



W.P(MD)No.27017 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

DATED : 15.11.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.27017 of 2023

M.Suresh

... Petitioner

Vs.

1.The District Collector,
Tenkasi,
Tenkasi District.

2.The Block Development Officer,
Vadakarai Keelpedagai Town Panchayat,
Tenkasi District.

3.The President,
Vadakarai Keelpedagai Panchayat,
Tenkasi District.

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to impugned resolution passed by the 3rd respondent dated 26.07.2023 and quash the same and consequently directing the Respondents to permit the petitioner to discharge his regular activities as a councilor.



W.P(MD)No.27017 of 2023

WEB COPY

For Petitioner : Mr.S.Sundarapandian

For Respondents : Mr.M.Sidharthan,
Addl. Government Pleader for R1.
Mr.M.Lingadurai,
Spl. Government Pleader for R2 & R3.

ORDER

Heard the learned counsel for the writ petitioner, the learned Additional Government Pleader for the first respondent and the learned Special Government Pleader for the respondents 2 and 3.

2.The writ petitioner is an elected ward member of Vadakarai Keelpedagai Town Panchayat. The local body has passed the impugned resolution dated 26.07.2023 for disqualifying the petitioner herein. The ground for disqualification is the judgment of conviction and sentence imposed on the petitioner on 09.05.2023 by the Judicial Magistrate, Sengottai in C.C.No.47 of 2016. The petitioner was convicted for offences under Sections 294 (b), 323 and 506(ii) of IPC. He was given the following sentences:-



W.P(MD)No.27017 of 2023

Section	Sentence of imprisonment
294(b) I.P.C.	To undergo three months imprisonment.
324 I.P.C.	To undergo three years simple imprisonment.
506 (ii) I.P.C.	To undergo two years simple imprisonment.

He was directed to pay a sum of Rs.25,000/- as compensation. Interestingly, the sentences were to run consecutively. Aggrieved by the same, the petitioner filed C.A.No.77 of 2023 before the Sessions Court, Tirunelveli. On 17.05.2023 in Cr.M.P.No.6384 of 2023 in C.A.No.77 of 2023, the substantial sentences of imprisonment were ordered to be suspended.

3.The question is whether this would have attracted the disqualification set out in Section 32 of the Tamil Nadu Urban Local Bodies Act, 1998. The contention of the learned counsel for the petitioner is that it would not as the offences cannot be brought under the category of moral delinquency.

4.The learned Special Government Pleader on the other hand would argue that the relevant statutory provision is squarely attracted. The learned Special Government Pleader would add that the petitioner



W.P(MD)No.27017 of 2023

need not to come to this Court as he has an effective alternative remedy under Section 35 of the Act. The respondents pressed for dismissal of the writ petition.

5.I carefully considered rival contentions and went through the materials on record. Section 32 of the Act states that an elected councillor or chairperson shall cease to hold office if he is sentenced by a criminal Court to such imprisonment and for such offence as specified in Sub Section 4 of Section 12 of the Act. Section 12(4) of the Tamil Nadu Urban Local Bodies Act, 1998 is as follows:-

“12. Qualification and disqualification for being elected as [Councillor]—

(4) A person who has been sentenced by a Criminal Court to imprisonment for life or to imprisonment for a period of more than six months for any offence other than an offence of a political character or an offence not involving moral delinquency (such sentence not having been reversed or the offence pardoned) shall be disqualified for being elected as a [Councillor] [while the sentence is in force] and for the further period of [six years] from the date of the expiration of the sentence.”



W.P(MD)No.27017 of 2023

6.It has been held in quite a few decisions that the expression “moral delinquency” will have to be understood depending on the facts and circumstances of each case. The Hon'ble Division Bench of this Court in the decision reported in **1996 (2) MLJ 194 (Tamizhahagam v. The Revenue Divisional Officer, Namakkal, Salem District)** held as follows:-

“..... We cannot agree that a murder, if committed in a spirit of patriotism, will be an exception. It may be that patriots of the revolutionary type, who had committed murders of alien rulers, might have been applauded by sections of the community as heroes. But murder will not cease to be murder, if it is an offence under the Penal Code. Killing is permitted in war, but not in times of peace. An assassin will never be applauded by right-thinking men, and certainly the moral Gode of India, as we see it does not approve of it. Nor can we see any exception in respect of offences by political parties in furtherance of political agitations. There may be all sorts of political organisations or forces in a country and members of them may commit all sorts of infractions of the criminal law in the belief that by so doing they will be furthering their political ends. But if there is an established Government, standing apart, concerned in the enforcement of the criminal law, we cannot see how there can be a blanket exception in respect of



W.P(MD)No.27017 of 2023

political crimes. Nor is it possible to define with precision what a political crime is; certainly it is not just a crime by a politician. The so-called political crimes too will have to be judged in the light of the principles above enunciated-whether the offences are shocking and abhor- rent to a large body of right-minded citizens."

7.I went through the judgment of conviction imposed on the petitioner by the trial Court. The case of the prosecution is that the petitioner had borrowed a certain sum from the defacto complainant by name Ganesan. When Ganesan asked for return of the same, the writ petitioner is said to have stabbed him on his thigh. The learned Special Government Pleader would point out that the stabbing was so deep that the injured had been taken to the hospital along with the weapon. That is why, the trial Court chose to hold that the sentences imposed on the petitioner would run consecutively and not concurrently. A borrower is obliged to return the money borrowed. If he resorts to violence to avoid the consequence of borrowal, that could certainly be considered as an act of moral delinquency. I am more than satisfied that the act committed by the petitioner involves moral delinquency. Since the sentence imposed on the petitioner is for a period of more than six months, the resolution



W.P(MD)No.27017 of 2023

was rightly passed. In any event, a person who has suffered sentence for more than two years ought not to continue as an elected ward member.

Interference is not warranted and the writ petition stands dismissed. No costs.

15.11.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
ias

To:-

- 1.The District Collector,
Tenkasi,
Tenkasi District.
- 2.The Block Development Officer,
Vadakarai Keelpedagai Town Panchayat,
Tenkasi District.
- 3.The President,
Vadakarai Keelpedagai Panchayat,
Tenkasi District.



WEB COPY



W.P(MD)No.27017 of 2023

G.R.SWAMINATHAN, J.

ias

W.P(MD)No.27017 of 2023

15.11.2023