

In the High Court of Judicature at Madras

Dated: 18.03.2015

CORAM:

The Honourable Mr. SANJAY KISHAN KAUL, Chief Justice
and
The Honourable Mr. Justice M.M. SUNDRESH

Writ Petition No. 24278 of 2011

S. Balasubramanian

... Petitioner

vs.

1. The Secretary
Law Department
Fort St. George
Secretariat, Chennai 600 009.

2. The Secretary
Home Department
Fort St. George
Secretariat, Chennai 600 009.

3. The Secretary
Municipal Administration & Water
Supply Department
Fort St. George, Secretariat
Chennai 600 009.

4. The Commissioner
Tindivanam Municipality
Tindivanam Taluk
Villupuram District.

5. The Secretary
Tamil Nadu State Election Commission
208/2, Jawaharlal Nehru Salai
Opp. CMBT, Chennai 600 106.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records

in guidelines to candidates in Local Body Election (Urban) 2011, pertaining to Clause 2.3 (vi) Disqualification issued by the fifth respondent and quash the same by declaring the above guidelines as ultra vires of the Constitution of India.

For Petitioner : Mr. M. Sathish for Mr. Kumar

For Respondents : Mr. S.T.S. Murthi
Govt. Pleader for R1 to R3
Mr. B. Nedunchezhiyan for R5
No Appearance for R4.

O R D E R

(Made by The Hon'ble The Chief Justice)

The petitioner, a contestant for 28th Ward Councilor post of the Tindivanam Municipality, seeks to assail Clause 2.3 (vi) of the Guidelines issued by the fifth respondent/Tamil Nadu State Election Commission to the Local Body Election 2011, disqualifying a candidate for appearing for or against the Corporation or Municipality in which the candidate is contesting.

2. The petitioner had appeared for one of the accused in a default of property tax case prior to the election, but, on the date of nomination, there was no case pending in which he had appeared against the Municipality, as the case in which he had appeared stood compounded on payment of the amount.

3. Chapter-II of the Handbook of Candidates' Guidelines issued for the Local Body Elections, 2011, by the Tamil Nadu State Election Commission, deals with qualification and disqualification of the candidates. Clause 2.3 deals with disqualification and the relevant Clause reads as under:

"2.3] DISQUALIFICATION

The candidate who on the day of filing of the nomination they should not have these following disqualification:-

i] to v] ...

vi] The candidate should not have been the counsel for the local municipality or should not have appeared against the local municipality on the date of the nomination in which the candidates files their nomination."

4. We find the aforesaid Clause is one of restraint on profession in carrying out the obligations which an Advocate is required to do so under the Advocates Act, 1961. The bar which this Clause seeks to impose is not even with respect to any period of time, but is blanket ban, i.e. if an Advocate in performance of his profession had ever appeared against or for the Corporation, he would be disqualified to file his nomination.

5. On a query is being raised by us to the learned counsel for the fifth respondent as to how such a clause can be justified, learned counsel submits that the source of this Clause is Section 50 of the Tamil Nadu District Municipalities Act, 1920 and the relevant portion of which reads as under:

"50. Disqualification of the Chairman or Councillors:-

(1) Subject to the provisions of Section 51 Chairman or a Councillor or a person referred to in clauses (b) and (c) of sub-section (2) of Section 3-C or clauses (a) and (b) of sub-section (2) of Section 3-Q or clauses (b) and (c) of sub-section (3) of Section 7 shall cease to hold his office, if he:-

.....

(dd) is employed as paid legal practitioner on behalf of the council or accepts employment as legal practitioner against the council."

6. We are afraid that this is completely misreading of the Section, as it provides for the consequences once a person is elected as a Chairman or Councillor, i.e. he will "cease to hold his office" once he is employed as paid legal practitioner on behalf of the council or accepts employment as legal practitioner against the council.

7. We may hasten to add that we are not commenting the legality or validity of this provision, as the same has not been questioned in the present petition, though we would have grave doubts about its constitutionality.

8. At this stage, learned counsel states that Section 49 of the said Act deals with disqualification of candidates and a similar provision is made in Clause 2(cc).

9. Once again we would say that we have grave doubts on the constitutional validity of such provision, but, since that is not in challenge before us, we refrain from proceeding any further.

10. Insofar as the petitioner is concerned, suffice to say that even if this Clause was to apply, it could be only reflective of the position existing on the date of the nomination. The facts set out show that the petitioner had no such disqualification even as per the Clause on the date of filing of the nomination, as the case already stood compounded. There is no other manner of construing this Clause, as it cannot be countenanced that even such a provision could be made, it would refer to a position indefinitely in the past.

11. We are, thus, of the view that the rejection of the nomination of the petitioner by the fifth respondent is illegal and the objections put forth by the Election Commission are unsustainable.

12. The writ petition accordingly stands allowed, leaving an option to the petitioner or any person who is so inclined to assail the relevant paragraph of the Guidelines along with the provision in the said Act, which forms the basis of this Guidelines. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

ATR

To

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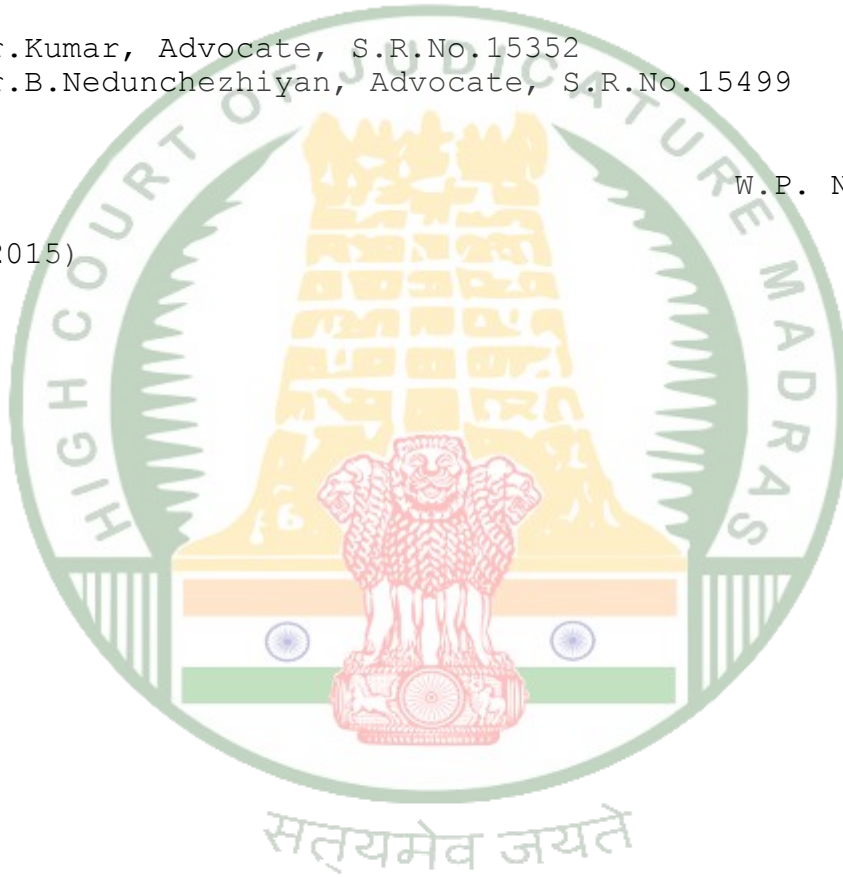
5. The Secretary
Tamil Nadu State Election Commission
208/2, Jawaharlal Nehru Salai
Opp. CMBT, Chennai 600 106.

+1cc to Mr.Kumar, Advocate, S.R.No.15352

+1cc to Mr.B.Nedunchezhiyan, Advocate, S.R.No.15499

RSY(CO)
CA(24/03/2015)

W.P. No. 24278 of 2011



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