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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 20.05.2021

Pronounced on: 02.06.2021

CORAM:

THE HON'BLE Dr.JUSTICE ANITA SUMANTH
and

THE HON'BLE Mr.JUSTICE SENTHILKUMAR RAMAMOORTHY

W.P. No.12052 of 2021
and WMP.No.12828 of 2021

G.A.Jagaannathan

.. Petitioner

Vs.

1. The Union of India,
Rep. By its Secretary to Government,
Ministry of Home Affairs,
Government of India,
New Delhi.
2. The Union of India,
Rep. by the Government of
Union Territory of Puducherry
Through the Chief Secretary to Government,
Government of Puducherry,
Puducherry-605001
3. K.Venkatesan
4. V.P.Ramalingam
5. R.B.Ashok Babu

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying to Writ of declaration, declaring the notification dated 10.05.2021 issued by the 1st respondent nominating the respondents 3 to 5 herein as Members of the Legislative Assembly of the Union Territory of Puducherry published in G.O.Ms.No.53 dated 10.05.2021 issued by the 2nd respondent as illegal and unconstitutional.



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For Petitioner : Mr. M.Gnanasekar

For Respondents : Mr.Tushar Mehta
Solicitor General
Mr.R.Sankaranarayanan
Additional Solicitor General
Assisted by
Mr.V.Chandrasekaran
Senior Panel Counsel - R1
Ms.N.Mala
Government Pleader - R2
Mr.Raghavachari - R3 & R4
Mr.Aravindh - R5

O R D E R

(Order of the Court was made by Dr.ANITA SUMANTH,J.)

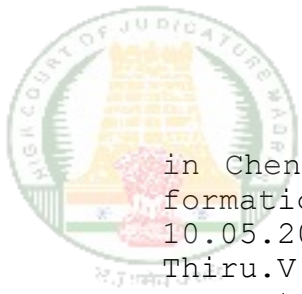
This Writ Petition, styled as a Public Interest Litigation, has been filed by one Thiru G.A.Jagannathan, who was earlier holding the post of President of the Karikalampakkam Village, Puducherry.

2. The trigger for the filing of this Writ Petition is the issuance of notification dated 10.05.2021 by the Union of India/R1 on 10.05.2021, nominating three members to the Legislative Assembly of the Union Territory of Puducherry. The nominees are members of the Bharatiya Janata Party ('BJP').

3. Puducherry is a Union Territory and its Legislative Assembly comprises 30 elected and three nominated members. General elections to the Legislative Assembly were held in April 2021, wherein the N.Rangasamy Congress ('NR Congress') emerged as the single largest party. The Electorate returned members to the Legislative Assembly as follows: NR Congress - 10, BJP - 6, Indian National Congress (INC) - 2, Dravida Munnetra Kazhagam (DMK) - 6, Independent - 1 and Others - 5.

4. NR Congress being the single largest party, formed the Government with the support of six (6) BJP MLAs and the single independent candidate, Thiru N.Rangasamy. Post constitution of the Legislative Assembly, Thiru Rangasamy was sworn in as Chief Minister on 07.05.2021.

5. It appears that the Chief Minister tested positive for COVID - 19 on 10.05.2021 and was admitted in a private hospital



in Chennai. The swearing-in of the elected MLAs as well as the formation of the Cabinet remains to be completed. It was on 10.05.2021 that the impugned nomination of Thiru. K.Venkatesan, Thiru.V.P.Ramalingam and Thiru.R.V.Ashok Babu, R3, R4 and R5 respectively, as MLAs took place, (the private respondents being referred to hereinafter by name, collectively as 'nominees' or by way of their rank in the writ petition) with the Central Government exercising powers in terms of Section 3(3) of the Government of Union Territories Act, 1963 ('1963 Act').

6. All learned counsels were ready for a final hearing even when the matter had come up for admission and it is thus that we proceeded to hear the parties in detail and dispose the Writ Petition finally, by way of this order.

7. Heard Mr.N.Gnanasekar, learned counsel for the petitioner, Mr.Tushar Mehta, learned Solicitor General of India and Mr.R.Sankara Narayanan, learned Additional Solicitor General assisted by Mr.V.Chandrasekaran, learned Senior Panel Counsel for the Union of India/R1, Ms.N.Mala, learned Government Pleader for the Union of India represented by the Government of Union Territory of Puducherry/R2, Mr.Raghavachari, learned counsel for Mr.Venkatesan and Mr.V.P.Ramalingam/R3 and R4, and Mr.Aravindh, learned counsel for Mr.Ashok Babu/R5.

8. The petitioner challenges their nomination on the grounds that (i) all three nominees are members of the BJP (ii) Thiru K.Venkatesan is a former DMK MLA (iii) Thiru V.P.Ramalingam is the brother of the Ex-Assembly Speaker Thiru V.P.Sivakozhundu (iv) Thiru Ashok Babu, an advocate, is a BJP leader (v) The nominees do not have a 'good background' (vi) Thiru.K.Venkatesan has been implicated in a criminal case involving a 'heinous crime' (vii) Nomination should be from among jurists, academicians, economists and social reformers, to add to the value of the House and enrich it in the fields of law, administration and social reform and, (viii) there was no urgency to have nominated members at a point in time when the Government had itself not been formed and the Chief Minister, in hospital. We clarify at this juncture, that the Legislative Assembly had not been sworn-in at the time when this writ petition was filed or heard by us but has subsequently been sworn-in on the 26th of May, 2021.

9. Per contra, the defence of the respondents is that the only disqualification set forth under Section 3(3) of the 1963 Act is that the nominee shall not be an employee of the Government. Section 14 of the 1963 Act sets out further disqualifications to the effect that the nominee not hold a post of profit under the Central or State Government and should not have been disqualified for being chosen as a Member of either House of Parliament under the Constitution of India. None of



the prescribed disqualifications are attracted in the instant case.

10. Our attention has been drawn to a decision of the First Bench of this Court in K.Lakshmi Narayanan V. Union of India and batch (W.P.Nos.16275 of 2017 etc. batch - decision dated 22.03.2018), wherein the Bench had considered a challenge to the provisions of Section 3(3) of the 1963 Act and upheld the same. One of the other contention raised by the petitioners in that case were to the effect that it was only the Puducherry Legislative Council, acting through Lieutenant Governor that had the power to nominate MLAs, as this was the modus operandi conventionally being followed in the past. This argument had also been rejected and the nominations made by the Central Government that were under challenge in that case, had been confirmed.

11. The decision of the First Bench was confirmed by a three Judge Bench of the Supreme Court in K.Lakshmi Narayanan V. Union of India and another and batch ((2020) 14 SCC 664). Additionally, certain recommendations had come to be made by the First Bench of this Court in broad brushstrokes as to how the suitability of the nominees was to be adjudged. Those recommendations were set aside by the Supreme Court.

12. The respondents would point out that the scope of the present Writ Petition is far more limited and that the nominations we are concerned with now, have been challenged on vague, irrelevant and erroneous grounds. It was not the case of the petitioner that the nominees attracted any of the disqualifications as per the 1963 Act. The main, and only, challenge appears to be that they are members of the BJP which is not a disqualification under the applicable provisions. They would thus urge that this Court dismiss the Writ Petition as being devoid of any merit whatsoever.

13. Having perused the Writ Petition, the relevant statutory provisions and the case law relied upon, we would agree with the respondents that no case whatsoever has been made out for interference in the nominations of R3, R4 and R5 to the Legislative Assembly of Puducherry.

14. At the outset we may state that the scope of judicial review in matters of this nature is extremely limited, seeing as the challenge to the impugned notification is on the sole ground that the nominees are not suitable to hold the positions for which they have been nominated and no ground has been either raised or argued to the effect that the pre-conditions/statutory disqualifications are attracted.

15. Section 3 of the 1963 Act deals with Legislative Assemblies for UTs and their composition and sub-section (3) thereof vests power in the Central Government to nominate not more than three persons as members in the Legislative Assembly.



Section 3, in so far as it is relevant to this writ petition, is extracted below:

3. Legislative Assemblies for Union territories and their composition.- (1) There shall be a Legislative Assembly for each Union territory.

(2) The total number of seats in the Legislative Assembly of [the Union territory] to be filled by persons chosen by direct election shall be thirty.

(3) The Central Government may nominate not more than three persons, not being persons in the service of Government, to be members of the Legislative Assembly of [the Union territory].

. . . .

16. In K.Lakshmi Narayanan the challenge to Section 3(3) of the 1963 Act as well as the attempt to say that the nomination of the members under the aforesaid provisions was the preserve of the Lieutenant - Governor of the UT of Puducherry came to be rejected in the following categorical terms:

37. In view of the foregoing discussion, we are of the clear opinion that nomination in the Legislative Assembly of Puducherry is not the Business of the Government of Puducherry. It is a business of Central Government as per Section 3(3) of Act, 1963 which is to be carried out in accordance with the Government of India (Allocation of Business) Rules, 1961 and Government of India (Transaction of Business) Rules, 1961. The issue is answered accordingly.

17. A reading of Section 3(3) reveals that the only condition imposed disqualifying nomination thereunder, is that the nominee does not serve under the Government. Admittedly, R3, R4 and R5 do not attract this disqualification.

18. Section 14, prescribes specific disqualifications for holding the position of member of the Legislative Assembly, and the relevant portion thereof, reads thus:

14. Disqualifications for membership.- (1) A person shall be disqualified for being chosen as, and for being, a member of the Legislative Assembly of [the Union territory]-

(a) if he holds any office of profit under the Government of India or the Government of any State or the Government of 3 [the Union territory] other than an office declared by law made by Parliament or by the



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Legislative Assembly of the Union territory not to disqualify its holder; or

(b) if he is for the time being disqualified for being chosen as, and for being, a member of either House of Parliament under the provisions of sub-clause (b), sub-clause (c) or sub-clause (d) of clause (1) of article 102 or of any law made in pursuance of that article.

(2) For the purposes of this section, a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State or the Government of 3 [the Union territory] by reason only that he is a Minister either for the Union or for such State or Union territory.

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19. The first disqualification under Section 14 is of any person who either holds an office of profit in the Central/State Government other than an office declared by law made by Parliament or by the Puducherry Legislative Assembly other than an office declared by Parliament by law not to disqualify its holder.

20. Secondly, Section 14 adopts the conditions stipulated under sub-articles (b), (c) and (d) of Article 102 of the Constitution of India that prescribes disqualifications for Membership to the Houses of Parliament, stating that a candidate who attracts sub-clauses (b), (c) and (d) of Article 102 of the Constitution of India would attract disqualification. Article 102 reads as follows:

102. Disqualifications for membership

(1) A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament
Explanation For the purposes of this clause a person shall not be deemed to hold an office of profit under the Government of India or the Government of any State by reason only that he is a Minister either for the Union or for such State



(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule

21. The disqualification under Article 102(1)(a) is in parimateria with Section 14(1)(a) of the 1963 Act. The other disqualifications are if the nominee were of unsound mind as declared by a competent Court, an undischarged insolvent, if he was not a citizen of India, or has voluntarily acquired the citizenship of a foreign state or were under any acknowledgement of allegiance or adherence to a foreign state or if he were disqualified by or under any other law made by the Parliament.

22. The Representation of Peoples Act, 1951 ('RP Act') deals with disqualification of representatives in terms of Section 8 thereof, which reads as follows:

8. Disqualification on conviction for certain offences.

– [(1) A person convicted of an offence punishable under–

(a) section 153A (offence of promoting enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony) or section 171E (offence of bribery) or section 171F (offence of undue influence or personation at an election) or sub-section (1) or sub-section (2) of section 376 or section 376A or section 376B or section 376C or section 376D (offences relating to rape) or section 498A (offence of cruelty towards a woman by husband or relative of a husband) or sub-section (2) or sub-section (3) of section 505 (offence of making statement creating or promoting enmity, hatred or ill-will between classes or offence relating to such statement in any place of worship or in any assembly engaged in the performance of religious worship or religious ceremonies) of the Indian Penal Code (45 of 1860); or

(b) the Protection of Civil Rights Act, 1955 (22 of 1955) which provides for punishment for the preaching and practice of "untouchability", and for the enforcement of any disability arising therefrom; or

(c) section 11 (offence of importing or exporting prohibited goods) of the Customs Act, 1962 (52 of 1962); or

(d) sections 10 to 12 (offence of being a member of an association declared unlawful, offence relating to dealing with funds of an unlawful association or offence relating to contravention of an order made in respect of a notified place) of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967); or



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(e) the Foreign Exchange (Regulation) Act, 1973 (46 of 1973); or

(f) the Narcotic Drugs and Psychotropic Substances Act, 1985 (61 of 1985); or

(g) section 3 (offence of committing terrorist acts) or section 4 (offence of committing disruptive activities) of the Terrorist and Disruptive Activities (Prevention) Act, 1987 (28 of 1987); or

(h) section 7 (offence of contravention of the provisions of sections 3 to 6) of the Religious Institutions (Prevention of Misuse) Act, 1988 (41 of 1988); or

(i) section 125 (offence of promoting enmity between classes in connection with the election) or section 135 (offence of removal of ballot papers from polling stations) or section 135A (offence of booth capturing) of clause (a) of sub-section (2) of section 136 (offence of fraudulently defacing or fraudulently destroying any nomination paper) of this Act; 1 [or]

[(j) section 6 (offence of conversion of a place of worship) of the Places of Worship (Special Provisions) Act, 1991;] 2 [or]

[(k) section 2 (offence of insulting the Indian National Flag or the Constitution of India) or section 3 (offence of preventing singing of National Anthem) of the Prevention of Insults to National Honour Act, 1971 (69 of 1971),] 4 [; or]

[(l) the Commission of Sati (Prevention) Act, 1987 (3 of 1988); or

(m) the Prevention of Corruption Act, 1988 (49 of 1988); or

(n) the Prevention of Terrorism Act, 2002 (15 of 2002),] 5 [shall be disqualified, where the convicted person is sentenced to—

(i) only fine, for a period of six years from the date of such conviction;

(ii) imprisonment, from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(2) A person convicted for the contravention of—

(a) any law providing for the prevention of hoarding or profiteering; or

(b) any law relating to the adulteration of food or drugs; or



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(c) any provisions of the Dowry Prohibition Act, 1961 (28 of 1961);

(3) A person convicted of any offence and sentenced to imprisonment for not less than two years [other than any offence referred to in sub-section (1) or sub-section (2)] shall be disqualified from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.]

(4)] Notwithstanding anything 8 [in sub-section (1), sub-section (2) or sub-section (3)] a disqualification under either subsection shall not, in the case of a person who on the date of the conviction is a member of Parliament or the Legislature of a State, take effect until three months have elapsed from that date or, if within that period an appeal or application for revision is brought in respect of the conviction or the sentence, until that appeal or application is disposed of by the court.

23. The disqualifications enumerated are, conviction of an offence under Section 153A, 171E, 171F, 376, 505 (2) or (3), 505 (2) and (3) of the Indian Penal Code. Offences committed by candidates under the Protection of Civil Rights Act, 1955, which provides for punishment for preaching and practice of untouchability, Section 11 of the Customs Act, 1962 which deals with the offences of import and export of prohibited goods, Sections 10 to 12 of the Unlawful Activities (Prevention) Act, 1967 which deals with the offences of being a member of an association declared to be unlawful, the Narcotics Drugs and Psychotropic Substances Act, 1985 and the Prevention of Corruption Act, 1988. A candidate shall also stand disqualified in circumstances where, once convicted and the sentence is a fine, for a period of six years from the date of such conviction, and where the sentence is imprisonment for six years, from the date of his release from incarceration for that crime.

24. We are conscious that there is no reference to the R P Act in the 1963 Act. However, we believe that the criteria for nomination/selection both at the levels of Centre and State/Union Territory must be uniform and it would perhaps be open for a Court to test whether the disqualifications prescribed under other enactments, such as those noticed above, should also be borne in mind when candidates are nominated for Legislative Assemblies of State/UT.

25. In any event, a decision on this point would be unnecessary in the present case, since there is no allegation which touches upon any of the disqualifications enumerated



above. We thus leave this question open, to be decided another day, in a more appropriate matter.

26. R3 has been accused of being charged with 'criminal offences of a heinous nature'. However, the details of charge have not been made available and there is no allegation of a conviction, if any. We are thus not persuaded to look further into this aspect. As regards R4 and R5, there are, in fact, no allegations at all, save that they are members of the BJP. This would hardly be a relevant consideration seen in the context of the discussion as above.

27. The petitioner would state that the nominations must be of eminent men from the fields of Science, Economics and Law, who are persons of repute in their chosen fields. Whilst one cannot fault this as a general proposition and such choices would indeed be ideal, one cannot impose such criteria in the absence of any such conditions in the applicable statutory provisions.

28. Perhaps the petitioner has in mind the provisions of Article 80 of the Constitution of India dealing with the composition of the Council of States. Article 80(3) states that the nominees by the President under Article 80(1) shall be of persons having special knowledge or practical experience in the arenas of literature, Science, Art and social service. However this requirement has not been echoed in the 1963 Act. In any event, neither has such averment been raised in the writ petition nor have any arguments been advanced before us in this regard.

29. The Division Bench of this Court while deciding the challenge to Section 3(3) and allied issues had thought it fit to make some recommendations on the methodology to be followed in the manner of making nominations as well as the determination of whether a candidate was 'suitable' to be nominated. In the case of the latter, a distinction was made between the 'eligibility' and 'suitability' of a candidate.

30. While the matter of 'eligibility' would be decided based on the statutory prescriptions of qualifications and disqualifications, the question of 'suitability' was wider and hinged upon whether the candidate was well equipped intellectually as well as in every other way necessary, for holding such high office. The recommendations were:

5 RECOMMENDATIONS :

(i) A clear and unambiguous procedure has to be laid down for nomination of MLAs to the Puducherry Legislative Assembly, with particular clarity about



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where it should emanate from and how it should be carried to its logical end.

(ii) It has to be laid down with specificity as to who / which office will actually exercise the powers of nomination under Section 3(3) of the UT Act eliminating the need to resort to inferential process which has become necessary in the instant case.

(iii) Qualifications, qualities and credentials which will go to make a 'well rounded personality' for qualifying for being nominated as an MLA have to be set out. To be noted, we are not on 'eligibility' or 'educational qualification'. We are on 'suitability'.

(iv) If the nominated MLA belongs to a political party on the date of nomination, it should be made clear that he shall become part of the legislature party of that political party. If there is no legislature party in the house on the date of nomination, the nominated MLA/s shall constitute the legislature party of that political party. This is inter-alia owing to Explanation (b) to paragraph 2(1)(b) of Tenth Schedule to COI using the term 'political party' and not 'legislature party'.

31. Recommendation (iv) was carried in appeal and in considering the challenge, the Supreme Court set aside all recommendations made. As far as the recommendation regarding 'suitability' the Court held the view that a nomination, one made by the proper authority as earmarked under Statute, would be deemed to be one that was not just 'eligible' but also 'suitable' in every relevant way. The relevant paragraph is 92, extracted below:

92. There being already Rules of Business for carrying out the functions by the Central Government as per Article 77(3) of the Constitution of India, we fail to see any justification for making recommendation in paragraph No. 5 of the impugned judgment. Furthermore, the power is to be exercised by Central Government and it is to be presumed that Central Government, in exercise of its power, shall be guided by objective and rational considerations. We, however, hasten to add that there is no inhibition in Central government or the Legislature to make Rules or a Statute for more convenient transaction of business regarding nominations. Recommendations to the Legislature and the high Constitution authorities are



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35. On all fronts therefore, we find no merit in this Writ Petition and dismiss the same. No costs. Connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS VII)

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Sub Assistant Registrar

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To

1. The Secretary to Government,
The Union of India,
Ministry of Home Affairs,
Government of India, New Delhi.
2. The Chief Secretary to Government,
The Union of India,
Rep. by the Government of
Union Territory of Puducherry
Government of Puducherry,
Puducherry-605001.

+1cc to Mr.Raghavachari, Advocate, S.R.No.27343

+1cc to the Government Pleader, S.R.No.27371

W.P. No.12052 of 2021
and WMP.No.12828 of 2021

SSI (CO)
HS (16/07/2021)