

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 26TH DAY OF FEBRUARY 2020

THE HON'BLE MS. JUSTICE P.T.ASHA

ELECTION PETITION NO. 2 OF 2019

and

OA.NOS.1162 OF 2019, 41 OF 2020 & 42 OF 2020

ELP No.2 of 2019

G.Pravina, M.B.B.S. B.L.,
W/O.Shri.B.Bala Murugan, I.R.S.,
27, Fifth Cross, Indra Nagar, Salem 8. ... Petitioner

-VS-

S.R.Parthiban,
Returned Candidate
(D,M.K.Party)
Salem MP Elections 2019,
133/3, Gayathri Nagar,
MTS Nagar Backside,
Hasthampatti, Salem – 7. ... Respondent

Election Petition praying that this Hon'ble Court be pleased to

a)Declare the election of the returned candidate Mr.S.R.Parthiban in

Salem Parliamentary Constituency, Salem, Tamil Nadu, Parliamentary

Lok Sabha Elections, India as null and void and set aside the election

held on 18.04.2019 in the Salem Parliamentary Constituency, Salem,

Tamil Nadu, India.

b)pass an order directing fresh poll in Salem Parliamentary

Constituency, Tamil Nadu as per provision of Representation of People's Act 1951 and conduct of Election Rules 1961 and the Constitution of India and order consequential contesting and declaration of results in the Salem Parliamentary Constituency, Tamil Nadu, India.

d)Direct the first respondent to pay the costs of this election petition.

OA.No.1162 Of 2019

The Chief Electoral Officer,
Public (Elections) Department,
Secretariat, Fort St.George,
Chennai 600 009.

.... Applicant

-VS-

1.G.Pravina, M.B.B.S. B.L.,
W/O.Shri.B.Bala Murugan, I.R.S.,
27, Fifth Cross, Indra Nagar,
Salem 8.

...1st Respondent/Election Petitioner

2.S.R.Parthiban,
Returned Candidate
(D,M.K.Party)
Salem MP Elections 2019,
133/3, Gayathri Nagar,
MTS Nagar Backside,
Hasthampatti, Salem – 7. ... 2nd Respondent/Respondent

This Original Application praying that this Hon'ble Court be pleased to permit the Applicants to file the application to release the Electronic

OA.Nos.41 & 42 Of 2020

S.R.Parthiban,
Returned Candidate
(D,M.K.Party)
Salem MP Elections 2019,
No.133/3, Gayathri Nagar,
MTS Nagar Backside,
Hasthampatti, Salem – 636 007. ... Applicant/Respondent

-VS-

1.G.Pravina,
W/o.B.Bala Murugan,
27, Fifth Cross, Indra Nagar,
Salem – 636 008. ... Respondent/Election Petitioner

The Original Application No.41 of 2020 praying that this Hon'ble Court be pleased to strike off paras 5 to 26 in the Election Petition No.2 of 2019.

The Original Application No.42 of 2020 praying that this Hon'ble Court be pleased to reject the Election Petition No.2 of 2019.

The Election petition No.2 of 2019 and Original Application Nos.1162 of 2019 & 41 & 42 of 2020 coming on this day before this Court for hearing in the presence of Mr.Richardson Wilson for

M/s.P.Wilson Associates, Advocates for the Respondent in ELP.No.2 of 2019 and for the 2nd Respondent in OA.No.1162 of 2019 and for the

Applicant in OA.Nos.41 & 42 of 2020 and Mr.Niranjan Rajagopalan for M/s.G.R.Associates, Standing Counsel for the applicant in OA.No.1162 of 2019 and the Election Petitioner not appearing in person or by advocate; and upon reading the Election Petition and Affidavit of G.Pravina filed herein; and the Judges Summon, affidavit of Satyabrata Sahoo filed in OA.No.1162 of 2019; and the Judges Summon and affidavit of S.R.Parthiban filed in OA.Nos.41 & 42 of 2020 and the order of this Court herein dated 03.02.2020,

The Court made the following order:-

Though, the matter was listed on 26.02.2020 (today) at 02.15 p.m., the matter was called on 03.10 p.m., however, the petitioner was not present before this Court, when the matter was called. Notice was sent by the Registry, informing her that the matter is to be listed today at 02.15 p.m. Although, the said notice had been received by her on 13.02.2020, she did not appear before this Court. In fact in the notice sent by the Registry, the petitioner was informed that if she did not appear on 26.02.2020 at 02.15 p.m., the matter would be dismissed for non-prosecution. The petitioner, who has received the notice has written in the reverse of the very notice that this Court has not taken up two of her applications for hearing and also made allegations about the learned senior counsel appearing on behalf of the counsel for the respondent.

2. When the matter first came up for hearing on 29.07.2019, in the presence of the petitioner, notice was directed to the respondent returnable by 20.08.2019 and private notice was also permitted. When the matter came up on 20.08.2019 one Mr.A.M.Esakkiappan took notice for the respondent and sought time to file his counter and the matter was directed to list on 29.08.2019. On 29.08.2019, when the matter was called, M/s.Wilson Associates has submitted that they have entered appearance on behalf of the Returned Candidate and that they have also filed application for striking off the petition.

3. The petitioner at that juncture has submitted that she was going to take out an application for filing additional documents and the matter was directed to be listed on 18.09.2019.

4. Since, I was sitting at Madurai, from September, 2019 to November, 2019, the matter was not listed and thereafter, when I resumed sitting in the Principal Bench the matter was formally posted on 04.12.2019 to fix a date for the Election Petition. On that day the Registry was directed to take notice on the petitioner/party in person, intimating her that the matter would be posted on 03.01.2020 at 02.15 p.m. On 03.01.2020, when the matter was called, a message was shown by the Registry, received from the petitioner, stating that she would be unable to attend the hearing on 03.01.2020 as the information about the

listing of the case on 03.01.2020 was informed to her only on the previous day i.e., 02.01.2020.

5. Considering the fact that she was appearing as a party-in-person and in order to ensure advance notice to her, this Court had made an exception and directed the Registry to inform the petitioner by whats app/sms about the next hearing date at least ten days in advance and the matter was adjourned to 03.02.2020 at 02.15 pm. This information was communicated to the petitioner by whats app and she had also acknowledged receipt of the same.

6. When the matter was called on 03.02.2020, there was no appearance by party-in-person at 02.15 p.m., and the matter was passed over and once again called at 03.15 p.m. Even at 03.15 p.m., the petitioner had not entered appearance, the matter was therefore adjourned to 26.02.2020. The Registry was directed to inform the petitioner that she has to appear before this Court, failing which, her petition would be dismissed for non-prosecution.

7. Meanwhile, the Registry had also brought it to the notice of this Court that party-in-person was addressing several communications through the whats app number of the staff, from whose mobile phone, the message has been sent informing her about the posting of the case on

application that she seeks to move should be by way of an application filed into Court as per the procedure contemplated under the Act. The notice informing her about the matter being posted on 26.02.2020 has been received by her as early as on 13.02.2020 and instead of appearing before this Court, the petitioner has made allegations against the learned counsel appearing for the respondent as well as against the Court. The petitioner has stated that she has filed applications and the same was not heard. The Registry has informed me that both the applications filed by her viz., D.No.26509 on 20.08.2019 has been returned on 22.8.2019 and D.No.113383 filed on 30.08.2019 has been returned by the Registry on 04.09.2019. Till date, the petitioner has not taken return of this application. In the reply made by the petitioner on the reverse of the notice sent to her, the petitioner has treated an official notice sent from none less than the highest Court of this state contemptuously by term the notice a “malpractice crooked notice”.

8.Today (26.02.2020), when the matter was called the learned counsel for the Returned Candidate as well as the Election Commission is present. They had also informed the Court that the petitioner has till date not filed a reply to the application filed by the Returned Candidate for striking of the petition.

9.In view of the fact that the petitioner has not appeared before

this Court, despite her being put on notice that the matter would be dismissed for non-prosecution, if she does not appear, this Court is left with no other alternative, but to **dismiss the petition for non prosecution.** Consequently, connected Original Applications are closed.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 26TH DAY OF FEBRUARY 2020.

SD/-

ASSISTANT REGISTRAR (OS-II)

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2020

COURT OFFICER(OS)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

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cns– 04.03.2020

ELP. NO. 2 of 2019

AND

OA.Nos.1162/2019 & 41 & 42/2020

ORDER

DATED: 26.02.2020

THE HON'BLE MS. JUSTICE

P.T.ASHA

FOR APPROVAL: 04/03/2020

APPROVED ON: 04/03/2020

सत्यमेव जयते

Copy To:

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The Election Commission of
India,
Nirvachan Sadan,
Ashoka Road,
New Delhi–110 001

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Act 1951 and conduct of Election Rules 1961 and the Constitution of India and order consequential contesting and declaration of results in the Salem Parliamentary Constituency, Tamil Nadu, India.

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Public (Elections) Department,
Secretariat, Fort St.George,
Chennai 600 009.

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133/3, Gayathri Nagar,
MTS Nagar Backside,
Hasthampatti, Salem – 7.

... 2nd Respondent/Respondent

This Original Application praying that this Hon'ble Court be pleased to permit the Applicants to file the application to release the Electronic Voting Machines.

OA.Nos.41 & 42 Of 2020

S.R.Parthiban,
Returned Candidate
(D,M.K.Party)

Salem MP Elections 2019,
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MTS Nagar Backside,
Hasthampatti, Salem – 636 007.

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Sahoo filed in OA.No.1162 of 2019; and the Judges Summon and affidavit of S.R.Parthiban filed in OA.Nos.41 & 42 of 2020 and the order of this Court dated 03.02.2020, this Court is in view of the fact that the petitioner has not appeared before this Court, despite her being put on notice that the matter would be dismissed for non-prosecution, if she does not appear,

IT IS ORDERED AS FOLLOWS :-

(1) That the Election petition No.2 of 2019 be and is hereby dismissed for non prosecution.

(2) That the Original Application Nos.1162 of 2019, 41 & 42 of 2020 be and are hereby closed.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID
THIS THE 26TH DAY OF FEBRUARY 2020.

SD/-

ASSISTANT REGISTRAR (OS-II)

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//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2020

COURT OFFICER(OS)

cns- 28.02.2020

ELP. NO. 2 of 2019

AND

OA.Nos.1162/2019 & 41 & 42/2020

ORDER

DATED: 26.02.2020

THE HON'BLE MS. JUSTICE

P.T.ASHA

FOR APPROVAL: 04/03/2020

APPROVED ON: 04/03/2020

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