



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 17.10.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

CONT P(MD)No.1231 of 2023

G.Alagesan Nadar

... Petitioner

VS.

1.Thirumathi Bagya Leela,
The Returning Officer /
Block Development Officer
(Block Panchayat),
Nalumavadi Village Panchayat Union,
Alwarthirunagari Panchayat Union,
Alwarthirunagari – 628 612, Thoothukudi District.

2.Dr.K.Senthil Raj, IAS.,
The Inspector of Panchayats /
District Collector, Thoothukudi District,,
PSP Nagar, Korampallam,
Thoothukudi – 628 101.

3.Mr.S.Ulaganathan,
The Assistant Director of Panchayat,
Collectorate, Thoothukudi District,
PSP Nagar, Korampallam,
Thoothukudi – 628 101.

...Contemnors 1 to 3 /
Respondents 1 to 3

4.Mr.Senthil Kumar
Principal Secretary to Government,
Rural Development and Panchayt Raj
Department,
Secretariat, Fort.St.George,
Chennai.

...4th Respondent

(R4 is suo motu impleaded vide order dated 25.07.2023)



Prayer: Contempt Petition filed under Section 11 of the Contempt of Courts Act, 1971, to punish the respondents herein for committing grave contempt and gross disobedience of the order passed by this Court in WP(MD)No.27904 of 2022 dated 09.01.2023.

For Petitioner : Mr.K.Rahavan

For Respondents : Mr.Veerakathiravan,
Additional Advocate General
assisted by Mr.K.Balasubramani,
Special Government Pleader

ORDER

Heard the learned counsel for the petitioner and the learned Additional Advocate General appearing for the respondents.

2.WP(MD)No.27904 of 2022 filed by the petitioner herein was disposed of on 09.01.2023 in the following terms :

"2.The fourth respondent was elected as a member of Nalumavadi Village Panchayat in the elections held in the year 2019. The case of the writ petitioner is that the fourth respondent suffered conviction for the offences under Section 302 I.P.C. in the year 2007. But following the intervention of this Court, conviction and sentence were modified and he was released in the year 2015. My attention is drawn to Section 37(2) of the Tamil Nadu Panchayats Act, 1994 which reads as follows:-

“ A person convicted of an offence and sentenced to imprisonment for not less than two years other than any



WEB COPY



offence referred to in sub-section (1) shall be disqualified for election as a member from the date of such conviction and shall continue to be disqualified for a further period of six years since his release. ”

3. My attention is also drawn to G.O.Ms.No.66, Rural Development and Panchayat Raj (PR-I) dated 24.06.2017 in which Rule 2-A has been incorporated in the Tamil Nadu Panchayats (Election) Rules 1995. The amended rule reads as follows:-

“ (h) In view of the penal provisions contained in Section 177 of the Indian Penal Code, 1860, in case of furnishing of false information by any candidate, if any, confirmed at a later date, the Returning Officer concerned may initiate 3/8 <https://www.mhc.tn.gov.in/judis> 4 W.P.(MD)NO.27904 OF 2022 criminal action against that candidate, after providing reasonable opportunity of hearing and by following the procedure contemplated in Section 195 of the Code of Criminal Procedure, 1973.”

4. The petitioner has applied to the first respondent seeking action in this regard. But the first respondent has not so far taken any action. That led to the filing of this writ petition.

5. Though the learned counsel appearing for the fourth respondent seeks time to file counter, I am of the view that it is not necessary to adjourn the case because the facts are very clear. All that the petitioner seeks is initiation of action by the first respondent. The first respondent is directed to take appropriate action on the petition mentioned representation.

6. The learned Special Government Pleader would contend that under Section 41 of the Tamil Nadu Panchayats Act 1995, it is the Inspector of Panchayat must refer the matter to the Government and its decision will be



WEB COPY



final. Before taking its decision, the Government shall obtain the opinion of the Election Commission and act according to the said opinion. Section 41 deals with the question of disqualification. I endorse the stand of the learned Special Government Pleader. Section 41 of the Act reads as follows:-

“Authority to decide Questions of disqualification or cessation of members – (1) If any question arises as to whether any person who has been elected as a member of a panchayat or who becomes a member of a panchayat is not qualified or has become disqualified under Section 33 or Section 34 or Section 35 or subsection (3) of Section 38 or 38A or cessation under Section 40, the question shall be referred by the Inspector to the Government whose decision shall be final.

(2) Before taking any such decision on such question, the Government shall obtain the opinion of the Tamil Nadu Election Commission and shall act according to such opinion.”

7. The fourth respondent will have to be dealt with in two respects. For the act of suppression, he may have to be prosecuted. That has to be done by the first respondent. For disqualifying him from the membership of the Panchayat, the decision has to be taken by the Government. The second respondent shall forthwith forward the question to the Secretary to Government, Rural Development Panchayat Raj Department, Government of Tamil Nadu, Chennai. The Government shall take a decision after getting opinion from the Tamil Nadu Election Commission. The entire exercise will be completed within a period of sixteen weeks from the date of receipt of a copy of this order.”



Contending that the direction has not been complied with, the present contempt petition came to be filed. The member in question has now been disqualified and notification has also been issued. Thus, the direction given by this Court has been complied with. I felt that since the disqualified member had cheated the electoral system, he must be criminally prosecuted. The returning officer has given a complaint and it has been registered as Crime No.99 of 2023 on the file of the Kurumbur Police Station, for the offence under Section 177 of IPC. The learned Additional Advocate General informed the court that since it is a non-cognizable offence, the procedure followed in private complaint case must be followed. The Inspector of Police, Kurumbur Police Station shall relegate the defacto complainant to file a private complaint. The Returning Officer shall file a private complaint within four weeks from today. If such private complaint is filed, it shall be taken on file on merits and in accordance with law and the same shall be disposed of within a period of six months thereafter.

3. With these observations, this contempt petition stands closed. No costs.

17.10.2023

Index : Yes / No
Internet : Yes / No
NCC : Yes / No
Skm



To

1. The Returning Officer / Block Development Officer
(Block Panchayat), Nalumavadi Village Panchayat Union,
Alwarthirunagari Panchayat Union, Alwarthirunagari – 628 612,
Thoothukudi District.
2. The Inspector of Panchayats /
District Collector, Thoothukudi District,,
PSP Nagar, Korampallam,
Thoothukudi – 628 101.
3. The Assistant Director of Panchayat,
Collectorate, Thoothukudi District,
PSP Nagar, Korampallam,
Thoothukudi – 628 101.
4. The Principal Secretary to Government,
Rural Development and Panchayt Raj Department,
Secretariat, Fort.St.George, Chennai.



WEB COPY



G.R.SWAMINATHAN, J.

skm

CONT P(MD)No.1231 of 2023

17.10.2023