard to the allotment of seats for women in Puliyangudi Municipality, held that in the light of the bar contained under Article 243-ZG of the Constitution, the only remedy for the petitioner therein was to file an election petition.

16. The above legal proposition cannot be disputed by the petitioners. It is the endeavor of the learned counsel for the petitioners to convince this Court that the mandate in Article 243-O of the Constitution may not per se bar judicial review, which is the basic structure of the Constitution and there may be some cases where a writ petition would be entertained. In Harnek Singh (cited supra), the Honourable Supreme Court though made such an observation, did not go into the said question as the case did not require the question to be considered. This is evident from the observation made in Paragraph No. 16 of the said decision, which reads as follows:

16. Article 243-O of the Constitution mandates that all election disputes must be determined only by way of an election petition. This by itself may not per se bar judicial review which is the basic structure of the Constitution, but ordinarily such jurisdiction would not be exercised. There may be some cases, where a writ petition would be entertained but in this case we are not concerned with the said question.

17. As noticed above, the Honourable Supreme Court has observed that ordinarily the said jurisdiction should not be exercised. Therefore, the petitioner has to carve out an exception that the present case is an extraordinary case or rarest of rare cases for this Court should exercise jurisdiction under Article 226 of the Constitution.

18. In fact, an identical contention was raised before this Court in W.P. (MD) No. 14868 of 2014, wherein it was contended that this Court, invoking the power under Article 226 of the Constitution of India, is entitled to adjudicate into the facts and it is not in all cases the petitioner should be directed to file an election petition and in support of such contention, reliance was placed on the decision in the case of All India Anna Dravida Munnetra Kazhagam Vs. The State Election Commissioner and Others, . This Court, by Order dated 15.09.2014, considered the very question and observed that:

In support of such contention, much reliance was placed on the decision in the case of All India Anna Dravida Munnetra Kazhagam (cited supra). In fact, this very contention was examined by this Court in the case of C.S. Bhuvaneswari (cited supra) and it was pointed out that rejection or non-acceptance of nomination on the grounds stated would not make out a case to fall under the category of "rarest of rare cases" warranting interference under Article 226 of the Constitution of India. It was further pointed out that the question as to whether the rejection of the nomination papers was on substantial

grounds or not is a question of fact and non-compliance of the statutory Rules in individual cases cannot give rise to a presumption that a monstrous situation had arisen and declared to interfere in the election process. I am in respectful agreement with a view taken by V. Ramasubramanian, J., in the case of C.S. Bhuvaneswari (cited supra).

16. As pointed out by this Court in the case of C.S. Bhuvaneswari and Others Vs. The State Election Commissioner, 100 Feet Road, Vadapalani, Chennai and Others, , to examine as to whether it is a negligible mistake or a grave mistake etc., is also a question of fact, which cannot be adjudicated in a writ petition. That apart, the situation in the case of All India Anna Dravida Munnetra Kazhagam (cited supra) was entirely different and in the context of those facts direction was issued. But, in the instant case, the petitioner has not produced any material to show that any monstrous situation arose as in the said case warranting interference under Article 226 of the Constitution of India. The second respondent would state that the particulars relating to ward number, part/division should be as per the ULB Electoral Roll, published on 25.07.2014. If the petitioner states that there was no due publicity of such electoral roll that also is a question of fact to be established by leading evidence. On the contrary, the second respondent has taken a stand that seven out of thirteen candidates furnished details as per the ULB Electoral Roll. In such circumstances, it has to be seen as to why the petitioner's nomination was filled up using the particulars in the Election Commission of India's notification when a separate Electoral Roll has been published for the local body election on 25.07.2014. Therefore, whether the mistake, which has occurred in the petitioner's nomination form, is a substantial mistake or a negligible mistake has to be established before the appropriate forum. In any event, it is not a clerical mistake or a printing error to be overlooked. Therefore, these aspects could only be proved if the petitioner raises an election dispute.

17. In the light of the legal position as noted above and the facts, this Court is not inclined to entertain the writ petitions for the reasons assigned. Therefore, it is held that both the writ petitions are not maintainable.

18. In the result, both the writ petitions fail and the same are dismissed. It is left open to the petitioner to agitate all the factual issues before the appropriate forum and any observation contained in this order will not be held against the petitioner in the event of she raising an election dispute. Consequently, connected miscellaneous petitions are closed. No costs.