

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.11.2016

CORAM

THE HON'BLE MR.JUSTICE M.M.SUNDRESH

W.P.No.29749 of 2014 and 9539 of 2015

and

MP.No.1 of 2014

and

WMP.No.29729 of 2016

S.Ravi ... Petitioner in W.P.No.29749 of 2014

D.Beeman ... Petitioner in W.P.No.9539 of 2015

Vs.

1. Tamil Nadu State Election Commission
rep. by its Election Commissioner
No.208/2, Jawarhalal Nehru Salai,
Arumbakkam, Chennai - 600 106.
2. The District Election Officer/
District Collector, Nilgiris District.
3. D.Beeman ... Respondents in WP.29749/2014

- 1.The District Collector,
Office of the District Collectorate,
Udhagamandalam,
The Nilgiris District.

- 2.The Block Development Officer/
Commissioner,
O/o.Block Development Officer,
Kothagiri, The Nilgiris District.

.. Respondents in WP.9539 of 2015

WP.No.29749/2014: Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Mandamus, to direct the second respondent to disqualify the third respondent as Councilor for the ward No.3, Panchayt Union Kotagiri, Nilgiris

District in the election held on 19.10.2011 in view of his findings dated 19.03.2013.

WP.No.9539/2015: Writ Petition filed under Article 226 of the Constitution of India praying for Writ of Certiorari to call for the entire records which culminated in issuing the impugned proceedings dated 04.03.2015 on the file of the second respondent and quash the same.

WP.29749/2014

For Petitioner : Mr.K.Sivakumar

For R1 & R2 : Mr.B.Nedunchezhilan, AGP
For R3 : Mr.N.Jothi

WP.9539/2015

For Petitioner : Mr.N.Jothi for
Mr.M.C.Govindan

For Respondents: Mr.P.Sanjay Gandhi, AGP

COMMON ORDER

Since the issue involved in both the writ petitions is one and the same, both the writ petitions are disposed of by way of a common order.

2. WP.No.9539 of 2015 has been filed challenging the notice issued under section 41(1) of the Tamil Nadu Panchayats Act.

WP.No.29749 of 2014 has been filed seeking a direction to the second respondent therein to disqualify the third respondent, who is the petitioner in W.P.No.9539 of 2015, as Councilor for the Ward No.3 Panchayat Union, Kotagiri, Nilgiris District.

3. As rightly pointed out by the learned counsel for the petitioner in WP.No.9539 of 2015, the impugned notice dated 04.03.2015 is certainly one without jurisdiction. Section 41(1) of the Tamil Nadu Panchayats Act (hereinafter shortly referred to as 'Act') has undergone an amendment. As per the Amended Act, which came into force with effect from 18.06.2008 by Act 39 of 2008, the authority to decide the question of disqualification or cessation of members would be the Government, pursuant to the reference to be made by the Inspector. Under Old section 41(1) of the Act, such power was available with the Block Development

Officer viz., the second respondent in WP.No.9539 of 2015. Unfortunately, the impugned notice dated 04.03.2015 has been issued only by old Act, which, in my view, certainly lacks one such jurisdiction and the same is totally non- application of mind on the part of the authority concerned.

4. In such view of the matter, the notice dated 04.03.2015 which is impugned in WP.No.9539 of 2015 stands quashed and W.P.No.9539 of 2015 is allowed as prayed for. In view of the same, the relief sought for in W.P.No.29749/2014 no longer survives. Hence, WP.No.29749 of 2014 is dismissed. However, this order will not prevent the authority concerned to proceed further in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

RK

Sd/-

Assistant Registrar

/True Copy/

Sub Assistant Registrar

To

1. The Election Commissioner,
Tamil Nadu State Election Commission
No.208/2, Jawarhalal Nehru Salai,
Arumbakkam, Chennai - 600 106.
2. The District Election Officer/
District Collector, Udhagamandalam,
Nilgiris District.
3. The Block Development Officer/Commissioner,
O/o. Block Development Officer, Kothagiri,
The Nilgiris District

- + 1 cc to Mr.K.Sivakumar, Advocate Sr 69933
- + 1 cc to Mr.B.Nedunchezhiyan, Advocate Sr 70008
- + 2 ccs to Mr.M.C.Govindan, Advocate Sr 69950
- + 1 cc to The Govt. Pleader Sr 70505

KR/12/1/17

W.P.No.29749 of 2014 and 9539 of 2015