2026:MHC:4380

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on:15.10.2026	Pronounced on: 30.10.2026

CORAM

THE HON'BLE MR.JUSTICE P.B. BALAJI

O.A. No.1022 of 2026
in ELP. No.5 of 2026

O.Panneerselvam
S/o.Ottarkarathevar,
No.145/70, South Agraharam,
Thenkarai, Periyakulam - 625 601
Theni District.

..Applicant(s)

Vs

1. T.Kannan
   S/o.K.Thayumanavan,
   No.6-3-2, Pajaimada Street,
   Genguvarpatty - 625 203,
   Theni District.

2. The Returning Officer Cum District Supply
   And Consumer Protection Officer
   Theni, No.200,
   Bodinayakkanur Assembly Constituency,
   Bodinayakkanur - 625 513.
   Theni District.

3. S.Kalaiyarasu
   S/o.Srinivasagam,
   Moovendar Illam,
   414, Natarajan Salai,
   Ponnappa Nadar Nagar,
   Nagercoil - 629 004.
   Kanyakumar District.

4. V.T.Narayansamy
   S/o.P.N.V.Thiruvengadam,
   32/W4, Panayat Office Street,
   Govindhanagaram - 625 517.
   Theni District.

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5. N.Padmanabhan
   S/o.Narayanasamy,
   Thirunagar,
   Sivagiripatty - 624 601.
   Palani, Dindigul District.

6. S.Prakash
   S/o.R.Selvam,
   48-A, 6th Street, Forest Road,
   Theni - 625 531.
   Theni District.

7. M.Raja
   S/o.Mani, 2-1-101/2-1-62,
   Maravar Street, Sedapatty,
   Vadugapatty - 625 603.
   Theni District.

8. S.Pandikumar
   S/o.Ponnammal Subramaniyan,
   924W, Vinobaji Nagar,
   2nd Street, Near Vithaigal Education Centre,
   Bodinayakkanur - 625 513.
   Theni District.

9. G.Karuppiah
   S/o.Gopal, Sowdamman Kovil Street,
   Silamalai - 625 528.
   Theni District.

10. R.Gowtham
    S/o.Rajendran,
    11-1-19, Main Road,
    Upparpatty, Veerapandi - 625 534.
    Theni District.

11. S.Chandrasekaran
    S/o.R.Subramaniyapillai,
    10, Vaniyar Street, Chinnakadai Veethi,
    Vadugapatty - 625 603.
    Theni District.

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12. V.Saravanakumar
S/o.Vellusamy, 196,
West Street,
Govindhanagaram - 625 517.
Theni District.

13. V.Naganathini
W/o.S.Prakash,
48-A, 6th Street, Forest Road,
Theni - 625 531.
Theni District.

14. P.Selvamurugan
S/o.Pandiyarajan,
40/40, TVKK Nagar-2,
Bodinayakkanur - 625 513.
Theni District.

15. K.Balasubramani
S/o.Rengasamy,
1491, Veerapandi Road,
Thappukundu,
Thandichery - 625 534.
Theni District.

16. K.Velraj
S/o.Kaliappan, 290,
Ramakrishnapuram,
Pottipuram, Bodinayakkanur - 625 513.
Theni District.

..Respondent(s)

ELP. No.5 of 2026

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S/o.K.Thayumanavan,
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..Petitioner(s)

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Vs

1. The Returning Officer Cum District Supply
And Consumer Protection Officer
Theni, No.200,
Bodinayakkanur Assembly Constituency,
Bodinayakkanur - 625 513.
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2. O.Panneerselvam
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Bodinayakkanur - 625 513.
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15. K.Balasubramani
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16. K.Velraj
S/o.Kaliappan, 290,
Ramakrishnapuram,
Pottipuram, Bodinayakkanur - 625 513.
Theni District.

..Respondent(s)

PRAYER in O.A. No.1022 of 2026: This Original Application is filed under Rules 3 and 12 of the Madras High Court Election Petitions Rules, 1967 read with Order XIV Rule 8 of the Original Side Rules of the Madras High Court and Order VII rule 11(a) and (d) of the Code of Civil Procedure, 1908, to reject the Election Petition No.6 of 2026 .

PRAYER in ELP No.5 of 2026: This Election Petition is filed under Sections 80, 81, 82, 83, 84 and 100(1)(c) of the Representations of the People Act, 1951 challenging the Election of the 2nd respondent from Bodinayakkanur Assembly Constituency, (a) The election of the returned candidate, the 2nd respondent, from No.200 Bodinayakkanur Assembly be declared void and set aside under Section 100(1)(c) of the Representation of the People Act, 1951 and declare a fresh election and (b) Allow the cost of this petition to the petitioner.

For Applicant(s): Mr.N.R.Elango,
Senior Counsel for
Mrs.P.Rajalakshmi

For Respondent(s): Mr.K.Karthikeyan

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ORDER

This Original Application has been taken out by the successful returned candidate, the 2nd respondent in the Election Petition, seeking to reject the Election Petition, invoking Order VII Rule 11(a) and (d) of the Code of Civil Procedure.

2. I have heard Mr.N.R.Elango, learned Senior Counsel, for Mr.Agilesh Kumar, appearing for the applicant/ 2nd respondent and Mr.K.Kathiresan, appearing for the respondent/election petitioner.

3. The election petition has been filed by the respondent herein, contending that his nomination has been improperly rejected by the Returning Officer and therefore, the election petitioner is entitled to succeed, in view of the mandate of Section 100(1)(c) of the Representation of the People Act, 1950. Submissions of Mr.N.R.Elango, learned Senior Counsel, are summarised as hereunder:

According to the learned Senior Counsel, there is absolutely no cause of action for the relief sought for in the election petition and there is absolutely no pleading with regard to grounds 7 to 13, which have been set out in the election petition. He would further state that there is no proof as well, leave alone absence of pleading, warranting consideration of the election petition on merits.

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Taking me to the Form-26 itself, learned Senior Counsel, Mr. N.R.Elango states that the nomination of the election petitioner has been refused on the ground that the petitioner was receiving monthly income from the Government and he himself had admitted to be an employee of the State Government, getting salary from the State Government. Learned Senior Counsel would therefore state that the Returning Officer has rightly found that the election petitioner is holding an office of profit under the State Government and rejected his nomination. He would also take me through the admitted pleadings of the election petitioner to contend that the rejection was for a valid reason and not unfounded, as contended by the election petitioner. Learned Senior Counsel would further state that the mere use of adjectives like mechanical, arbitrary, illegal and non-speaking without being able to substantiate any of the same would not suffice to maintain the election petition.

4. On facts, learned Senior Counsel would contend that the petitioner was initially appointed as a Junior Assistant in the Local Library Authority at Virudhunagar and was subsequently promoted as the Superintendent in the Office of District Library, at Theni. However, it is the contention of the learned Senior Counsel that the election petition does not contain material facts with regard to the source of the petitioner's appointment which would clearly constitute an office of profit under the Government, within the meaning of Article 191(1)(a) of the Constitution of India. Learned Senior Counsel would

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further state that the explanation offered by the election petitioner, that the Local Library Authority is a separate statutory body, constituted under the Tamil Nadu Public Libraries Act, 1948 and therefore, the employees of the Local Library Authority cannot be treated as Government servants and consequently, not as holders of "office of profit" under the Government, is factually as well as legally, unsustainable. In this regard, he has taken me through the Tamil Nadu Public Libraries Act, 1948 itself and referring to Section 9-A, he would vehemently contend that in view of the express language employed in Section 9-A of the Act, the petitioner cannot contend that he is not a Government Servant. Learned Senior Counsel has also relied on the following 3 decisions:

(i) Azhar Hussain vs. Rajiv Gandhi, reported in *1986 SCC OnLine SC 394;*

(ii) Kimneo Haokip Hangshing vs. Kenn Raikhan, reported in *2024 SCC OnLine SC 2548; and*

(iii) Karim Uddin Barbhuiya vs. Aminul Haque Laskar, reported in *2024 SCC OnLine SC 509*

5. The learned senior counsel, Mr.N.R.Elango therefore contends that there is no necessity for the parties to go for trial as there is complete absence of cause of action and there is nothing in the election petition, even pleading on

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necessary grounds, leave alone the same requiring proof, for setting aside the assembly election, in which the applicant has been successfully elected.

6. Submissions of Mr.K.Kathiresan, learned counsel for the respondent/ election petitioner are briefly summarised hereunder:

Per contra, Mr.K.Kathiresan, learned counsel for the respondent/ election petitioner, contends that the reason for the rejection of the election petitioner's nomination is that he holds office of profit and also citing Articles 102(1) and 191(1) of the Constitution of India. With regard to Article 102(1), learned counsel for the respondent, Mr.K.Kathiresan, states that this Article can be applied only to Members of Parliament and not to members of the State Legislature Assembly. He would therefore, at the outset, state that the very reference to Article 102(1) is wholly misplaced and consequently inapplicable. As regards Article 191(1), taking me through the said Article, it is the contention of the learned counsel for election petitioner that the said Article can be invoked only when a person is sworn in and therefore, unless the parties are referred to trial, the contention and objections of the respondent/election petitioner cannot be effectively tested. In short, it is his submission that rejection under Article 191(1) was in fact premature. The learned counsel would also invite my attention to Article 173, which prescribes the qualifications for a candidate standing for an assembly election. He would further contend that the respondent/ election petitioner qualifies and satisfies all the requisites and

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conditions enumerated in Article 173 and therefore, there was absolutely no justification on the part of the returning officer to return the nomination.

7. As regards "office of profit", he would contend that the enactment is of the year 1948 and Section 9-A will have to be read along with Section 9-B and Sections 12 and 13. Pointing out to the above Sections, the learned counsel contends that though under Section 9-A, employees under the Local Library Authority are treated as Government servants, their salary is not paid by the Government, but from and out of a separate fund and income, and the said income for the said fund is also taken care of by imposition of cess under Section 12(2)(c) of the Act, in the form of surcharge on property taxes. It is therefore, his submission that the salary paid to the election petitioner is only out of a public fund and cannot be treated as payment of salary by the Government. He would therefore state that there is no bar for the election petitioner to have participated and stood in the elections. He also contended that before passing the impugned order of rejection, there was no proper scrutiny or enquiry conducted by the election officer. He would therefore state that the application seeking rejection under Order VII Rule 11, cannot be entertained and has to be dismissed, requiring an elaborate trial in the election petition and to afford an opportunity to the election petitioner to establish his prayer to set aside the election, invoking Section 100(1)(c) of the Representation of the People Act, 1950.

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8. I have carefully considered the submissions advanced by the learned Senior Counsel for the applicant/2nd respondent and the counsel for the respondent/ election petitioner.

9. It is not in dispute that the nomination of the election petitioner has been rejected citing 2 Articles namely, Articles 102(1) and 191(1). As regards Article 102(1), I find force in the submission of the counsel for respondent. This Article specifically deals with disqualification of a person for being chosen as and for being a member of either house of the Parliament. There is no corresponding Article in the Constitution of India which pertains to the State Legislative Assemblies. In fact, Mr.N.R.Elango, learned Senior Counsel, fairly conceded to this position, though he contended that even otherwise, the rejection on the ground of holding an office of profit, invocation of Article 191(1) is proper, and therefore no purpose would be served by keeping the election petition on file.

10. Article 191(1), admittedly applies to the case on hand since the Article relates to disqualification for membership to the Legislative Assembly or Legislative Council of a State. Article 191(1)(a) disqualifies a person for being chosen as and for being, a member of the Legislative Assembly, if he holds any profit under the Government of India or the Government of any State

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specified in the first schedule, other than an office declared by the Legislature of the State by law not to disqualify its holder. Admittedly in the present case, it is not the case of both parties that in so far as State of Tamil Nadu, there is any exemption granted by declaring any office being held to fall within the purview of office of profit, thereby disqualifying the holder. I am now concerned with whether the petitioner holds an office of profit under the Government and consequently was disentitled to contest in the assembly elections.

11. In this context, the most relevant provision would be Section 9-A of the Tamil Nadu Public Libraries Act, 1948. Under Section 9-A, all persons employed in the Local Library Authorities, notwithstanding anything contained in any other law in force on, and from 1st April 1982, are treated as wholetime Government Servants. The election petitioner was appointed subsequent to this relevant date which factum is not disputed by the election petitioner. Therefore, I do not see any difficulty in straight away finding that the election petitioner, being an employee of the Local Library Authority is a whole time Government servant. Merely because there is an internal arrangement between the Government and the Local Library Authority relating to reimbursement of salaries and allowances paid by the Government, the express conferment of status of a Government servant on a person employed in the Local Library Authority, does not in any manner stand diluted.

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12. As regards the argument of the learned counsel for the respondent, that the application is premature and Article 191(1) can be applied only when the person is sworn in and not earlier, I am unable to countenance the argument for the simple reason that Article 191 disqualifies a person who holds an office of profit under the State Government from even being chosen as, leave alone being a Member of the Legislative Assembly. Therefore, if the petitioner is not being capable of being chosen in the first place to be elected to the Legislative Assembly, then I do not see why the parties should be forced to a prolonged and unnecessary trial. Therefore, I do not see any merit in the argument of the learned counsel for the respondent/ election petitioner that in view of Sections 9-B, 12 and 13 and separate fund being created, the petitioner cannot be treated as Government servant holding an office of profit.

13. Coming to the decisions that are relied on by Mr. N.R.Elango, learned Senior Counsel, the Hon'ble Supreme Court in *Azhar Hussain's* case (referred herein supra), held that when there is no cause of action set out and there is clear absence of material particulars, and the pleadings also do not disclose a cause of action, then there would be nothing for the respondent to answer and following the doctrine laid down in *Nihal Singh vs. Rao Birendra Singh and Another,* reported in *(1970) 3 SCC 239,* the Hon'ble Supreme Court held that the election petition can be dismissed in exercise of powers under Order VII Rule 11, CPC. In *Kimeo Haokip Hangshing's* case, (reported herein supra) the

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Hon'ble Supreme Court held that in an election petition, pleadings have to be precise, specific and unambiguous and if the allegations in the election petition do not set out grounds as contemplated under Section 100 and do not conform to the requirement of Sections 81 and 83 of the Act, then the election petition is liable to rejected under Order VII Rule 11 CPC. A similar view was taken in *Karim Uddin Barbhuiya's* case (referred herein supra).

14. Applying the ratios laid down in the above decisions of the Hon'ble Supreme Court, to the facts of the present case as well, I do not find anything irregular or improper on the part of the returning officer in returning the nomination of the respondent/ election petitioner, under Article 191(1) of the Constitution of India. In such circumstances, having found that there is no useful purpose being served by directing the parties to lead evidence, as the writing is already on the wall and in view of the findings that the petitioner holds an office of profit, which factum cannot be disputed by him in the light of Section 9-A of the Tamil Nadu Public Libraries Act, 1948, which is clearly applicable to the petitioner, who was appointed only in the year 1996, I am inclined to invoke Order VII Rule 11 CPC to reject the election petition, holding that the election petition is without a cause of action and there is no necessity for conducting a trial to decide whether the rejection of the election petitioner's nomination was proper or improper.

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15. In light of the above, ***OA No. 1022 of 2026 is allowed and consequently, Election Petition No. 5 of 2026 stands rejected.*** No costs.

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Index: Yes
Speaking order
Neutral Citation: Yes

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P.B.BALAJI J.

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Pre-delivery order in
O.A. No.1022 of 2026
in ELP. No.5 of 2026

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