

N. Ponnusamy Vs. Returning Officer and Special Grade Executive Officer, Inam Karur Town Panchayat, Vengamedu, Karur Taluk and Nine Others

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Court : Chennai

Decided On : Dec-18-2000

Reported in : (2001)1MLJ649

Judge : T. Meenakumari, J.

Acts : Tamil Nadu Panchayat (Election) Rules, 1995 - Rules 63 and 64 to 67;

Appeal No. : W.P. No. 18528 of 1998

Appellant : N. Ponnusamy

Respondent : Returning Officer and Special Grade Executive Officer, Inam Karur Town Panchayat, Vengamedu, Karur T

Advocate for Def. : Mr. R. Thirugnanasambandam, Special Government Pleader

Advocate for Pet/Ap. : Mr. K. Alagiriswamy, ;Senior Counsel for Mr. V. Chithranjandoss

Judgement :

ORDER

1. The writ petition is for the issue of writ of Certiorarified Mandamus to call for the records connected with the judgment and decree dated 23.9.1998 made in

Election Original Petition No.67 of 1996 on the file of the tenth respondent and quash the same and grant the reliefs as prayed in the Election Original Petition No.67 of 1996 on the file of the tenth respondent.

2. When the matter came up for hearing on 17.4.2000, learned counsel Mr.S.R. Raghunathan who has entered appearance for the second respondent has submitted that as there was no instruction from the second respondent in spite of repeated reminders to the second respondent through post with acknowledgment due, he is withdrawing the vakalat to appear on behalf of the second respondent. He has also made an endorsement to that effect on the case bundle. On the basis of his submission, this Court by order dated 17.4.2000, directed the Registry to send notice to the second respondent returnable by 6.6.2000 and private notice was also permitted by this Court. Notice was sent by the Registry on 13.6.2000. The matter again came up for hearing on 29.6.2000. There was no representation for the second respondent. Heard the learned Senior Counsel for the petitioner and the Special Government Pleader for the first respondent. The matter is decided on merits.

3. The case of the petitioner is that he has contested as a candidate on behalf of the AIADMK party in the Election for Chairperson of Inam Karur Town Panchayat (Special Grade) Karur, Deeran Chinnamalai District. The first respondent was the Returning Officer. Respondents 2, 3 and 6 to 9 have also contested in the said election as independent candidates. The third respondent has contested on behalf of C.P.I. party and the fourth respondent has contested on behalf of C.P.I.(M) party. The second respondent was declared as an elected Chairperson to Inam Karur Town Panchayat. The election was held on 9.10.1996. Counting took place on 14.10.1996. The election result was declared on 14.10.1996 by the first respondent. The second respondent was declared as an elected Chairperson of Inam Karur Town Panchayat (Special Grade) Karur Deeran Chinnamalai District, by a margin of 148 votes against the petitioner. The petitioner has submitted an application before the first respondent for recounting before he completes and signs the result sheet in the form specified for that purpose. His request was rejected. According to the petitioner, the first respondent ought to have passed written orders on the application submitted by the petitioner for recounting, as per

Rule 66 of the Tamil Nadu Panchayat Election Rules, 1995. The petitioner has made representations to the District Collector and also to the Chief Election Commissioner, State of Tamil Nadu, for recounting. As there was no response, the petitioner filed writ petition No.15599 of 1996 before this Court. By order dated 30.10.1996, this Court directed the petitioner to raise the issue by way of Election Petition since the election was over. In pursuance of the said direction, the petitioner has filed Election Petition No.67 of 1996 before the tenth respondent Additional District Judge, for a direction to recount all the votes already counted with regard to the election of Chairperson of Inam Karur Town Panchayat, Karur, to declare the election of the second respondent N. Selvaraj as Chairperson of Inam Karur Town Panchayat as void and to declare the petitioner N. Ponnusamy has been duly elected as Chairperson of Inam Karur Town Panchayat. Before the tenth respondent, the petitioner has also filed Exs.A1 to A4 namely written request for recounting submitted to the first respondent by the petitioner, Form-22 Result of election issued by the first respondent, complaint dated 16.10.1996 submitted to the District Collector and request for recounting sent to the Chief Election Commissioner of the State of Tamil Nadu on 19.10.1996. The election petition was dismissed by the tenth respondent Additional District Judge, on 23.9.1998. Aggrieved by the said order, the petitioner has filed the present writ petition.

4. Learned Senior Counsel Mr.K. Alagiriswamy, appearing for the petitioner has argued that the learned Additional District Judge has erred in holding that the petitioner herein has failed to prove that he has given the written request for recounting and failed to produce any acknowledgment for issuing such written request and the same was refused. Learned Senior Counsel has also argued that the learned Additional District Judge has failed to appreciate that the first respondent herein has not followed the procedure at the time of recounting and has not taken into consideration, the objections raised by the petitioner. Learned Senior Counsel for the petitioner has further argued that the tenth respondent Additional District Judge has failed to note that all the votes recorded in the ballot paper which are not rejected under Rule 63 of the Tamil Nadu Panchayats Election Rules shall be counted and after counting such votes recorded in all ballot papers, necessary entries have to be made in part II of Form 20 and the Returning Officer has to make entries in a result sheet in Form 22 under Rule 64 of the

Election Rules. The petitioner has also filed the result sheet Ex.A2. Only after the completion of process of Form 22, the declaration of result of election has to be published under Form 23. Learned senior counsel has also argued that Form 23 cannot be contrary to Form 22 and any amendment can be made in Form 22 only if there is any recount of votes under Rule 66 of the Tamil Nadu Panchayats Election Rules. Learned Senior Counsel has also argued that the tenth respondent Additional District Judge has failed to note that P.W.2 Returning Officer has admitted in his evidence that he has prepared Form 22 i.e., Ex.A2 only on 15.10.1996 but the Return of election Form 23 i.e., Ex.A3 was prepared on 14.10.1996 itself. Learned Senior Counsel has submitted that the entire process of election was in violation of the provisions of the Tamil Nadu Panchayats (Elections) Rules 1995. He has also submitted that the lower Tribunal has proceeded on the basis of the counter statements filed by the respondents and has not taken into consideration the facts submitted by the petitioner before the Tribunal. Hence the order passed by the Tribunal dismissing the election petition is liable to be set aside.

5. In this case, the election was held on 9.10.1996. The petitioner's case is that before signing the declaration, he has submitted the application on 14.10.1996 itself. The first respondent has refused to receive the same. The first respondent has released the election result sheet on 15.10.1996. The result sheet should contain the particulars of total number of votes in Panchayat, total number of votes polled, total number of valid votes and total number of invalid and rejected votes and total number of votes secured by each candidate. According to the petitioner, the figures furnished by the first respondent did not tally. The first respondent has not followed the rules and regulations at the time of counting and he acted against the petitioner. Learned Senior Counsel has also brought to the notice of this Court the result sheet purported to be under Form No.22 prepared on 15.10.1996 to substantiate his contention that the votes polled and secured did not tally. Learned senior counsel has further argued that the lower Tribunal has failed to consider the variations in the votes secured by each candidate. Learned senior counsel has further argued that total number of votes polled in the town panchayat were 23949 whereas total number of votes secured by the candidates were 24047. Invalid votes were 935. The total number of votes in the town panchayat were 35606.

Learned senior counsel has argued that total number of votes secured should not have exceeded the total number of votes polled.

6. A perusal of Form 22 result sheet, reveals that total number of votes polled in the town panchayat were 23949 and total number of votes secured by each of the candidates, and in all, came to 24047. A perusal of the impugned order also shows that the result sheet Form 22 has been submitted before the Tribunal also. It is clear from the perusal of the result sheet that total number of votes secured by the candidates exceeded the total number of votes polled in the town panchayat. The Tribunal should have disregarded the total number of invalid votes out of the total number of votes polled. When the number of votes secured did not tally with the number of the votes polled, the Tribunal should have considered the case of the petitioner once again and should not have dismissed the election petition. From a perusal of the result sheet in Form 22, filed along with the writ petition, it is clear that the petitioner has secured 7247 votes and the second respondent has secured 7395 votes difference being 148. It is also clear that return of election under Form 23 has been prepared on 14.10.1996 whereas the result sheet purported to be under form 22 has been signed on 15.10.1996. Learned senior counsel has argued that prima facie there was procedural illegality in counting of the votes and declaration of result of election. Learned senior counsel brought to the notice of this Court Rules 64 and 67 of the Tamil Nadu Panchayats (Elections) Rules, 1995. Rule 64 deals with counting of valid votes and reads thus:

64. Counting of valid votes. (1) The vote recorded in every ballot paper which is not rejected under Rule 63 shall be counted.

(2) After the counting of the votes recorded in all ballot papers contained in all ballot boxes has been completed, the Returning Officer shall have the result of such counting entered in Part II of Form 20 and it shall be signed by the counting supervisor and the Returning Officer. The Returning Officer shall, then, make the entries relating thereto in a result sheet in Form 22.

(3) The valid ballot papers found in all the ballot boxes as well as the valid votes referred to in clause (c) of sub-rule (2) shall thereafter be bundled together and kept along with the bundle of rejected ballot papers in a separate packet which

shall be sealed and on which shall be recorded the following particulars, namely:

- (a) name of election;
- (b) the number of the ward, and the name of the panchayat and
- (c) the date of counting.

Rule 67 of the Rules deals with declaration of result of election and it reads thus:

'67. Declaration of result of election' (1)(a). In the case of election of members of District Panchayat or Panchayat Union Council, after the Returning Officer has completed the scrutiny and counting of votes, he shall declare the contesting candidate to whom the largest number of valid votes have been given as elected and complete and certify the return in Form 23 and send the signed copy thereof to the District Election Officer and the State Election Commission,

(b) The Returning Officer shall also forthwith cause to be affixed a copy of the declaration referred to in clause (a) in his office and in the office of the District Panchayat, or the Panchayat Union as the case may be.

(c) If there is an equality of votes between two or more contesting candidates, and the addition of one vote will entitle any of these candidates to be declared elected, the Returning Officer shall decide between these candidates by lot and the candidate on whom the lot falls shall be deemed to have received an additional vote. The Returning Officer shall then declare the result accordingly.

(d) Any contesting candidate or his election agent or his counting agent on application be permitted to take a copy or an extract from the statement in Form 22.

2(a). In the case of election of President of Village Panchayat, after the Returning Officer has completed the scrutiny and counting of votes, he shall declare the contesting candidate to whom the largest number of valid votes have been given and complete and certify the return in Form 23 and send the signed copy thereof to the District Election Officer and the State Election Commission.

(b) The Returning Officer shall also forthwith cause the said form to be affixed in his office, and in the office of the Village Panchayat and one or more conspicuous places in the Village Panchayat.

(c) If there is an equality of votes between two or more contesting candidates, the Returning Officer should follow the procedure laid down in clause (c) of sub-rule(1).

(d) Any contesting candidate or his election agent or his counting agent, on application be permitted to take a copy or an extract from the statement in Form 22.

(3)(a) In the case of election of members of Village Panchayats, after the Returning Officer has completed the scrutiny and counting of votes, he shall declare elected, the contesting candidate or candidates as the case may be, to whom the largest number of valid votes have been given and complete and certify the return in Form 24 and send the signed copy to the District Election Officer and the State Election Commission:

Provided that if one or more seats are reserved for members of the Scheduled Castes or Scheduled Tribes, the Returning Officer shall first declare elected the candidate/candidates who are eligible to be elected to such seats and to whom the largest number of valid votes have been given to the seats so reserved and then declare elected the contesting candidate or candidates who among the remaining contesting candidates have obtained the largest number of votes to the non-reserved seats in such ward.

Provided further that if a seat is reserved for woman in any ward, the Returning Officer shall first declare the woman candidate, who is eligible to be elected to such seat and to whom the largest number of valid votes have been given to be elected to the seat so reserved, and then declare the contesting candidate or candidates who among the remaining contesting candidates have obtained the largest number of votes to be elected to the non-reserved seats in such ward:

Provided also that if one or more seats are reserved for members of the Scheduled Castes or Scheduled Tribes or for women in any ward, the Returning Officer shall first declare the women candidate to whom the largest number of valid votes have been given to be elected to the seat reserved for women and adopt procedure laid down in the first proviso in respect of declaration of candidates for Scheduled Castes and Scheduled Tribes or other non-reserved seats.

(b) The Returning Officer shall also cause to be affixed in his office a copy of the declaration referred to in clause(a) above, and in the notice board of the office of Village Panchayat or in a conspicuous place in the Panchayat.

(c) If there is an equality of votes between two or more contesting candidates, and the addition of one vote will entitle any of these candidates to be declared elected, the Returning Officer shall decide between these candidates by lot and the candidate on whom the lot falls shall be deemed to have received an additional vote. The Returning Officer shall then declare the result accordingly.

(d) Any contesting candidate or his election agent or his counting agent on application be permitted to take a copy or an extract from the statement in Form 22.'

A reading of Section 67 makes it clear that in the case of election of members of Village Panchayats, after the Returning Officer has completed the scrutiny and counting of votes, he shall declare elected, the contesting candidate or candidates as the case may be, to whom the largest number of valid votes have been given and complete and certify the return in Form 24 and send the signed copy to the District Election Officer and the State Election Commission.

7. Learned senior counsel next contended that the authorities ought to have taken cognizance of the application made by the petitioner for recounting on 14.10.1996 and ought to have recounted the votes and by the non-acceptance of the application submitted by the petitioner to the first respondent, the petitioner had been deprived of his legitimate right of recounting the votes.

8. In the counter affidavit filed by the first respondent he has denied having received any application for recounting. He has also stated in the counter that the election was conducted as per the rules prescribed and there was no violation of rules and hence the election of the second respondent is valid.

9. Now the point involved in the writ petition is whether the Returning Officer has followed the procedure prescribed under the Rules. A perusal of the material papers annexed to the writ petition shows that the Return of Election in Form 23 declaring the second respondent herein as President of the Inam Karur Town Panchayat was made on 14.10.1996 whereas the Result Sheet in Form 22 has been prepared on 15.10.1996. As per Rule 64 the Returning Officer has to make the entries in the Result Sheet in Form 22 followed by declaration of election of the candidate in Form 23. In the counter also the first respondent has not disputed the fact that the Return of Election in Form 23 has been prepared on 14.10.1996 and Result Sheet in Form No.22 has been prepared on 15.10.1996. Hence it has to be held that the first respondent Returning Officer has erred in preparing Form 22 and Form 23 in accordance with the Rules. A perusal of Form 22 annexed to the writ petition also shows that the total number of votes polled in the Town Panchayat Election was 23949 and the votes secured by the candidates were 24047. I am of the view that the figures shown do not tally and there is variance of the figures as the total number of votes secured were more than the total number of votes polled. As the Form No.22 and Form 23 have been marked as Exhibits though on the side of the respondents, the tenth respondent Tribunal has failed to look into the said Forms in proper perspective. Had the Tribunal looked into the said Forms, it would not have accepted the claim of the first respondent that the election was held as per the procedure prescribed under the Rules. As the Rules provide for recounting, the first respondent ought to have accepted the application made by the petitioner on 14.10.1996 for recounting the votes. Instead, he has refused to accept the same. The action of the first respondent in preparing Form 22 on 15.10.1996 and Form 23 on 14.10.1996 cannot be sustained as he has not followed the procedure prescribed under Rules 64 and 67 of the Rules. As the error committed by the first respondent has not been taken note of by the tenth respondent Tribunal, it has to be held that the order passed by the Tribunal dismissing the election petition filed by the petitioner, is liable to be set aside and

the same is accordingly set aside. For the reasons stated above, the writ petition is allowed. No costs. The matter is remanded to the Additional District Judge, Trichirapalli to consider the matter afresh with reference to the observations made by this Court and pass appropriate orders in E.P.No.67 of 1996 within a period of three months from the date of receipt of the order of this Court basing on the material already available on record.

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