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W.P.(MD)NO.27904 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.01.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.27904 of 2022

G.Alagesan Nadar

... Petitioner

Vs.

1. The Returning Officer / Block Development Officer
(Block Panchayat),
Nalumavadi Village Panchayat Ward Member Election,
Alwarthirunagari Panchayat Union,
Alwarthirunagari,
Thoothukudi District.

2. The Inspector of Panchayat /
District Collector (Thoothukudi District),
National Highway 7A,PSP Nagar,
Korampallam,
Thoothukudi – 628 101.

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

4. M.Rajesh

... Respondents

Prayer: Writ petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the 1st respondent to consider the representation of the petitioner dated 22.08.2022 and to direct the 1st respondent to



initiate proceedings on the representation of this petitioner dated 22.08.2022 under Rule 26 (2A) (h) of the Tamil Nadu Panchayat (Election) Rules, 1995 as amended by (G.O. (Ms).No. 66, Rural Panchayat Raj (PR-I), 24th June 2017 and to dispose the same within a stipulated period of time as may be fixed by this Court.

For Petitioner : Mr.K.Rahavan

For R-1 to R-3 : Mr.M.Lingadurai,
Special Government Pleader.

For R-4 : Mr.N.Pragalathan

* * *

ORDER

Heard the learned counsel on either side.

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 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



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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 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 sub-section (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



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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.

8. This writ petition stands disposed of. No costs.

09.01.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes / No
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To:

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G.R.SWAMINATHAN,J.

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