



O.A.No.345 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.06.2024

CORAM :

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

O.A.No.345 of 2024 in

ELP No.1 of 2021

V.M.C.S.Manoharan

... Applicant

Vs.

1. M.Nagathiyagarajan
2. A.Arulraju
3. S.Sellamuthu
4. C.Baladhandayudhabani
5. Mohammed Yusuf
6. VMCS. Rajaganapathi
7. A.Geetha Anandan
8. S.Sridhar

9. The Returning Officer-X,
Neravy T.R.Pattinam Constituency,
Karaikal District, U.T. of Puducherry.

10. The Chief Electoral Officer,
U.T. of Puducherry 605 001.

11. The District Election Officer,
Karaikal District.

(Respondents 9 to 11 are struck off from the respondents in
ELP No.1 of 2021 as per order of this court dated
03.12.201 in O.A.No.704/2021.)

... Respondents



O.A.No.345 of 2024

PRAYER: This application has been filed under Order 14 Rule 8 of O.S.

Rules r/w Order XVI Rule 6 & 7 of CPC to issue subpoena to the District Election Officer, Office of the District Election Officer (District Collectorate) Duplex Street, Karaikal, Government of Puducherry to appear and produce the following file/documents in his possession 1. Complaint dated 05.04.2021 received from Thiru VMCS.Manoharan of BJP, Neravey TR Pattinam Constituency; 2. Complaint dated 26.05.2021 received from Thiru VMCS. Manoharan of BJP, Neravey TR Pattinam Constituency; 3. Notice of Member Secretary (DL-MCMC), vide No. E.18/MCMC/GEPLA-2021, dated 05.04.2021 and acknowledgment; 4. Reply submitted by M.Nagathiyagarajan on 06.04.2021 to the Member Secretary, District level Medical Certification and Monitoring Committee, Karaikal; 5. Order No.03 DL/MCMC/KKL/2021 dated 05.04.2021 of the Chairman DL-MCMC, Karaikal District; 6. Video posted on facebook on the night time of 05.04.2021 by Thiru Nagathiyagarajan, DMK candidate of 28 Neravey TR Pattinam Assembly Constituency; and 7. Order dated 26.04.2021 by the District Collector (Rev.Cum Returning Officer -X) on the date and time fixed by this Court and to give evidence.

For Applicant : Mr. Parthiban Patmanabane

Page 2 of 10



WEB COPY



O.A.No.345 of 2024

For Respondents : Mr.P.V.Blasubramanian, Senior Counsel

ORDER

(Order of the Court was delivered by D.KRISHNAKUMAR, J.)

This application has been filed by the petitioner to issue subpoena to the District Election Officer, office of the District Election Officer (Collectorate), Karaikal, Government of Puducherry to appear and produce the following documents, on the date and time fixed by this Court and to give evidence.

i) Complaint dated 05.04.2021 received from Thiru VMCS.Manoharan of BJP, Neravey TR Pattinam Constituency.

ii) Complaint dated 26.05.2021 received from Thiru VMCS. Manoharan of BJP, Neravey TR Pattinam Constituency

iii) Notice of Member Secretary (DL-MCMC), vide No. E.18/MCMC/GEPLA-2021, dated 05.04.2021 and acknowledgment.

iv) Reply submitted by M.Nagathiyagarajan on 06.04.2021 to the Member Secretary, District level Medical Certification and Monitoring Committee, Karaikal.

v) Order No.03 DL/MCMC/KKL/2021 dated 05.04.2021 of the Chairman DL-MCMC, Karaikal District

vi) Video posted on facebook on the night time of 05.04.2021 by Thiru Nagathiyagarajan, DMK candidate of 28 Neravey TR Pattinam Assembly Constituency

vii) Order dated 26.04.2021 by the District Collector (Rev.Cum Returning Officer -X)

2. The learned counsel appearing for the petitioner submitted that the



O.A.No.345 of 2024

documents sought to be marked are kept in the custody of the District Election officer and not available with the petitioner, neither at the time of filing the election petition nor at the time of his examination in chief and also till the date, the certified copies were denied by the District Election Officer. Further, it is contended by the petitioner that, he is not the author of any of the above documents and he filed an application under RTI Act to provide documents and he was provided with the copy of the order dated 25.06.2021 along with the copies of the notice sent, reply given by the first respondent, and the action taken report. Subsequently, he made another representation to provide the certified copies of the same, sighting the urgency, as it is required to the court case, but the same was rejected, as it is not possible. Thereafter, he filed an Appeal under RTI Act, however, there was no reply. As such, he made a representation to the Chief Election Officer, Puducherry, who replied that, since the first appeal is pending, the time limit is not yet over and he has to wait and then file appeal to the Central Information Commission. In such circumstances, all the efforts taken by the petitioner to collect the certified copies of the documents went in vain and till date, the District Election Officer has not provided the certified copies. Hence, this petition has been filed seeking to produce the



O.A.No.345 of 2024

documents by the subpoena witness and to give evidence, as it is necessary to bring out the real fact and to prove his case.

3. The learned counsel appearing for the respondents, making objection to the said submission made by the learned counsel for the petitioner, submitted that, now evidence of PW1 and RW1 was already completed and the case is pending for hearing arguments. At this juncture, this petition cannot be entertained and hence, he seeks for dismissal of the petition.

4. Heard the learned counsel for the petitioner and the learned counsel for the respondents and I have perused the materials on record.

5. According to the petitioner, the documents, now required to be marked before this court are in custody of the District Election Officer and the same are not available with him either at the time of filing the election petition nor at the time of examining the witnesses. Further, it is contended by him that all the efforts taken by him to get the certified copies of the said documents under RTI Act went in vain and since the documents are very



O.A.No.345 of 2024

essential to decide the issue involved in the election petition, this petition has been filed.

6. The learned counsel for the respondents submitted that, as far as the documents No.1 and 2, dated 05.04.2021 and 26.05.2021 respectively are concerned, already they were marked before this Court. He further submitted that, the document No.3, dated 05.04.2021 is a summon, issued to the respondents to appear for enquiry and hence, it is not necessary to mark the said document through the Election Officer.

7. The learned counsel for the petitioner replied that, the document No.4, dated 06.04.2021 is the reply submitted by the first respondent, namely M.Nagathiyagarajan, to the summon dated 05.04.2021 issued to him and it was not marked at the time of examination of RW1. He further submitted that the document No.4 is a vital document to establish his case in the election petition and if the same are marked, no prejudice would be caused to the respondents. He also added that the document No.5, viz. order of the Chairman, KL MCMC, Karaikal, dated 05.04.2021 and document No.7 viz., order dated 26.04.2021 by the District Collector (Rev.Cum



O.A.No.345 of 2024

Returning Officer -X) were also not marked before this Court, however, the document No.6, viz., video posted on facebook, dated 05.04.2021 was already marked.

8. The learned counsel for the respondents strongly objected to produce the document No.4 dated 06.04.2021 (reply given by the first respondent/ M.Nagathiyagarajan) and also the documents No.5 and 7.

9. After elaborate discussion and the submission made by both counsel, as stated supra, it is clear that the documents No.1, 2 and 6 were already marked in the election Petition. As far as the document No.3 is concerned, it is only a summon issued to the respondent to appear for enquiry and hence, there is no need to mark the above said document and the same is also accepted by the learned counsel for the petitioner. At this juncture, the counsel for the petitioner submitted that he is not pressing to mark the document Nos.1, 2, 3 and 6. As far as the document No.4 (reply given by the first respondent/ M.Nagathiyagarajan, dated 06.04.2021) is concerned, even though the learned counsel for the respondents made serious objection to mark the same, considering the submission of the



O.A.No.345 of 2024

petitioner that it is a vital document to decide the issue, this court is inclined to allow the above document to be marked. Likewise, the document No. 5 and 7 also allowed to be marked.

10. Accordingly, this petition is allowed in part to the extent of issuing subpoena to the District Election Officer, office of the District Election Officer (Collectorate), Karaikal to produce the document Nos.4, 5 and 7, viz.,

iv) Reply submitted by M.Nagathiyagarajan on 06.04.2021 to the Member Secretary, District level Medical Certification and Monitoring Committee, Karaikal.

v) Order No.03 DL/MCMC/KKL/2021 dated 05.04.2021 of the Chairman DL-MCMC, Karaikal District Constituency.

vii) Order dated 26.04.2021 by the District Collector (Rev.Cum Returning Officer -X)

As for as the other document Nos.1, 2, 3 and 6 are concerned, this petition is dismissed as not pressed. ***The learned counsel for the petitioner also undertakes not to examine further witnesses in the election petition.***

11. Notice to the respondents, returnable by 12.07.2024.



WEB COPY



O.A.No.345 of 2024

12. Post the matter on 12.07.2024.

28.06.2024

Internet: Yes/No
Index : Yes/No
mst



WEB COPY



O.A.No.345 of 2024

D.KRISHNAKUMAR, J.

mst

O.A.No.345 of 2024 in

ELP No.1 of 2021

28.06.2024