

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 5564 OF 2012

ELECTION COMMISSION OF INDIA AND ANR. Appellant(s)

VERSUS

K.KALAIMANI AND ORS. Respondent(s)

WITH

CIVIL APPEAL NO(s). 9826 OF 2014
(Arising out of SLP(C) No(s). 27607 of 2012)

CIVIL APPEAL NO(s). 5936 OF 2012

O R D E R

Leave granted in SLP(C) No. 27607 of 2012.

These appeals have been preferred under Section 116A of the Representation of People Act, 1951 by respondent No.10 and 11 in Election Petition No.6 of 2009 on the file of the High Court of Madras.

The first respondent herein is the Election Petitioner who has challenged the election of the second respondent herein to the 197 Ilayangudi Assembly Constituency, Tamilnadu in the by-election conducted on 18.8.2009. The High Court in its judgment recorded a finding in para 46 that the Election Petition has become infructuous, nonetheless, recorded at para 49 of the judgment that the election petition is "allowed

accordingly".

Be that as it may, in the process, the High Court also directed the appellants herein to pay costs of Rs.25,000/- jointly and severally to the Election Petitioner. The relevant portion of the impugned judgment reads as under:

"..Though the matter has become infructuous as per Issues No.5, view of the serious lapses on the part of the Returning Officer and also the Chief Electoral Officer, the decision in the Election Petition should not only be academic, but realistic as well. Accordingly, the Returning Officer and the Chief Electoral Officer of the relevant period and the Election Commission of India are jointly and severally directed to pay costs of Rs.25,000/- (Rupees Twenty Five Thousand only) to the election petitioner within a period of one month from the date of receipt or production of a copy of this order. It is open to the competent authority/State Government to recover the monetary benefits that are availed by the first respondent/ returned candidates during his tenure, if they so desire."

Hence, these three appeals by respondent nos. 10 and 11 and the Returning officer of the above-mentioned constituency who initially was respondent no. 12 in the Election Petition but whose name was struck off from the array of the respondents by an order of the High Court dated 14.11.2011.

Though all the respondents are served, there is no appearance on behalf of the respondents.

Heard senior learned counsel for the appellants.

Learned senior counsel for the appellants submitted that in view of the law declared by this Court in Jyoti Basu and Others Vs. Debi Ghosal and Others 1982(1) SCC 691, anybody other than the contesting candidate could not have been made a party to the Election Petition. Apart from that, learned senior counsel submitted that the reason which prompted the High Court to award costs against these appellants is : an allegation of improper rejection of the nomination of the Election Petitioner by the deleted 12th Respondent, i.e. the Returning Officer. Learned senior counsel submitted that assuming for the sake of the argument that the action of the Returning Officer in rejecting the nomination is for some reason legally not tenable, the Election Commissioner of India and the Chief Electoral Officer of the State of Tamil Nadu can in no way be held responsible for such an act of the Returning Officer.

Coming to the case of the Returning Officer, learned senior counsel submitted that the least that is required in law is that before such adverse order is passed against the Returning Officer who is not a party to the proceedings on the date such an order came to be passed, the Returning Officer was entitled for a notice.

More importantly, the learned counsel submitted that the High Court absolutely lacks jurisdiction to pass such an order against any one of the three appellants herein in view of the fact that the jurisdiction of the High Court in deciding the election disputes is a

statutory conferred by the Representation of People Act, 1951 and limited by the language of Sections 98 & 99.

Sections 98 and 99 deal with the orders that could be passed by the High Court and are categoric regarding the nature and ambit of the orders that could be passed by the High Court in deciding any Election Petition. They read as follows:-

98. Decision of the High Court - At the conclusion of the trial of an election petition [the High Court] shall make an order-

- (a) dismissing the election petition, or
- (b) declaring the election of [all or any of the returned candidates] to be void; or
- (c) declaring the election of [all or any of the returned candidates] to be void and the petitioner or any other candidate to have been duly elected.

99. Other orders to be made by the High Court- (1) At the time of making an order under Section 98 the High Court shall also make an order-

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording -

(i) finding whether any corrupt practice has or has not been proved to have been committed at election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of cost payable and specifying the persons by and to whom costs shall be paid:

Provided that a person who is not a party to the petition

shall not be named in the order under sub-clause (ii) of clause (a) unless --

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, or calling evidence in his defence and of being heard.

(2) In this section and in Section 100, the expression "agent" has the same meaning as in Section 123.

Learned senior counsel submitted that though Section 99 authorise the High Court to award costs and specify the persons by whom the cost should be borne, necessarily such a jurisdiction extends only against the parties to the proceedings before the Court either under Sections 82 or 99(1)(a)(ii) of the Act. Therefore, the order impugned in these appeals cannot be sustained.

We accept the submission made by the learned senior counsel for the appellants in toto. The High Court, in our opinion, erred in awarding costs on both the counts as pointed out by the learned senior counsel. We, therefore, set aside that part of the judgment in Election Petition No. 6 of 2009 of the High Court of Madras insofar as it pertains to the award of costs against these appellants.

The appeals stands allowed accordingly.

.....J.
(J. CHELAMESWAR)

.....J.
(PINAKI CHANDRA GHOSE)

NEW DELHI
OCTOBER 16, 2014.

ITEM NO.101

COURT NO.8

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Civil Appeal No(s). 5564/2012

ELECTION COMMISSION OF INDIA AND ANR.

Appellant(s)

VERSUS

K.KALAIMANI AND ORS.

Respondent(s)

(With appln(s) for stay)

WITH

SLP(C) No. 27607/2012

(With Interim Relief and Office Report)

C.A. No. 5936/2012

(With Office Report)

Date : 16/10/2014 These matters were called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE J. CHELAMESWAR

HON'BLE MR. JUSTICE PINAKI CHANDRA GHOSE

For Appellant(s) Ms. Meenakshi Arora, Sr. Adv.

Mr. Mohit D. Ram, Adv.

Mr. A. Radhakrishnan, Adv.

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Leave granted in SLP(C) No. 27607/2012.

The appeals are allowed in terms of the signed
order.

(DEEPAK MANSUKHANI)

COURT MASTER

(Signed order is placed on the file)

(INDU BALA KAPUR)

COURT MASTER

