

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 03.10.2016

CORAM

THE HONOURABLE Mr. JUSTICE M.M.SUNDRESH

and

THE HONOURABLE Mr. JUSTICE R.MAHADEVAN

W.P.No.32667 OF 2016

AND

W.M.P.No.28297 of 2016

N.Sarala Devi

... Petitioner

Vs.

1.The Election Commissioner,
Tamil Nadu State Election Commission,
Arumbakkam,
Chennai-600 106.

2.The Deputy Block Development Officer,
Panchayat Unions,
Arakkonam Block Development Office,
Arakkonam,
Vellore District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India praying to issue a Writ of Certiorari to call for the records of the first respondent passed in S.O.No.37/2013/TNSEC/PE/2 dated 07.10.2013 and quash the same.

For Petitioner : Mr.N.L.Rajah
Senior Counsel for
M/s.P.Krishnan

For Respondents : Mr.B.Kumar
Senior Counsel for
Mr.B.Neduchezhian for R1
Mr.R.Vijayakumar
Addl. Government Pleader for R2

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O R D E R

(Order of the Court was made by M.M.SUNDRESH, J)

The petitioner, who has been elected as President for Thanigaipolur Village Panchayat , Arakkonam Panchayat Union, during the Local Body Elections held in the year 2011 under the reserve category of women, has come forward to file this writ

petition seeking to challenge the order dated 07.10.2013 passed by the first respondent, by which, she was disqualified for a period of three years on the premise that she has not filed the accounts as mandatory under law.

2. The learned Senior Counsel appearing for the petitioner submits that as early as on 23.10.2011, the Deputy Block Development Officer (Panchayata) Panchayat Unijon, Arakkonam has received the accounts submitted by the petitioner. Merely because the said Officer has since retired, it cannot be said that the same was not received. The petitioner was allowed to continue in the capacity as President till now. Thus, the impugned order dated 07.10.2013, which according to the petitioner has not been served on her and it cannot be served in the teeth of Section 37(4) of the Tamil Nadu Panchayats Act, 1994. Reliance has been made on Rule 29(3)(a) of the Tamil Nadu Panchayats (Elections) Rules, 1995 to the effect that the said rule will have to be read in consonance with the said Act.

3. The learned Senior Counsel appearing for the first respondent submitted that the petitioner was aware of the show cause notice issued, which she has acknowledged. The impugned order non-suits qualification of the petitioner for a period of three years. As the last date for nomination ends today and three years period ends only on 06.10.2016, the disqualification would come into play. Therefore, interference is required.

4. At least the basic facts are not in dispute. The petitioner was allowed to function as the President till now. Section 37(4) mandates that an order of disqualification would become complete by a notification in the Government Gazette. Therefore, the said order would come into play only if the said exercise is being carried out. In this case, there was no Gazette publication made. Perhaps, that is the reason why the petitioner was allowed to continue as President. Relying upon the impugned order, which has not been Gazetted as mandatory under Section 37(4) of the said Act, the petitioner cannot be disqualified. Therefore, this Court is of the view that though the impugned order dated 07.10.2013 cannot be faulted with in strict sense, taking into account the allegation of the petitioner that the said order dated 07.10.2013 has not been served on her coupled with the further fact that there was no Gazette publication giving effect of the said order, there is no question of disqualification of the petitioner under the eye of law. Accordingly, a direction is issued to the respondents to accept the nomination of the petitioner, as ultimately what the petitioner has prayed for in this petition is for an opportunity to contest in the ensuing election.

5. The writ petition is disposed of with the aforesaid direction. No costs. Consequently, W.M.P.No.28297 of 2016 is closed.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

bbr

Note: Order copy be issued to respondents by wire/fax today.

To

1. The Election Commissioner,
Tamil Nadu State Election Commission,
Arumbakkam,
Chennai-600 106.
- 2.The Deputy Block Development Officer,
Panchayat Unions,
Arakkonam Block Development Office,
Arakkonam, Vellore District.

+1 CC to Mr. P. Advocate Sr.No.56614
+1 CC to Government Pleader, Sr.No.56609

W.P.No.32667 of 2016

MG (CO)
MD : 03/10/2016

सत्यमेव जयते

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