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O.A.No.27 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 11.03.2024

PRONOUNCED ON: 25.03.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.A.No. 27 of 2024

in

E.L.P.No. 9 of 2021

T.Senguttuvan

... Applicant

Vs.

1.Ashokkumar.K

2.Chandramohan.K.M.

3.Tamilselvan.S

4.Ameenulla

5.Sasikumar.K.S.

6.Nirandari.V

7.Ravishankar.R.K.

8.Ruthramani.T

9.Vijayakumar.R

10.TVS Gandhi



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11.Kumaresan.M

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12.Gopinath.M

13.Sakthi.K

14.Sivan.C

15.The Election Commission of India
Represented by its Chief Election Commissioner
Nirvachansadan, Ashoka Road,
New Delhi – 110 001.

16.The Chief Electoral Officer, Tamil Nadu
Election Commission of India,
Public (Elections) Department, Secretariat,
Fort St., George,
Chennai – 600 009.

17.The District Collector cum
District Returning Officer,
District Collector Office,
Krishnagiri District,
Tamil Nadu – 635001

18.The Returning Officer
53, Krishnagiri Assembly Constituency,
Krishnagiri Taluk,
Krishnagiri District,
Tamil Nadu – 635 122.

19.G.Karpagavalli

...Respondents

PRAYER: Application is filed to direct the Registrar to scrutinise the postal ballots which is under the safe custody of this Court.



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For Applicant : Mr. Richardson Wilson
for M/s. P. Wilson Associates.

For 1st Respondent : Mr. B. Arvind Srevatsa

ORDER

This application has been filed to appoint a Registrar to scrutinise the 605 rejected postal ballot votes, which have been marked collectively as Ex.C.4. This exercise is sought to be undertaken to examine,

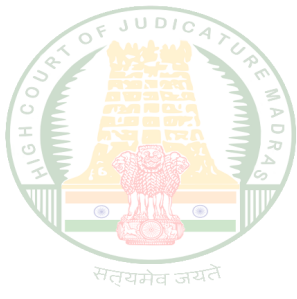
(i) Whether reasons have been recorded for rejecting postal ballot votes?

(ii) If so, whether the reasons are factually correct?

(iii) Whether the reasons recorded tallies with the reasons given in Ex.C.3.

(iv) Compare 605 rejected postal ballot votes with the 750 postal ballot votes (Ex.C.5) polled in

favour of the 1st respondent to ascertain whether the



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Returning Officer had adopted standard method and thereafter filed a report to the Court.

2. In the affidavit filed in support of the said application, the applicant has given reasons for the said request which is herein below set out point wise:

(a) 605 postal ballot votes were rejected without giving any reasons and without informing the reasons to the applicant or his election agent despite their raising objection about the same at the time of counting.

(b) Despite the request of the applicant's agent to tally the postal votes counted with the, number of valid and invalid postal votes and to provide details as to the number of postal ballot votes secured by him, the 1st respondent has turned down the request. The assurance of the Returning Officer to furnish the tally of postal votes at the end of the counting was also not



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complied with.

(c) That in the reply of the Returning Officer dated 02.05.2015 given in a tabular form reasons have been given only for 525 votes and the remaining 80 votes have been rejected under the head “others”.

3. The main bone of contention of the Applicant is that the reasons for rejection was not recorded and communicated to the candidate or their agent. On 02.05.2021, the applicant has been served with a reply in which the reasons for rejecting postal ballot votes have been given in the form of a tabulated statement. When this statement is examined, only 525 postal ballot votes' rejection reasons are recorded and the rejection in respect of 80 votes has been made under the category “others”.

4. The applicant would submit that recount is essential since the rejection was done without following the procedure contemplated under the Conduct of Election Rules, 1961 in as much



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as the covers were not examined and rejected in accordance with the provisions of Rule 54 A (11) and 54 A (8) of the Conduct of Election Rules, 1961, hereinafter referred to as the Rules. Therefore, the Applicant would submit that since the scrutiny is time consuming as each of the 605 ballots have to be scrutinised individually to ascertain if the reasons recorded for rejection was valid, the same can be done by a Registrar of this Court.

5. The applicant would further submit that the scrutiny of these votes was very crucial since the margin of victory between the election petitioner and the 1st respondent is very slender.

6. The 1st respondent has filed a counter affidavit inter alia contending that the contentions in the affidavit filed in support of the application is nothing but an attempt to conduct a roving enquiry and a fishing expedition.

7. It is the contention of the respondent that the Judges summons has been filed under the provisions of Order XIV Rule 8



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and Order XVI Rule 1 and 4 of the Madras High Court Original Side

Rules read with Section 151 of the Code of Civil Procedure. He would submit that none of these provisions apply to the instant application. Order XVI Rule 1 relates to the presentation of list of witnesses and production of documents. Order XVI Rule 4 relates to Subpoena being issued to public servant to give evidence or summons to produce documents to be served through head of department. Therefore, he would submit that the application has been made under provisions which are neither applicable nor relevant. However, in the Judge's Summons filed into the Court the provisions "And Order XVI Rule 1 and 4" has been struck off. It appears that in the copy served upon the respondents the same has not been carried out.

8. Apart from denying the contentions raised in the affidavit, the respondent would submit that the entire election process has been done in accordance with the provisions of the Representation of People Act, 1951 and the Conduct of Election Rules, 1961.

Thirty One months after the filing of the election petition, the



election petitioner has taken out this application to recount the postal votes and the same is totally untenable.

9. The respondent would put the election petitioner to strict proof that 605 postal votes were incorrectly rejected. The 1st respondent would further submit that the recounting of the votes cannot be done in a casual manner or as a matter of course. Therefore, he sought for the dismissal of the application.

10. Mr. Richardson Wilson, learned counsel appearing on behalf of the applicant would submit that one of the grounds that has been pleaded in the Election Petition for setting aside the election is on the ground of improper rejection of postal ballot votes and this application is only a sequel to this.

11. The learned counsel would submit that with reference to the counting of the postal ballot votes, the same had commenced early in the morning and when some of the postal ballot votes were rejected, the agent had requested the Returning Officer to show the



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postal ballot votes to all the candidates to enable them to verify the reasons for rejections and to reject the same only if there are valid grounds for rejecting. Despite such request, the Returning Officer has proceeded to disqualify / reject 605 votes. He would submit that as soon as his agent had come to know about the irregularity, he had lodged a complaint in writing that 605 votes had been rejected without giving any reasons and such rejection was wrong.

12. He would also draw the attention of the Court to column No.11 of Ex.P.12, which is the reply of the Returning Officer wherein, the reasons for rejecting postal ballot votes has been furnished. In the said letter, column No.11 refers to a category “*others*”. He would submit that there is no such reason given either in rule 54 A (11) or 54 A (8) of the Rules. He would submit that Rule 54 – A (8) of the Rules provides five reasons for rejecting the postal ballot votes and nowhere is there a reason “*others*” giving discretion to the Returning Officer to reject the votes other than on the grounds set out in Rule 54 A (8) of the Rules.



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13. He would also submit that C.W.2 has in her evidence accepted receipt of Ex.P.10 letter dated 02.05.2021 and he would also draw the attention of the Court to Ex.P.13, in which orders had been passed on another representation of the applicant dated 02.05.2021, wherein he had asked the Returning Officer to make an entry of the votes polled in Form 20. Initially, the election petitioner who was the DMK candidate had secured 95256 votes and the 1st respondent, AIDMK candidate had secured only 94252 votes. In the said order it has been stated that at the end of 29 rounds of counting the postal ballot votes, the AIDMK candidate had secured 96050 votes. He would therefore submit that counting of these rejected votes is very crucial as it would have bearing on the declaration of the 1st respondent as the elected candidate. In support of this contention, he would rely upon the following Judgements:

“(i) (1996) 4 SCC 53 – I.Vikheshe Sema Vs.

Hokishe Sema.

(ii) (2001) 6 SCC 558 – P.H.Pujar Vs.



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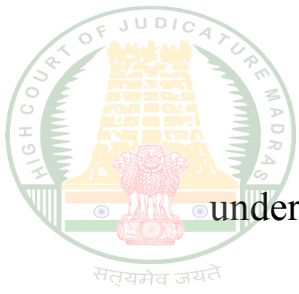
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Dr.Kanthi Rajashekhar Kidiyappa and others.”

The learned counsel would submit that ends of Justice therefore require that this Court should direct the counting of the votes by Registrar of this Court.

14. Per contra, Mr. B.Arvind Srevatsa, learned counsel appearing on behalf of the 1st respondent would submit that the provisions of law under which the application has been filed is totally wrong. He would submit that this application has been filed invoking the provisions of Order XIV Rule 8 read with Section 151 of the CPC. He would submit that the applicant ought to have exhausted remedies available in Rule 56, 59 which is amended as Rule 55 – A or under Rule 63 (2).

15. The learned counsel would submit that the application contemplated under Section 63 (1) includes counting of votes both in the ballot boxes as well as through postal ballot. He would submit that if really the postal ballot votes had been wrongly rejected, the applicant ought to immediately make a request as contemplated



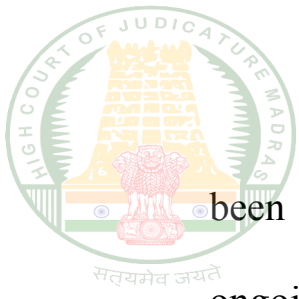
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under Section 63 (2) of the Conduct of Election Rules.

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16. The learned counsel would submit that in Ex.P.10, the applicant himself has called upon the Returning Officer to accept the postal ballot votes, whereas, from a reading of Ex.P.11 order, it appears that on 02.05.2021, the applicant has requested the Returning Officer to reject 700 postal ballot votes. He would submit that the applicant has been blowing hot and cold. At one point in time, he would ask Returning Officer to accept the postal ballot votes and in another to reject it.

17. The learned counsel would submit that recount can be ordered only where there is a possibility of the result of the recounting having material impact on the results already announced or if there has been non compliance of Rules. He would submit that in the instant case, the request is being made without any valid reasons. He would distinguish the Judgments cited on the side of the applicant by submitting that these Judgments have been given in cases where full Trial has been completed and final judgment had



been pronounced. However, in the instant case, the Trial is still ongoing. He would rely upon the following Judgments in support of his arguments as to why the scrutiny should not be permitted :

“(i) (1976) 1 SCC 687 – Bhabi Vs. Sheo Govind and Others.

(ii) (2003) 1 SCC 390 – Mahender Pratap Vs. Krishnan Pal and others.

(iii) (2014) 5 SCC 312 – Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and another.”

18. Heard the learned counsels on the either sides.

19. Admittedly, 605 votes have been rejected and these votes have been submitted to this Court as Ex.C.4 and is in the custody of the Court. The applicant's contention is that these votes had been rejected not on the reasons set out in Section 54 - A (8) of the Conduct of Election Rules. Before proceeding to discuss the argument it would be useful to extract the provisions of Rule 54 A (8) of the Rules. Rule 54 – A (8) would read as follows:



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“(8) A postal ballot paper shall be rejected—

[(a) if it bears any mark (other than the mark to record the vote) or writing by which the elector can be identified; or]

[(aa) if no vote is recorded thereon; or

(b) if notes are given on it in favour of more candidates than one; or

(c) if it is a spurious ballot paper; or

(d) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established; or

(e) if it is not returned in the cover sent along with it to the elector by the Returning Officer.

20. The defense is that the procedure has been duly followed and the election result cannot as a matter of routine be set aside. In the Judgement reported in *(1976) 1 SCC 687 – Bhabi Vs. Sheo Govind and Others*, the learned Judges have set out the conditions that should be present to persuade the Court to order a recount as



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follows:

“Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a Court can grant inspection, or for that matter sample inspection, of the ballot papers :

(1)That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2)That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4)That the Court must come to the conclusion that in order to grant prayer for inspection it is



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necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

21. Similarly, in the Judgement of the Hon'ble Supreme Court reported in **2014 (5) SCC 312 – Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari**, the learned Judges have emphasised on statutory requirements that “*election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding*



unknown to the common law and thus, the doctrine of equity, etc., does not apply in such dispute”.

22. The learned Judges had in the aforesaid judgment further observed that before permitting recounting the following conditions must be satisfied:

“(i) The court must be satisfied that a prima facie case is established;

(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;

(iv) An opportunity should be given to file objection; and

(v) Secrecy of the ballot should be guarded.”

23. The learned Judges have followed the dicta laid down in **1976 (1) SCC 687 – Bhabi Vs. Sheo Govind and Others**. The Bench



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had also observed that the party should take proper pleadings and establish by adducing evidence that by a particular irregularity / illegality, the result of the election has been materially effected.

24. In the case on hand, the petitioner has in his election petition set out in great detail as to why the rejection of the postal ballot votes has bearing on the ultimate result declaring the 1st respondent as an elected candidate. The evidence would show that the 1st respondent has won the election with a slender margin of 794 votes and if the applicant is able to establish that the rejection of the postal ballot votes was contrary to the provisions of Rule 54 - A (8) of the Conduct of Election Rules, it would definitely have a bearing on the ultimate result. The petitioner has contended in the Election Petition that the reasons for the rejection had not been intimated to the candidates or their agents. That it has been shown to the petitioner or his agent has also not been clearly stated by the official witnesses.

25. C.W.2 while adducing evidence has in answer to question No.16 has stated as follows:



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“Q:Are the abovesaid details available on the 13 C cover?

A:Yes. Only if the details on 13 C cover are correct it is opened. Once the 13 C cover is opened, we verify whether 13 A – Declaration Form and 13 B – Ballot paper are kept separately. Only if the serial nos on A and 13 B tally, we would open Form 13 B – Ballot paper. We also verify the details in the 13 A and the signature of the Gazetted Officer. On opening the ballot paper, if the serial number mentioned outside on the cover of 13 B and the serial number mentioned inside the ballot paper are different it would be rejected.

26. C.W.2 has also stated that each postal ballot votes is scrutinised separately and done in the presence of the agents of the candidate. However, signature of the petitioner or his agent have not been obtained. She has also given the following answer for the ballots papers that fall under the category “others” in response to



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question nos.22 and 23.

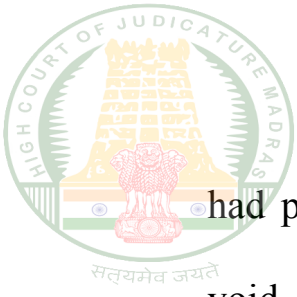
“Q22:Kindly see the last row of Ex.C.3, where you have mentioned “others” as a category. Can you say what falls under the “others” category?”

A:We receive postal ballots from other constituencies, without attestation, without the signature of the voter either in the ballot or in the front cover; these fall under the “others” category.

Q23:Why did you not specify the reasons for votes rejected in the “others” category in serial 11 of Ex.C.3?

A:That was the format given to us but individually we have mentioned the reason in each ballot paper.”

27. In the Judgement reported in **(1996) 4 SCC 53** – *I.Vikheshe Sema Vs. Hokishe Sema*, the Hon'ble Supreme Court was considering the election conducted in Nagaland Legislative Assembly, where the grounds of challenge was that the High Court



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had proceeded to declare the election of the returned candidate as void, on the ground that there was a duplication of the names of the voters' list and therefore it should be regarded that these votes were void votes. Ultimately, the Hon'ble Supreme Court has directed as follows:

“We accordingly, direct the High Court to send to this Court all the ballot papers in respect of the Dinapur Constituency No. 1 the election of which was held to the Nagaland Legislative Assembly on 15.3.1993, within four weeks from the date of this order. We depute the Registrar (Judicial) of this Court to make an inspection after notice to and in the presence of the parties and their counsels, of all the said ballot papers. identify the void votes which had been cast in respect of polling station Nos. 5,6,21 & 28 and to exclude the said void votes and then count the number of votes received by each of the five candidates. The report should be submitted to this Court by the Deputy Registrar within eight weeks. Appeal to be put up for



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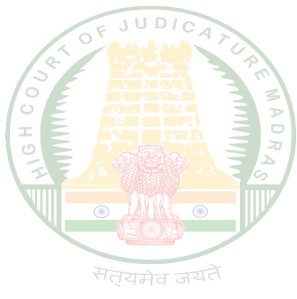
formal disposal as soon as the report is ready.”

28. Therefore taking into account the above observation made by the Hon'ble Supreme Court and the facts of the case on hand more particularly, taking into account the slender margin of victory and the fact that no concrete evidence has been produced to prove that either the petitioner or his agent has been appraised with the reasons for rejection, interests of Justice would be sub served if the Registrar General of this Court is directed to depute any one of the Registrars to supervise the counting. The Registrar General, Madras High Court shall name any one of the Registrars to supervise the counting of all the 605 postal ballot votes, which have been rejected and submit a report on the following:

(a)The reasons recorded for the rejection of the postal ballot votes.

(b)That the reasons have been recorded on each postal ballot / cover.

(c)That the number of votes rejected under each head detailed in Form 20 tallies with the number of



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*votes rejected under the respective heads as indicated
in the postal ballot / postal ballot cover.*

29. The said exercise shall be completed within a period of 20 days from the date of receipt of a copy of this order. The same shall be done in the presence of the candidates or any one person authorised on their behalf. The Election Commission of India shall depute atleast two persons to assist in the recounting.

30. With the above direction, the application is allowed.

31. Post the Election Petition on 26.04.2024.

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Index : Yes/No
Internet : Yes/No
Speaking Order / Non Speaking Order
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Pre-Delivery Judgment in
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