



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.10.2016

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THE HON'BLE DR.JUSTICE S.VIMALA

W.P(MD) No.19125 of 2016

Nachiyappan

... Petitioner

-vs-

The Returning Officer (Urban Elections)
Kandanur Town Panchayat,
Sivagangai District.

... Respondent

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent to furnish nomination form to the post of Ward Member, Kandanur Town Panchayat Local Body Election 2016 and consequently, direct the respondent to scrutinize the petitioner's nomination form without reference to the conviction period between 02.03.2012 and 25.10.2013 in the Central Prison, Coimbatore.

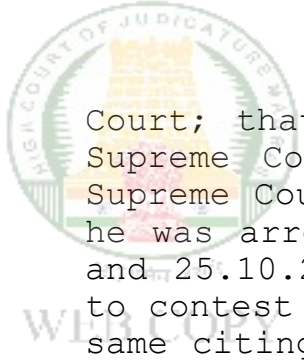
For Petitioner	: Mr.RM.Arun Swaminathan
For Respondent	: Mr.R.Karthikeyan
	Addl. Govt. Pleader

O R D E R

The writ petition has been filed, seeking to direct the respondent to furnish Nomination Form to the post of Ward Member, Kandanur Town Panchayat Local Body Election 2016 and consequently, direct the respondent to scrutinize the same without reference to the conviction period between 02.03.2012 and 25.10.2013 in the Central Prison, Coimbatore.

2. Heard the learned counsel for the petitioner and the learned Additional Government Pleader appearing for the respondent.

3. The case of the petitioner is that while he was working as Branch Manager, Indian Overseas Bank, Kanjamalai Branch, Coimbatore District, the Central Bureau of Investigation (CBI) registered a case against him under Sections 120(b), 405, 471 r/w 465, 471 IPC and Section 5(1)(c) r/w Section 5(ii) of P.C.Act; that learned Additional Sub Judge, Coimbatore convicted the petitioner and ordered to undergo Rigorous Imprisonment; that he preferred appeal before this Court in C.A.No.186 of 1992, which was dismissed by this



Court; that the petitioner thereafter filed SLP before the Hon'ble Supreme Court and the Advocate, who appeared for him before the Supreme Court did not inform the fate of the case and subsequently, he was arrested by the CBI and confined in jail between 02.03.2012 and 25.10.2013; that when the petitioner asked for Nomination Form to contest in the Local Body Election, the respondent denied for the same citing the relevant provisions of the Booklet published by the Tamil Nadu State Election Commissioner and hence, the petitioner is before this Court.

4. Learned Additional Government Pleader would submit that at first blush, this petition is not maintainable for two reasons, namely, no writ under Article 226 of the Constitution of India would lie, when the Election Code of Conduct is in existence in the light of the judgment rendered by the Hon'ble Supreme Court in the case of **N.P.Ponnusamy vs. Returning Officer, Namakkal Constituency and others**, reported in **1952 AIR 64**, and secondly, there is a bar under the provisions of Section 37(1)(k) of the Tamil Nadu Panchayat Act for the petitioner to participate in the election. Hence, he pleaded that this writ petition is liable to be dismissed in limine.

5. For ready reference, Section 37(1)(k) of the Tamil Nadu Panchayat Act is extracted as under:

"37. **Disqualification of candidates** - (1) A person convicted of an offence punishable under -

(k) the Prevention of Corruption Act, 1988 (Central Act 49 of 1988)."

5.1. It is also appropriate for this Court to refer to the relevant paragraph of the judgment of the Hon'ble Supreme Court in the case of **N.P.Ponnusamy vs. Returning Officer, Namakkal Constituency and others** (cited supra), which reads as follows:

".....(1) Having regard to the important functions which the legislatures have to perform in democratic countries, it has always been recognized to be a matter of first importance that elections should be concluded as early as possible according to time schedule and all controversial matters and all disputes arising out of elections should be postponed till after the elections are over, so that the election proceedings may not be unduly retarded or protracted. (2) In conformity with this principle, the scheme the election law in this country as well as in England is that no significance should be attached to anything which does not affect the "election"; and if any irregularities are committed while it is in progress and they belong to the category or class which, under the law by which elections are governed, would have the effect of vitiating the 'election' and enable the person affected to call it in question, they should be brought up before a



special tribunal by means of an election petition and not be made the subject of a dispute before any court while the election is in progress....."

6. In this case, it is an admitted fact that the petitioner has already been convicted for various offences, including the one under the provisions of Prevention of Corruption Act and therefore, there is a bar under the provisions, disqualifying the petitioner to contest in the Local Body Election. Hence, no direction can be issued to the respondent as sought for by the petitioner in this writ petition.

7. Accordingly, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar

To:

The Returning Officer (Urban Elections)
Kandanur Town Panchayat,
Sivagangai District.

+ 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 58306

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TE/SS-3 : 20/12/2016 : 3P/3C

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