

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 14TH DAY OF JULY 2017

THE HON'BLE MR. JUSTICE P.KALAIYARASAN

O.A. Nos.309 TO 312 of 2017

IN

Election Petition No. 10 of 2016

Elp.No.10 of 2016

S.Parthiban,
S/o.V.Sundaram,
Door No.70/183,
Old Mambalam Salai,
Saidapet,
Chennai 600 015.

... Petitioner/Applicant

-VS-

- 1.The Chief Election Commissioner,
Election Commission of India,
New Delhi.
- 2.The Chief Electoral Officer,
Tamil Nadu, Chennai 9.
- 3.The Chief Electoral Officer/District Collector,
Election Officer for Chennai District,
Chennai 1.
- 4.The Returning Officer,
No.23, Saidapet Assembly Constituency,
Saidapet, Chennai 15.
- 5.S.Elumalai,
Door No.39/20-A,
Poonamallee Road,
Ekkattuthaangal,
Chennai 600 032.
- 6.V.Kalidass,
Door No.17-A, 4th Cross Street,
New Colony, West Saidapet,
Chennai 600 015.

7. MA. Subramanian,
Door No. 7-1/4, Labour Colony,
Guindy, Chennai 600 032.
8. C. Ponnaiyan,
Door No. 66/67,
'Q' Block, Anna nagar,
Chennai 600 040.
9. S. Murugesan,
Door No. 309, Kanagam Pattu,
Muruganathal,
Arani Taluk,
Thiuvannamalai District.
10. T. R. Sahadevan,
Door No. 6/5, Baby Nagar,
First Main Road, VOC Street,
Velachery Main Road,
Chennai 600 032.
11. C. Thomas,
Door No. 139, 9th Street,
Kannigapuram,
Velachery Main Road,
Chennai 600 032.
12. M. Manoharan,
Door No. C-58, Chitra nagar,
Kotturpuram,
Chennai 600 085.
13. M. Vishnuram,
Door No. 9-D, No. 12,
Brown Stone Apartment,
Mahalingapuram,
Nungambakkam, Chennai 600 034.
14. V. Anand,
Door No. 8/9,
Ezhumalai Street,
Saidapet,
Chennai 600 015.
15. R. Kandasamy,
Door No. 56,
Periya Karumariamman Koil Street,
(Gandhi Mandabam Road)
Kottupuram, Chennai 600 113.

- 16.C.Gokularajan,
Door No.9/2, Ethiraj Street,
Pallipattu, Chennai 600 113.
- 17.E.Shankar,
Door No.6/14, Ilayaalwar Koil Street,
Saidapet, Chennai 600 015.
- 18.V.Chinnadurai,
Door No.41/51,
Visaka Thottam,
West Saidapet,
Chennai 600 015.
- 19.K.Subramani,
Door No.10-3/75,
Vathalakundu Arumugam Nagar 1st Street,
Arumbakkam,
Chennai 600 094.
- 20.M.Subramani,
Door No.56/32,
Kamala Nehru Nagar,
1st Street, Choolaimedu,
Chennai 600 094.
- 21.C.Soundarajan,
Door No.426, Paindiamman Koil Street,
Thiruvanmiyur,
Chennai 600 041.
- 22.P.Meena,
Door No.31/84,
Labour Colony,
Guindy, Chennai 600 032.
- 23.N.Mohana,
Door No.57/125,
Labour Colony,
Guindy, Chennai 600 032.
- 24.T.Rajasekar,
Door No.12, 18th Street,
Rajalakshmi Nagar,
Pallikaranai,
Chennai 600 100.

25.S.Vishnu,
 'J' Apartment, Ground Floor,
 "D", 23 Hospital Street,
 Kaveri Nagar,
 T.Nagar, Chennai 600 017. ... Respondents/Respondents

OA.Nos.309 to 312 of 2017

- 1.The Chief Election Commissioner,
 Election Commission of India,
 Nirvachan Sadan, Ashoka Road,
 New Delhi 110 001.
 - 2.The Chief Electoral Officer,
 Tamil Nadu, Chennai 9.
 - 3.The Chief Electoral Officer/District Collector,
 Election Officer for Chennai District,
 Chennai 1.
 - 4.The Returning Officer,
 No.23, Saidapet Assembly Constituency,
 Saidapet, Chennai 15.
- ... Applicants/Respondents 1 to 4

Vs

- 1.S.Parthiban,
 S/o.V.Sundaram,
 Door No.70/183,
 Old Mambalam Salai,
 Saidapet, Chennai 600 015. ... Respondent/Petitioner
- 2.S.Elumalai,
 Door No.39/20-A,
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Kaveri Nagar,
T.Nagar, Chennai 600 017. ... Respondents/Respondents

The Original Application No.309 of 2017 praying that
this Hon'ble Court be pleased to strike off the 1st
respondent as a respondent in the Election Petition No.10
of 2016.

The Original Application No.310 of 2017 praying that this Hon'ble Court be pleased to strike off the 2nd respondent as a respondent in the Election Petition No.10 of 2016.

The Original Application No.311 of 2017 praying that this Hon'ble Court be pleased to strike off the 3rd respondent as a respondent in the Election Petition No.10 of 2016.

The Original Application No.312 of 2017 praying that this Hon'ble Court be pleased to strike off the 4th respondent as a respondent in the Election Petition No.10 of 2016.

The above Original Applications coming on this day before this Court for hearing in the presence of Mr.Niranjan Rajagopalan for M/s.G.R.Associates, Advocates for the Applicants/respondents 2 to 4 in all Original Applications, Mr.A.Ilayaperumal, Advocate for the 1st respondent/Election Petitioner in all Original Applications and Mr.Richardson Wilson for M/s.Wilson Associates, advocate for the 4th respondent/R7 in all Original applications and upon reading the Judges Summons and common affidavit of Rajesh Lakhoni filed in all Original Applications and the Common Counter affidavit of S.Parthiban filed herein, **This Court made the following order:**

These four applications have been filed under XIV Rule 8 of Madras High Court Original Side Rules r/w Order 6 Rule

16 of Civil Procedure Code, seeking to strike out the respondents 1,2,3 and 4 in the EL.P.No.10 of 2016.

2. It is averred in the applications that Election Petition has been filed to declare the election of the returned candidate, namely the seventh respondent herein from No.23, Saidapet Assembly Constituency, Tamil Nadu, held on 16.05.2016, in which results have been declared on 19.05.2016 as void.

3. Section 82 and 86 (4) of the Representation of the People Act, 1951 provide that only candidates who contested the election are to be arrayed as parties and no others. Therefore, the applicants who are arrayed as respondent Nos.1 to 4 in the Election Petition are not necessary parties to the proceedings and therefore, the respondents 1 to 4 in the Election Petition are to be struck off.

4. The first respondent / Election Petitioner in his counter contends that the declared candidate who is the fourth respondent has filed nomination on 27.04.2016 at 11.05 a.m along with Form 2B and in the said Form 2B he strikes down page No.2 and 3. Again on 29.04.2016 at 1.45 p.m, he again submitted another Form 2B and the same was received by the Returning Officer. The receipt of another Form 2B by the Returning Officer is prohibited under law. Hence, the presence of the applicants are required in the

petition. The affidavits and Form 26 should be properly attested by Notary Public. The attestation of the fourth respondent from a notary of Kancheepuram District in Form 26 is not proper and hence, the nomination papers of the fourth respondent is liable to be rejected. These aspects can be proved through the evidence of applicants only.

5. The Election Petition is to declare that the election of the returned candidate from No.23, Saidapet Assembly Constituency, Tamil Nadu held on 16.05.2016 in which results are declared on 19.05.2016 as void alleging that the returned candidate has suppressed every personal details and filed nomination by giving false information.

6. The Chief Election Commissioner, the Chief Electoral Officer, the District Election Officer / Collector and the Returning Officer / Revenue Divisional Officer have been arrayed as respondents 1 to 4 along with the returned candidate and others as respondents.

7. Section 82 of the Representation of the people Act, 1951 reads thus :

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

(a) where the petitioner, in addition to claiming 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."

8. Section 86 (4) reads as follows :

"86. Trial of election petitions -

(4) 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."

9. The learned counsel appearing for the applicants contend by citing the above provisions that the persons mentioned in the above sections only are to be arrayed as respondents and no others including the Chief Election Commissioner can be arrayed as respondents. To support the contention, the learned counsel appearing for the applicants cited the following Judgments of the Hon'ble Supreme Court.

(a) *Jyoti Basu v. Debi Ghosal*, (1982) 1 SCC 691

(b) *B.Sundara Rami Reddy v. Election Commission of India*, 1991 Supp (2) SCC 624

10. In ***Jyoti Basu v. Debi Ghoshal***, reported in (1982) 1

SCC 691, it has been held by the Hon'ble Supreme Court as follows:

"Sec. 82 is headed "Parties to the petition" and clause (a) provides that the petitioner shall join as respondents to the petition the returned candidates if the relief claimed is confined to a declaration that the election of all or any of the returned candidates is void and all the contesting candidates if a further declaration is sought that he himself or any other candidate has been duly elected. Clause (b) of Sec. 82 requires the petitioner to join as respondent any other candidate against whom allegations of any corrupt practice are made in the petition. Sec. 86 (4) enables any candidate not already a respondent to be joined as a respondent. There is no other provision dealing with question as to who may be joined as respondents. It is significant that while clause (b) of Sec. 82 obliges the petitioner to join as a respondent any candidate against whom allegations of any corrupt practice are made in the petition, it does not oblige the petitioner to join as a respondent any other person against whom allegations of any corrupt practice are made. It is equally significant that while any candidate not already a respondent may seek and, if he so seeks, is entitled to be joined as a respondent under Sec. 86 (4), any other person cannot, under that provision seek to be joined as respondent, even if allegations

of any corrupt practice are made against him. It is clear that the contest of the election petition is designed to be confined to the candidates at the election. All others are excluded. The ring is closed to all except the petitioner and the candidates at the election. If such is the design of the statute, how can the notion of 'proper parties' enter the picture at all ? We think that the concept of 'proper parties' 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 Sec. 82 and Sec. 86 (4) and no others. However desirable and expedient it may appear to be, none else shall be joined as respondents."

11. In **B.Sundara Rami Reddy v. Election Commission of India** reported in **1991 Supp (2) SCC 624**, the Hon'ble Supreme Court, following Jyoti Basu's case has held 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."

12. It is very clear from Sections 82 and 86(4) and

also the Judgment of the Hon'ble Supreme Court cited by the learned counsel appearing for the applicants that only the candidates contested in the election may be arrayed as respondents, while making allegation of corruption against them and no others. Therefore, the applicants being the Chief Election Commissioner, the Chief Electoral Officer, the District Election Officer and the Returning Officer are not necessary parties to the Election Petition and therefore, they are to be struck off.

In fine, all these original applications are allowed and the applicants / respondents 1 to 4 in the Election Petition in EL.P.No.10 of 2016 are ordered to be struck off.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 14TH DAY OF JULY, 2017.

sd/- (i/c)
ASSISTANT REGISTRAR (O.S.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 - 19/07/2017

OA.NOS.309 to 312 OF 2017

in

ELP.NO.10 OF 2016

ORDER

DATED:14/07/2017

THE HON'BLE MR. JUSTICE

P.KALAIYARASAN

FOR APPROVAL:19/07/2017

APPROVED ON :19/07/2017