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GOVERNMENT OF TAMIL NADU
2013

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No. 237] CHENNAI, TUESDAY, AUGUST 20, 2013
Aavani 4, Vijaya, Thiruvalluvar Aandu-2044

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGMENT OF THE HIGH COURT OF JUDICATURE AT MADRAS IN
ELECTION PETITION NO. 6 OF 2011

No. SRO G-15/2013

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001 Dated 26th July 2013 (4, Shravana 1935 (Saka)), is published:—

No. 82/TN-LA/6/2011:— in pursuance of Section 10-6(b) of the Representation of the People Act, 1951 (43 of 1951) the Election Commission hereby publishes the order of the High Court of Madras, Dated 5-4-2013 in Election Petition No. 6 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 5th DAY OF APRIL 2013

THE HON'BLE MR. JUSTICE K. VENKATARAMAN

ELECTION PETITION No. 6 OF 2011

ELP. No. 6 of 2011

S. Chinnadurai,
S/o Sadaiyan,
Wets Nagar, Neelamangalam Village and Post,
Kallakurichi Taluk,
Villupuram District.—*Petitioner*

Versus

1. Mrs. K. Alaguvelu,
W/o M. Babu,
No. 9/20-A, Raja Nagar,
Gandhi Road,
Kallakurichi-606 202,
Villupuram District.
2. V. Ayyappa,
No. 3-D, Kasthuribai Nagar,
Thiayathurgam, Kallakurichi Taluk,
Villupuram District.
3. E. Sankar Subramani,
Karunapuram New Colony,
Kallakurichi Town (M) Taluk,
Kallakurichi Taluk,
Villupuram District.
4. M. Dinesh,
No. 3/305-A, Main Road,
Thenkeeranur Post,
Kallakurichi Taluk,
Villupuram District.
5. N. Rajesh,
No. 48, Kottaimedu,
Kallakurichi,
Villupuram District.

6. A. Amsavalli,
Moraitheru,
V.O.C. Nagar,
Kallakurichi Town (M) Taluk,
Villupuram District.
7. K. Arivukarasu,
North Street,
Adari Road,
Porasakurichi Village and Post,
Kallakurichi Taluk,
Villupuram District.
8. A. Kesavan,
North Street, Adari Road,
Porasakurichi Village and Post,
Kallakurichi Taluk,
Villupuram District.
9. M. Danapal,
Siruvangoor Road,
Kottaimedu,
Kallakurichi,
Villupuram District.
10. A.C. Pavarasu,
26, 2nd Street,
A. Kosakulam,
Anaiyur Post,
Madurai District.
11. V. Anandhi,
No. 40/1, Gandhi Road,
Kallakurichi,
Villupuram District.
12. M. Gurusamy,
No. 96/B, 7th Street,
V.O.C. Nagar,
Kallakurichi,
Villupuram District.
13. A. Kolangi,
No. 148-B, Karunapuram,
Kallakurichi,
Villupuram District.

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14. M. Senthilkumar,
520/55, Vanava Reddy Colony,
Kallakurichi Taluk,
Villupuram District.
15. N. Dharmalingam,
Marur,
Kadambur Post,
Sankarapuram Taluk,
16. K. Natesan,
No. 6/23, Old No. 47.
Vilanthangal Road,
Kallakurichi,
Villupuram District.
17. The Returning Officer for
No. 80. Kallakurichi (Reserved)
Constituency, Villupuram District
Cum Revenue Divisional Officer,
Kallakurichi, Villupuram District.
18. The Chief Election Officer,
Fort St. George,
Secretariat, Chennai.
19. The Chief Election Commission
of India, New Delhi. —*Respondents.*

R17, R18, R19, has been Struck off from the array of respondents as per the Common order of this Hon'ble Court dated 29-10-2012 made in Original Application Nos. 761, 763, 762/2012 in ELP No. 6 of 2011.

The Election Petition Praying that this Hon'ble Court be pleased to

(a) declare the election of the candidate *viz.*, the 1st respondent herein from the Kallakurichi (Reserved) Constituency in the election held on 13-4-2011 and result declared on 13-5-2011 as *Null and void*.

(b) direct the 1st respondent to pay the petitioner's costs of this Proceedings.

The above Election Petition having been heard on 1-4-2013 in the presence of Mr. A.R.L. Sundaresan, Senior Counsel for M/s. A.L. Gandhimathi, advocate for the Election Petitioner herein and Mr. S. Muthuraj, Advocate for the 1st respondent. herein and the respondents 17 to 19 are struck Off from the array of respondents and upon reading the petition of S. Chinnadurai filed herein and the written statement of the 1st respondent filled herein and upon perusing the evidence adduced herein and also the exhibits marked thereto and having stood over for consideration till this day and coming on this day, before this Court, for orders in the presence of the said advocates to the parties hereto.

The Court made the following order:—

The election petition has been filed by the election petitioner to declare the election of the first respondent from Kallakurichi (Reserved) Constituency in the election held on 13.4.2011 as *Null and Void*.

2. For the sake of convenience, the petitioner in the election petition is called as 'election petitioner', the first respondent in the election petition is referred as the 'returned candidate' and the other respondents are referred as per their nomenclature in the election petition.

3. In the election petition, the following facts have been set out by the election petitioner:—

(a) No. 80, Kallakurichi Assembly Constituency is one which is reserved for Scheduled Caste candidates. The election for the 16th Legislative Assembly in the State of Tamil Nadu was notified on 1-3-2011. The election was held on 13.4.2011 and the results were declared on 13-5-2011.

(b) The returned candidate does not belong to Scheduled Caste community and hence, on the date of election, she was not qualified to be chosen to fill up the seat. Her nomination has been improperly accepted by the Returning Officer without proper scrutiny.

(c) Even though the returned candidate is living at Kallakurichi, for the purpose of fraudulently contesting as a candidate in the reserved constituency, she obtained a community certificate from the Tahsildar, Devakottai on 21-1-2011 as though she belongs to 'Hindu Pallan' Community.

(d) The returned candidate was originally calling herself as Alaguvel Babu. But, for the purpose of election, she has changed the records by tampering with the same as K. Alaguvelu. However, no authentic records have been submitted by her before the Returning officer with regard to the change of her name from Alaguvel Babu to K. Alaguvelu.

(e) The returned candidate had married one Babu, who belongs to Hindu Reddiar Community and on and from the date of her marriage, she has been living only as a Hindu Reddiar and practicing only the custom of the said Reddiar Community.

(f) The returned candidate does not belong to the Scheduled Caste Community by birth or otherwise. At no point of time, she has been practicing the custom of Scheduled Caste Community. The returned Candidate, who does not belong to Scheduled Caste Community, has deprived the real Scheduled Caste Community persons' right of representation in the assembly for which purpose the Constituency was reserved for Scheduled Caste Community.

(g) Therefore, the returned candidate is not qualified under Section 5(1) of the Representation of people Act, 1951 and is therefore disqualified under Section 100(1) (a) of the Representation of People Act, 1951 and her nomination ought

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to have been rejected. Her election is vitiated under Section 100(1) (d) (i) of the Representation of People Act.

Thus putting forth the above grounds, the election petition was filed.

4. Written Statement was filed on behalf of the Returned Candidate, wherein the following facts have been set out:—

(a) The returned candidate was born at Sirumaruthur Village, Devakottai Taluk, Sivagangai District and her parents were also residing in the same Village and they belong to 'Hindu Pallan', which is a Scheduled Caste Community. She has completed her B.E. Course. In all her school records viz., Secondary School Cumulative Record, her Community has been mentioned as 'Hindu Pallan'. The Community certificate can be issued only in the concerned Taluk Office, where the native village is situated. Accordingly, the Tahsildar, Devakottai, after due enquiry has issued Community certificate dated 21-1-2011 in her name stating that she belongs to 'Hindu Pallan', which is a Scheduled Caste Community. Therefore, she is factually and legally qualified to contest in the Kallakurichi (SC) Assembly Constituency. Since her nomination papers were in order and proper in accordance with law and rules of the Election Commission of Tamil Nadu, if was accepted and she was authorised to contest in the said assembly as the AIADMK party candidate.

(b) Originally, the returned candidate was residing in their joint family house at No.38-C, Kuathumettu Street, Kallakurichi and the family card was issued in that address during 2005-2009. Subsequently, her husband constructed a new house at No.9/20-A, Raja Nagar, Gandhi Road, Kallakurichi and they shifted their residence therein. On the application, her permanent address was also changed in the family card by the order of the Special Tahsildar (Civil Supplies), Kallakurichi.

(c) The native of the returned candidate is Sirumaruthur Village, Devakottai Taluk, Sivagangai District. Her parents resided there till their life time and they were belonging to 'Hindu Pallan' (SC) Community. Hence, she being their daughter also belongs to the said community. The Community Certificate can be obtained only in the Native Taluk. Hence, on her Application, after enquiry Community Certificate was issued to her by the Tahsildar, Devakottai. Merely because she married M. Babu, who belongs to Reddiar Community, her original caste will never change. A person's community is being decided based on her birth and not by Marriage.

(d) It is not correct to state that the returned candidate is living only as a Reddiar and practising only the custom of the Reddiar Community. Not only the Community Certificate but also in her school certificates, her caste has been mentioned as 'Hindu Pallan' (SC) Community. There are no grounds made out for declaring the election to be Void.

Thus, the written statement filed by the returned candidate sought for dismissal of the election petition with costs.

5. The following issues were framed in the election petition:—

- (i) Whether the first respondent belongs to Scheduled Caste Community?
- (ii) Whether the first respondent was in any way disqualified from contesting the election for No. 80, Kallakurichi (Reserved) Constituency?
- (iii) Whether the acceptance of the nomination of the first respondent by the 17th respondent is violative of Section 5(a) and 100(1) (d) (i) of the Representation of the People Act, 1951?
- (iv) Whether the election of the first respondent is vitiated under Section 100 (1) (d) (i) of the Representation of the People Act, 1951?
- (v) Whether the Petitioner is entitled to any other relief?

6. On the basis of the above Pleadings, I have heard Mr. AR.L. Sundaresan, learned Senior Counsel appearing for the election petitioner and Mr. S. Muthuraj, Learned counsel appearing for the returned candidate. The other respondents have not chosen to file any written statement and to contest the Matter.

7. The election petitioner has filed the election petition to declare the election of the returned candidate from Kallakurichi (Reserved) Constituency in the election held on 13-4-2011 as *Null and void*.

8. Even though five issues were framed in the election petition, the only ground on which the election petition was filed is that the returned candidate does not belong to Scheduled Caste Community. They are dealt with hereunder:—

9. On behalf of the election petitioner, he has examined himself as P.W.1 and Exs.P.1 to P.6 have been filed and marked. The returned candidate examined herself as R.W.1 and Exs.R.1 to R. 7 have been filed and marked. The Tahsildar, Devakottai has been examined as C.W1 and Exs.C.1 to C.5 have been marked through him. The Returning Officer, Kallakurichi Reserved Constituency during the assembly election held in the year 2011, was examined as C.W.2 and Exs.C.6 to C.8 have been marked through him. The Tahsildar of Kallakurichi during the assembly election held in the year 2011 has been examined as C.W.3.

10. It is the case of the election petitioner, as stated already, that the returned candidate does not belong to Scheduled Caste Community. On the one hand, the election petitioner has stated that the returned candidate does not belong to Scheduled Caste Community by birth or otherwise and at the same time, in his election petition, he has stated that the returned candidate married one M. Babu, who belongs to Hindu Reddiar Community and on and from the date of her marriage with the said M. Babu, she has been living only as Hindu Reddiar and practicing only the custom of Reddiar Community. It would be useful to extract para 9 and a portion of para 10 in this connection and the same are extracted hereunder:—

“9. The 1st respondent had married one Babu, who belongs to Hindu Reddiar Community and on and from the date of her marriage, she has been living only as a Hindu Reddiar and practicing only the customs of the said Reddiar Community. The children born out of the said wedlock was also brought up only

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as a Hindu Reddiar Community members. The 1st respondent herein or her family members do not practice the customs of the Hindu-Pallar Community and are not accepted by the Scheduled Caste members as part of their Community.

10. The petitioner respectfully submits that the 1st respondent does not belonged to the Scheduled Caste Community by birth or otherwise. At no point of time, she has been practicing the customs of tenets of Scheduled Caste Community."

Thus, the election petitioner takes two stand in his election petition viz., the returned candidate does not belong to Scheduled Caste Community and at the same, he takes the plea that after her marriage, she is practicing the customs of the Reddiar Community of her husband.

11. In the chief examination, the election petitioner, as P.W.1 has stated that the returned candidate belongs to Reddiar Community and she does not belong to Scheduled Caste Community. In the cross examination, the election petitioner has stated that he has no documentary proof to show that the returned candidate does not belong to Scheduled Caste Community. He has further added that he only knows that she does not belong to the Scheduled Caste Community.

12. The evidence of P.W.1, in chief as well as in the cross examination would reveal that he has not documentary proof to show that the returned candidate does not belong to Scheduled Caste Community. In such circumstances, it has to be seen, as to whether the contention raised on behalf of the election petitioner that the returned candidate does not belong to Scheduled Caste community, has to be accepted or not.

13. Except the oral testimony of P.W.1 that the returned candidate does not belong to the Scheduled Caste Community, no document has been produced by him to prove the same.

14. On the other hand, the returned candidate, by examining herself as R.W.1, has filed proof affidavit, which was entertained by this Court with the consent of the election petitioner, who was present before this Court and as Well as his counsel. Exs.R.1 to R.7 were marked with the consent of the election petitioner and his counsel. Ex.R.1 is the Secondary School Cumulative Record of the returned candidate. It shows that the returned candidate has studied in St. Mary's Girls' Higher Secondary School, Devakottai and the religion that has been declared by her father as early as 9-2-1981 is "Hindu Pallan". On the basis of the said declaration given by the father of the returned candidate, the same has been entered in her Secondary School Cumulative Record. "Hindu Pallan" is admittedly a Scheduled Caste Community. The authenticity of the same has not been questioned by the election Petitioner. Not even he has stated either in the Chief examination or in the cross examination that the declaration given by the father of the returned Candidate that the returned candidate belongs to "Hindu Pallan" is false and that the entry of the same in the Secondary School Cumulative Record of the returned candidate is incorrect. Not even a suggestion has been made while cross examining R.W.1, the returned Candidate, that her father has given false declaration before the school authorities and that a wrong entry has been made in her Secondary School Cumulative Record. Thus, it could be

inferred that the election petitioner has not questioned the validity of Ex.R.1, the Secondary School Cumulative Record of the returned candidate at any stage.

15. Ex.R.3 is the Form of Income Certificate, which was marked through the returned candidates. The said certificate contains a declaration of the father of the returned candidate and also the signature of the Village Administrative Officer, Devakottai. The Village Administrative Officer signed the same on 31-8-1995. It is shown therein that the returned candidate belongs to "Hindu Pallan", which is a Scheduled Caste Community. On behalf of the election petitioner, no cross examination was made regarding Ex.R.3. No questions have been put to R.W.1 that the community shown in Ex.R.3 is incorrect and that the contents in the said certificate are false. Therefore, in my considered view, Exs.R.1 and R.3, which are of the years 1981-82 and 1995 respectively, cannot be simply thrown out. There is no reason to disbelieve Exs. R.1 and R.3. It cannot also be contended on behalf of the election petitioner that these documents have been created for the purpose of contesting the election in the Reserved Constituency.

16. The returned Candidate filed yet another document viz., Ex. R. 7, the Community Certificate issued by the Tahsildar, Devakottai. The said Certificate shows that the returned candidate belongs to "Hindu Pallan" Community, which is a Scheduled Caste Community. It is contended on behalf of the election petitioner that the returned candidate, who was born at Devakottai and was residing at Devakottai till her marriage, has shifted her residence to Kallakurichi after her marriage and settled there. While so, the Community Certificate should have been obtained by her only from the Tahsildar, Kallakurichi and not from the Tahsildar at Devakottai. When a specific question was put to R.W.1, the returned candidate as to why she has obtained the Community Certificate at Devakottai and not at Kallakurichi, where she is residing, she has answered that even if she applies for Community Certificate from Kallakurichi, the Tahsildar, Kallakurichi has to get information from the Tahsildar at Devakottai and hence, she has applied the Community Certificate before the Tahsildar, Devakottai. She has further deposed that since her brother was living in Devakottai Taluk, she thought that it would be easier for her to obtain Community Certificate from Devakottai. This statement made by R.W.1, the returned candidate in the cross examination appears to be reasonable. Since she was born at Devakottai, she has obtained Community Certificate from the Tahsildar at Devakottai and there is no reason to disbelieve the said Community Certificate. The application given by the brother of the returned candidate viz., K. Kesavamani for issuance of Community Certificate to the returned candidate was marked as Ex.C.1. through C.W.1, the Tahsildar of Devakottai. The file brought by him before this Court contains the Xerox copy of the birth certificate of the returned candidate and the same has been marked as Ex. C.2. The Xerox copy of the School certificate of the returned candidate has also been produced by C.W.1 and the same has been marked as Ex. C.3. The file also contains the Community Certificate issued to the returned candidate signed by the Tahsildar, Devakottai and counter signed by the Village Administrative Officer and the Revenue Inspector and the same has been marked as Ex. C.4. The declaration given by the brother of the returned candidate has been marked as Ex. C.5. C.W.1 has clearly stated in the cross examination that he is aware that the returned candidate

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got married at Kallakurichi and is living there and he has got that information from her brother. When a specific question was put to C.W.1 how he can give a Community Certificate to a person, who is not living within his jurisdiction, the reply from C.W.1 was that the returned candidate's birth place is within his jurisdiction and her relatives are also living within his jurisdiction and hence, he issued a community Certificate to her. He has further added that he enquired the persons belonging to the returned candidate's Community before he issued Community Certificate to her. he has further deposed that the Village Administrative Officer and the Revenue inspector enquired and reported to him and also he knows K. Kesavamani, the brother of the returned candidate personally. He has also denied the suggestion that only on political pressure, he has issued the Community Certificate to the returned candidate, who is not living within his jurisdiction. He further denied the suggestion that he did not enquire into the matter and that the returned candidate does not belong to the Scheduled Caste Community. he was cross examined on behalf of the election petitioner. He has deposed in the cross examination that before granting Community Certificate to the returned candidate, he has conducted enquiry in accordance with law. He has also enquired as to whether the returned candidate's father belonged to Scheduled Caste Community. This statement made by C.W.1, the Tahsildar, Devakottai in the Chief examination as well as in the cross examination will amply establish that he has conducted enquiry before granting Community Certificate to the returned Candidate. There is no reason to disbelieve the said statement. He is an independent witness, who need not dance to the tune of the returned candidate, while granting Community Certificate to her. The returned candidate belongs to AIADMK party and at the time when she got the certificate, her party was not in power. Therefore, in my considered view, the suggestion made by the learned counsel appearing for the election petitioner that only on political pressure, the Community Certificate was issued to the returned candidate, which was denied by the returned candidate, cannot be accepted.

17. When such overwhelming evidence both oral and documentary are available to establish that the returned candidate belongs to Scheduled Caste Community, there is no reason to agree with the plea taken by the election petitioner that the returned candidate does not belong to Scheduled Caste Community. In my considered view, the evidence of R.W.1 and C.W.1 coupled with Exs. R1, R.3 and R. 7 will clearly establish that the returned candidate belongs to "Hindu Pallan", which is a Scheduled Caste Community.

18. It is also contended on behalf of the election petitioner that the returned candidate married one M. Babu, who belongs to Reddiar Community and the returned candidate is practicing only the custom of the said Reddiar Community.

19. First of all, the election petitioner has not stated anywhere in his pleadings or during his chief examination or the cross examination about the custom of the Scheduled Caste Community or the Reddiar Community. When it is not stated or established by the election petitioner that the custom of Scheduled Caste Community are different from the Custom followed by the Reddiar Community, it cannot be stated that the returned candidate is practicing only the custom of the Reddiar

Community especially on the backdrop of the contentions raised on behalf of the returned candidate that there is no separate custom prevailing in Scheduled Caste Community, which is not inconsonance with the custom of the Reddiar Community and hence, the said plea taken by the election petitioner is liable to be rejected.

20. Further more, the election petitioner has not established that after marriage with the said M. Babu, who belongs to Reddiar Community, the returned candidate is practicing only the custom of the said Reddiar Community. As stated already, when the election petitioner has not established that there are separate custom in the Scheduled Caste Community and in the Reddiar Community, the further question, as to whether the returning Candidate is practicing only the custom of the Reddiar Community or the custom of Scheduled Caste Community, does not arise for consideration. Further more, the returned candidate, in her evidence as R.W.1, has clearly stated that she is not following different custom after her marriage with M. Babu, who belongs to Reddiar Community.

21. That apart, the returned candidate has deposed in her cross examination that she has applied for Community Certificate while she was studying in the school and college and she has not filed those said certificates before this Court since those certificates were handed over to the school and college authorities. She has also denied the suggestion that she has not got the Community Certificate from the school and college. This statement made by the returned candidate in her cross examination cannot be disbelieved.

22. Thus, in view of the above stated position, I am of the considered view that the election petitioner failed to establish that after marriage with one M. Babu, the returned candidate is practicing only the custom of the Reddiar Community. The certificate issued by C.W.1 that the returned candidate belongs to Scheduled Caste Community cannot be disbelieved and the contention raised by the election petitioner that it is a fraudulent certificate, cannot be accepted without any evidence, oral or documentary. The oral and documentary evidence of the returned candidate proves her case that she belongs to "Hindu Pallan" community, which is a Scheduled Caste Community. No evidence either oral or documentary is available on the side of the election petitioner to disprove the same.

23. (I) Learned Senior Counsel appearing for the election petitioner relied on the decision reported in **(2003) 8 Supreme Court Cases 204-Punit Rai vs. Dinesh Chaudhary** and contended that it is for the person to prove his case, which was within his special knowledge that he belongs to Scheduled Caste Community, and if he or she fails to establish the same by producing the best evidence, adverse inference could be drawn against such person.

(II) However, I am of the considered view that in the said judgment, majority of Their Lordships have held that initial burden is on the election petitioner and later, the onus shifts on the respondent to prove his case within his special knowledge. Thus, the Hon'ble Apex Court has held that the initial burden is on the person who claims that the returned candidate does not belong to Scheduled Caste Community and later, It shifts to the returned candidate to prove his or her case, which was within his or her special knowledge.

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(III) In the case on hand, the returned candidate filed Ex.R.1, the Secondary School Cumulative Record, wherein her caste has been shown as "Hindu Pallan", which is a Scheduled Caste Community. In Ex.R.3, the Form of income Certificate, her caste has been shown as "Hindu Pallan". Further, Ex.R.7, the Community Certificate issued by the Tahsildar, Devakottai reveals that the returned candidate belongs to Scheduled Caste Community. When such an overwhelming evidence is available with the returned candidate, I am of the considered view that even though the election petitioner has not established that the returned candidate does not belong to Scheduled Caste Community and the initial burden which lies on him has not been discharged by him, nevertheless, the returned candidate filed the above referred documents and established her case *viz.*, she belongs to Scheduled Caste Community. Hence, the said judgment will not come to the rescue of the election petitioner.

24. Yet another decision that has been relied on by the learned Senior Counsel appearing for the election petitioner is reported in **AIR 2008 Supreme Court 1177-Anjan Kumar V. Union of India & Ors.** The sole question called for determination in the appeal before the Hon'ble Apex Court was, as to *whether the off-shoot of the tribal woman married to non-tribal husband could claim the status of Scheduled Tribe and on the basis of which the Scheduled tribe certificate could be given.* The appellant therein was born to Tribal mother, who married a forward community person. The couple performed Court marriage outside the village, settled down in a city and their son, the appellant was also born and brought up in the environment of forward community. In such circumstances, the Hon'ble Apex Court has held that the appellant therein did not suffer any disability from the society to which he belonged. But, in the case on hand, the returned candidate claims that she belongs to Scheduled Caste Community. Her marriage with the person belonging to Reddiar Community alone cannot be put against her, unless otherwise it is established that she is practising the custom of the Reddiar Community, which fact has not been established by the election petitioner. Therefore, in such circumstances, I am of the considered view that the said judgment also will not come to the rescue of the election petitioner.

25. That apart, when once the Community Certificate has been issued by the competent authority, unless otherwise the same is set aside in a manner known to law, the issuance of the same is in favour of the returned candidate shall hold good.

26. Considering the totality of the circumstances, I am of the considered view that—

(a) The election petitioner failed to establish by any acceptable oral or documentary evidence that the returned candidate does not belong to the Scheduled Caste Community;

(b) The returned candidate, who claims to be "Hindu Pallan", which is a Scheduled Caste Community, has established by oral and documentary evidence, *viz.*, Exs. R.1, R.3 and R.7 that she belongs to Scheduled Caste Community.

(c) The initial burden is on the election petitioner to prove that the returned candidate does not belong to Scheduled Caste Community. Thereafter, it will shift to the returned candidate, which was within her knowledge. But, in the case on hand, even the initial burden has not been discharged by the election petitioner so as to shift the onus on the returned candidate.

(d) The election petitioner has not established that the returned candidate, after her marriage with her husband, who belongs to Hindu Reddiar Community, is practising the custom of that community disowning the custom of Scheduled Caste Community.

27. Thus, the election petition is liable to be dismissed and accordingly, dismissed, However, there is no order as to costs.

WITNESS THE HON'BLE THIRU RAJESH KUMAR AGRAWAL, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 5TH DAY OF APRIL 2013.

SD/-
ASSISTANT REGISTRAR,
ORIGINAL SIDE-II.

(CERTIFIED TO BE TRUE COPY)

DATED THIS THE 6th DAY OF MAY 2013.

SD/-
COURT OFFICER (OS)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders / Judgments/Decrees in this format.

HIGH COURT, MADRAS.

ELP. NO. 6 OF 2011.
LIST OF EXHIBITS.

Documents Marked on the side of Election Petitioner.

- 1 Ex. P1 Attested Photocopy of the Voter's list of ward No. 18, Kallakurichi Assembly Constituency.
- 2 Ex. P2 Attested Photocopy of The Nomination of the first respondent
- 3 Ex. P3 Attested Photocopy of the community certificate obtained by the first respondent from the Tahsildar, Devakottai

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- 4 Ex. P4 Attested Photocopy of the family Ration card of the first respondent wherein there is a change of her initial
- 5 Ex. P5 The resignation letter dated 23-3-2011 submitted by the first respondent.
- 6 Ex. P6 The acceptance of the resignation letter dated 23-3-2011 by the Executive Officer, Kallakurichi Municipality.

Documents Marked through Court Witness.

- 1 Ex. C1 The first respondent's brother K. Kesavamani gave an application to the Tahsildar, Devakottai for issuance of community certificate to the 1st respondent.
- 2 Ex. C2 The file contains Xerox copy of the birth certificate of the first respondent.
- 3 Ex. C3 The Xerox copy of the school certificate of the first respondent.
- 4 Ex. C4 The file contains community certificate issued to the first respondent signed by the Village Administrative Officer and Revenue Inspector.
- 5 Ex. C5 Declaration given by the 1st respondent's brother.
- 6 Ex. C6 Nomination papers and the community certificate filed by the 1st
& respondent before the Deputy Collector.
Ex. C7
- 7 Ex. C8 The Declaration of the first respondent.

Documents Marked on the side of First Respondent.

- 1 Ex. R1 SSLC Book Sr. No. 63167 (Original)
- 2 Ex. R2 Bachelor of Engineering (Original) Decree Certificate from the Madurai Kamaraj University, November 1989
- 3 Ex. R3 Income Certificate issued by the Village Administrative Officer date 5-9-1988
- 4 Ex. R4 Voters List in the part No. 24 of No. 80. Kallakurichi Assembly Constituency Certified by a Notary public
- 5 Ex. R5 Copy of the family card.

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 15

- 6 Ex. R6 Resignation letter of the 1st respondent date 23-3-2011 in the
(True position of Ward Member of the XVIII ward of Kallakurichi Grade III
Copy) Municipality as also from the position of the Chairman to the
Executive Officer of the Kallakurichi Municipality, an authenticated
copy issued by Commissioner of Kallakurichi Municipality.
- 7 Ex. R7 Community Certificate issued by the Thasildar, Devakottai.
(Original)

MK - 22/04/2013

ELP.No. 6 OF 2011

ORDER

DATED: 5/4/2013

THE HON'BLE MR. JUSTICE
K. VENKATARAMAN

FOR APPROVAL :30/4/2013

APPROVED ON: 30/4/2013

Copy to:

1. Mr. M.R. Raghavan
Standing Counsel for
Election
2. The Returning Officer
Kallakurichi
Villupuram District.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 5TH DAY OF APRIL 2013

THE HON'BLE MR. JUSTICE K. VENKATARAMAN

Election Petition No. 6 of 2011

ELP. No. 6 of 2011

S. Chinnadurai,
S/o Sadaiyan,
Wets Nagar,
Neelamangalam Village & Post,
Kallakurichi Taluk,
Villupuram District. —Petitioner

Versus

1. Mrs. K. Alaguvelu,
W/o/ M. Babu,
No. 9/20-A, Raja Nagar,
Gandhi Road,
Kallakurichi-606 202,
Villupuram District.
2. V. Ayyappa,
No. 3-D, Kasthuribai Nagar,
Thiagathurgam, Kallakurichi
Taluk, Villupuram District.
3. E. Sankar Subramani,
Karunapuram New Colony,
Kallakurichi Town (M) Taluk,
Kallakurichi Taluk,
Villupuram District.
4. M. Dinesh,
No.3/305-A, Main Road,
Thenkeeranur Post,
Kallakurichi Taluk,
Villupuram District.
5. N. Rajesh,
No. 48, Kottaimedu,
Kallakurichi,
Villupuram District.

6. A. Amsavalli,
Moraitheru,
V.O.C. Nagar,
Kallakurichi Town (M) Taluk,
Villupuram District.
7. K. Arivukarasu,
North Street,
Adari Road,
Porasakurichi Village and Post,
Kallakurichi Taluk,
Villupuram District.
8. A. Kesavan,
North Street,
Adari Road,
Porasakurichi Village and Post,
Kallakurichi Taluk,
Villupuram District.
9. M. Danapal,
Siruvangoor Road,
Kottaimedu,
Kallakurichi,
Villupuram District.
10. A.C. Pavarasu,
26, 2nd Street,
A. Kosakulam,
Anaiyur Post,
Madurai District.
11. V. Anandhi,
No. 40/1, Gadhi Road,
Kallakurichi,
Villupuram District.
12. M. Gurusamy,
No. 96/B, 7th Street,
V.O.C. Nagar,
Kallakurichi,
Villupuram District.
13. A. Kolangi,
No. 148-B, Karunapuram,
Kallakurichi,
Villupuram District.

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14. M. Senthilkumar,
520/55, Vanava Reddy Colony,
Kallakurichi Taluk,
Villupuram District.
15. N. Dharmalingam,
Marur,
Kadambur Post,
Sankarapuram Taluk.
16. K. Natesan,
No. 6/23, Old No. 47,
Vilanthangal Road,
Kallakurichi,
Villupuram District.
17. The Returning Officer for
No. 80, Kallakurichi (Reserved)
Constituency, Villupuram District
cum Revenue Divisional Officer,
Kallakurichi, Villupuram District.
18. The Chief Election Officer,
Fort. St. George,
Secretariat, Chennai.
19. The Chief Election Commission of India, New Delhi—*Respondents*.

R17, R18, R19 has been struck off from the array of respondents as per the common order of this Hon'ble Court dated 29th October 2012 made in Original Application Nos. 761, 763 762/2012 in ELP No. 6 of 2011.

The Election Petition praying that this Hon'ble Court be pleased to

(a) declare the election of the candidate *viz.*, the 1st respondent herein from the Kallakurichi (Reserved) Constituency in the election held on 13th April 2011 and result declared on 13th May 2011 as *null and void*.

(b) direct the 1st respondent to pay the petitioner's costs of this proceedings.

The above Election Petition having been heard on 1st April 2013 in the presence of Mr. A.R.L. Sundaresan, Senior Counsel for M/s. A.L. Gandhimathi, advocate for the Election Petitioner herein and Mr. S. Muthuraj, advocate for the 1st respondent herein and the respondents 17 to 19 are struck off from the array of respondents and upon reading the petition of S. Chinnadurai filed herein and the written statement of the 1st respondent filed herein and upon perusing the evidence adduced herein and also the exhibits marked thereto, and this Court observed that, once the community certificate has been issued by the competent authority, unless otherwise the same is set aside in a manner known to law, the issuance of the same in favour of the returned candidate shall hold good and the initial burden

is on the Election Petitioner to prove that, the returned candidate does not belong to Schedule Caste Community. Thereafter it will shift to the returned candidate which was within her knowledge. But in case on hand, even the initial burden has not been discharged by the election petitioner so as to shift, the onus on the returned candidate.

It is ordered as follows:-

1. That the Election Petition No. 6/2011 be and is hereby dismissed.
2. That there shall be no order as to costs.

WITNESS THE HON'BLE THIRU RAJESH KUMAR AGRAWAL, ACTING CHIEF, JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 5TH DAY OF APRIL 2013.

SD/-
ASSISTANT REGISTRAR,
ORIGINAL SIDE-II.

(CERTIFIED TO BE TRUE COPY)

DATED THIS THE DAY OF 2013.

COURT OFFICER (OS)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders / Judgments / Decrees in this format.

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MK - 22/04/2013

ELP. No. 6 of 2011

ORDER

DATED: 5th APRIL 2013.

THE HON'BLE MR. JUSTICE
K. VENKATARAMAN

FOR APPROVAL: 30th APRIL 2013.

APPROVED ON: 30th APRIL 2013.

Copy to:

1. Mr. M.R. Raghavan
Standing Counsel for Election.
2. The Returning Officer Kallakurichi
Villupuram District.

Sd/.....

Assistant Registrar (O.S.II)

(By Order)

TAPAS KUMAR,
Principal Secretary,
Election Commission of India.

Secretariat,
Chennai-600 009,
August, 2013.

PRAVEEN KUMAR,
Chief Electoral Officer and
Principal Secretary to Government.
Public (Elections) Department.

/True Copy/