

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 6/3/2019

C O R A M

THE HON'BLE MR.JUSTICE S.MANIKUMAR

AND

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition Nos.33751 of 2018 and 5971 of 2019

a n d

M.P.No.6792 of 2019

K. Sundarajan

...

Petitioner in W.P.No.  
33751 of 2018

a n d

Communist Party of India (Marxist)

Puducherry Pradesh Committee

rep. By its Secretary

Mr.R.Rajangam

A. Nallasivan Nainaivagam

Azees Nagar

Reddiarpalayam

Puducherry 605 010

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Petitioner in W.P.No.  
5971 of 2019

Vs

1. The Election Commission of India  
rep. By the Chief Election Commissioner  
Nirvachansadan  
Asoka road  
New Delhi.

2. The Union of India  
rep. By the Secretary to Government  
Ministry of Home Affairs  
New Delhi.

3. The Chief Secretary to Government  
Government of Puducherry  
Puducherry.

4. Dr.V.Candavelou

...

Respondents

Prayer in W.P.No.33751 of 2018: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus to direct the first respondent to consider the representation dated 11/10/2018 of the petitioner and take action of transferring the

fourth respondent out of the office of the Chief Electoral Officer of Puducherry in accordance with law.

Prayer in W.P.No.5971 of 2019: Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of mandamus directing the respondents 1 to 4 to forthwith act upon the representation dated 23/2/2019 to implement the instruction 437/6/1/INST/ECI/FUNCT/MCC/2019 dated 16/1/2019 with respect to the fourth respondent and appoint a new Chief Electoral Officer for the upcoming General Elections in the Union Territory of Puducherry, by replacing the fourth respondent in order to ensure conduct of a free and fair election.

For petitioner... Mr.K. Premkumar(WP.33751/18)  
Mr.Rahul Balaji (WA.5971/19)

For respondents ... Mr.Niranjan Rajagopal  
for R.1

Mr.S.S.Pajaniradja  
CGSC for R.2.

Mr.D.Ravichandran  
for R.3.

Mr.SunihtaNarayanan  
for R.4.(in Both Wps)

C O M M O N O R D E R

(Order of the Court was made by S.Manikumar,J)

In W.P.No.33751 of 2018, one Mr.K.Sundarajan, a practising Advocate, has sought for a writ of mandamus, to direct the first respondent, to consider the representation of the petitioner, dated 11/10/2018 and to take action, transferring the fourth respondent, from the office of the Chief Electoral Officer of Puducherry, in accordance with law.

2. In W.P.No.5971 of 2019, Communist Party of India (Marxist), Puducherry Pradesh Committee, rep. By its Secretary, Mr.R.Rajangam, has sought for a writ of mandamus, directing the respondents 1 to 4 to forthwith act upon the representation, dated 23/2/2019, to implement the instruction 437/6/1/INST/ECI/FUNCT/MCC/2019, dated 16/1/2019, with respect to the fourth respondent and appoint a new Chief Electoral Officer for the upcoming General Elections, in the Union Territory of Puducherry, by replacing the fourth respondent, in order to ensure and to conduct of a free and fair election.

3. Averments made in both the writ petition are similar. Prayer sought for, is also similar, to consider the representations, dated 11/10/2018 and 23/2/2019, respectively, to take action for transferring the fourth respondent, out of the Chief Electoral Officer, Government of Puducherry, Puducherry.

4. In W.P.No.33751 of 2018, petitioner has contended that

(i). Respondents 1 to 3 have a statutory to duty implement the regulations framed for appointing officers on election duties, which would include the Chief Electoral Officer and the failure to inform the same has a direct effect on free and fair conduct of elections and therefore, the respondents are liable to be directed by this Court to consider the representation and take action in accordance with law, immediately transferring the fourth respondent out of the office as Chief Electoral Officer.

(ii). Respondents 1 to 3 have omitted to perform their statutory duties since the representations of the petitioners raised a legally valid and sustainable question and the respondents are keeping silent without considering the representation of the petitioner and as such are liable to be directed to perform their statutory duties.

(iii). The fourth respondent himself having implemented the regulations in respect of everybody else by his proceedings dated 28/12/2015 cannot feign ignorance in his own case and the said attitude smacks the intention to cling on to the post first, to sweep the various allegations against him under the carpet and second to favour his chosen candidates. Therefore, the respondents 1 to 3 are liable to be directed by this Court to take appropriate action in accordance with law.

5. On the basis of the above said grounds and inviting the attention of this Court, to the Notification No.437/6/1/2014-CC & BE, dated 9<sup>th</sup> January 2014, issued by the Election Commission of India, Mr.Rahul Balaji, learned counsel for the petitioner, in W.P.No.5971 of 2019, made submissions that the fourth respondent has developed roots in Union Territory of Puducherry and on the grounds stated supra, submitted that the fourth respondent should not be allowed to continue as Chief Electoral Officer of Puducherry.

6. Learned counsel for the petitioner further submitted that the first respondent Commission has addressed communications to the Chief Secretary of Puducherry/Ministry of Home Affairs, sometime during

November 2017 and June 2018, respectively, seeking a panel of 3 I.A.S.Officers, for appointment as new Chief Electoral Officer for Puducherry. He would further submit that pursuant to the request of the first respondent, Government of Puducherry have also prepared a panel of three names, after due deliberation in the cabinet and it is evident that the first respondent Commission, in fact, wanted to replace the fourth respondent and appoint a new Chief Electoral Officer for Puducherry. However, for reasons best known to the first respondent, the matter is still pending, without any finalisation.

7. Mr.Niranjana Rajagopal, who has taken notice on behalf of Election Commission of India, represented by Chief Election Commissioner, New Delhi/first respondent, in both the writ petitions submitted that earlier four complaints were sent, against the fourth respondent, to the Election Commission of India, New Delhi. Complaints were forwarded to Government of Puducherry. Reports sent by the Chief Vigilance Officer, Union Territory of Puducherry was received and the report did not have any adverse remarks against the fourth respondent.

8. He further submitted that some of the complaints pertain to the allegations during the period while the fourth respondent was stated to have held the posts of Health and Finance Secretaries. However, the report sent by the Chief Vigilance Officer, Union of Territory, Puducherry is to the effect that he was not holding the post of Health and Finance Secretaries, when the allegations were pointed out.

9. Inviting the attention of this Court, to the Letter No.437/6/1/INST/ECI/FUNCT/MCC/2019, dated 16<sup>th</sup> January 2019, addressed to the Chief Secretaries to all the States and Union Territories and the Chief Electoral Officers of all the States and Union Territories, learned counsel appearing for the Election Commission of India, submitted that the tenure of three years is applicable only for the District level Officers and not for the Chief Election Officers, appointed in a State. He submitted that Commission is satisfied with the performance of the fourth respondent. Writ petitions are filed only for a direction to the Election Commission of India, represented by the Chief Election Commissioner, New Delhi, to dispose of the representation, stated supra.

10. Though the learned counsel for both the parties made submissions, contending that the fourth respondent should not be allowed to continue and on the contra, Chief

Election Commissioner was satisfied with the performance of the fourth respondent, at this juncture, we cannot delve into the merits and demerits of the submissions, and it is for the Election Commission of India, New Delhi, to take a decision on the representations of the petitioners, in accordance with law and instructions issued by the Election Commission of India.

11. Election Commission of India, represented by Chief Election Commissioner, New Delhi, first respondent, in both the writ petitions, is directed to consider the representations dated 11/10/018 and 23/2/2019, submitted by the petitioners, Mr.K.Sundarajan and Communist Party of India (Marxist), Puducherry Pradesh Committee, respectively, and take an appropriate decision, in accordance with law and the Notifications issued from time to time, within a period of one week, from the date of receipt of a copy of this order. Decision taken, be communicated to both the writ petitioners, as expeditiously, as possible.

13. With the above direction, these writ Petitions are disposed of. No costs. Consequently, the connected Miscellaneous Petition No.6792 of 2019 is closed.

Sd/-

Assistant Registrar (Co)

//True Copy//

Sub Assistant Registrar

mvs.

To

1. The Chief Election Commissioner  
Election Commission of India  
Nirvachansadan  
Asoka road  
New Delhi.

2. The Secretary to Government  
Union of India  
Ministry of Home Affairs  
New Delhi.

3. The Chief Secretary to Government  
Government of Puducherry  
Puducherry.

+1cc to Mr.R.ParhtaSarathy , Advocate SR.No. 20752  
+1cc to Mr.G.R.Associates , Advocate SR.No.21093  
+1cc to Mr.G.R.Associates , Advocate SR.No.21092  
+1cc to Mr. K.Prem Kumar, Advocate SR.No.20658  
+1cc to Mr. A.Senthil Narayanan, Advocate SR.No. 20669  
+1 CC TO GOVERNMENT PLEADER (Pondy) SR.NO. 21029,21030  
+1 CC TO GOVERNMENT PLEADER SR.NO. 21788

Writ Petition Nos.33751 of 2018  
and  
5971 of 2019

A.SK (08/03/2019)



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