
(2015) 06 MAD CK 0071

In the Madras High Court

Case No : Writ Petition No. 18028 of 2015, M.P. Nos. 1 and 2 of 2015

T. Paulraj

APPELLANT

Vs

Election Commission of India and Others

RESPONDENT

Date of Decision : 26-06-2015

Acts Referred:

Constitution of India, 1950 — Article 226, 329(b)

Representation of the People Act, 1951 — Section 10A, 29A, 77

Citation : (2015) 06 MAD CK 0071

Hon'ble Judges : M. Sathyanarayanan, J

Bench : Single Bench

Advocate : N. Sakthivel, for the Appellant; Niranjan Rajagopalan for G.R. Associates, Advocates for the Respondent

Final Decision : Dismissed

Judgement

M. Sathyanarayanan, J.—By consent, this writ petition is taken up for final disposal.

2. The petitioner is a member of a political party, namely "Makkal Manadu Katchi", which is a registered political party and he along with 27 candidates are contesting in the election to fill the casual vacancy in Dr.Radhakrishnan Nagar Assembly Constituency. The schedule of election is as follows:

The petitioner would aver among other things that the first respondent, namely the Election Commission of India bestowing star campaigner status under Section 77 of the Representation of the People Act, 1951 [in short "RP Act"] to be leaders of political parties, whereby the expenditure incurred on account of campaigning of such leaders shall not be included in the expenditure of the candidate. As per the said provision, a recognized political party is allowed to have 40 star campaigners and registered political party is allowed to have 20 star campaigners.

3. The second respondent, namely the Chief Electoral Officer of Tamil Nadu has

released the list of star campaigners for various political parties which includes non-contesting parties and members of All India Anna Dravida Munnetra Kazhagam (AIADMK). The star campaigners of non-contesting parties belong to All India Samathuva Makhal Katchi, Puratchi Bharatham, Tamil Maanila Quaide Milleth League, Indian Christian Front, Akhila India Jananayaka Makkal Katchi (Dr.Isaac) and Indiya Kudiয়ারasu Katchi.

4. The grievance expressed by the petitioner is that the respondents 6 and 7 belongs to All India Samathuva Makkal Katchi and the eighth respondent belongs to Indiya Kudiয়ারasu Katchi and they were elected to Tamil Nadu Legislative Assembly in the election symbol of AIADMK Party and therefore, they are the sitting members of AIADMK Party in the Legislative Assembly and by virtue of their inclusion, the total number of star campaigners of AIADMK is 80 members, which is a clear violation of poll code. The petitioner would further submit that the said act of the second respondent has resulted in mockery of the election process and is contrary to Section 29A of the RP Act and the procedures formulated by the first respondent for registration of political parties. The petitioner, in this regard, has submitted a representation dated 15.06.2015 to the respondents 2 and 3, requesting for appropriate orders to restrain the respondents 6 to 8 to perform/act as star campaigners and since no orders have been passed on the said representation and further that the election is going to be held on 27.06.2015, has filed this writ petition.

5. Mr.N.Sakthivel, learned counsel appearing for the petitioner has drawn the attention of this Court to Section 77 of the RP Act more particularly Explanation (2) and would submit that sub-clauses (i) and (ii) to the said Explanation put a clog on star campaigners and in utter violation of the said statutory provision, AIADMK party has been given the benefit of having more number of Star Campaigners than the prescribed and therefore, the respondents 2 and 3 are under obligation to set right the same, but they have failed to perform their statutory duty. It is the further submission of the learned counsel appearing for the petitioner that the respondents 2 and 3 are under mandate to ensure free and fair election and by permitting the ruling party to have more star campaigners had put the said party in an advantageous position and would further submit that the power of jurisdiction to interfere with the election process is not absolute and placed reliance upon the judgments in (i) Election Commission of India through Secretary v. Ashok Kumar and Others [2000 AIR SCW 3274] and (ii) All India Anna Dravida Munnetra Khazhagam v. The State Election Commissioner and Others [2007 (1) CTC 705].

6. Per contra, Mr. Niranjan Rajagopalan, learned counsel, who accepted notice on behalf of the respondents 1 and 2, has invited the attention of this Court to the Compendium of Instructions for Election Expenditure Monitoring and would submit that as per Clause 5.6.5 of the said instructions, if a star campaigner of another political party/a party in alliance with the party of the candidate attends the rally and takes the name of the candidate or shares dais with the candidate,

then the travel expense of that campaigner of allied party up to the constituency is not exempted and should be added to the candidate's expenses and in this regard, the Election Commission has also issued necessary instructions in its letter No. 437/6/2008-CC and BE dated 24.10.2008 relating to use of helicopters. Attention of this Court was also drawn to Clause 5.6.6. wherein all expenditure including lodging/boarding expenses of star campaigners in the constituency where they campaign for any candidate shall be included in the expenditure account of that particular candidate subject to certain conditions. It is the further submission of the learned counsel appearing for the respondents 1 and 2 that the second respondent, in its letters dated 04.06.2015 and 11.06.2015 addressed to the General Secretary of Indiya Samathuva Makkal Katchi and National President of Akila Indiya Jananayaka Makkal Katchi, has issued certain clarifications with regard to their letters dated 01.06.2015 and 09.06.2015 respectively and the contents of the said letters would disclose that the entire expenses relating to sharing of dais with the star campaigner by the candidate or the election as well as attending the rally and campaigning, are not exempted and will be added to the candidate's expenses and therefore, any party utilizing the services of more number of star campaigners is definitely a disadvantage. Lastly, it is submitted by the learned counsel appearing for the respondents 1 and 2 that after election also, candidates, who stood in the election, are required to submit their poll expenses and if any infraction or violation is noted, the first respondent is at liberty to initiate appropriate action and therefore, the apprehension expressed by the petitioner is unfounded.

7. This Court has carefully considered the rival submissions and also perused the materials placed before it.

8. The petitioner, being one of the candidates seeking election to Dr.Radhakrishnan Nagar Assembly Constituency, admittedly did not pray for stay of the election process and therefore, the decisions relied on by the learned counsel appearing for the petitioner has no application to the case on hand as in those cases, malpractices were alleged and stay of the election process was sought.

9. The Constitution Benches of the Hon''ble Supreme Court of India in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, AIR 1952 SC 64 : (1952) 1 SCR 218 and Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others, AIR 1978 SC 851 : (1978) 1 SCC 405 : (1978) 2 SCR 272 has laid down the proposition that Article 329(b) of the Constitution of India is primarily intended to exclude or oust the jurisdiction of all Courts in regard to electoral matters and to lay down the only mode in which the election could be challenged and the provisions of the special jurisdiction can be invoked by the aggrieved party at the end of the election and thereby excludes other forms and therefore, while exercising the jurisdiction under Article 226 of the Constitution of India, the High Court cannot consider the correctness, legality or otherwise of the election rules taken by the Election Commissioner and its

officers.

10. The Election Commission, under Section 10A of the RP Act, can conduct enquiry to find out/determine the falsity or otherwise of the Return of Election Expenses by the elected candidate and can disqualify the elected candidate also. In the light of Section 10A of the RP Act, the apprehension expressed by the petitioner is unfounded and the Compendium of Instructions for Election Expenditure Monitoring as well as the letters of the second respondent dated 04.06.2015 and 11.06.2015 addressed to the office bearers of the ninth and fifteenth respondents also make it clear their position.

11. This Court, in the light of the facts and legal position, is of the view that the writ petition lacks merit. In the result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.