

W.P.No.9987 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 14.10.2020

Delivered on: 28.10.2020

CORAM

THE HONOURABLE MR. JUSTICE N.ANAND VENKATESH

WP.Nos.687, 9105 & 2803 of 2020

and

WMP Nos.819, 11095 & 10096 of 2020

W.P.No.687 of 2020

R.Jayalakshmi

..Petitioner
in W.P.No.687/2020

.vs.

- 1.The State Election Commissioner,
Local Body Election,
100 Feet Road, Opposite, Koyambedu Bus Stand,
Chennai.
- 2.The Returning Officer/Block Development Officer,
Cuddalore Panchayat Union,
Cuddalore, Cuddalore District.
- 3.The Assistant Election Officer,
Kumalankkulam Village Panchayat,
Kumalankkulam, Cuddalore District.

W.P.No.9987 of 2020

4.Vijayalakshmi,

5.The District Collector,
Cuddalore District,
Cuddalore.

..Respondents
in W.P.No.687/2020

(R-5 impleaded as per order dt.06.02.2020
made in WMP No.3053/2020 in W.P.No.687/2020 by PDAJ)

Prayer in W.P.No.687/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ Mandamus directing the 1st respondent to conduct enquiry and declare the petitioner as elected candidate for the post of Village Panchayat President in the Kumalankkulam Village Panchayat , Keerapalayam Panchayat Union, Cuddalore District.

W.P.No.9105 of 2020

R.Jayalakshmi

..Petitioner
in W.P.No.9105/2020

.VS.

1.The State Election Commissioner,
Local Body Election,
100 Feet Road, Opposite, Koyambedu Bus Stand,
Chennai.

W.P.No.9987 of 2020

2.The Returning Officer/Block Development Officer,
Cuddalore Panchayat Union,
Cuddalore, Cuddalore District.

3.The Assistant Election Officer/
Deputy Block Development Officer,
Cuddalore Panchayat Union,
Kumalankkulam Village Panchayat,
Kumalankkulam, Cuddalore District.

4.Vijayalakshmi,

5.The District Collector,
Cuddalore District,
Cuddalore.

..Respondents
in W.P.No.9105/2020

Prayer in W.P.No.9105/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, calling for the entire records relating to the impugned order passed by the 1st respondent in his proceedings S.O.No.10/2020/TNSEC/PE-1, dated 22.06.2020 and quash the same.

W.P.No.2803 of 2020

Mrs.Vijayalakshmi

..Petitioner
in W.P.No.2803/2020

W.P.No.9987 of 2020

.VS.

1.The District Collector,
(The District Election Officer),
Cuddalore District,
Cuddalore.

2.The Returning Officer,
Block Development Officer,
Cuddalore District,
Cuddalore,

3.The Tamil Nadu State Election Commissioner,
Tamil Nadu State Election Commission,
Chennai.

4.Jayalakshmi,

..Respondents
in W.P.No.2803/2020

Prayer in W.P.No.2803/2020:- Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ Mandamus directing the respondents 1 to 3 to fix the date of swearing ceremony to the petitioner to the post of the President of Kumalankulam Village Panchayat, Cuddalore Taluk in pursuance of declaration of the result in Form No.25, dated 02.01.2020 issued by the 2nd respondent within stipulated time fixed by this Court.

For Petitioner

in W.P.Nos.687&9105/2020 & : Mr.C.Prakasam
for **4th Respondent**
in W.P.No.2803/2020

For Petitioner

in W.P.No.2803/2020 & : : Mr.R.Gokulakrishnan
for **4th Respondent**
in W.P.No.687/2020

For R-1 in W.P.Nos.687,9105/2020
& R-3 in W.P.No.2803/2020) : Mr.AR.L.Sundaresan, Sr. counsel
Assisted by:
Mr.B.Nedunchezhiyan

For 2nd Respondent : Mrs.Narmada Sampath for R 5 9105
(in All Wps) Additional Advocate General
Assisted by:
Mr.E.Balamurugan
Special Government Pleader

For 5th Respondent
(in W.P.Nos.687&9105/2020) & : Mr.E.Balamurugan
For 1st Respondent Special Government Pleader
in W.P.No.2803/2020)

COMMON ORDER

The issue involved in all these Writ petitions are common and hence all the Writ Petitions were taken up together and on hearing the submissions of either side this Common Order is passed.

2. The petitioner in W.P.No. 9105 of 2020, initially approached this Court and filed W.P.No.687 of 2020, praying for the relief of Writ of Mandamus directing the 1st respondent to conduct enquiry and to declare the petitioner as the elected candidate for the post of Village Panchayat President in the Kumalankulam Village Panchayat. During the pendency of this Writ Petition, the Impugned Order came to be passed by the 1st respondent dt.22.06.2020, wherein, the Election was declared as null and void and a direction was given to conduct fresh Election. Aggrieved by the same, the same petitioner has filed W.P.No.9105 of 2020. The rival candidate, who is the 4th respondent in this Writ Petition, has filed W.P.No.2803 of 2020, to direct the official respondents to swear in her as the Village Panchayat President, within

the time stipulated by this Court. For the purpose of easy reference, the parties will be identified in accordance with the rank assigned to them in W.P.No. 9105 of 2020.

3.The case of the petitioner is that the 1st respondent conducted the Local Body Elections all over Tamil Nadu during the last week of December 2019 and the first week of January 2020. The petitioner filed her nomination which was accepted on 17.12.2019. The specific case of the petitioner is that the 3rd respondent allotted “Auto Rickshaw Symbol” to the petitioner and “Lock And Key Symbol” to the 4th respondent. The further case of the petitioner is that the petitioner and the 4th respondent were canvassing during the Election only with the Symbol that was allotted to them and pamphlets were also issued by them in their respective names with the respective Symbols allotted to them. Thereafter, the polling was held on 27.12.2019. On 02.01.2020, the counting of votes was completed and the Election Officer declared that the “Auto Rickshaw Symbol” has obtained 2524 votes and “Lock And

Key Symbol” has obtained 1478 votes and thereby the petitioner was declared as the elected candidate. However, sometime later on the same day the Election Officer declared the 4th respondent elected as the Village Panchayat President. This was questioned by the petitioner and since no action was taken by the 1st respondent, W.P.No.687 of 2020, came to be filed before this Court.

4. The first respondent thereafter passed the Impugned Order dt 22.06.2020, to the effect that there is a discrepancy in the allocation of Symbol in Form 4 and Form 9 issued by the 3rd respondent and some correction that has taken place in Form 9 and the 1st respondent came to a conclusion that the Election was not conducted in accordance with the rules and hence it was held to be null and void and a fresh Election was directed to be conducted at a future date.

5.The second respondent has filed a counter affidavit in W.P. No.9105 of 2020, and the relevant portions in the counter affidavit are

extracted hereunder:

“ 3. As regards the averments in Para 2 & 3 of the affidavit, it is submitted that Tmt.R.Jayalakshmi, the petitioner herein contested for the post of Village Panchayat President of Mumalankulam Village Panchayat of Cuddalore Panchayat Union. It is submitted that the Assistant Returning Officer, the 3rd respondent herein allotted autorickshaw symbol to the petitioner and lock and key symbol to Tmt.Vijayalakshmi, another contestant who has been impleaded as 4th respondent in this case. It is submitted that the contesting candidates canvassed on the basis of the above symbol allocation. The polling was held on 27.12.2019.

4.As regards the averments in Para 4 & 5 of the affidavit, it is submitted that the counting was done on 02.01.2020. At the end of the counting, it was stated that “autorickshaw” symbol secured 2512 votes and “lock & key symbol” secured 1478 votes. It is submitted that the Returning Officer declared Tmt.Vijayalakshmi as the winning candidate. Tmt. Jayalakshmi submitted her representation in writing

to the Returning Officer claiming that she has been allotted “autorickshaw” symbol and hence she has to be declared elected.

5.It is submitted that on perusal of the records, it was found that the Assistant Returning Officer has prepared form for allocation of symbols as given in the Annexure 4 of the Hand Book 3 (Instructions to the Assistant Returning Officer for the election of Village Panchayat President and Village Panchayat Ward member) without following the procedures and the Instructions issued for the allocation of symbols as given in Part-4 of the said hand Book and furthermore, the statutorily issued Form 9 was contrary to the symbols already allocated to the candidates for which the signature of the candidates was duly obtained.

6.It is further submitted that on the Counting day 02.01.2020, it was declared that “Autorickshaw” symbol secured 2512 votes and “Lock & Key” symbol secured 1478 votes. Based on the entries made in Form 9, which is the list of final contesting candidates, the Returning Officer declared Tmt.Vijayalakshmi as the winning

candidate. Because in form-9, as against the name of the candidate, Tmt.Vijayalakshmi, Autorickshaw symbol has been written. Tmt.Vijayalakshmi, having been declared elected, declaration in Form-26 was issued to her. However, the swear in of oath of affirmation had not happened.

7.As regards the averments in Para 6 of the affidavit, it is submitted that, Tmt.Jayalakshmi filed a Writ Petition in W.P.No.687/2020 before the Hon'ble High Court. It is submitted that Counter Affidavit for the same was filed by the 2nd respondent, the Returning Officer/Block Development Officer (BP), Cuddalore Panchayat Union. Meanwhile, the Petitioner submitted a representation before the District Election Officer/District Collector and the District Election Officer/District Collector has written a detailed report to the 1st respondent/Tamil Nadu State Election Commission, Chennai seeking necessary clarification in this regard.

8.It is submitted that the Tamil Nadu State Election Commission called for the election records pertaining to the above election and ordered the

Returning Officer and Assistant Returning Officer of the said election to appear before the Commission for the enquiry of the factual incident of the President election of Kumarankulam Village Panchayat, Cuddalore Panchayat Union.

9.It is submitted that on perusal of the records pertaining to the elation to the President of Kumalankulam Village Panchayat, Cuddalore Panchayat Union and the written statements given by the Returning Officer and Assistant Returning Officer, the Tamil Nadu State Election Commission has concluded that the allocation of symbols to the contesting candidates were not made as prescribed in the Annexure 4 of the Hand Book 3 (Instructions to the Assistant Returning Officers for the election of Village Panchayat President and Village Panchayat Ward Member) and also the publication of Form 9 were not issued as per the sub-rule (5) of rule 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and decided that the election of the office of the President of Kumalankulam Village Panchayats (Elections) Rules, 1995 and decided that the election of the office of the President of

Kumalankulam Village Panchayat, Cuddalore Panchayat Union, Cuddalore District was not conducted in a free and fair manner as the provisions envisaged under rule 31 to 69 of the Tamil Nadu Panchayats (Elections) Rules, 1995.

10.It is submitted that in exercise of the powers conferred under Art.243-K of the Constitution of India read with the relevant section of the Tamil Nadu Panchayats Act, 1994 and rule 35 of the Tamil Nadu panchayats (Elections) Rules, 1995 and Para 6 of the Tamil Nadu Local Bodies Symbols (Reservation and Allotment) Order, 2019, the Tamil Nadu State Election Commission in S.O.No.10/2020/TNSE/C/PE-1, dated 22.06.2020 cancelled the poll held on 27.12.2019 in respect of the election of the Office of the President of Kumalankulam Village Panchayat and ordered that all the proceedings of the recording of allocation of symbols to the contesting candidates, publication of list of contesting candidates in Form 9 and declaration of results in Form 25 made by the Returning Officer and Assistant Returning Officer for the election of the office of the President of

Kumalankulam Village Panchayat be null and void and adjourned to a later date for fresh election under conducive atmosphere after the prevailing situation caused by pandemic covid-19 become normalcy.

11.It is therefore submitted that with a view to rectify the commission of errors made by the Returning Officer and the Assistant Returning Officer in recording and allocation of symbols in the relevant Forms and in order to ensure free and fair elections, the Tamil Nadu State Election Commission in S.O.No.10/2020/TNSEC/PE-1, dated 22.06.2020 cancelled the poll held on 27.12.2019 in respect of the election of the Office of the President of Kumalankulam Village Panchayat, Cuddalore Panchayat Union.

6. The 5th respondent viz; the District Collector has filed a separate counter affidavit and the relevant portions are extracted hereunder:

“4. It is humbly submitted that, being the District Election Officer/District Collector, the 5th respondent herein, reported to the Tamil Nadu State

Election Commission that the election to the office of the President of Kumalankulam Village Panchayat of Cuddalore Panchayat Union was not held as per the Tamil Nadu Panchayats (Elections) Rules, 1995 and requested to declare the result of the above said election as null and void and recommended to conduct fresh poll for the said office.

5.Pursuant to that, the Tamil Nadu State Election Commission called for the records connected with the above election and ordered the Returning Officer and Assistant Returning Officer involved in the said election, to appear before the Commission for the inquiry of the factual incidents took place in the election for the post of President of Kumalankulam Village Panchayat, Cuddalore Panchayat Union.

6.It is submitted that, on perusal of the records pertaining to the election to the President of Kumalankulam Village Panchayat, Cuddalore Panchayat Union and the written statements given by the Returning officer and Assistant Returning Officer, the Tamil Nadu State Election Commission has conducted that the allocation of symbols to the

contesting candidates were not made as prescribed in the Annexure 4 of the hand Book 3 (Instructions to the Assistant Returning Officers for the election of Village Panchayat Ward Member) and also the publication of Form 9 were not issued as per the sub-rule(5) of rule 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and decided that the election of the office of the President of Kumalankulam Village Panchayat, Cuddalore Panchayat Union, Cuddalore District was not conducted in a free and fair manner as per the provisions envisages under rule 31 to 69 of the Tamil Nadu Panchayats (Elections) Rules, 1995.

7.It is submitted that, in exercise of the powers conferred under Article 243-K of the Constitution of India read with the relevant section 239 of the Tamil Nadu Panchayats Act, 1994 and rule 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and para 6 of the Tamil Nadu Local Bodies Symbols (Reservation and Allotment) Order, 2019, the Tamil Nadu State Election Commission in S.O.No.10/2020/TNSEC/PE-1, dated 22.06.2020 cancelled the poll held on 27.12.2019 in respect of

the election of the Office of the President of Kumalankulam Village Panchayat and ordered that all the proceedings of the recording of allocation of symbols to the contesting candidates, publication of list of contesting candidates in Form 9 and declaration of results in Form 25 made by the Returning Officer and Assistant Returning Officer for the election of the office of the President of Kumalankulam Village Panchayat, Cuddalore District in pursuance of rules 31 to 69 of the Tamil Nadu Panchayat (Elections) Rules, 1995 so far as it relates to that office, be held as null and void and the process be adjourned to a later date for fresh election under conducive atmosphere after the prevailing situation caused by pandemic covid-19 become normalcy. Hence it is evident that the Tamil Nadu State Election Commission has not cancelled all the entire election process but cancelled the election process from the point where the error occurred i.e. The allocation of symbols to eligible contesting candidates.

8.It is submitted that, in view of the commission of errors committed by the Returning

Officer, the District Election Officer/District Collector and the fifth respondent herein, placed the Returning Officer under suspension from services by order No.11/2020/PA1 dated 06/01/2020. Further, charges were framed under rule 17(b) of TNCS (D&A) rules against both the Returning Officer and Assistant Returning Officer in Roc.No.PA1/11/2020 dated 02.03.2020 by the District Election Officer/District Collector.

9.It is therefore submitted that, with a view to rectify the commission of errors made by the Returning Officer and the Assistant Returning Officer in allocation of symbols and recording in the relevant Forms and in order to ensure free and fair elections, the Tamil Nadu State Election Commission in S.O.No.10/2020/TNSEC/PE-1, dated 22.06.2020 cancelled the poll held on 27.12.2019 in respect of the election of the Office of the President of Kumalankulam Village Panchayat, Cuddalore Panchayat Union.

7. Mr.C.Prakasam, learned counsel appearing on behalf of the petitioner submitted that the official respondents have virtually subverted

the democratic process and in spite of the petitioner winning the Election with a clear majority, due to political intervention, an attempt was made to declare the 4th respondent as the successful candidate and since it became possible, the Election itself has been declared to be null and void and the same requires the interference of this Court. The learned counsel for the petitioner submitted that neither the petitioner nor the 4th respondent nor the voters had any doubts in their mind with regard to the Symbol that was allotted to the contestants and the so-called confusion created in the Forms, is only a ruse to defeat the rights of the petitioner who has successfully won the Election with a huge margin. The learned counsel for the petitioner further submitted that the alternative remedy of filing an Election Petition will not apply to the facts of the present case since there is a patent illegality in the process adopted by the respondents to declare the Election as null and void and thereby defeat the rights of the petitioner, who successfully won the Election.

8. Mr.A.R.L.Sundaresan, learned Senior Counsel appearing on behalf of the first respondent submitted that the first respondent will have to taken a neutral stand in this case. When the records were examined by the first respondent, the Assistant Returning Officer had prepared the relevant Form for allocation of Symbols as given in Annexure 4 of the handbook without following the procedures and Form 9 was found to be contrary to the Symbols already allocated to the candidates. The learned Senior Counsel submitted that there was an apparent correction made in Form 9 against the Symbol allotted to the petitioner and that caused a huge confusion as to who won the Election. On counting the votes, “Auto Rickshaw Symbol” had obtained 2524 votes and “Lock And Key Symbol” had obtained 1478 votes and Form 9 showed that the fourth respondent has been allotted the “Auto Rickshaw Symbol” and whereas Form 4 showed that the same Symbol has been allotted to the petitioner. After conducting the enquiry with the concerned Election Officer, the first respondent came to a conclusion that the Election was conducted in violation of the rules and therefore, the Election was declared to be null and void. The learned Senior Counsel

submitted that the first respondent wanted to maintain purity in the process of Election and therefore, a fresh Election will be conducted at a future date wherein, the petitioner and the fourth respondent can contest in the Election.

9. The learned Senior Counsel further questioned the very maintainability of the Writ Petition on the ground that the petitioner has an alternative remedy of filing an Election Petition under Section 258 of the Tamil Nadu Panchayats Act, 1994 and since the same was not done, the Writ Petition is liable to be dismissed.

10. Mrs.Narmada Sampath, learned Additional Advocate General appearing on behalf 2nd respondent submitted that the Election itself was not held as per the Tamil Nadu Panchayats (Elections) Rules, 1995. The learned Additional Advocate General further submitted that serious errors were committed by the Returning Officer and the Returning Officer as well as the Assistant Returning Officer have been placed under suspension and disciplinary proceedings have been initiated

against them for gross dereliction in duty. The learned Additional Advocate General submitted that the entire Election process has not been canceled and that the Election process will again commence from the stage of allocation of Symbols to the eligible candidates. The learned Additional Advocate General also questioned the maintainability of Writ Petition on the ground that the petitioner has an alternative remedy of filing an Election Petition and this Court cannot entertain a Writ Petition in view of the explicit bar imposed by Article 243-O of the Constitution of India.

11. The learned Counsel appearing on behalf of the 4th respondent submitted that the 4th respondent has won the Election against the Symbol allotted to her and she should have been sworn-in as the President of the Panchayat and the official respondents went wrong in declaring the Election as null and void.

12. This Court has carefully considered the submissions made on either side and the material available on record.

13. The High Court does not have any jurisdiction under Article 226 of the Constitution of India to entertain any Election Petition in respect of Panchayat Elections, in view of an absolute and explicit bar imposed by Article 243-O of the Constitution of India. The Tamil Nadu Panchayat Act, 1994, specifically provides for filing Election Petition under Section 258 of the Act, wherever the Election of a President is called in question. This Court is fully aware about the limitations imposed upon this Court when it comes to an Election dispute.

14. In the present Writ Petitions, this Court is not dealing with an Election dispute between the petitioner and 4th respondent and this Court is only testing the legality of the Impugned Order passed by the 1st respondent declaring the Election as null and void, after the Elections were over and the results were also declared.

15. A careful perusal of the pleadings of the petitioner and the

fourth respondent makes it very clear that the candidates did not have any doubt whatsoever with regard to the Symbol that was allotted to them. The petitioner was allotted “Auto Rickshaw Symbol” and the fourth respondent was allotted “Lock And Key Symbol”. Form 4 that has been filed before this Court and signed by the 3rd respondent on 19.12.2019, clearly shows that the petitioner was allotted “Auto Rickshaw Symbol” and the fourth respondent was allotted “Lock And Key Symbol”. The signature of the petitioner and the fourth respondent found against the Symbol allotted to them in Form 4, clearly establishes the same.

16.It will be relevant to extract paragraph 3 from the affidavit filed by the 4th respondent (as petitioner in W.P.No.2803 of 2020) hereunder:

“3. I submit that the respondents 1 to 3 have announced the local body election for the period of 2019 to 2024, notification was issued by the 2nd Respondent to conduct the election on 27.12.2019. I further submit that 1 and 4th

respondent have filed nomination for the post of President. The respondents 1 to 3 have allotted to me “Lock and Key” symbol and “Auto Rickshaw” symbol was allotted to the 4th respondent. On 27.12.2019 the election was conducted by the respondents 1 & 2.

17. It is clear from the above that even as per the admitted case of the fourth respondent, the Symbol that was allotted to her was “Lock And Key”. The pamphlets issued during the Election by the fourth respondent also establishes the fact that she has campaigned for the Election only under “Lock And Key Symbol”. No one had any doubts with regard to the Symbol that was allotted to the petitioner and the fourth respondent and the campaigning had also taken place for the Elections under the same Symbol and the voters were also aware regarding the Symbol that was allotted to the petitioner and fourth respondent.

18. The confusion actually arose only after the announcement

of the results on 02.01.2020, wherein the Election Officer had declared that the candidate who stood under the “Auto Rickshaw Symbol” had polled the maximum votes and won the Election. That is where all of a sudden, some material alterations have been attempted to be made in Form 9. This alteration is now sought to be taken advantage of and there is an attempt to create confusion as if, the 4th respondent was allotted the “Auto Rickshaw Symbol” and the petitioner was allotted “Lock And Key Symbol”. This is a clear after thought and an apparent attempt made to dislodge the Election process for reasons best known to the official respondents.

19. The statement given by the third respondent at the time of enquiry conducted by the first respondent brings out the clear attempt that was made to subvert the Election due to the pressure that was exerted from some quarters. For proper appreciation, the written statement given by the 3rd respondent is extracted hereunder:

அனுப்புதல்

கவிதை

இணை வட்டார வளர்ச்சி

Zone 3 (ARO)

ஊராட்சி ஒன்றியம், கடலூர்.

பெறுதல்

தேர்தல் ஆணையர்

மாநில தேர்தல் ஆணையம்

சென்னை.

அய்யா,

நான் உள்ளாட்சி தேர்தலின் போது AROவாக பணிபுரிந்தேன். எனக்கு 6 ஊராட்சிகள் ஒதுக்கீடு செய்யப்பட்டு பணிபுரிந்தேன். எல்லா ஊராட்சிகளுக்கும் ஒதுக்கீடு செய்யப்பட்ட சின்னங்களை அளித்து குலுக்கல் முறையில் பெயரை எழுது போட்டு தேர்ந்தெடுக்கப்பட்டது. Form 4ல் விஜயலட்சுமிக்கு பூட்டு சாவியும், ஜெயலட்சுமிக்கு ஆட்டோ சின்னமும் ஒதுக்கீடு செய்து கொடுத்தேன். அவர்களும் வாங்கி சென்று அவரவருக்கு ஒதுக்கப்பட்ட சின்னமான விஜயலட்சுமி பூட்டு சாவியும், ஜெயலட்சுமிக்கு ஆட்டோவும் வேலை செய்து ஆட்டோ சின்னம் வெற்றிப் பெற்றது. பூட்டு சாவி தோல்வி அடைந்தது, தோல்வி பெற்ற விஜயலட்சுமிக்கு order வழங்கப்பட்டது. ஜெயித்தவர் தோற்றவரும் தோற்றவர் ஜெயித்ததாக விஜயலட்சுமிக்கு ஜெயித்துவிட்டார் என்று அவருக்கு வழங்கப்பட்டது. நான் எவ்வளவோ R.O.விடம் பேசினேன் தோற்றவருக்கு order கொடுக்காதீர்கள் ஜெயித்த ஆட்டோவில் நின்று ஜெயித்த ஜெயலட்சுமிக்கு வழங்குங்கள் என்று கூறியது கேட்காமல் order விஜயலட்சுமிக்கு கொடுத்து விட்டார். நான் ஒதுக்கீடு செய்த சின்னம் அவரவருக்குதான் சின்னம் கொடுத்து வேலை பார்த்து ஜெயித்தார்கள் online entry மட்டும் தவறுதலாக சின்ன மாற்றி கொடுக்கப்பட்டுள்ளது. Form 9ல் எப்படி அடித்தல் திருத்தல்

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வந்தது என்று எனக்கு தெரியவில்லை. ஒரு Form அடிக்காமல் உள்ளதாகவும் ஒரு 9 கடிசை அடித்துள்ளதாக தெரிய வருகிறது. இது எப்படி நடந்தது என்று தெரியவில்லை. எனவே நான் Form 4ல் விஜயலட்சுமி பூட்டு சாவியும், ஜெயலட்சுமி ஆட்டோ சின்னம் எழுதி உரியவர்கள் கையொப்பம் வாங்கினேன் அவையும் சமர்ப்பிக்கப்பட்டது. என் மகள் வண்டி ஆக்சிடென்டில் இறந்துவிட்டாள். எங்களை பார்த்துக்கொள்ள எவரும் இல்லை. ஒரு பையன் இருந்தான் அவனும் இறந்துவிட்டான்.

அய்யா அவர்கள் நான் ஏதேனும் தவறு செய்து இருந்தாலும் அதை மன்னித்து நான் 31.05.2020 பணி ஓய்வு பெற உள்ளதால் பணி ஓய்வின் போது எந்த இடையூறும் இல்லாமல் ஓய்வு பெற மன்னித்து அனுப்புமாறு மிகவும் பணிவுடன் கேட்டுக்கொள்கிறேன்.

தங்கள் பணிவுள்ள

A.Kavithai

03.08.2020

Dy.BDO Zone 3

(ARO)

20. It is apparent from the materials placed before this Court that there was a clear interference in the Election process from some unknown hand, who wanted the fourth respondent to be declared as the successful candidate and not the petitioner. When this became legally impossible due to the overwhelming materials, the first respondent has

chosen to cancel the very Election itself by pointing out some discrepancy in the Forms. The materials placed before this Court shows that it is not a case of any discrepancy in Forms but, it is a clear case of an attempt being made to materially alter statutory forms and subvert the entire Election process.

21. The Panchayats have been given a Constitutional Status after the 73rd Amendment and that is the reason why Article 243-O specifically provides for a bar on interference by Courts in Election matters. It must be kept in mind that the preamble of the Constitution of India which declares that, “We the people of India solemnly resolve to constitute India into a democratic republic”, ensures free and fair Elections. The Election process even for Panchayats must be recognized and given the status of the Elections conducted for forming the Government in the Centre or the State. A local body Election has been given such a status by the Constitution itself. Therefore, any interference that takes place in a free and fair Election conducted for the local body,

must be taken very seriously by this Court. This Court cannot mechanically relegate the parties to file an Election Petition when the monstrosity of the situation apparently establishes subversion of Election process by adopting illegal means. Those are exceptional cases where this Court has to step in and exercise its jurisdiction under Article 226 of the Constitution of India and prevent such subversion of Election process. The case on hand clearly falls under this category. Therefore, the plea taken on the side of the respondents regarding the alternative remedy available to the petitioner under the Panchayat Act, is held to be not sustainable. This Court has the duty to set right the illegality that has cropped in conducting the Election, in the peculiar facts of the present case.

22. In the present case, the first respondent claims to have exercised the powers under Rule 35 of the Tamil Nadu Panchayats (Elections) Rules, 1995 and Para 6 of the Tamil Nadu Local Bodies Symbols (Reservation and Allotment) Order, 2019. These are rules which deals with assignment of Symbols and publication of list of

contesting candidates and allotment of Symbols. There is absolutely no confusion with regard to the fact that the petitioner was allotted the “Auto Rickshaw Symbol” and the respondent was allotted the “Lock And Key Symbol”. The subsequent confusion is clearly self-inflicted for extraneous considerations due to some interference by an unknown hand. It is true that the primary duty of the Election Commission is to ensure purity in Elections and if there is any manipulation in the process of Election, the Election Commission has powers and authority to interfere with it in exercise of its powers under Rule 143 of the Tamil Nadu Panchayat Rules, 1995. In this case, the manipulation has been attempted after the petitioner was declared as the winning candidate under the “Auto Rickshaw Symbol” allotted to her. The first respondent ought not to have cancelled the Elections and the Impugned Order passed by the 1st respondent clearly amounts to interference after the entire Election was over and the petitioner was declared as the winner. The truth of the entire story gets revealed from the statement of the third respondent which has been extracted supra.

23. In the result, this Court has absolutely no hesitation to interfere with the Impugned Order passed by the first respondent dt. 22.06.2020 and accordingly, the same is quashed. The first respondent is directed to declare the petitioner as the elected candidate for the post of Village Panchayat President in the Kumalankulam Village Panchayat, within a period of one week from the date of receipt of copy of this order. Accordingly, Writ Petition Nos.687 and 9105 of 2020 are allowed and Writ Petition No.2803 of 2020, is dismissed. No costs. Consequently, the connected miscellaneous petitions are closed.

28.10.2020

Internet: Yes
Index : Yes/No
KP

To

- 1.The State Election Commissioner,
Local Body Election,
100 Feet Road, Opposite, Koyambedu Bus Stand,
Chennai.
- 2.The Returning Officer/Block Development Officer,
Cuddalore Panchayat Union,
Cuddalore, Cuddalore District.
- 3.The Assistant Election Officer,
Kumalankkulam Village Panchayat,
Kumalankkulam, Cuddalore District.
- 4.The District Collector,
Cuddalore District,
Cuddalore.

W.P.No.9987 of 2020

N.ANAND VENKATESH, J.,

KP

Pre Delivery Common Order in
WP.Nos.687, 9105 & 2803 of 2020

28.10.2020