

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 29TH DAY OF JUNE 2017

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

O.A. No. 247 of 2017

IN

Election Petition No. 1 of 2016

ELP No. 1 of 2016

S.P.Rajeandran,
S/o.Palanisamy,
No.268, Seenuvasan Street,
Saram Village & Post,
Tindivanam Taluk,
Villupuram District,
(Partly AIADMK
Symbol Two leaves)

... Petitioner

-VS-

1. M.Udayakumar,
No.314, ECR Main Road,
Kizhpettai Village,
Marakanam Taluk,
Villupuram District.
2. A.Govindasamy,
No.60, Perumal Koil Street,
Gidangal - 2,
Tindivanam City & Taluk,
Villupuram District.
3. Mrs.Seethapathy,
No.3E, Muthalamman Koil Street,
Pongkolathur & Post,
Tindivanam Taluk,
Villupuram District.
4. P.Poovazhagi,
No.7/9, Ambedkar Street,
Avanipur Village,
Tindivanam Taluk,
Villupuram District.
5. A.Kalidoss,
No.323/337, Molasoor Village & Post,
Tindivanam Taluk,
Villupuram District.

6. K.Bhuvaneswari,
No.19, Jayalalitha Street,
Nedimozhiyanoor Village,
Tindivanam Taluk,
Villupuram District.
 7. S.A.Viswanathan,
No.6, Pillaiyar Road,
Alathur Village & Post,
Marakanam Taluk,
Villupuram District.
 8. R.Karthik,
No.183, Mariamman Koil Street,
Kizhakaranai Village,
Panchalam Post,
Tindivanam Taluk,
Villupuram District.
 9. M.Chandrasekaran,
No.25/1, Gopalapuram,
Marakanam Road,
Tindivanam,
Tindivanam Taluk,
Villupuram District.
 10. K.Meera,
No.323/337,
Mowchoor Village & Post,
Tindivanam Taluk,
Villupuram District.
 11. The Returning Officer,
No.72, Tindivanam Legislative Assembly
Constituency (Reserve),
Villupuram District,
Tamil Nadu.
- ...Respondents

OA.No.247 of 2017

The Returning Officer,
No.72, Tindivanam Legislative Assembly
Constituency (Reserve),
Villupuram District,
Tamil Nadu.

...Applicant/11th Respondent

-VS-

1. S.P.Rajendran,
S/o.Palanisamy,
No.268, Seenuvasan Street,
Saram Village & Post,

Tindivanam Taluk,
Villupuram District,
(Partly AIADMK
Symbol Two leaves)

2. M.Udayakumar,
No.314, ECR Main Road,
Kizhpettai Village,
Marakanam Taluk,
Villupuram District.
3. A.Govindasamy,
No.60, Perumal Koil Street,
Gidangal - 2,
Tindivanam City & Taluk,
Villupuram District.
4. Mrs.Seethapathy,
No.3E, Muthalamman Koil Street,
Pongkolathur & Post,
Tindivanam Taluk,
Villupuram District.
5. P.Poovazhagi,
No.7/9, Ambedkar Street,
Avanipur Village,
Tindivanam Taluk,
Villupuram District.
6. A.Kalidoss,
No.323/337, Molasoor Village & Post,
Tindivanam Taluk,
Villupuram District.
7. K.Bhuvaneswari,
No.19, Jayalalitha Street,
Nedimozhiyanoor Village,
Tindivanam Taluk,
Villupuram District.
8. S.A.Viswanathan,
No.6, Pillaiyar Road,
Alathur Village & Post,
Marakanam Taluk,
Villupuram District.
9. R.Karthik,
No.183, Mariamman Koil Street,
Kizhkaranaï Village,
Panchalam Post,
Tindivanam Taluk,
Villupuram District.

10. M.Chandrasekaran,
No.25/1, Gopalapuram,
Marakanam Road,
Tindivanam,
Tindivanam Taluk,
Villupuram District.

11. K.Meera,
No.323/337,
Mowchoor Village & Post,
Tindivanam Taluk,
Villupuram District.

...Respondents

This Original Application praying that this Hon'ble Court be pleased to strike off the 11th respondent as a respondent in the Election Petition No.1 of 2016.

The above original Application having been heard on 16.06.2017 in the presence of Mr.Niranjan Rajagopalan, advocate for M/s.G.R.Associates, advocates for the applicant/11th respondent herein and of Mr.R.N.Amarnath, advocate for the 1st respondent/Election Petitioner and Mr.Richardsonwilson, advocate for the 3rd respondent and Mr.N.Raja, advocate for the 4th respondent herein and the counter affidavit of S.P.Rajendran filed herein and this court having stood over for consideration till this date and coming on this day before this court for orders in the presence of the above said advocates,

The Court made the following order:-

The present application is taken out by the Returning

Constituency(Reserved), who is arrayed as 11 respondent in the Election Petition, filed by the first respondent herein to strike off his name arrayed as 11 respondent in the Election Petition.

2. The first respondent herein filed the Election Petition to declare the election of the 4th respondent herein in the above mentioned Assembly Constituency, as null and void. In the above Election Petition, the applicant herein was arrayed as 11th respondents. Now, the applicant herein contending that in view of the Sections 82 and 86(4) of the Representation of the People Act, 1951, he cannot be impleaded as a party respondent in the Election Petition. Hence, he sought for strike off his name from the Election Petition. The above application was contested by the 4th respondent, who is the Election Petitioner, on the ground that the Returning Officer is a designated officer of the Election Commission of India to discharge their election duty impartially. The Representation of the People Act contemplates the Election Officer to discharge his function fairly, he should not any act in favour of any candidate and influence the voters which is also a cognizable offence. Since some allegations were made against the Returning Officer in the Election Petition for which the Returning Officer should answer, if the Returning Officer is not made as a party respondent, the Returning Officer may not appear before the Court and it

will cause grave injustice to the Election Petitioner.

3. Mr.Niranjan Rajagopalan, the learned counsel appearing for the petitioner would submit that Section 82 of the Representation of People Act provides for impleading of parties in the Election Petition, as per Section 82 of the said Act, the persons who are all mentioned therein can alone be impleaded as respondent, no one else, including the Election Commission of India, can be impleaded as a party respondent. In support of his contention, the learned counsel appearing for the petitioner relying upon the Judgment of the Hon'ble Supreme Court in **JYOTI BASU AND OTHERS Vs. DEBI CHOSAL AND OTHERS** reported in 1982 (1) SCC 691 and another Judgment in **S.SUNDARA RAMI REDDY Vs. ELECTION COMMISSION OF INDIA AND OTHERS** reported in 1991 Supp (2) SCC 624.

4. Per contra, the learned counsel appearing for the Election Petitioner would vehemently contend that since some personal allegations were made against the Returning Officer, she should necessarily be added as a party respondent in the Election Petition. Even though, Section 82 of the Representation of People Act provides for necessary parties in the Election Petition, when the allegations are levelled in the Election Petition against the Returning Officer, in such case, the Returning Officer is a necessary and proper party, and sought for dismissal of the application.

5. I have considered the rival submissions.

6. The issue involved in this application is no more *res intagra*. The Hon'ble Supreme Court in number of cases has held that, the right to elect, to be elected, or to dispute election are not fundamental right or common law right, but it is only a statutory right, and it is subject to statutory limitations, the Election Petition being a statutory proceedings, for which only the statutory rules apply. Hence, the persons who are all mentioned in Sections 82 and 86(4) of the Representation of the People Act, can alone be joined as respondents in the Election Petition and no other persons can be arrayed as party respondent however desirable and expedient it may appear to be. The concept of necessary and proper party is not applicable in election petition filed under the Representation of the People Act.

7. The Hon'ble Supreme Court in **JYOTI BASU AND OTHERS Vs. DEBI CHOSAL AND OTHERS** reported in 1982 (1) SCC 691, held as follows:-

"In view of the foregoing discussion we are of the opinion that no one may be joined as a party to an election petition otherwise than as provided by Sections 82 and 86(4) of the Act. It follows that a person who is not a candidate may not be joined as a respondent to the election

petition. The appeal is therefore, allowed with costs and the names of the appellants and the 7th respondent in the appeal are directed to be struck out from the array of parties in the election petition."

In another Judgment of the Hon'ble Supreme Court in **S.SUNDARA RAMI REDDY Vs. ELECTION COMMISSION OF INDIA AND OTHERS** reported in **1991 Supp (2) SCC 624**, held as follows:-

"The representation of the People Act, 1951 does not provide for joinder of a proper party to an election petition. The concept of joining a proper party to an election petition is ruled out by the provisions of the Act. The concept of joinder of a proper party to a suit or proceeding underlying Order I of the Civil Procedure Code cannot be imported to the trial of election petition, in view of the express provisions of Sections 82 and 87 of the Act. The Act is a self contained Code which does not contemplate joinder of a person or authority to an election petition on the ground of proper party. In *K.Venkateswara Rao v. Bekkam Narasimha Reddy*, this Court while discussing the application of Order I Rule 10 of the Civil Procedure Code to an election petition held that there could not be

any addition of parties in the case of an election petition except under the provisions of sub-section (4) of Section 86 of the Act. Again in *Jyoti Basu v. Debi Ghosal*, this Court held that the concept of 'proper party' is and must remain alien to an election dispute under the Representation of the People act, 1951. Only those may be joined as respondents to an election petition who are mentioned in Section 82 and Section 82(4) and no others. However, desirable and expedient it may appear to be, none else shall be joined as respondents.

The above two judgments have been considered by the 3 Judges Bench of the Hon'ble Supreme Court in **MICHAEL B. FERNANDES Vs. C.K.JAFFER SHARIEF AND OTHERS** reported in **2002 (3) SCC 512** and reiterated the view taken in the above two judgments.

WEB COPY

8. In view of the above stated position, I am of the considered view that the 11th respondent can not be added as party respondent in the Election Petition. Hence, the application filed by the petitioner deserves to be allowed.

9. In the result, this application stands allowed and the name of the applicant/, namely, Returning Officer, No.72, Tindivanam Legislative Assembly Constituency (Reserved), the 11th respondent in the election petition, is strike out in the election petition.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 29TH DAY OF JUNE 2017.

sd/-

ASSISTANT REGISTRAR
Original Side - II

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2017

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

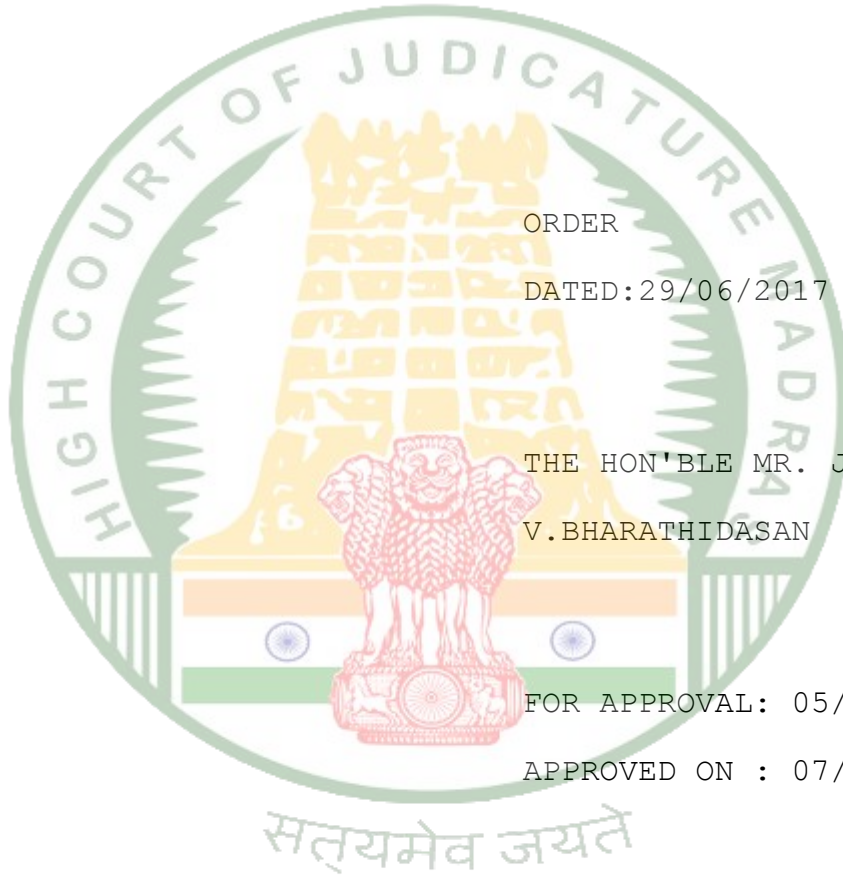
WEB COPY

cns - 05/07/2017

OA.NO.247 OF 2017

in

ELP.NO.1 OF 2016



ORDER

DATED:29/06/2017

THE HON'BLE MR. JUSTICE
V.BHARATHIDASAN

FOR APPROVAL: 05/07/2017

APPROVED ON : 07/07/2017

WEB COPY