

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 11TH DAY OF JULY 2017

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

O.A.Nos.297 and 298 of 2017

in

Election Petition No. 3 of 2016

ELP No.3 of 2016

S.M.Nasar,
No.16, Thayagam Illam,
Budhhar Nagar,
Avadi,
Chennai 600 071.

... Petitioner

-VS-

- 1.Pandia Rajan K.
61/-TAS Enclave,
Flat No.C3, 3rd Floor,
Golden Kings Court,
10th Main Road, Annanagar,
Chennai 600 040.
- 2.Charles S.
4/- Dr.Ambedkar Street,
Kengureddykuppam,
Thiruninravur 602 024.
- 3.Loganathan J.
3-9/- Pillayar Koil Street,
Pidarithangal Village,
Paanavedu Garden,
Poonamallee,
Chennai 600 056.
- 4.Anthridoss R.
3/- Govindarajulu Street,
Sri Devi nagar,
Avadi, Chennai 600 071.
- 5.Anandakrishnan N.
4/- Station Road,
Annanur, Chennai 600 077.

- 6.Nallathambi S.
37/- Mosque Street,
Pattabiram,
Chennai 600 072.
- 7.Ponnusamy R.
5/- Transformer Metu Street,
Thiruninravur,
Chennai 602 024.
- 8.Rowoth Pasari,
3/-3rd Street, Santhipuram,
Thirumullaivoyal,
Avadi, Chennai 600 062.
- 9.Antharaiyan,
198-13/- Madhakoil Street,
Monnavedu, Melannur,
Tiruvallur,
Pincode - 627 027.
- 10.Karthikeyan V.P.
B3-35/- Kendriyavihar,
2nd PH Road,
Paruthipattu,
Avadi 600 071.
- 11.Kaliammal Rajendran,
3/- EVR Nagammai Nagar,
Vinayagarkoil Cross Street,
Avadi, Chennai 600 109.
- 12.Sathya D.
3-Jothiramalinga Nagar,
2nd Cross Street,
Kavarapalayam,
Avadi, Chennai 600 054.
- 13.Selvanayagam D.
30-2/- Thiruvalluvar Street,
Kamarajapuram, Pattabiram,
Chennai 600 072.
- 14.Dharani K.
16-5/- Kadumpadi,
Nagammankoil Street,
Chattaram, Pattabiram,
Chennai 600 072.
- 15.Dinesh kumar P.
3-10/- Thanneerkinaru Street,
Thandurai,
Pattabiram,

Chennai 600 072.

- 16.Durga Prasad G.
10-1/- Bajanaikoil Street,
Kavarapalayam,
Avadi, Chennai 600 054.
- 17.Nasar S M A
26/- Pavalakara Street,
mannadi, Chennai 600 001.
- 18.Pandiarajan G.
2/- Ramalingapuram 1st Street,
Kamarajarnagar, Avadi,
Chennai 600 071.
- 19.Ramachandran J.
4/3, Annai Abirami Nagar,
Sivan Koil Road, Avadi,
Chennai 600 077.
- 20.Janova J.
44/42 Mettu Street,
Sekkadu,
Avadi, Chennai 600 071.
- 21.The Election Commission of India,
Represented by its Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi 110 001.
- 22.The Returning Officer,
Avadi Constituency,
Avadi Taluk Office,
Railway Station Road,
Avadi, Chennai 600 054.
- 23.V.Muthusamy,
Returning Officer,
Avadi Constituency,
Avadi Taluk Office,
Railway Station Road,
Avadi, Chennai 600 054.
- 24.Muthu,
DRO Cum Election Nodal Officer for Avadi and
Poonamallee Constituency, Collectorate Office,
Tiruvallore. ...Respondents

O.A.Nos.297 & 298 of 2017

- 1.The Election Commission of India,
Represented by its Chief Election Commissioner,

Nirvachan Sadan, Ashoka Road,
New Delhi 110 001.

- 2.The Returning Officer,
Avadi Constituency,
Avadi Taluk Office,
Railway Station Road,
Avadi, Chennai 600 054.

... Applicants/21st & 22nd Respondent

-VS-

- 1.S.M.Nasar,
No.16, Thayagam Illam,
Budhhar Nagar,
Avadi,
Chennai 600 071.

... Respondent / Petitioner

- 2.Pandia Rajan K.
61/-TAS Enclave,
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Avadi, Chennai 600 054.
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30-2/- Thiruvalluvar Street,
Kamarajapuram, Pattabiram,
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4/3, Annai Abirami Nagar,
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- 21.Janova J.
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- 22.V.Muthusamy,
Returning Officer,
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Avadi Taluk Office,
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Avadi, Chennai 600 054.
- 23.Muthu,
DRO Cum Election Nodal Officer for Avadi and
Poonamallee Constituency, Collectorate Office,
Tiruvallore. ... Respondents

O.A.No.297 of 2017

This Original Application praying that this Hon'ble Court be pleased to strike off the 21st respondent as a respondent in the Election Petition No.3 of 2016.

O.A.No.298 of 2017

This Original Application praying that this Hon'ble Court be pleased to strike off the 22nd respondent as a respondent in the Election Petition No.3 of 2016.

These Original Applications and Election Petition coming on this day before this Court for hearing in the presence of Mr.Niranjan Rajagopalan, advocate for M/s.G.R.Associates, advocates for the applicants/21st & 22nd respondent herein and of Ms.B.Aparna, advocate for M/s.Wilson Associates, advocate for the 1st respondent/Election Petitioner and Mr.M.Velu, advocate for the 2nd respondent/1st respondent; and upon reading the Judges Summons and Common affidavit of Rajesh Lakhoni filed herein,

The Court made the following order:-

The respondents 21 and 22 namely, the Election Commission of India and Returning Officer of Avadi Constituency in the Election Petition No.3 of 2016 are the applicants in these applications in O.A.Nos.297 and 298 of 2017, praying this Court to strike off the respondents 21 and 22 as respondents in the Election Petition in ELP.No.3 of 2016.

2.The applicants in this case has submitted that the Election Petition has been filed to declare the Election of the returned candidate, namely, the 1st respondent herein from Avadi Legislative Assembly Constituency, Thiruvallur District, Tamil Nadu held on 16.05.2016 in which result have been declared on 19.05.2016 as void.

3.It is further case of the petitioners that as per Section 82 of the Representation of People Act, 1951,

provides for who shall be a party to an Election Petition, which is extracted hereunder:

"82.Parties to the petition.-A petitioner shall join as respondents to his petition-

(a)where the petitioner, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claims a further declaration that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner, and where no such further declaration is claimed, all the returned candidates; and

(b)any other candidate against whom allegations of any corrupt practice are made in the petition."

Further Section 86(4) of the Act, provides that, Any candidate not already a respondent shall, upon application made by him to the High Court within fourteen days from the date of commencement of the trial and subject to any order as to security for costs which may be made by the High Court, be entitled to be joined as a respondent."

4.The applicants also stated that the Hon'ble Supreme Court in its judgments reported in **AIR 1982 SC 983** and **1991 SUPP (2) SCC 624** which has been held that the persons

mentioned in the above provisions alone can be impleaded as respondents, and no one else including the Election Commission of India can be impleaded as a party. The operative portion of the judgment of the Hon'ble Supreme Court is as follows:

"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 86(4) and no others. However desirable and expedient it may appear to be, none else shall be joined as respondents."

5. Pursuant to the above provision, Section 82 of the Representation of People Act, 1951 and the orders of the Hon'ble Supreme Court mentioned supra, these applicants have filed the two applications to strike off them as the respondents in the above petition, since neither the 21st respondent nor the 22nd respondent cannot be impleaded as the respondents in the above petition. Therefore, they prayed this Court to strike off the respondents 21 and 22 in the Election Petition in ELP.No.3 of 2016.

6. The respondents in these applications have not filed any counter affidavit by denying the above said allegations.

7.I heard Mr.Niranjan Rajagopalan, learned counsel appearing for the petitioners and M/s.B.Aparna for M/s.P.Wilson Associates, learned counsel appearing for the 1st respondent and Mr.Velu for M/s.Iyer and Thomas, learned counsel appearing for the 2nd respondent.

8.It is admitted fact that the 1st respondent/petitioner has filed the above Election Petition in ELP.No.3 of 2016 seeking a declaration, declaring that the Election of the returned candidate namely the 1st respondent in the Election Petition from Avadi Legislative Assembly Constituency, Thiruvallur District on 16.05.2016, in which result have been declared on 19.05.2016 as void.

9.As per Section 82 of Representation of Peoples Act, 1951, which provides for who shall be a party in the Election Petition and extracted the petition as mentioned supra. The Hon'ble Supreme Court in its judgments reported in **AIR 1982 SC 983** and **1991 SUPP (2) SCC 624** is made clear that the election dispute under the Representation of the Peoples Act, 1951, only those may be joined as respondents to an Election Petition who are mentioned in Section 82 and Section 86(4) of the Act and no others. Therefore, the Hon'ble Supreme Court has categorically says that the persons, who contest the Election and the returned candidates alone are the parties impleaded as parties in this case.

10. Apart from this, in one another Election Petition in ELP.No.13 of 2016 application in O.A.Nos.2, 20 and 21 of 2017 by order dated 17.07.2017, I considered that the Election Commission as well as the Returning Officer are not necessary parties in the said case, I categorically held in paragraph-23, 24 and 25 as follows:

"23. To support their case, the 1st respondent has produced a judgment in a case of ***Union of India v. Association for Democratic Reforms and another*** reported in ***(2002) 5 SCC 294***. The Hon'ble Supreme Court held that in Sections 33A, 33B in the Act by Act No.72 of 2002 with effect from 24.08.2002, it says that the Section 33A was required the candidate to furnish information under the Act or the Rules made thereunder together with his elaborating his submission, but the said judgment is not applicable to this present petition.

24. As per the provisions of Section 82 of the Representation of the People Act, 1951 and the orders of the Hon'ble Supreme Court reported in the above judgements cited supra produced by the learned counsel appearing for the petitioner, it is made clear that Section 82 of the Representation of the People Act, 1951, which

specifies the persons who are required to be joined as respondents to an election petition. Under this provision, the returned candidate alone is a necessary parties as the respondents and where relief for a declaration is claimed that the election petitioner, or any other candidate be duly elected, all the contesting candidates are necessary to be impleaded as respondents to the petition. Therefore, no other person or authority except as aforesaid is required to be impleaded as a respondent to an election petition under the Representation of the People Act, 1951. In the above circumstances, the Election Commission of India is not a necessary party to an election petition. Hence, only those may be joined as respondents from the election petition, who are mentioned in Sections 82 and 86(4) of the Representation of the People Act, 1951, the others are not necessary to add as a party in the election petition. Therefore, the Hon'ble Apex Court in the judgment rendered in the case of ***Jyoti Basu and others v. Debi Ghosal and others*** reported in ***(1982) 1 Supreme Court Cases 691***, in which it is clearly held that the concept of 'proper parties' is and must remain alien to an election dispute under the Representation of the People Act, 1951.

25.As per the provision under Section 82 of the Representation of the People Act and the orders of the Hon'ble Apex Court, it is my absolute view that the Election Officers are not necessary parties in the Election Petition. Accordingly, the petitioners, who are the respondents 2, 3 and 4 in the election petition are not necessary parties in the Election Petition No.13 of 2016 and the 4th respondent, who is the election officer can be examined in this election petition. Hence, these petitions in O.A.Nos.2, 20 and 21 of 2017 are to be allowed and the names of the petitioners/respondents 2, 3 and 4 in the election petition are directed to be struck off from the array of parties in the election petition."

11.Therefore, the respondents 21 and 22 in the Election Petition in ELP.No.3 of 2016 are not necessary parties in the Election Petition in ELP.No.3 of 2016 and the 22nd respondent, who is the Returning Officer can be examined in this Election Petition as witness. Hence, these petitions in O.A.Nos.297 and 298 of 2017 are to be allowed and the names of the petitioners/respondents 21 and 22 in Election Petition in ELP.No.3 of 2016 are directed to be strike off from the array of parties in the Election Petition.

12. In the result:

(a) both the applications in O.A.Nos.297 and 298 of 2017 in ELP.No.3 of 2016 are allowed;

(b) the respondents 21 and 22 in the Election Petition in ELP.No.3 of 2016 are strike off from the array of parties in the Election Petition in ELP.No.3 of 2016;

(c) the 1st respondent/petitioner in the Election Petition in ELP.No.3 of 2016 is at liberty to examine the 22nd respondent as witness in the Election Petition, if necessary.

13. Accordingly, both the petitions are allowed. There shall be no order as to costs.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 11TH DAY OF JULY 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.

cns.05/09/2017

O.A.Nos.297 & 298 of 2017

IN

ELP.NO.3 OF 2016

ORDER DATED: 11.07.2017

THE HON'BLE MR. JUSTICE

M.V.MURALIDARAN

FOR APPROVAL: 05/09/2017

APPROVED ON : 05/09/2017