

(2011) 04 MAD CK 0228

In the Madras High Court

Case No : Writ Petition No. 8441 of 2011

Vanathi Srinivasan

APPELLANT

Vs

The Chief Electoral Officer, The Returning Officer and K.V.
Thangabalu

RESPONDENT

Date of Decision : 05-04-2011

Acts Referred:

Representation of the People Act, 1951 — Section 33A

Citation : (2011) 04 MAD CK 0228

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

Bench : Division Bench

Advocate : Su. Srinivasan, for the Appellant; Rajagopalan for G.R. Associates for R1 J. Raja Kalifulla, Spl. G.P. for R2 and K.V. Subramanian for A. Mohandoss, for R3, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, C.J. and T.S. Sivagnanam, J.—The Petitioner who is the practicing advocate, has filed this writ petition for issuance of writ of

Mandamus to direct the second Respondent, the Returning Officer of Mylapore Constituency, to reexamine the nomination papers of the third

Respondent and reject the same, if the affidavit submitted by the third Respondent did not disclose full and correct information with regard to the

assets of the third Respondent and his spouse.

2. The facts of the case lie in a narrow campus.

The third Respondent filed his nomination as a candidate for the Mylapore constituency. According to the Petitioner, the third Respondent's

spouse also had filed her nomination for the same constituency which was rejected by the second Respondent. According to the Petitioner, the

nomination papers of the third Respondent was also liable to be rejected on account of non-disclosure of full and correct information. It is stated

that the affidavit filed by the third Respondent also suffers from several discrepancies, non-disclosure, in complete information and misinformation.

It appears that the Petitioner has given her objections to the second Respondent on 28.03.2011 and it is stated that the second Respondent is

bound to consider the same and pass orders and as the second Respondent has failed to pass orders it prompted, the Petitioner to file this writ

petition.

3. Heard the learned Counsels appearing for the parties.

4. It is contended by the learned Counsel for the Petitioner that the third Respondent, who was a Member of Parliament for many times and even

functioned as Union Minister should be honest in disclosing the information which is given by way of affidavit and any false information or non-

disclosure would interfere with the free exercise of electoral right of the voter. The learned Counsel would further submit that the Petitioner has

loco standi to submit her objections to the nomination filed by the third Respondent and pursuant to the decision of the Hon''ble Supreme Court,

the Election commission had issued circular, wherein, it had mandated all candidates to give affidavit disclosing information and therefore, the

second Respondent should pass an order on the Petitioner''s objection.

5. In People''s Union for civil Liberties (PUCL) and Others Vs. Union of India (UOI) and Another, the validity of the Representation of People

(Amendment) Ordinance, 2002, was challenged. Their Lordships took note of the decision of the Hon''ble Supreme Court in Union of India (UOI)

Vs. Association for Democratic Reforms and Another, , and observed that in spite of the said Judgment, the question as to whether that the

amendment to the Representation of the People Act, 1951, is in accordance with, what has been declared in the said judgment has to be decided.

Their Lordships after elaborately considering the matter summarized their conclusion in paragraph 129 of the Judgment. Sub-para 9 of para 129

would be relevant for the purpose of this case, which reads as follows:

129. ...(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this

judgment regarding the cases in which cognizance has been taken. The Election

Commission's orders related to disclosure of assets and liabilities

will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of

summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not

be enforced.

(emphasis supplied)

6. In view of the judgment rendered by the Hon'ble Supreme Court insofar as verification of assets and liabilities by means of summary enquiry and

rejection of nomination papers on the ground of furnishing wrong information or suppressing material information should not be enforced.

Therefore, if the prayer sought for by the Petitioner is to be granted, it would be in direct violation of the direction issued by the Hon'ble Supreme

Court as referred to above. Therefore, the relief sought for by the Petitioner cannot be granted.

7. For the above reasons, a writ of mandamus as sought for by the Petitioner cannot be granted as it is barred in terms of the decision of the

Hon'ble Supreme Court in the case of PUCL v. Union of India, referred supra, and therefore, the writ petition is dismissed and not maintainable.

However, there shall be no order as to costs.