

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.07.2020

CORAM:

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.9217 of 2020
and WMP.No.11244 of 2020

S.Kayalvizhi

... Petitioner

-vs-

- 1.The State Election Commissioner,
Tamilnadu State Election Commission,
Jawaharlal Nehru Road,
Chennai 600 106.
- 2.The Director,
Rural Development and Panchayatraj,
Secretariat, Fort St. George,
Chennai 9.
- 3.The District Collector,
Ramanathapuram District,
Ramanathapuram.
- 4.The Assistant Director,
Rural Local Administrations (Panchayats)
Office of the District Collector,
Ramanathapuram District.
5. Malliga,
Panchayat President,
Sadayanendhal Village Panchayat,
Kamuthi Panchayat Union,
Ramanathapuram District.

...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Quo Warranto as against the 5th respondent by removing her from the post of Panchayat President of Sadayanendhal Village Panchayat in Kamuthi Panchayat Union of Ramanathapuram District on the ground of disqualification, based on the petitioner's representation dated 13.02.2020 made to the respondents 1 to 4.

For Petitioner : Party-in-Person

For Respondents: Mr.B.Nedunchezian, for R1

Mr.E.Balamurugan, SGP, for RR2 to 4

ORDER

This Writ Petition has been filed by the petitioner as party in person for issuance of Quo Warranto as against the fifth respondent, who is holding the post of Panchayat President in Kamuthi Panchayat Union, Ramanathapuram District.

2. The case of the petitioner is that she is a daughter of the fifth respondent. The petitioner fell in love with one Selvakumar, who belongs to Schedule Caste Community, and this was opposed by the fifth respondent. The petitioner married the said Selvakumar in the year 2003. According to the petitioner, both her parents subjected the petitioner and her husband to humiliation and an attempt was also made to assault the petitioner and her husband. The further case of the petitioner is that Police complaints were given in this regard in the year 2003 and no action was taken. Even thereafter, the humiliation continued and the complaints given by the petitioner and her husband were never acted upon since the parents of the petitioner are very influential both politically and communally.

3. The petitioner also filed a private complaint against her parents and other relatives and the concerned Court did not take cognizance of the complaint and the complaint was dismissed, as against which, the petitioner has filed a Criminal Revision Petition and the same is pending before the Madurai Bench of Madras High Court.

4. The further case of the petitioner is that an election notification was issued for conducting election to the local body and the fifth respondent had also participated in the said election. The fifth respondent was declared as elected as the Panchayat President.

5. According to the petitioner, the fifth respondent is not entitled to held the post of President of the concerned Panchayat since she has violated the oath / affirmation taken under Section 40 of the Tamil Nadu Panchayat Act, 1994. According to the petitioner, the fifth respondent is communally biased and the same is evident from the fact that the petitioner and her husband, who belongs to SC Community, were repeatedly humiliated right from the year 2003 and therefore, the fifth respondent has given false oath when she is communally biased

and the same is a dis-qualification under Section 41 of the said Act.

6. The petitioner has given a representation in this regard to the respondents 1 to 4 and since the same was not considered, the present Writ Petition has been filed for issuance of Writ of Quo Warranto.

7. The petitioner who appears in person through Video Conference submitted that even though the fifth respondent is her mother and there is a dispute with regard to the marriage right from the beginning, she is more interested in projecting the fact that the fifth respondent is communally biased and she has treated the husband of the petitioner very badly and has humiliated him and the petitioner only because the husband of the petitioner belongs to the Schedule Caste Community. The petitioner further submitted that the fifth respondent has concealed the fact that there is a criminal case pending against her, which was filed by the petitioner and therefore that is also a ground to disqualify the fifth respondent, who is holding the post of Panchayat President.

8. Heard the learned counsel appearing on behalf of the respondents and perused the materials available on record.

9. The law with regard to the issuance of Quo Warranto is well settled. A Writ of Quo Warranto can be maintained only in a case where the eligibility of a candidate is under question. The law on this issue has been dealt with by the Supreme Court in detail in the judgment in *Bharati Redi vs. The State of Karnataka* and others reported in 2018 6 SCC 162. The Quo Warranto is a discretionary remedy, which the Court may grant or refuse according to the facts and circumstances of each case. Thus, the Court may refuse, if where the application is actuated with ill-will or ulterior motive.

10. In the present case, the grievance of the petitioner is that the fifth respondent has become dis-qualified under Section 40 of the Tamil Nadu Panchayat Act 1994 since the fifth respondent has violated oath / affirmation. It is seen from the Act that Section 41 provides for the procedure to deal with such disqualifications and the alleged violation of Section 40 of the Act, at the best should be dealt with only in the manner contemplated under Section 41 of the Act and the same cannot be a ground to issue a Writ of Quo Warranto. The provision itself

contemplates an opportunity and enquiry to be conducted before any candidate is disqualified.

11. In the considered view of this Court, it cannot be said that a Criminal case is pending against the fifth respondent since the private complaint filed by the petitioner was dismissed without taking cognizance and therefore the effect of the same would be that there is no criminal complaint as such pending against the fifth respondent. Therefore, the contention of the petitioner that there is a criminal complaint pending against the fifth respondent and the same was concealed cannot be countenanced.

12. In the considered view of this Court, there is a personal dispute between the petitioner and the fifth respondent for a long period of time and the petitioner obviously has a ill-will against the fifth respondent. Even if this Court is to take an extreme view that the case projected by the petitioner is true, the same does not result in the issuance of a Writ of Quo Warranto since the eligibility of the fifth respondent to hold the post of the President is not found wanting. Any alleged disqualification on the ground of violation of the oath / confirmation under Section 40 of the Panchayat Act, will have to be dealt with in accordance with the procedure that has been provided under the Act and a Writ of Quo Warranto cannot be issued by this Court.

13. In the result, this Court does not find any ground to issue a Writ of Quo Warranto and accordingly, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

pvs
To

1. The State Election Commissioner,
Tamilnadu State Election Commission,
Jawaharlal Nehru Road,
Chennai 600 106.

2. The Director,
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Secretariat, Fort St. George,
Chennai 9.

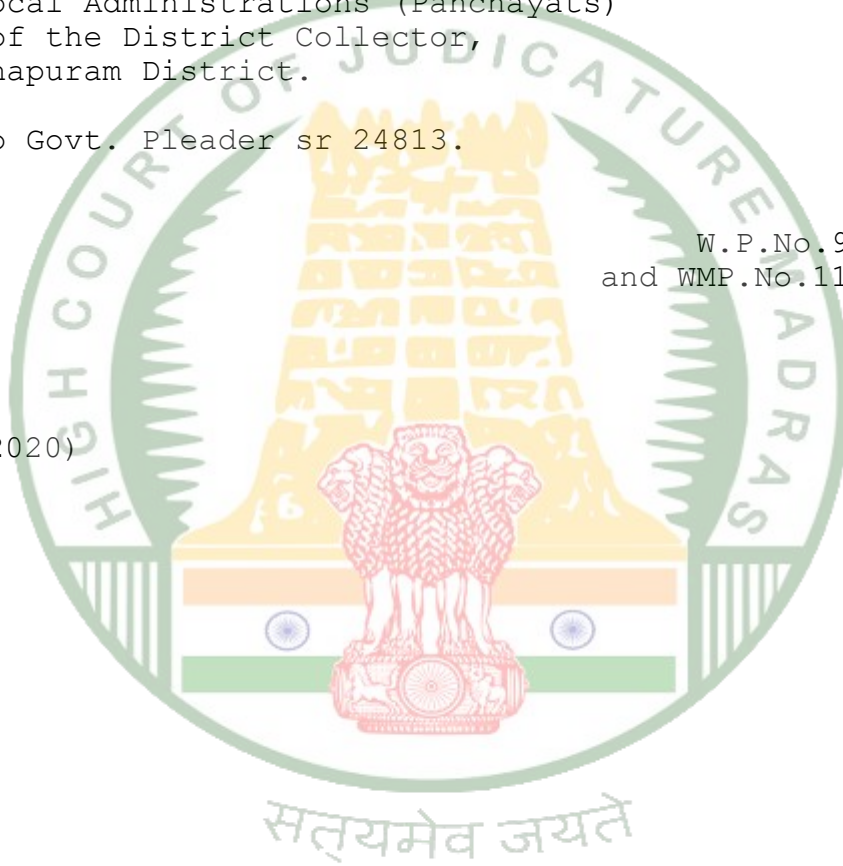
3. The District Collector,
Ramanathapuram District,
Ramanathapuram.

4. The Assistant Director,
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Office of the District Collector,
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+1 CC to Govt. Pleader sr 24813.

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VSNI (CO)
SP (04/08/2020)



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