

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 9TH DAY OF FEBRUARY 2018

THE HON'BLE MR. JUSTICE P.VELMURUGAN

O.A NOS.649 TO 652 OF 2017
in
Election Petition No. 1 of 2017

Elp.No.1 of 2017

A.P.Geetha,
D/o.Perumal,
Door No.New No.89, Old No.100,
Vanniar Street (Otha Vadai Street)
Kodambakkam, Vadapalani,
Chennai 600 024. Petitioner

-VS-

- 1.The Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi.
- 2.The Chief Electoral officer,
Public (Elections) Department,
Government of Tamil nadu,
Secretariat, Fort St.George,
Chennai 600 009.
- 3.The District Electoral Officer cum
District Collector,
Karur District,
Karur.
- 4.The Returning Officer,
134, Aravakurichi Assembly Constituency,
Tahsildar office,
Aravakurichi Karur District.
- 5.Senthilbalaji V.
No.123, Rameswarpatti,
Manmangalam (PO),
Manmangalam Tk,
Karur District.

Ward No.19, Karur Town,
Karur District.

7.Prabhu S.

No.1, Kamaraj Nagar,
Aravakurichi,
Aravakurichi Taluk,
Karur District.

8.Muthu M.

No.25, Nh7 East Street,
Aravakurichi,
Aravakurichi Taluk,
Karur District.

9.Aravinth G.

91, Thalavapalayam West,
Punjai Thottaikurichi,
Manmangalam Taluk,
Karur District.

10.Chandran S.

New No.115, Old No.67,
Kamaraj Nagar, Pothanur,
Paramathi Velur Taluk,
Namakkal District.

11.Tamilcheran Sa.Su.

No.8/86, Pasupathipalayam,
Punnam (PO),
Aravakurichi,
Karur District.

12.Thekkamalai P.

1/158, Veeriyapatti,
Kaniyalampatti (Post),
Kadavur Taluk,
Karur District.

13.Baskaran M.

No.3/7B, Puthupalayam,
Nerur (Post)
Manmangalam Taluk,
Karur District.

14.Rajesh Kumar P.

4/432, Arangapalayam (PO)
Chinnadharapuram Via,
Aravakurichi Taluk,
Karur District.

15.Ashokkumar N.

Old No.64, New No.73,

Thirukattuthurai,
Nanjai Pugalur Post,
Manmangalam Taluk,
Karur District.

16.Kannan R.
No.32, Parasakthi Illam,
Dharapuram Road,
Aravakurichi,
Karur District.

17.Karthikeyan B.K.
No.39-A, Kamarah Road,
Karur, Karur District.

18.Krishnamoorthy S.
26/50, Narasimmapuram,
Middle Street,
Karur Town,
Karur District.

19.Sampath S.
No.12-2/12, Nanchappan Padithurai Street,
Karur, Karur District.

20.Sivakumar S.
No.1/292, Dheera Chinna malai Nagar,
Semmadai, Rameswarapatty,
Manmangalam Taluk,
Karur District.

21.Sivashanmugam M.
No.22, Tirupathi Layout,
Ward No.20, Karur,
Karur District.

22.Sukumaran N.
817, Erode Road,
Vellakovil Town,
Tirupur District.

23.Sundareswaran M
Door No.31C, Old Bazar Street,
Karur Taluk,
Karur District.

24.Senthil Kumar N.
No.4, Sree Illam, L.R.G.Colony,
Ward No.5, Andankoil East,
Karur District.

25.Selvaraj S.
Door No.8/71, Vedichipalayam,

Nerur South, Manmangalam Taluk,
Karur District.

26.Thangapandian R.
No.4/70, Rajaji Road,
palani, Dindugal District.

27.Dasaprakash K.
Door No.2/1, Mahalakshmi Garden,
Gandhigramam South,
Pasupathipalayam post,
Karur District.

28.Palanisamy K.
2/171, Merkur,
Manmangalam Taluk,
Karur District.

29.Palanisamy M.
Door No.6/69A, Sevanthipalayam,
Nanniyur Post,
Manmangalam Taluk,
Karur District.

30.Babu G.
No.44 D, Railway Colony,
Karur, Karur District.

31.Balasubramani K.
32 B, Othaiyur Road,
T.Selandipalayam,
Karur, Karur District.

32.Baskar P.
No.20/18, Mettupalayam,
Kadambankurichi Village,
East Tavuttupalayam Post,
Manmangalam Taluk,
Karur District.

33.Pitchaimuthu T.
No.3A, Muninathapuram,
Vettamangalam East,
Samangi Post,
Manmangalam Taluk,
Karur District.

34.Magudeeswaran K
Door No.41-H/5,
Anbu Nagar, 1st Street,
Rayanur, Karur, Karur District.

35.Mani C.
No.D24, Salaithottam,
Pugalur Sugar Factory post,
Manmangalam Taluk,
Karur District.

36.Manikandan M.
No.45, Muthaladampatti,
Thanthonimalai,
Karur, Karur District.

37.Manivannan S.
No.41, Anna Nagar 2nd Street,
Rayanoor,
Thoranakkaipatti Post,
Karur Karur District.

38.Muthukumar G.
No.10/2, Bharathidasan Nagar,
Thanthoni,
Karur, Karur District.

39.Ravi S.P.
20/11-B, Cinnandipatti,
Kalayapatty Post,
Kadavur Taluk,
Karur District.

40.Loganathan K.
New No.3/337, Sellandipalayam,
Somur Post,
Somur Village,
Karur District.

41.Vinothkumar N.
No.1, New Venkateshwara Nagar,
Thanthonimalai, Karur,
Karur District.

42.Jegan T.
No.6/C/1, Vivekanandha Nagar,
11th Cross, Sengunthapuram,
Karur, Karur District.

... Respondents

OA.Nos.649 TO 652 OF 2017

1.The Election Commissioner of India,
Niryachan Sadan,
Ashoka Road,
New Delhi.

2.The Chief Electoral officer,
Public (Elections) Department,
Government of Tamil Nadu,
Secretariat, Fort St.George,
Chennai 600 009.

3.The District Electoral Officer cum
District Collector,
Karur District,
Karur.

4.The Returning Officer,
134, Aravakurichi Assembly Constituency,
Tahsildar office,
Aravakurichi Karur District.

... Applicants/Respondents 1 to 4

1.A.P.Geetha,
D/o.Perumal,
Door No.New No.89, Old No.100,
Vanniar Street (Otha Vadai Street)
Kodambakkam, Vadapalani,
Chennai 600 024. ...1st Respondent/Election Petitioner

2.Senthilbalaji V.
No.123, Rameswarpatti,
Manmangalam (PO),
Manmangalam Tk,
Karur District.

3.Pallani Shamy K.C.,
No.5/2, Anna Salai,
Ward No.19, Karur Town,
Karur District.

4.Prabhu S.
No.1, Kamaraj Nagar,
Aravakurichi,
Aravakurichi Taluk,
Karur District.

5.Muthu M.
No.25, Nh7 East Street,
Aravakurichi,
Aravakurichi Taluk,
Karur District.

6.Aravinth G.
91, Thalavapalayam West,
Punjab Thottaikurichi,
Manmangalam Taluk.

Karur District.

- 7.Chandran S.
New No.115, Old No.67,
Kamaraj Nagar, Pothanur,
Paramathi Velur Taluk,
Namakkal District.
- 8.Tamilcheran Sa.Su.
No.8/86, Pasupathipalayam,
Punnam (PO),
Aravakurichi,
Karur District.
- 9.Thekkamalai P.
1/158, Veeriyapatti,
Kaniyalampatti (Post),
Kadavur Taluk,
Karur District.
- 10.Baskaran M.
No.3/7B, Puthupalayam,
Nerur (Post)
Manmangalam Taluk,
Karur District.
- 11.Rajesh Kumar P.
4/432, Arangapalayam (PO)
Chinnadharapuram Via,
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Karur District.
- 12.Ashokkumar N.
Old No.64, New No.73,
Thirukattuthurai,
Nanjai Pugalur Post,
Manmangalam Taluk,
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Ward No.5, Andankoil East,
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Door No.8/71, Vedichipalayam,
Nerur South, Manmangalam Taluk,
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23.Thangapandian R.
No.4/70, Rajaji Road,
palani, Dindugal District.

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No.20/18, mettupalayam,
Kadambankurichi Village,
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Manmangalam Taluk,
Karur District.

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No.3A, Muninathapuram,
Vettamangalam East,
Samangi Post,
Manmangalam Taluk,
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Thanthonimalai,
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No.10/2, Bharathidasan Nagar,
Thanthoni,
Karur, Karur District.

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Somur Post,
Somur Village,
Karur District.

38.Vinothkumar N.
No.1, New Venkateshwara Nagar,
Thanthonimalai, Karur,
Karur District.

39.Jegan T.
No.6/C/1, Vivekanandha Nagar,
11th Cross, Sengunthapuram,
Karur, Karur District.Respondents/Respondents

This Original Application No.649 of 2017 praying that this Hon'ble Court be pleased to strike off the 1st respondent as a respondent in a Election Petition No.1 of 2017.

This Original Application No.650 of 2017 praying that this Hon'ble Court be pleased to strike off the 2nd respondent as a respondent in a Election Petition No.1 of 2017.

This Original Application No.651 of 2017 praying that this Hon'ble Court be pleased to strike off the 3rd respondent as a respondent in a Election Petition No.1 of 2017.

This Original Application No.652 of 2017 praying that this Hon'ble Court be pleased to strike off the 4th respondent as a respondent in a Election Petition No.1 of

2017.

The above Original Applications coming on this day before this Court for hearing in the presence of Mr.Niranjana Rajagopalan, advocate for M/s.G.R.Associates, advocates for the Applicants/Respondents 1 to 4, Mr.T.S.Sivagnanasambandam, advocate for the 1st Respondent/Election Petitioner and Mr.N.C.Ashok kumar, advocate for the 2nd Respondent/5th Respondent in all applications and upon reading the Judges summons and affidavits of Rajesh Lakhoni filed in all applications and the counter affidavits of A.P.Geetha, filed in all applications, **The Court made the following order:**

The applicants in O.A.Nos.649 to 652 of 2017 are arrayed as Respondents 1 to 4 in ELP.No.1 of 2017

2. These applications are filed to strike out the respondents 1 to 4 in ELP.No.1 of 2017.

3. The learned counsel for the applicants would submit that these applicants in O.A.Nos.649 to 652 of 2017 are arrayed as respondent Nos.1 to 4 in the main Election Petition in ELP.No.1 of 2017 and they are officials. As per Section 82 of the Representation of the People's Act and Section 86 (4), these Officials shall not be arrayed as parties in the Election Petition and in support of his contention, he placed his reliance on the following

judgments of the Hon'ble Supreme Court :-

(i) Jyoti Basu and others Vs. Debi Ghosal and Others
reported in (1982) 1 SCC 691 and

(ii) B.Sundara Rami Reddy Vs. Election Commission of India and others reported in 1991 Supp (2) SCC 624.

4. The learned counsel for the respondents in all these applications and petitioner in the main Election Petition would submit that there are certain allegations levelled against these applicants/respondents 1 to 4 and without their presence, effective decision cannot be arrived. Therefore, further no prejudice would be caused to them, if they continue as the respondents. Therefore, respondents 1 to 4 need not be deleted from the Election Petition.

5. Heard the rival submissions made on both sides and considered the averments made in the applications and counter filed by the respondents and also the Election Petition.

6. Though there are certain allegations levelled in the Election Petition against these applicants/respondents 1 to 4 also, as contended by the learned counsel for the applicants, the Representation of People's Act, 1951 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 this regard, it is relevant to refer

Sections 82 and 86(4) of the Act. Section 82 of the Act reads as follows :

"(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."

Further the Section 86(4) of the Act reads as follows

:-

" 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."

7. On reading of the above Sections would go to show that Section 82 deals with, who shall be added as parties in the Election Petition and Section 86(4) deals with that if any of the contesting candidates have not been added as parties, they themselves can be impleaded as parties. In

these petitions, except these two Sections, none of the Sections deals about who can be arrayed as parties in the Election Petition.

8. At this juncture, it is necessary to extract the relevant portion of the judgment of the Hon'ble Supreme Court in the case of **Jyoti Basu and others Vs. Debi Ghosal and Others** reported in (1982) 1 SCC 691 which reads as follows:

"13. 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".

Further, in the case of **B.Sundara Rami Reddy Vs. Election Commission of India and others** reported in 1991 Supp (2) SCC 624 reads as follows:

4....." Only those may be joined as respondents to an electionn 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".

9. Therefore, in the light of the above decisions, I am of the view that these applicants/respondents 1 to 4 need not be arrayed as parties. Therefore, respondents 1 to 4 are liable to be deleted from the Election Petition.

10. In the result, all the applications are allowed. However, since there is an allegation against these applicants/respondents 1 to 4 and they have not denied the same that they are officials at that time, as and when necessary, they have to respond the summon, if court summon them for giving evidence.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 9th DAY OF FEBRUARY 2018.

sd/-

ASSISTANT REGISTRAR
Original Side - I

सत्यमेव जयते

//CERTIFIED TO BE TRUE COPY//

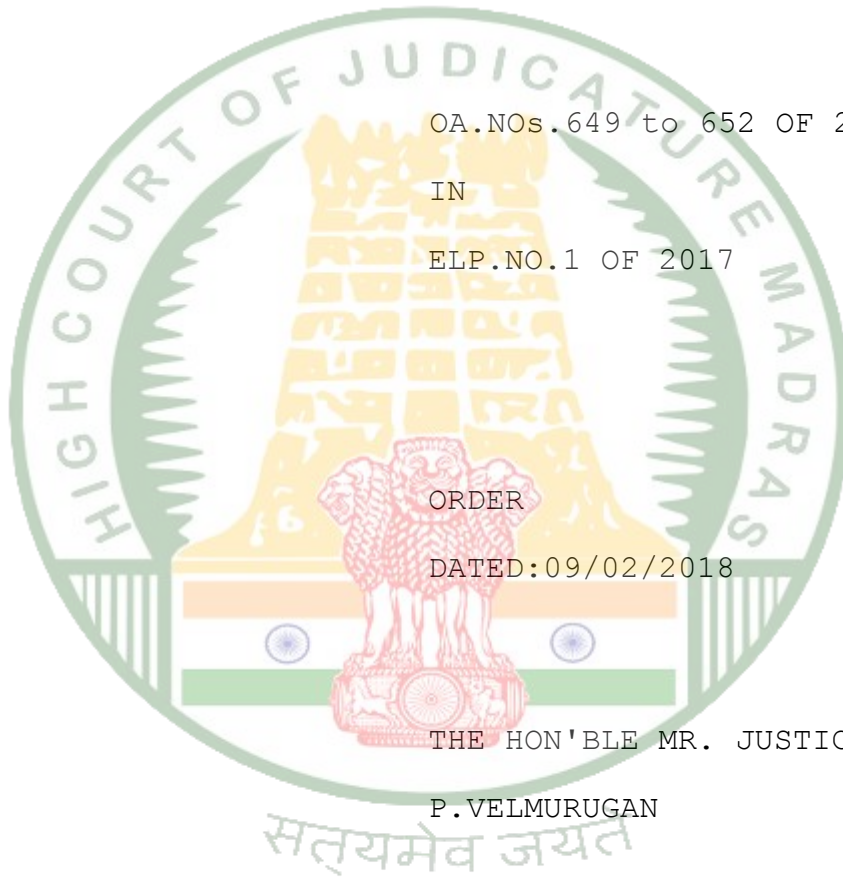
DATED THIS THE DAY OF 2018

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COURT OFFICER(OS)

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

cns - 05.04.2018



OA.NOs.649 to 652 OF 2017

IN

ELP.NO.1 OF 2017

ORDER

DATED:09/02/2018

THE HON'BLE MR. JUSTICE

P.VELMURUGAN

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FOR APPROVAL: 05/04/2018

APPROVED ON : 05/04/2018