

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 19.03.2019

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THE HONOURABLE MR. JUSTICE K.RAVICHANDRABAABU

Election Petition No.5 of 2016

and

O.A.No.137 of 2019

Dr.K.Krishnasamy M.D.,
Founder-President,
PuthiyaTamilagam Party,
Candidate- 217 Ottapidaram (SC)
Assembly Constituency,
No.2/34, V.Gangadar Street,
Nungambakkam, Chennai – 600 034. Petitioner

Vs

1.Sundararaj.R

2.Arumuga Nainar.S

3.Santhana Kumar.A

4.Muthukrishnan.T

5.Murugaperumal.R

6.Poovani Murugan.B

7.Jeyaraman

8.Murugan.G

9.Balakrishnan.A

10.Paulraj.M

11.Perumal.V

12.The Returning Officer,
217, Ottapidaram (SC) Assembly
Constituency, Ottapidaram,
Thoothukudi District.

13. The District Election Officer/District Collector,
Thoothukudi,
Thoothukudi District.

... Respondents

(Respondents 12 and 13 struck off from the array of respondents in ELP 5 of 2016 as per Common Order dated 02.08.2017 made in O.A.Nos.576 and 577 of 2017 in ELP No.5 of 2016.)

PRAYER: Election Petition filed under Section 80, 81, 82, 83, 84, 100 and 101 of the Representation of People Act, 1951 R/W Rules 54, 54(A) of the Conduct of Election Rules 1961 and Rule 2 of Madras High Court Election Petitions Rules, 1967, as follows:

(i) Declare the election of the Returned candidate, namely, the first respondent herein from No.217 Ottapidaram (SC) Assembly Constituency (Tamil Nadu) in the election held on 16.05.2016 in which results have been declared on 19.05.2016 as null and void;

(ii) Ordering scrutiny of all the postal ballot papers including the declaration and order re-counting of all the postal ballot papers in comparison with the register maintained by the returning officer along with Form 12 received for such postal ballot papers;

(iii) Declare the 1st respondent as disqualified from contesting the election as per Sec.9A of the Representation of People Act, 1951.

(iv) Declare the petitioner as duly elected as a member of the Tamil Nadu Legislative Assembly from No.217 Ottapidaram Assembly Constituency (Tamil Nadu) in the election held on 16.05.2016 (in which results have been declared on 19.05.2016).

(v) Directing the 1st respondent to pay the costs of this election petition.

For Petitioner : Mr.J.Saravana Vel

For Respondents : Mr.N.C.Ashok Kumar for R1
R2 to R11- set ex-parte
R12 & R13 – Struck off

ORDER

This election petition is filed to declare the election of the Returned candidate viz., the first respondent herein from No.217 Ottapidaram (SC) Assembly Constituency (Tamil Nadu) in the election held on 16.05.2016 as null and void and for other reliefs.

2.The election petitioner subsequently filed Original Application No.137 of 2019 to grant leave to withdraw the above election petition with liberty and direction to the Election Commission to hold the election for the Ottapidaram Constituency for Tamilnadu Assembly to fill up the vacancy. The affidavit filed in support of the above application reads as follows:

"2. I state that the 1st respondent herein who is the successful candidate and whose election has been challenged in the above election petition has been disqualified from the membership of the Tamil Nadu Legislative Assembly by an order of the Speaker of the Assembly. The writ petition filed by the 1st respondent challenging the disqualification has been dismissed by this Hon'ble Court on 23.10.2018. To my knowledge the 1st respondent has not filed any appeal against the order of this Hon'ble Court confirming the disqualification of the 1st respondent from the membership of the Legislative Assembly. In such circumstances further proceedings in this Election Petition is rendered academic and the Election Commission of India, have

to declare the constituency as vacant. The Election Commission has to take steps to fill the vacancy and such bye election should be held within a period of 6 months from the date of occurrence of vacancy as per Part IX and X of the Representation of People Act, 1951. Hence it is just and necessary that leave may be granted to withdraw the above election petition with liberty. This leave is sought purely on the above said grounds."

3. Section 109 of the Representation of People Act, 1951 deals with withdrawal of election petition and Section 110 of the said Act deals with procedure for withdrawal of the election petition, which read as follows:

"109. Withdrawal of election petitions:- (1)

An election petition may be withdrawn only by leave of the High Court.

(2) *Where an application for withdrawal is made under Sub-Section (1), notice thereof fixing a date for the hearing of the application shall be given to all other parties to the petition and shall be published in the Official Gazette.*

110. Procedure for withdrawal of election petitions:- (1) *If there are more petitioners than one, no application to withdraw an election petition shall be made except with the consent of all the petitioners.*

(2) *No application for withdrawal shall be granted if, in the opinion of the High Court, such*

application has been induced by any bargain or consideration which ought not to be allowed.

(3) If the application is granted-

(a) the petitioner shall be ordered to pay the costs of the respondents there to fore incurred or such portion thereof as the High Court may think fit;

(b) the High Court shall direct that the notice of withdrawal shall be published in the Official Gazette and in such other manner as it may specify and thereupon the notice shall be published accordingly;

(c) a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the condition, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit."

4. Perusal of the above said provisions would show that a person, who might himself have been a petitioner may, within 14 days of such gazette publication, apply to be substituted as petitioner in place of the party withdrawing.

5. Thus, this Court by order dated 13.02.2019, directed the Registry to comply with the procedure contemplated under Section 109(2) of the Representation of the People Act, 1951 by fixing the date of hearing of the above application as 01.03.2019. On that

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day, it was informed by the Registry that gazette publication was made by fixing the date of hearing as 01.03.2019. Thus, this Court adjourned the matter for further hearing today. Today, the matter is taken up for further hearing. It is seen that no such application is filed by any person within 14 days from the date of publication of the gazette viz., 27.02.2019.

6. In view of the above stated facts and circumstances, Original Application No.137 of 2019 is allowed and the election petitioner is granted permission to withdraw this election petition. Consequently, the election petition is dismissed as withdrawn. No costs.

7. Registry is directed to report the withdrawal of this election petition to the Election Commission, as required under Section 111 of the Act, forthwith.

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19.03.2019

Speaking/Non Speaking

Index :Yes/No

Note :Issue order copy by 19.03.2019

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