

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.8110 of 2019
and
W.M.P.No.8700 of 2019

Mr.A.Ashok Anand ... Petitioner

Vs.

- 1.The Election Commission of India,
represented by its Chief Election Commissioner,
having his office at Nirvachan Sadan, Ashoka Road,
New Delhi-110001.
- 2.The Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-110001.
- 3.The Secretary,
Lt. Governor's Secretariat,
Government of Puducherry,
Raj Nivas, Puducherry - 605001.
- 4.The Government of Puducherry,
Represented by its Chief Secretary,
Puducherry-605001.
- 5.The Chief Election Officer,
Union Territory of Puducherry,
Having his office at Villanur Road,
Reddiarpalayam, Puducherry-605010.
- 6.The Secretary, Legislative Assembly,
Union Territory of Puducherry,
Puducherry.

.. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, issuance of a Writ of Prohibition, prohibiting the respondents No.1 or any one acting on his behalf from in any manner Notifying Bye-Election to No.9,

Thattanchavadi Assembly Constituency in the Union Territory of Puducherry or holding By-Election to the said constituency, in pursuant to the Notification issued by the Speaker of the Puducherry Assembly and the sixth respondent by publication in The Gazette of Puducherry, Part-1 Extraordinary NO.156 dated 8th November 2018, holding that the Petitioner is disqualified from being a member of the Puducherry Legislative Assembly from the date of conviction i.e.30th October 2018, passed by the learned Special Judge for Prevention of Corruption Act, 1988, (Principal District and Sessions Judge) Puducherry made in Special C.C.No.1 of 2008, till the validity of the question of the petitioner's disqualification is decided by Her Excellency, the Administrator/the Lt.Governor for the Union Territory or His Excellency The President of India in terms of Article 192 of the Constitution of India and Section 14(3) and (4) of the Government of Union Territories Act, 1963, in pursuant to the letter from Her Excellency, the Administrator/the Lt. Governor from the Union Territory to His Excellency The President of India in proceeding No.LGS/2019/5803/MLA-Disq. Dated 15th March 2019.

For Petitioner : Mr.J.Raja Kalifulla
Senior Counsel for
Mr.M.S.Govindarajan

For R1, R2 and R5 : Mr.Niranjan Rajagopal

For R3 : No appearance

For R4 : Mr.A.V.Ramalingam
Additional Govt. Pleader (Pondicherry)

For R6 : Mr.ARL.Sundaresan, Senior Counsel,
for Mr.D.RAvichandran
Additional Govt. Pleader (Pondicherry)

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioner who has been disqualified from being a Member of the Puducherry Legislative Assembly from the date of conviction dated 30.10.2018, passed by the learned Special Judge for Prevention of Corruption Act, 1988 (Principal District and Sessions Judge), Puducherry, made in Special C.C.No.1 of 2008 under Sections 13(1)(e) read with 13(2) of the Prevention of Corruption Act, 1988 read with Section 109 of Indian Penal Code under Section 8(1) of the Representation of People's Act, 1951, vide notification No.5154/2018/LA(Legn), dated 08.11.2018, issued by the Secretary to the Government, Legislative Assembly, Puducherry, has filed W.P.No.452 of 2019, on the following

grounds:-

“(a) The impugned Order passed by the Government of Puducherry, Legislative Assembly Secretariat, and published by the 5th and 6th Respondents in the Gazette of Puducherry, Part-1 Extraordinary No.156 dated 8th November 2018 disqualifying me from being a member of the Puducherry Legislative Assembly from the date of conviction i.e. 30th October 2018 under section 8 of the Representation of People Act 1951 Act (Act 43 of 1951) read with sub-clause (e) of clause (1) of Article 102 of the Constitution of India read with section 14(1) of the Government of Union Territories Act, 1963, is in Gross violation of the Principles of Natural Justice and not justifiable both in law and on facts. It is ab-initio void and illegal.

(b) The Respondents ought to have noted that neither Article 102 of the Constitution of India nor the provisions of The Prevention of Corruptions Act 1951 or Government of Union Territories Act 1963 has any application. The respondents have exceeded their jurisdiction in passing the impugned order for extraneous reasons and narrow political consideration, as the Petitioner is from the Opposition party.

(c) The Impugned order passed by the 5th and 6th. Respondent is wholly without Jurisdiction and not maintainable both in law and on facts.

(d) The respondents 5 and 6 have passed the Impugned order on 08.11.2018, within 8 days of the Judgment passed in the Criminal case convicting the Petitioner for offence under section 109 r/w section 13(1)(e) r/w 13(2) of P.C. Act and sentenced to one year R.I. and to pay a fine of Rs.1,00,000/- and in default to undergo R.I for three months. This order is passed without any notice to me or considering the Judgment passed in the Criminal case in Spl. C.C. No.1 of 2008 in proper perspective or the provisions of The Prevention (Corruptions Act 1951 or Government of Union Territories Act 1963.

(e) The respondents ought-to have referred the matter to His Excellency the President of India under section 14(3) of The Government of Union Territories Act 1963, before passing the impugned order.

(f) The respondents have passed the impugned order within 8 days without considering the fact that I have filed Appeal in C.A. No.724 of 2018, before this Hon'ble High Court and the Hon'ble High Court was pleased to admit the Appeal and after notice to the respondent in the Appeal was pleased to pass an order suspending the sentence imposed as against me till the disposal of the Appeal by order dated 26.11.2018 in

Crl.M.P. No.15301 of 2018. I have also filed Crl.M.P. No.15303 of 2018 and Crl.M.P. No.15762 of 2018 to stay the order of attachment and to stay the conviction passed in C.A. No.724 of 2018 respectively. Notice is ordered in these petitions and the same is pending adjudication.

(g) The respondents ought to have noted that the charge framed against the Petitioner, 2nd. Accused in Spl.C.C. No. 1/2008 is for offence under section 109 r/w section 13(1)(e) r/w 13(2) of P.C. Act. The finding against the Petitioner is that he had abetted his father, the First Accused in accumulating wealth disproportionate to his known source of Income.

(h) The Respondents failed to consider the circumstances as referred to by the learned Judge, which amounts to abetment in para 155 of the Judgment, to hold the Petitioner guilty. None of the circumstances can be construed as "Abetment" as set out under section 107 I.P.C.

(i) The respondents ought to have noted that my conviction for one year R.I., is under section 109 I.P.C r/w section 13(1)(e) r/w section 13(2) of the Prevention of corruption Act. The allegation against me is for abetment under section 109 of I.P.C., which is a separate and distinct offence and not under the provisions of the Prevention of Corruption Act. The order passed by respondents 5 and 6 disqualifying me from being a member of the Puducherry Legislative Assembly from the date of conviction I.e. 30th. October 2018, is ex-facie illegal and without jurisdiction.

(j) The respondents ought to have noted that there is no express provision providing for punishment for abetment of offence under section 13 of P.C. Act. In such circumstances under the provisions of Section 8(3) of The Representation of Peoples Act 1951, the elected member can be disqualified only if his conviction is for two years and above. The impugned order passed against me is ab-initio void and illegal.

(k) The respondents ought to have noted that the learned Special Judge for Prevention of Corruption Act 1988 (Principal Districts & Sessions Judge) Puducherry has framed the charge against me, as referred to in para 2 at page 2 of the Judgment for offence under section 109 I.P.C. r/w Section 13 (2) and 13(1)(e) of the P.C. Act 1988. The finding against me in para 155 is also on abetment as set out in concluding Para 165 and 167 at page 86 and 87 of the Judgment. The learned Judge has observed

as follows:-

Para 165 " There is no specific punishment for abetment under the Prevention of Corruption Act, thereby as per dictum laid down by the Hon'ble Supreme Court in Nallammal Case; conviction can be made under section 109 I.P.C. In this case A-2 (Petitioner) has abetted A-1 for the commission of the offence u/s 13 (1)(e) of P.C. Act 1988 thereby we have to punish the accused as per section 109 I.P.C. Since there is no specific provision of punishment we have to invoke for punishment the provisions of section 13(1)(e) of P.C. Act 1988.

Para 167..... The 2nd Accused (Petitioner) is sentenced to undergo R.I. for one year u/s 13(1)(e) r/w 13(2) r/w 109 of I.P.C. and to pay a fine of Rs.1,00,000/- (Rupees One Lakh only) an default to undergo R.I. for three months ".

Having observed as above the learned erred in convicting and sentencing me erroneously u/s 13(1)(e) r/w 13(2) r/w 109 of I.P.C. The conviction even, if the allegations are true, can be only under section 109 I.P.C. r/w Section 13 (2) and 13(1)(e) of the P.C. Act 1988. This erroneous approach has been misconstrued by the respondents 5 and 6 in passing the impugned order and disqualifying me from continuing as Member of Puducherry Legislative Assembly.

(1) The respondents 5 and 6 have passed the impugned order under section 8 of the Representation of People Act 1951 (Act 43 of 1951) read with sub-clause (e) of clause (1) of Article 102 of the Constitution of India read with section 14(1) of the Government of Union Territories Act, 1963.

Section 8(1) of the Prevention of Corruption Act has no Application as my conviction is only under section 109 of I.P.C. r/w section 13(1)(e) r/w 13(2) of P.C. Act. Since my conviction and sentence is only for One year, section 8(3) of the Act also cannot be invoked. Without considering the said legal position the impugned order has been passed disqualifying me from continuing as Member of the Legislative Assembly.

(m) The respondents ought to have noted that under Section 14(3) of the Government of Union Territories Act, 1963, If any question arises as to whether a member of the Legislative Assembly of the Union Territory has become disqualified for being such a member, the question shall be referred for the decision of the President and his decision shall be final.

Without following the Mandatory provision of this

Act, the respondents 5 and 6 have passed this order, due to extraneous and narrow political consideration.

(n) The respondents ought to have noted that In respect of Union Territories the Administrator is the Lt. Governor, and the impugned order passed by respondents 5 and 6 is wholly without jurisdiction and beyond the powers vested in them.

(o) The respondents ought to have noted that the during the check period from 1st January 1997 to 7 th January 2006, the Petitioner was neither in any Public service nor was he a member of the Legislative Assembly."

2. Notification dated 08.11.2018 disqualifying the petitioner, reads thus:-

"Government of Puducherry
LEGISLATIVE ASSEMBLY SECRETARIAT
No.5154/2018/LA(Legn.).
Puducherry, the 8th November
2018.

NOTIFICATION

VACANCY OF SEAT IN THE UNION TERRITORY OF PUDUCHERRY
DUE TO DISQUALIFICATION UNDER SUB-CLAUSE (e) OF CLAUSE
(1) OF ARTICLE 102 OF CONSTITUTION OF INDIA READ WITH
SECTION 14(1) OF THE GOVERNMENT OF UNION TERRITORIES
ACT, 1963

Whereas, Thiru Ashok Anand, Elected Member of the Puducherry Legislative Assembly from 9-Thattanchavady Assembly Constituency has been convicted under clause (e) of sub-section 9(1) of Section 13 read with sub-section (2) of Section 13 of the Prevention of Corruption Act, 1988 read with section 109 of Indian Penal Code by the Hon'ble Court of the Special Judge (Principal Sessions Judge), Puducherry in Spl.C.C.No.1/2008 on the 30th October, 2018 followed by an award of sentence of one year rigorous imprisonment alongwith a fine of Rupees One lakh (in default to undergo further rigorous imprisonment for three months) and confiscation of the property to the State for the disproportionate wealth value to the tune of Rs.1,74,36,839.

2. And whereas, the existing provisions contained in section 8 of the Representation of the People Act,

1951 (Act 43 of 1951) readwith sub-clause (e) of clause (1) of Article 102 of the Constitution of India readwith section 14 (1) of the Government of Union Territories Act, 1963 provide for disqualification of a person convicted for offences referred to in the said sections;

3. An whereas, consequent upon the conviction of Thiru. Ashok Anand, Member of the Puducherry Assembly, he stands disqualified for being a Member of the Puducherry Legislative Assembly from the date of conviction i.e., the 30th October, 2018 for the period of his sentence and shall continue to be disqualified for a further period of six years since his release in terms of the existing provisions contained in Section 8 of the Representation of the People Act, 1951 (Act 43 of 1951);

4. Now, therefore, I, Speaker of the said Assembly for the reasons stated above, hereby declare that in accordance with sub-clause (e) of clause (1) of Article 102 of the Constitution of India readwith section 14(1) of the Government of Union Territories Act, 1963, the seat of Thiru. Ashok Anand, Member of the Puducherry Legislative Assembly representing 9- Thattanchavady Assembly Constituency shall be deemed to have become vacant from the date of his conviction i.e., the 30th October, 2018.

Puducherry,
VE.VAITHILINGAM,

8th November, 2018.

Speaker

A.VINCENT RAYAR,

Secretary,

Legislative Assembly,"

3. Pending disposal of the W.P.No.452 of 2019 in W.M.P.No.474 of 2019, petitioner has sought for an interim injunction, restraining the respondents, their men, agents and subordinates or any one acting on their behalf, from holding bye-election to No.9-Thattanchavady Assembly Constituency in Puducherry by declaring the seat as vacant in pursuant to the order passed by the respondents 5 and 6 by publication in the Gazette of Puducherry, Part-1 Extraordinary No.156 dated 8th November 2018, under Section 8 of the Representation of People

Act, 1951 (Act 43 of 1951) read with sub-clause (e) of clause (1) of Article 102 of the Constitution of India read with section 14(1) of the Government of Union Territories Act, 1963 disqualifying the petitioner from being a member of the Puducherry Legislative Assembly from the date of conviction i.e.30th October 2018, in Spl. C.C.No.1/2008 on the file of the learned Special Judge for Prevention of Corruption Act, 1988 (Principal District and Session Judge), Puducherry till the disposal of the writ petition.

4. Citing the very same grounds raised in W.P.No.452 of 2019 on 04.02.2019, the petitioner has sent a representation, dated 04.02.2019, to the Election Commission of India, Chief Election Commissioner, New Delhi, with a prayer, as hereunder:-

"In the above circumstance, I submit to state that, if any action is proposed to be taken for conducting By-poll Election at 09-Thattanchavady Legislative Constituency, Union Territory of Puducherry in 2019 subsequent to the Gazette Notification issued by the Secretary, Legislative Assembly of Puducherry, Government of Puducherry and any request made from the Government of PUducherry may please be reconsidered and requested to take any decision after the pronouncement of order in SLP (Crl.) No.798-799 of 2019 by the Supreme Court of India as well as after hearing my representation and render justice since if any damages done it cannot be undone."

5. Again, the petitioner has sent representation dated 26.02.2019 to the Election Commission of India, Chief Election Commissioner, New Delhi, with a prayer, as hereunder:-

"In view of above-stated submissions, I humbly pray that in light of the Final Order passed by the Hon'ble Supreme Court of India in SLP (Crl.) No.798-799 of 2019, the Commission may be pleased to reconsider legal submissions while taking a decision on conducting By-poll Election at 09-Thattanchavady Legislative Constituency, Union Territory of Puducherry in 2019 subsequent to Impugned Notification or in the alternative, keep such decision in abeyance till the final disposal of the writ petition and appeal pending adjudication before the Hon'ble Madras High Court and render justice as damage done cannot be undone in present facts and circumstances of the matter."

6. Yet another representation dated 01.03.2019, has been sent on the very same lines.

7. When the petitioner vide letter dated 15.03.2019, has sought for information relating to the action taken report on the representation, Private Secretary to the Lieutenant Governor-cum-Public Information Officer, Government of Puducherry, Lt. Governor's Secretariat, in his reply dated 16.03.2019, has stated that the representation, dated 15.03.2019, has been forwarded to Hon'ble President of India and Ministry of Home Affairs, Government of India, Vide No.LGS/2019/5803/MLA-DISQ, dated 15.03.2019. Letter dated 15.03.2019 of the Lieutenant Governor, Pondicherry, addressed to the President of India, New Delhi, is reproduced:-

Dr. Kiran Bedi Raj Nivas
Lieutenant Governor Pondicherry-605
001

No.LGS/2009/5803/MLA- DISQ. March 15,
2019

Respected President,

I am to forward herewith the representation of Shri Ashok Anand, farmer MLA, received on 13th March 2019, raising question on his disqualification made pursuant to his conviction for offence u/s. 13(1)(e) r/2 13(2) of PC Act r/w 109 of IPC under Section 8(1) of Representation of People's Act, 1951.

Hon'ble Speaker, Puducherry Legislative Assembly passed the orders of his disqualification w.e.f the date of his conviction i.e., 30th Oct 2018, declaring No.9 Thattanchavady Assembly constituency deemed to be vacant from the said date. The disqualification order was notified in Gazette Extraordinary No. 156, dated 8th Nov 2018.

Shri Ashok Anand, has contended that the sentence of punishment for abetment of offence falls under the domain of IPC and not under Prevention of Corruption Act, 1988. Citing Hon'ble Supreme Court judgment in Thomas vs. Union of India in WP No. 490 of 2005 that filling of the seat which falls vacant may await the decision of the President or the Governor under Art 103 and 192 respectively of the constitution, he has made a request to defer the by-elections announced by Election Commission of India to No.9 Thattanchavady Assembly Constituency from where he was elected in the last two elections.

I am to state that as per the schedule of polls, the statutory notification for the by-election will be issued on 19th March 2018 for the polls to be held on

18th April 2018 along with Parliament Elections to Puducherry Parliamentary Constituency.

In as much as, question if any arises, as to whether a Member of the Legislative of the Union Territory has become disqualified, has to be referred for the decision of the President under Section 14(3) of Government of Union Territories Act, 1963, the representation is forwarded, as such, with enclosures.

With kind regards.

Yours sincerely
Sd/-
DR. KIRAN BEDI"

End: As above

To

Shri Ram Nath Kovind
Hon'ble President of India,
Rashtrapathi Bhavan,
NEW DELHI 110 001

Copy to

Shri Rajiv Gauba
Union Home Secretary,
Ministry of Home Affairs,
North Block,
NEW DELHI 110 001

DR.KIRAN BEDI
LT. GOVERNOR"

8. For brevity, reply letter dated 16.03.2019, is reproduced:-

GOVERNMENT OF PUDUCHERRY
LT. GOVERNOR'S SECRETARIAT

Raj Nivas
Pondicherry 605 001
Phone : 0413 2332301
Fax : 0413 2334025

No. LGS/RTI/(20-19/2019

16.03.2019

To

Thiru. Ashok Anand,
No.6, Third Main Road,
Awai Nagar, Lawspet,
Puducherry 605 008.

Sir,

SUB: LGS -RTI Application from Thiru. Ashok Anand,

seeking Information relating to action taken report on the representation

REF: Your RTI application dated 15.03.2019 .

Please refer to your RTI application seeking Information relating to action taken report on the representation dated 15.03.2019.

2. Your representation dt. 15.03.2019 has been forwarded to Hon'ble President of India and Ministry of Home Affairs, Govt. of India vide No.LGS/2019/5803/MLA-DISQ dt. 15.03.2019. Copy of the related correspondence available in this office runs into 2 pages may be obtained from this office by payment of Rs.4/- @ Rs.2/- per page.

3. First Appeal, if any, may be filed before the Addl. Secretary to Lt. Governor, Raj Nivas, Puducherry.

Yours faithfully.

PRIVATE SECRETARY TO LT. GOVERNOR
-CUM-PUBLIC INFORMATION

OFFICER"

9. Placing reliance on paragraph No.31 of the Judgment of the Hon'ble Supreme Court in Lily Thomas vs. Union of India and others, reported in (2013) 7 SCC 653, and Section 14(3) of the Government of Union Territories Act, 1963, Mr.J.Raja Kalifulla, learned Senior Counsel for the petitioner submitted that unless the President or the Governor, as the case may be, takes a decision, as to whether the seat, which remains vacant, consequent to the petitioner's disqualification, should be filled up or not, Election Commissioner, has no authority to issue any notification.

10. It is also the contention of the petitioner that conviction is not for the offence under Section 109 Indian Penal Code and therefore disqualification, under Section 8 of the Representation of the People Act, 1951, is not attracted.

11. Mr.Niranjan Rajagopal, learned counsel appearing for the Election Commission of India, New Delhi, /first respondent herein, submitted that when W.P.No.452 of 2019, was argued at length before another Hon'ble Division Bench, the prayer for injunction, stated supra, was urged, but the Hon'ble Division Bench, was not inclined to grant the same.

12. He further submitted that instant writ petition, is nothing but an abuse of process of law, because the prayer

sought for, by way of an interim order in W.P.No.452 of 2019 before another Hon'ble Division Bench, has now become the main prayer in this writ petition.

13. Mr.Niranjan Rajagopal, learned counsel appearing for the Election Commission of India, submitted that all the grounds raised in the instant W.P.No.8110 of 2019 were argued in W.P.No.452 of 2019, written notes were submitted in W.P.No.452 of 2019 and that the same are extracted hereunder:-

"Note on Submissions of Mr. Niranjan Rajagopalan

1. It is submitted that the impugned notification issued of vacancy of Thattanchavady seat in the Union Territory of Puducherry, is passed by the Speaker of the assembly and the Secretary of the Legislative Assembly is the appropriate authority to defend the matter. The role of the Election Commission of India comes into play only on notification of such vacancy, on which bye-elections to the concerned legislative assembly is to be conducted before the period of six months as per Section 151A of the Representation of Peoples Act, 1951. However as the issues raised in the Writ Petition are intrinsic to election laws, more specifically the Representation of People's Act, 1951, the following submissions are made with regard to the position of law.

A. Challenge to orders of disqualification and the role of Election Commission of India - as laid down in Election Commission of India vs Bajrang Bahadur Singh in (2015) 12 SCC 570.

2. It is submitted that the aforesaid case arose pursuant to the order of disqualification made by the Governor of Uttar Pradesh under Article 192(1) of the Constitution of India on the ground that the member entered into contracts with the State during his holding of office as a member of the Legislative Assembly. While the elections were notified on declaring that the seats as vacant, the petitioner therein filed a Writ Petition challenging the Governor's order of disqualification before the Allahabad High Court and an interim order was passed in his favor staying the election process. The Election Commission of India filed an appeal against the same before the Supreme Court. In this context, the Supreme Court dealt with the question, considering the right of the disqualified MLA to challenge the order vis-a-vis the obligation of the Election Commission to conduct elections within 6 months as per Section 151 A, what would be the course of action to adopt. In the aforesaid process, the Hon'ble Supreme

Court has also discussed the nature and occurrence of disqualifications as contemplated under various provisions. The concluding portion is extracted below:

"65. The question, therefore, is as to how to reconcile the two apparently conflicting constitutional obligations, (i) of the High Court to adjudicate the dispute regarding the legality of the Governor's decision under Article 192, and (ii) the Commission's obligation to hold the election within a period of six months from the date of occurrence of the vacancy.

66. Unfortunately, there is no period of limitation prescribed by law within which a person aggrieved by the decision of the Governor under Article 192 can approach the High Court. Until such law is made, we deem it appropriate to hold that any person aggrieved by a decision of the Governor under Article 192 must approach the High Court by initiating appropriate proceedings (if he is so desirous) within a period of eight weeks from the date of the decision of the Governor.

67. Such proceedings must be heard by a Bench of at least two Judges and be disposed of within a period of eight weeks from the date of initiation without fail. The Chief Justice of the High Court concerned will make an appropriate arrangement in this regard. If the abovementioned time-frame is strictly followed, the Commission would still be left with another eight weeks of time to comply with the obligations emanating from Section 151-A of the RP Act.

4. As Article 102, Article 192 and Section 14(3) of the Government of Union Territories Act, 1963 are similar, the above said position of law would apply to present case and even to cases where Governors Order is not needed as enumerated in Issue C.

B. Whether conviction under section 109 of the Indian Penal Code, 1860 read with Sections 13(2) and 13(1)(e) of the Prevention of Corruption Act, 1988 is attracted under Section 8(1)(m) of the Representation of Peoples Act, 1951?

5. It is submitted that Article 102(1)(e) provides cases where a person shall stand disqualified under any provision of law made by the parliament. Section 8(1) of Representation of Peoples Act provides for disqualification on being convicted for certain offences among which, in subsection (m), Prevention of Corruption Act, 1988 is stated. Unlike subsection 2 of

Section 8, where disqualification occurs only on being sentenced for a particular period or more, in case of subsection (1), mere conviction is sufficient. This also indicates that the legislature views the offences provided under Section 8(1) as more serious in context of elections.

6. The original provisions of Prevention of Corruption Act 1988 were such that the abetment of the offences under Section 13 did not have a specific provision for punishment. In this context, the Hon'ble Supreme Court in (1999) 6 SCC 559 in Nallammal case held that abetment of offences under Prevention of Corruption Act though punishable under 109 of IPC is to be tried under Prevention of Corruption Act 1988. Only relying upon the aforesaid judgment did the trial court convict and sentence the petitioner under Section 109 of IPC read with Section 13(1) read with Section 13(2) of Prevention of Corruption Act.

7. It is submitted that a conviction and sentencing under Section 109 of IPC read with the provisions of Prevention of Corruption Act is in essence a conviction for offence under the Prevention of Corruption Act and without the penal provision under the Prevention of Corruption Act, abetment by itself does not have any existence. It is further submitted that the intention behind the provision under Section 8 to include certain offences under the category for disqualification on mere conviction is to ensure clean candidates in elections. If it is to be argued that committing an offence under the Prevention of Corruption Act will incur disqualification, however abetting the same will not, the same will defeat the purpose of the provision. The catena of decisions in of the Hon'ble Supreme Court in Lily Thomas, Association of Democratic Reforms and PUCL shows the importance of clean candidates as essence of democracy.

8. The contentions of the Petitioner as to the appropriateness of the conviction of the criminal court has to be made only in the criminal appeal and cannot be advanced in the instant Writ Petition.

9. It is pertinent to however note that Section 12 has been amended in 2018 by the Parliament to include abetment of all offences under the Prevention of Corruption Act 1988.
Section 12 of PCA: (pre amendment)

10. Punishment for abetment of offences defined in Section 7 or 11.

Whoever abets any offence punishable under Section 7 or Section 11 whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than six months but which may extend to five years and shall also be liable to fine.

Section 12 of PCA: (post amendment)

12. Punishment for abetment of offences.

Whoever abets any offence punishable under this Act, whether or not that offence is committed in consequence of that abetment, shall be punishable with imprisonment for a term which shall be not less than three years, but which may extend to seven years and shall also be liable to fine.

C. Whether question pertaining to disqualification under Section 8(1)(m) is necessitated to be referred to the President of India under Section 14(3) of Government of Union Territories Act, 1963 or under Article 102 or under Article 191 of Constitution?

11. It is submitted that, there are various types of disqualifications that are enumerated under Art 102. Not all of them are required to be referred to be President or the Governor as in Art 192 for decision. Art 102 is extracted below for convenience.

102. Disqualification's for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament Explanation For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the

Government of any State by reason only that he is a Minister either for the Union or for such State.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

12. It is submitted that whether a person holds an office of profit or not is a question that has to be referred. However where a person is declared of unsound mind by a competent Court, no question arises for determination and the disqualification is by operation of law. Thus there are 2 categories of disqualification, one by decision of the President/Governor, the other by operation of law. While the former is a case where, a question arises for determination, the latter, there is no such question arising and hence no requirement for referral.

13. Similarly when a person is convicted for an offence that is mentioned under Section 8 of the Representation of People Act 1951, the disqualification is automatic by operation of law, and there is no question arising for referral. It is submitted that where there is an order of Court convicting a person for corrupt practice as in an Election Petition under Section 100, the same position applies. Any interpretation requiring referral to the President in these cases will defeat the object of the Representation of Peoples Act 1951. A conjoint reading of Section 8 as well as Section 151-A, only supports the interpretation that, once the conviction occurs, disqualification is automatic and Election has to be conducted within 6 months. It is submitted that, vacancy arises on conviction and such vancancy is not curable. It is submitted that the present case arising under Section 14(3) of the Government of Union Territories Act 1963, being a similar provision the same principle would apply. It is submitted that paragraph 31 of Lily Thomas case, deals with only case of disqualification pursuant to Order of Governor and does not apply to the present case."

14. Mr.ARL.Sundaresan, learned Senior Counsel for Mr.D.Ravichandran, learned Additional Government Pleader (Pondicherry) appearing for the Secretary, Legislative Assembly, Puducherry/sixth respondent, submitted that it is the second round of litigation.

15. All the learned counsel for the parties submitted that W.P.No.452 of 2019, is pending for orders.

16. Going through the averments and grounds made in W.P.No.452 of 2019, challenge to the Notification No.5154/2018/LA(Legn), dated 08.11.2018, and the averments and grounds in W.P.No.8110 of 2019, for a Writ of Prohibition, we find no difference in the pleadings.

17. Inasmuch as, Mr.J.Raja Kalifulla, learned Senior Counsel for the petitioner made emphasis on the reference, stated to have been made by the Lieutenant Governor, Pondicherry and orders have to be passed by the President, at the risk of repetition, we deem it fit to extract the relevant paragraphs from the letters written by the Lt. Governor, Government of Puducherry to the President of India:-

"I am to forward herewith the representation of Shri Ashok Anand, farmer MLA, received on 13th March 2019, raising question on his disqualification made pursuant to his conviction for offence u/s. 13(1)(e) r/2 13(2) of PC Act r/w 109 of IPC under Section 8(1) of Representation of People's Act, 1951."

18. Going through the material on record and that in particular, the letter of the Lieutenant Governor dated 15.03.2019 addressed to the President, we do not find that the Lieutenant Governor had formed any opinion and that there was any question, which arose to the Lt. Governor, Government of Puducherry, as to whether, the petitioner has become disqualified.

19. Opening sentence of the letter, dated 15.03.2019, makes it clear that the writ petitioner has made a representation, dated 13.03.2019, on his disqualification, pursuant the conviction for an offence under Section 8 of the Representation of the People Act, 1951. In letter dated 15.03.2019, the Lieutenant Governor, Pondicherry, has only summarised the contention of the writ petitioner. From the reading of the said letter, we cannot discern that the Lt. Governor had taken any decision, seeking for reference to the President under Section 14(3) of the Government of Union Territories Act, 1963 for decision. Lieutenant Governor, Government of Pondicherry, has only forwarded the petitioner's representation.

20. Contentions on merits, are stated to have been raised before the another Hon'ble Division Bench, and it would not be appropriate for this Bench, to delve into the same. Writ petition is dismissed. No Costs. Consequently the connected writ miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.Chief Election Commissioner,
Election Commission of India,
having his office at Nirvachan Sadan, Ashoka Road,
New Delhi-110001.
- 2.The Secretary,
Ministry of Home Affairs,
Government of India,
North Block, New Delhi-110001.
- 3.The Secretary,
Lt. Governor's Secretariat,
Government of Puducherry,
Raj Nivas, Puducherry - 605001.
- 4.The Government of Puducherry
Represented by its Chief Secretary,
Puducherry-605001.
- 5.The Chief Election Officer,
Union Territory of Puducherry,
Having his office at Villanur Road,
Reddiarpalayam, Puducherry-605010.
- 6.The Secretary, Legislative Assembly,
Union Territory of Puducherry,
Puducherry.

+1cc to Mr.M.S.Govindarajan, Advocate sr.no.25590

W.P.No.8110 of 2019
and
W.M.P.No.8700 of 2019

nr 19/03/2019