

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 23.01.2020

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

W.P.No.34943 of 2016

D.Vijayalakshmi

.. Petitioner

-vs-

1. The Chief Election Officer
No.208/2, Jawaharlal Nehru Road
Opp.CMBT, Arumbakkam
Chennai 600 106

2. The District Collector
Coimbatore District
Coimbatore 641 018

3. The Commissioner
Coimbatore Corporation
Coimbatore 641 001

4. K.A.Aadhinarayanan .. Respondents

Petition under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus, directing the first respondent to immediately dispose of the clarification letter Na.Ka.No.1427/2016/Coo 1 dated 3.8.2016 on the petitioner's representation letter dated 29.2.2016.

For Petitioner :: Mr.K.Sridhar
Amicus Curiae

For Respondents :: Mr.B.Nedunchezhiyan
Standing Counsel for R1
Mr.M.Elumalai
Government Advocate for R2
Mr.K.Magesh
Standing Counsel for R3
No appearance for R4

ORDER

Mrs.D.Vijayalakshmi, aged 64 years, Wife of N.Devaraj appearing as party in person, is a resident cum voter of Ward No.80 of Coimbatore Corporation, the third respondent herein. The grievance of the petitioner is that Mr.K.A.Aadhinarayanan, the fourth respondent herein, while filing the nomination for the local body election conducted in the year 2011 for the post of Ward Councillor, concealed the pendency of 50 cases against him, therefore, she has given a representation to the respondents 1 to 3 on 29.2.2016, but they failed to take action. Thereafter, she came to this Court with W.P.No.10328 of 2016 and this Court, while disposing of the writ petition, directed the District Collector, Coimbatore, the second respondent herein to consider and take appropriate action on her representation within three months time. Even then, no action has been taken. Hence, she has once again come to this Court with the present writ petition.

2. As this Court thought that the grievance of the petitioner/party in person can be effectively subserved by appointing some able counsel as amicus curiae to assist the Court, this Court appointed Mr.K.Sridhar as amicus curiae, by order dated 23.10.2019.

3. When the matter was heard, Mr.K.Sridhar, learned amicus curiae submitted that the petitioner is a resident cum voter of Ward No.80 of Coimbatore Corporation, the third respondent herein, whereas Mr.K.A.Aadhinarayanan, the fourth respondent herein was elected on 26.9.2011 as Ward Councillor for Ward No.80 of Coimbatore Corporation. Subsequently, he has been chosen as Chairman for central zone of the Coimbatore Corporation. However, he has concealed the 50 cases relating to the offence under Section 138 of the Negotiable Instruments Act pending against him in the nomination papers. Since the fourth respondent has suppressed the pendency of 50 cases, he should not have been allowed to contest in the election. But he was allowed to contest and subsequently got elected as stated above. Therefore, the petitioner gave a representation to the respondents 1 to 3 on 29.2.2016, but they failed to take action for the reasons best known to them. Hence, she came to this Court with W.P.No.10328 of 2016 and this Court, while disposing of the said writ petition, directed the District Collector, Coimbatore Corporation, the second respondent herein to consider and take appropriate action on the representation made by the petitioner within three months time. Pursuant thereto, the District Collector, Coimbatore called the petitioner for enquiry on 10.6.2016 and in the said enquiry, the petitioner also gave

her oral and written statement indicating how many cases are pending against the fourth respondent, which were suppressed at the time of filing his nomination papers. When no action was taken by the District Collector, she filed a contempt petition against the District Collector, Coimbatore, the second respondent herein in Contempt Petition No.2039 of 2016 for failing to take action against the fourth respondent. Thereafter, she received a letter in Na.Ka.No.1427/2016 Co 1 dated 3.8.2016 from the District Collector, Coimbatore stating that the fourth respondent has shown only one criminal case in the election petition and there is no clear act in the Coimbatore City Municipal Act for dismissal of Ward Councillor and that the matter was forwarded to the Election Commission for clarification and further orders. In view of the fact that the matter has been seized by the Election Commission, the said contempt petition was dismissed.

4. Once again the petitioner gave a complaint to the District Collector and also the Election Commission. As no action has been taken, she has come to this Court seeking a direction to the State Chief Election Officer, the first respondent herein to dispose of the clarification letter dated 3.8.2016 sent by the second respondent on the representation dated 29.2.2016 sent by the petitioner. Referring to a judgment of this Court in S.P.K.Dhamodhar v. Narayanasamy and another, 2010 (5) CTC 734 holding that the punishment on the complaint said to have been made against the first respondent is only simple imprisonment for a term which may extend to two years or with fine or with both, in such event, it cannot be said that the alleged non disclosure of material facts, even if it is true, would fall under Section 33-A(1)(i) of the Representation of the People Act, 1951. Similarly, in the present case, the fourth respondent was facing the cases punishable for an offence under Section 138 of the Negotiable Instruments Act. When the punishment under Section 138 of the Negotiable Instruments Act speaks of imprisonment for a term which may extend to two years or with fine or with both, it cannot be said that the alleged non disclosure of material facts by the fourth respondent, even if it is true, would fall under Section 33-A(1)(i) of the Representation of the People Act. Mr.Sridhar, learned amicus curiae further pleaded that a reading of Section 33-A(1)(i) of the Representation of the People Act, 1951 makes it mandatory for a candidate to furnish information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which the charge has been framed by the Court of competent jurisdiction, only if the offence is punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction. Therefore, in the present case, as the

cases said to have been pending against the fourth respondent do not prescribe the punishment of two years or more, the petitioner has got a remedy only as per Section 81 of the Representation of People Act to file election petition questioning the election. But that also has not been done by the petitioner. Now the fourth respondent has also completed almost 4 ½ years. As the petitioner gave a complaint only on 29.2.2016 against the fourth respondent for suppression of criminal cases which were pending against him at the time of filing the sworn affidavit before the Returning Officer in the local body election conducted for Ward No.80 during 2011, this Court, by order dated 21.3.2016, directed the second respondent to consider the representation by affording opportunity to the fourth respondent and pass orders on merits and in accordance with law. Pursuant to the said direction, the District Collector directed the Commissioner, Coimbatore Corporation, the third respondent herein to conduct an enquiry after receiving explanation from the fourth respondent vide letter dated 13.6.2016. The fourth respondent also receiving notice from the third respondent gave reply dated 5.12.2016 stating that due to his lawyer's opinion, he failed to mention the pending criminal cases. Moreover, the criminal cases filed for dishonour of cheques were settled out of Court.

5. Learned amicus curiae also submitted that it is not known whether the petitioner has given any complaint within time and she has come to this Court only belatedly. Nonetheless, as a matter of fact, as per the settled legal position, the allegation of the petitioner in the affidavit as to the pendency of cases under Section 138 of the Negotiable Instruments Act at the time of filing nomination by the fourth respondent and such non disclosure of the pending criminal cases would disqualify the fourth respondent, may not carry any merit, for the reason that the punishment contemplated under Section 138 of the Negotiable Instruments Act is only for a term which may extend to two years or with fine or with both. Therefore, as per the ratio laid down by this Court in S.P.K. Dhamodhar case, it cannot be said that the alleged non disclosure of material facts by the fourth respondent, even if it is true, would fall under Section 33-A(1)(i) of the Representation of the People Act, 1951, however, such non disclosure of information may be a cause of action for initiating proceedings against the concerned candidate only under Section 125-A of the Representation of the People Act. But no such action has been pursued by the petitioner under Section 125- A of the Representation of the People Act, 1951.

6. A detailed counter affidavit has been filed by the Commissioner, Coimbatore Corporation, the third respondent herein. The learned counsel for the third respondent submitted that the writ petition is not maintainable since the election for the Ward Councillor was conducted in the year 2011 and the fourth respondent was elected on 26.9.2011. But the petitioner has given the complaint only on 29.2.2016. By the time the fourth respondent had completed more than 4 ½ years. In the meanwhile, she has not even filed any election petition or any civil suit, therefore, pleaded that the cause of action cannot be espoused by this Court, as now the term of office also got expired. However, the petitioner came to this Court with W.P.No.10328 of 2016 for issuance of a mandamus directing the respondents to consider her representation dated 29.2.2016 and this Court, by order dated 21.3.2016 directed the second respondent to consider the representation dated 29.2.2016. As per the order passed by this Court, the District Collector directed the Commissioner, Coimbatore Corporation to conduct an enquiry after giving notice to both the petitioner and the fourth respondent. Acknowledging the notice issued by the third respondent, the fourth respondent also submitted his explanation for the complaint given by the petitioner on 5.12.2016 stating that due to the advice of his advocate, he failed to mention the pending criminal cases and moreover, the criminal cases filed for dishonor of cheques were also settled out of Court. Therefore, he did not mention the same in the sworn affidavit before the Returning Officer for the local body elections held during the year 2011. Nonetheless, for the reason that the fourth respondent has categorically admitted in his reply dated 5.12.2016 that he has not stated about the pending criminal cases, the same amounts to providing false information at the time of filing the sworn affidavit. He also stated that the third respondent filed a police complaint on 6.1.2017 before the Commissioner of Police, Coimbatore City for offence under Section 177 of IPC for initiating necessary criminal action against the fourth respondent and the Commissioner of Police, Coimbatore also forwarded the said complaint to the Inspector of Police, B4 Ukkadam Police Station, Coimbatore and the Inspector of Police conducted enquiry and subsequently by letter dated 5.9.2017 informed the third respondent that as per Section 195 of the Criminal Procedure Code, the complaint for the offence punishable under Sections 175 to 188 IPC are to be filed only as a private complaint before the jurisdictional Judicial Magistrate and the police has no power to register the case for the offence under Section 177 of IPC. Thereupon the police also expressed their inability to take action against the fourth respondent and the same also has been informed to the District Collector vide letter dated 18.9.2017. Hence, it is not open to

the petitioner to say that no action was taken against the fourth respondent.

7. Heard learned counsel for the parties.

8. Admittedly, the local body elections were held in the year 2011 and the fourth respondent was elected on 26.9.2011 as Ward Councillor for Ward No.80 of the Coimbatore Corporation. Subsequently, he has been chosen as the Chairman of central zone of Coimbatore Corporation. The petitioner has alleged that there were 50 cases for the offence under Section 138 of the Negotiable Instruments Act pending against the fourth respondent and by suppressing these cases in the sworn affidavit, he has contested the election and got elected, therefore, action should be taken. When the fourth respondent was elected as Ward Councillor on 26.9.2011, it is not known why the petitioner, claiming to be the resident cum voter of Ward No.80 of Coimbatore Corporation, kept quiet for almost a period of 4 ½ years. Secondly, by the time the petitioner came to this Court with W.P.No.10328 of 2016, time to file election petition has also been lost and she has not even filed any private complaint, as per Section 195 of Cr.P.C. The said section says that a private complaint for the offence punishable under Sections 175 to 188 IPC is to be filed before the jurisdictional Judicial Magistrate and the police has no power to register the case for the offence under the said sections. Thirdly, when the District Collector, Coimbatore directed the Commissioner, Coimbatore Corporation, the third respondent to conduct enquiry, the Commissioner also has issued a notice calling upon the fourth respondent to give explanation regarding the complaint given by the petitioner dated 29.2.2016. Pursuant thereto, the fourth respondent gave his reply dated 5.12.2016 stating that since all the cases have been settled out of Court, his Advocate advised him not to mention about the said cases, therefore, he has failed to mention the pending criminal cases. Fourthly, even the imprisonment for the offence under Section 138 of the Negotiable Instruments Act shall be for a term which may extend to two years or with fine or both. In similar circumstances, this Court also in S.P.K. Dhamodhar case has held that as per Section 33-A (1)(i) of the Representation of the People Act, it is mandatory for a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which charge has been framed by the Court of competent jurisdiction. It is therefore relevant to extract paragraphs 64 and 65 of the said judgment, as follows:-

"64. Further, from the reading of Section 33-A(1)(i) of the Representation of the

People Act, 1951, it is clear that it is mandatory for a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case in which the charge has been framed by the Court of competent jurisdiction. From the said Section, it is also clear that the candidate would be required to furnish such information only if the offence is punishable with imprisonment "for two years or more", in a pending case, in which a charge has been framed by the Court of competent jurisdiction. However, from the facts of the present case, it is clear that a Complaint is said to have been made against the First Respondent before the Judicial Magistrate, First Class, Raipur, State of Chhattisgarh, under Sections 499 and 500 of the Indian Penal Code, 1860. The punishment for defamation, prescribed under Section 500 of the Indian Penal Code, 1860, is simple imprisonment for a term which may extend to two years or with fine or with both. As such, it cannot be said that the alleged non disclosure of material facts, by the First Respondent, even if it is true, would fall under Section 33-A(1)(i) of the Representation of the People Act, 1951, which talks about the information relating to offence punishable with imprisonment of two years or more.

65. According to Section 81 of the Representation of the People Act, 1951, the Election Petition calling in question any election may be presented on one or more of the grounds specified in sub Section 1 of Sections 100 and 101 of the said Act, to the High Court, by any candidate at such election or any elector, within the time limit specified therein. Therefore, the non-disclosure of the information regarding the Complaint, said to have been filed against the First Respondent, under Section 499 of the Indian Penal Code, 1860, for defamation, would not be a ground to declare the election of the First Respondent, as null and void."

9. This Court, having held that it is mandatory for a candidate to furnish the information as to whether he is accused of any offence punishable with imprisonment for two years or more in a pending case, has also held that if the punishment for the offence is simple imprisonment for a term which may extend to two years or with fine or with both, it cannot be said that the alleged non disclosure of material facts by an elected candidate, even if it is true, would fall under Section 33-A(1) (i) of the Representation of the People Act, 1951, which talks about the information relating to offence punishable with imprisonment of two years or more. That means, if the elected candidate while filing his nomination papers failed to furnish the pendency of criminal case in his sworn affidavit, the alleged non-disclosure of the pending criminal case relating to offence punishable for a term which may extend to two years or with fine or with both would not fall under Section 33-A(1) (i), as it relates to offence punishable for the offence relating to two years or more. However, the non disclosure of the information may be a cause of action for initiating proceedings against the concerned candidate only under Section 125-A of the Representation of the People Act, 1951. But in the present case, it appears that the petitioner has not given any criminal complaint, therefore, it is not known how she will be able to circumvent the bar of limitation prescribed under Section 468 of Cr.P.C. Hence, this Court is unable to entertain the writ petition and accordingly, the writ petition is dismissed. Consequently, W.M.P.No.30155 of 2016 is also dismissed. No costs.

10. Before parting with the case, this Court, placing on record its appreciation for the valuable assistance rendered by Mr.K.Sridhar, learned amicus curiae, hereby directs the Secretary, High Court Legal Services Committee to pay a sum of Rs.5,000/- to the learned amicus curiae, in the disposal of the case on behalf of the petitioner/party in person.

Sd/-

Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The Chief Election Officer
No.208/2, Jawaharlal Nehru Road
Opp.CMBT, Arumbakkam
Chennai 600 106

2. The District Collector
Coimbatore District
Coimbatore 641 018

3. The Commissioner
Coimbatore Corporation
Coimbatore 641 001

4. The Secretary
High Court Legal Services Committee
Chennai 600 104

+1cc to M/s.D.Vijalakshmi , Advocate SR.No. 5125

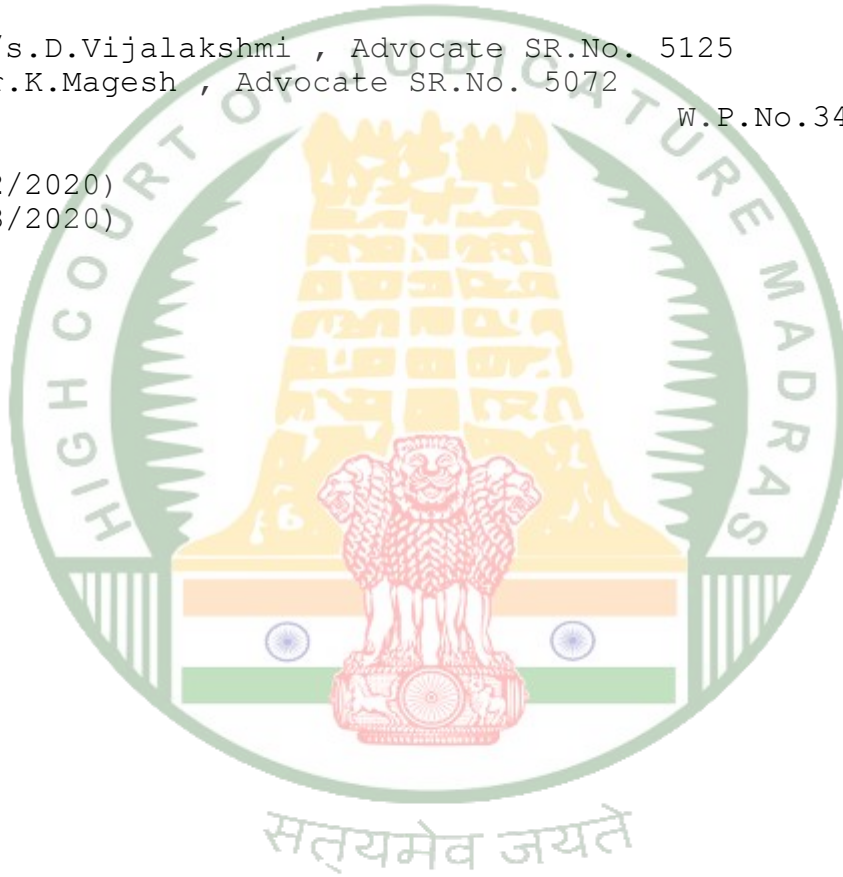
+1cc to Mr.K.Magesh , Advocate SR.No. 5072

W.P.No.34943 of 2016

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A.SK(28/02/2020)

A.SK(04/03/2020)



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