

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:16.08.2016

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THE HON'BLE MR.JUSTICE N.KIRUBAKARAN

W.P.No.28466 of 2016

and

W.M.P.Nos.24513 and 24514 of 2016

J.Shanmugam

[ Petitioner ]

Vs

- 1 Government of Tamil Nadu  
Rep by the Principal Secretary to Government  
Department of Municipal Administration and  
Water Supply, Secretariat, Chennai 9
- 2 The Commissioner of  
Municipal Administration Ezhilagam Chepauk  
Chennai 5
- 3 The Secretary to Government  
Rural Development and Panchayat Raj Department  
Government of Tamil Nadu  
Secretariat Fort St. George Chennai 9
- 4 Tamil Nadu State Election Commission  
Rep by Tamil Nadu State Election Commissioner  
No.208/2 Jawaharlal Nehru Road  
Opp to CMBT Arumbakkam Chennai 106
- 5 The Commissioner  
Maraimalai Nagar Special Grade Municipality  
Maraimalai Nagar Kancheepuram District

[ Respondents]

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorarified mandamus calling for the records of the 1st respondent in G.O.(Ms) No.137 dated 12.9.2011 and quash the same and consequentially direct the 1st and 2nd respondents herein to

consider petitioner's representation dated 27.6.2016 and 8.8.2016 respectively

For Petitioner Mr.R.Shanmugasundaram,  
Senior Counsel for  
Mr.S.Manuraj

For Respondents:Mr.V.Jayaprakash Narayanan,SGP  
(R1-3)  
Mr.Nedunchezhiyan (R4)  
Mr.T.M.Pappiah, SGP (R5)

ORDER

This writ petition is filed to call for the records of the 1st respondent in G.O.(Ms) No.137 dated 12.9.201, quash the same and consequentially direct the 1st and 2nd respondents herein to consider the petitioner's representation dated 27.6.2016 and 8.8.2016 respectively.

2. Heard Mr.Shanmugasundaram, learned Senior Counsel for Mr.S.Manuraj, learned counsel for the petitioner, Mr.V.Jayaprakash Narayanan, learned Special Government Pleader, who took notice on behalf of respondents 1 to 3, Mr.Nedunchezhiyan, learned counsel who took notice on behalf of the 4<sup>th</sup> respondent and Mr.T.M.Pappiah, learned Special Government Pleader who took notice on behalf of the 5<sup>th</sup> respondent and with their consent, the main writ petition itself is taken up for final disposal at the admission stage itself, since the petitioner intends to restrict his prayer only for a writ of mandamus to dispose of his representation and not pressing the prayer for certiorarified mandamus.

3.1 The petitioner is presently the Councilor of 5<sup>th</sup> Ward and Vice Chairman of Maraimalai Nagar Special Grade Municipality in Kancheepuram District. The election to the local bodies are governed by the Tamil Nadu Panchayats Act, 1994 (Tamil Nadu Act 21 of 1994) and the Tamil Nadu Panchayats (Election) Rules 1995. The 74<sup>th</sup> Constitutional Amendment brought reservation in the local bodies also. Pursuant to the amendment, the Tamil Nadu Government framed the rules in 1996, which came into force on 11.06.1996. As per sub rule 4 of Rule 4, reservation has been made for Schedule Castes and Schedule Tribes and Women belonging to Scheduled Castes and Scheduled Tribes and women in general with reference to sub rules 1 to 3 shall be in vogue for two full terms of the council, namely ten years and rotated thereafter at every ten years interval based on the next higher percentage of population of respective groups. According to the petitioner, the Government notified the local body elections in 1996 and the office of Chairperson of the Maraimalai Nagar Town

Panchayat was reserved for Scheduled Caste through G.O.Ms.No.196 dated 27.06.1996. By virtue of G.O.Ms.No.85 dated 18.06.3001 Amendment to the Tamil Nadu Town Panchayats, Municipalities and Corporations (Delimitation of Wards or Division and Reservation) Rules, 1996, the reservations made for Schedule caste was declared to be in vogue for two full terms of the Councils, namely 10 years. Accordingly, the office of Chairperson of Maraimalai Nagar Town Panchayat was reserved for candidate belonging to Scheduled Caste from 1996 to 2006 viz., 10 years. After completion of two terms of the council, in 2006, election to the office of the Chairperson of Maraimalai Nagar Town Panchayat was declared under the general category through G.O.Ms.No.88 dated 07.09.2006, that is to say, 10 years have to be given for general candidates. In other words, 10 years have been given to Scheduled Caste and thereafter 10 years for the general candidates.

3.2 Since reservation was in vogue from 1996-2006, the office of the Chairperson of Maraimalai Nagar Town Panchayat should be available for the general candidates from 2006-2016. However, for 5 years term viz., 2006-2011 only the candidates other than Scheduled Caste were allowed to contest and again in 2011, even before 10 years could be over, the aforesaid Office of the Chairperson of the said Municipality was again reserved. Subsequently, election was conducted and the person belonging to the reserved category has been elected as the Chairman, which according to the petitioner is illegal. Therefore, the petitioner gave a representation to the 2<sup>nd</sup> respondent on 27.06.2016 and on 08.08.2016 to the 1<sup>st</sup> respondent. Since the said representations did not evoke any response, the present writ petition has been filed by the petitioner challenging the impugned order by stating that 10 years period have not been completed for the general categories from 2006 to 2016 and only 5 years term alone was completed from 2006-2011.

4. Heard the learned counsel on either side and perused the materials available on record.

5. It is clear that after the amendment in the Constitution, reservation has been made available even for local bodies. It is clear from the records that from 1996 to 2006, the office of the Chairperson of Maraimalai Nagar Town Panchayat was reserved for the candidates belonging to Scheduled Caste and the persons belonging to the same caste were elected and they were in office till 2011. As per the rotation and as per the Government Orders and Rules, the said post was dereserved and it was open to all candidates. Once it is open to the general candidates, it should be made available for 10 years and then only the rotation can take effect. However, for the reasons best known to the respondents, even before the expiry of 10 years, after the expiry of 5 years in 2011, the said office has been available for

reserved category, thereby the general candidates were not allowed to contest. The grievance of the petitioner is that the Government Orders and Rules, which provide for reservation have not been followed by the respondents. Prematurely the terms of the general candidates have been restricted only for 5 years and not 10 years. Therefore, the petitioner has sent a representation to the 2<sup>nd</sup> respondent on 27.06.2016 and on 08.08.2016 to the 1<sup>st</sup> respondent seeking the office of the Chairperson of Maraimalai Nagar Special Grade Municipality be dereserved to enable the general category candidates to contest the election.

6. Taking into consideration the limited scope of the prayer now sought for in the writ petition, this Court directs the 1<sup>st</sup> respondent to consider the petitioner's representations dated 08.08.2016 and pass orders as per law and on its own merits, within a period of four weeks from the date of receipt of a copy of this order. At any rate, the order should be passed before issuing notification for conducting election for the local body.

No costs. Connected miscellaneous petitions are closed.

s/d-  
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

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Government of Tamil Nadu  
Department of Municipal Administration and  
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+1 cc to Mr.S.Manuraj Advocate sr 46615

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