

**IN THE HIGH COURT OF JUDICATURE AT MADRAS**

**Reserved on: 13.06.2018**

**Pronounced on: 20.06.2018**

**Coram:**

**The Honourable Dr.Justice G.Jayachandran**

**Original Application No.393 of 2018  
in Election Petition No.1 of 2018**

T.T.V.Dhinakaran ...Applicant/5<sup>th</sup> Respondent

/versus/

1. M.L.Ravi
2. Election Commission of India,  
Nirvachan Sadan,  
No.1, Ashoka Road,  
No.11, 88<sup>th</sup> Street,  
New Delhi-110 001.
3. Chief Electoral Officer of Tamil Nadu,  
Public (Elections) Department,  
Government of Tamil Nadu,  
Secretariat, Fort St.George,  
Chennai-600 009.
4. District Election Officer cum Commissioner  
Greater Chennai Corporation,  
Chennai-600 003.
5. The Returning Officer,  
No.11, Dr.Radhakrishnan Nagar Assembly Constituency,  
Zone-IV Office,  
Chennai-600 018.
6. E. Madhusudhanan
7. N. Maruthu Ganesh
8. K. Nagarajan
9. A.C.Sathyamurthy

10. K.A.Kalaikottuthayam
11. Kesavalu. G
12. P.Sakaravarthy
13. E. Sadaiyandi
14. Ramesh. M
15. V.Ramesh Babu
16. M.S.Rajendran
17. M.Ahamed Shahjahan
18. M.S. Arumuham
19. A.K. Umashankar
20. L.Kathiresan
21. S. Kandasamy
22. N.Gunasekar
23. L.Kesavan
24. N.Govindasamy
25. B.Shanmugam
26. A.Chandrasekar
27. S.Chinnaraja
28. D.Suresh Babu
29. R. Senthil Kumar
30. D.Selvavunayagam
31. K.Thangaraj
32. M. Dhanasekar
33. S. Dinesh
34. K.Dinakaran
35. G.Thinakaran
36. M. Dinakaran
37. P.Natarajan
38. Dr.K.Padmarajan
39. Franklin.D
40. E.D.Prithivirajan
41. Prem Kumar.N
42. Prem Kumar. P
43. Pushpa.P
44. Bothirajan.G
45. Madhusudanan.S
46. R.Madhusudanan.
47. M.Manmathan
48. Mohan.C
49. M.Rangaraj
50. T.Ramesh
51. N.Ramesh
52. R.Rameshram
53. Dr.D.Rajasekar
54. Raji.M



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55. Vinayagamurthy.A  
 56. Vijaya Sekar. D  
 57. Vijaya.s (a) Delta Vijayan  
 58. Viswanathan.R  
 59. Jahir Hussain  
 60. K.Jayaraman  
 61. Jothikumar.R  
 62. Shajahan. R

... Respondents

**PRAYER:** Judge's summon under Order XIV Rule 8 of Original Side Rules read with Rule 3 of Rules of Madras High Court Election Petitions 1967 and Order VII Rule 11 of C.P.C, to reject the Election Petition, pending on the file of this Hon'ble Court in Election Petition No.1 of 2018.

For Applicant : Mr.P.S.Raman, Senior Counsel  
 for Mr.N.Raja Senthoo Pandian

For R1 : Mr.T.Sivagnanasambandan

**ORDER**

The applicant Mr.T.T.V.Dhinakaran is the 5<sup>th</sup> respondent in the Election Petition No.1 of 2018 which has been filed to declare his election to the Dr.Radhakrishanan Nagar Assembly Constituency null and void.

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2. In response to the notice received in the Election Petition, the applicant/T.T.V.Dhinakaran herein has preferred the application under consideration to reject the Election Petition with exemplary costs.

3. Before advertng to the merits of the petition, for easy reference and understanding it is necessary to mention the background of this litigation.

#### **4. Prelude**

The voters of Dr.Radhakrishnan Nagar Assembly Constituency in the State of Tamil Nadu during the General Election for 15<sup>th</sup> Legislative Assembly held on 16.05.2016 returned Selvi J.Jayalalithaa as their representative. She also happened to be the General Secretary of the "AIADMK" party which won 135 seats out of 232 seats went for poll. Having secured the required majority "AIADMK" party formed the Government and its General Secretary Selvi J.Jayalalithaa became the Chief Minister of the state. Unfortunately, after brief illness Selvi J.Jayalalithaa died on 05.12.2016 at Apollo hospital, Chennai. [according to the death certificate issued by the competent authority.] The seat of Selvi J.Jayalalithaa in the Legislative Assembly of the State of Tamil Nadu, "Dr.Radhakrishnan Nagar Assembly Constituency" became vacant and the Election commission of India notified the vacancy and also proceeded for "bye-election" and scheduled the "bye-election" on 12<sup>th</sup> April 2017. Notification to the said effect was issued by the Election

Commission of India vide Notification No.100/TN-LA/1/2017 dated 16<sup>th</sup> March 2017. Many candidates including the election petitioner herein and the R-5, R-6 & R-7 herein filed nomination and found eligible by the Returning Officer and they were campaigning. However, as the polling date 12.04.2017 was nearing, the election fever went out of limit leading to complaints of violation model code of conduct and election offences.

5. The Election Commission of India, after a detailed enquiry conducted on the complaints received, exercising its power under Article 224 of Constitution read with Sections 150, 30 and 56 of Representation of People's Act, rescinded the election on 9<sup>th</sup> April 2017. After few months, draft electoral roll was published by the Election Commission on 03.10.2017 which was objected by "Dravida Munnetra Kazhagam" represented by his organising Secretary R.S.Barathi alleging that there are 45,000 bogus or ineligible voters found in the draft electoral roll. After complaining about this to the Election Commission "Dravida Munnetra Kazhagam" had filed a writ petition in W.P.No.27709 of 2017 before the Hon'ble High Court, Madras, for mandamus to carry out the purification of voters list of Dr.Radhakrishnan Nagar Assembly Constituency. The Division Bench of this Hon'ble High Court vide order dated 21.11.2017, taking note of

the purification exercise done by the Election Commission by deleting the names of the voters shifted, dead voters and double entries disposed the writ petition as infructuous and recorded its expectation that the Election Commission will announce the election dates at the earliest and conducted the elections preferably before 31.12.2017.

6. The Election Commission notified afresh in the Tamil Nadu Government Gazette dated 27.11.2017 appointing dates for various stages of "bye-election" to the Legislative Assembly Dr.Radhakrishnan Nagar Assembly Constituency. As per the said notification 21.12.2017 was fixed as date of poll, if necessary, be taken and 26.12.2017 as the date before which the election shall be completed. 59 candidates contested the poll on various symbols allotted by the Election Commission. Thiru.T.T.V.Dhinakaran contested as an independent candidate under 'pressure cooker symbol' secured 89,013 votes; out of 1,76,890 valid votes and declared elected. The said election of T.T.V.Dhinakaran is challenged by M.L.Ravi one of the unsuccessful candidate in the said election, who secured 246 votes in his favour.

**Gist of the Election petition**

7. Pursuant to the notification dated 27.11.2017 issued by Election Commission. Thiru.M.L.Ravi filed his nomination for the Dr.Radhakrishnan Constituency Assembly, on behalf of a registered political party by name "Desiya Makkal Sakthi Katchi". His nomination was accepted and he was allotted "Pot" symbol. In the course of the election process, the election petitioner had given representation to the Chief Election Commissioner and other officials of the Election Commission on 06.12.2017 alleging that leading political parties have fielded dummy candidates as independence. The vehicles in the name of the independent candidates are used for campaigning the leading political parties and the expenditure met out for the said purpose is excluded from the election expenditure of the parties for which the vehicles is used. Therefore, the petitioner has requested and suggested the election commission as under:-

"To overcome all this, all the booths should be monitored with web cam, direct telecast is to be relayed through ECI portal. The designated officials should be watched by external sources. All the booth officials should be provided with proper food and water in timely by the election commission itself. Also there should be sufficient staff to care take during their natural calls. All the wrong doers should be

booked and taken to without any delay.”

8. On 13.12.2017 at 8.52 pm he has sent a e-mail to the Chief Election Officer alleging that his campaign vehicle was stopped near IOC Lube Oil Plant railway gate by the Police and surveillance team. Alleging biased and threat by the authority he has sought for action. Another e-mail dated 15.12.2017 was sent to the election commission alleging that E.Madhusudhanan/6<sup>th</sup> respondent one of the candidate had organised a meeting near Korrukupet Railway junction. He had fixed 1000's of flags, Metal Halide lamps, serial lights, two leaves design lights and 1000's and 1000 of campaigners from the constituency and from other districts of Tamil Nadu have camped at R.K.Nagar. Several crores of rupees is spent on them exceeding the limit fixed by the Election Commission of India. He has also made reference about the 5<sup>th</sup> respondent/T.T.V.Dhinakaran that he also campaigning in the same way. The petitioner has requested the election commission to disqualify E.Madhusudhanan/6<sup>th</sup> respondent and T.T.V.Dhinakaran/5<sup>th</sup> respondent. Another e-mail dated 18.12.2012 has been sent by the Election petitioner to the Election commission alleging that, “on 17.12.2017 Sunday in R.K.Nagar “bye-election” for their campaign T.T.V.Dinakaran, E.Madhusudhanan, Kalaikottudhayam used 1000's of men campaign. In their earlier campaign huge number

of flags, dongiers, decorative lights, flood lights, music bands, mini actresses dances etc., were organised. If all these properly accounted without suppression these candidates candidature to be disqualified. All these are evident with your surveillance cameras if properly recorder. We represented hereby and put forth to you to disqualify these candidates to establish democracy and declare the same before the election.”

9. Relying upon these representations alleged to have sent through e-mail, the election petitioner M.L.Ravi had contended that the election commission rescinded the earlier election notification due to large scale violation committed by 5<sup>th</sup> respondent and others. The election commission having found that the 5<sup>th</sup> respondent had indulged in corrupt practice and electoral misconduct resulting in recession of the earlier notification, he should have been disqualified from contesting the subsequent election by the Election Commission of India.

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10. Quoting extensively the order of the election commission dated 09.04.2017, the election petitioner had submitted that no case has been booked against the 5<sup>th</sup> respondent for his misconduct and corrupt practice committed during the rescinded “Bye-

Election” process. Similarly, no action taken by election commission upon his representation dated 06.12.2017, 15.12.2017, 18.12.2017. It is also pleaded that during the moratorium of 48 hours presided to the poll day, one Mr.P.Vetrivel, the election agent of the 5<sup>th</sup> respondent released a “video clippings” of Former Chief Minister Selvi J.Jayalalithaa hospitalisation which violates the condition contain under Section 126 of Representation of People’s Act. The petition also contains extensive detail about the order of this Court passed in W.P.No.27709 of 2017 filed by “DMK” represented by its organising secretary R.S.Bharathi seeking mandamus to carry out purification of voters list.

11. It is contended that large scale deletion of 45,819 votes without proper and cursory verification and without giving any opportunity for the claims and objection is arbitrary against natural justice. It is stated in the petition that while the earlier notification was rescinded on the ground that there are 35 F.I.R’s filed for violation of election rules and Model Code of Conduct and for seizure of Rs.18.80 lakhs meant for distribution, in the present election under challenge. 95 F.I.R’s were filed, 15 persons were arrested for corrupt practice and Rs.30.29 lakhs was seized. Therefore, all the more reason to countermand the election. The election commission having

failed to do so, this Court has to declare the election of the 5<sup>th</sup> respondent to Dr.Radhakrishnan Assembly Constituency as “null” and “void”. Considering the corrupt practice adopted by him to get elected.

12. On receipt of the notice the 5<sup>th</sup> respondent herein has filed an application to reject the petition stating the petition does not satisfy the mandatory requirement to file an election petition under the Representation of People’s Act.

**13. Gist of the Application to reject the plaint:**

The election petition is misconceived, untenable and full of falsehood. The averments in the petition are irrelevant, inapplicable, unconnected, baseless and false allegations without any substantive and material evidence. The election petition does not make out any ground under the Representation of People Act. No material facts are pleaded as mandated under Section 83 of Representation of People’s Act.

(i). It is contended in the application that the averments made in paragraph Nos. 1 to 11 lacks material facts and particulars. No supportive documents are filed to substantiate the averments

hence deserves to be strike down or rejected.

(ii). As far as, the averments made in paragraph No. 12 it is figment of imagination by the election petitioner. His alleged representation dated 06.12.2017 and 15.12.2017 does not contain any specific allegation against the returned candidate [T.T.V.Dhinkaran] and what way he violated the Code of Conduct or committed electoral misconduct without any document to support and substantiate the averments made in paragraph No. 12, the averments and allegations are unsustainable.

(iii). In so far as, the allegation of releasing the video of Former Chief Minister Selvi J.Jayalalithaa which finds place in the paragraph No.13 in the election petition, the applicant/5<sup>th</sup> respondent contents that the "video clipping" has not been filed by the election petitioner. He has not mentioned which visual or print media released the video clipping. There is no detail as to how and when the returned candidate gave consent to release the video by his agent. Without specific date, time and place of alleged corrupt practice which requires to form part of material facts, the election petition is not sustainable.

(iv). As far as the allegation regarding the deletion of voters, it is contended that nearly 45,000 voters names were deleted. after the election commission took action of purifying the voters list pursuant to the direction of Hon'ble High Court. If at all the petitioner is aggrieved by deletion of the voters, he should have challenged the order of the Hon'ble High Court passed in W.P.No.27709 of 2017. The representations alleged to have given by the election petitioner on various dates before polling and after polling which form part of the typed set of papers does not contain any proof or acknowledgement of the authority whom it is addressed. The averments made in the representation are very vague, unspecific and not adequately supported by material facts. The election petition does not contain material facts sufficient to formulate a complete cause of action mentioned in the paragraph 25 of the election petition.

14. The learned Senior counsel for the Applicant/5<sup>th</sup> respondent would also submit that the affidavit accompanying the election petition is not consonance to the rules framed under the Representation of People's Act. The concision statement of material facts does not find place in the petition. The accompanying affidavit which is a mandatory requirement under Section 83 (1) (c) is defective and not in the prescribed form supporting the allegations of corrupt practise made in the petition.

**Response to the Application to reject the petition**

15. In response to the above contention raised by the 5<sup>th</sup> respondent in his application to reject the election petition, the election petitioner has filed a counter affidavit wherein, he has reiterated the averments made in his election petition and has emphasised that paragraph Nos. 3 to 25 of the election petition are relevant, applicable, "allegation and the pleadings" are with evidence. What is stated in paragraph Nos. 7 to 11 are part of official records. This Court can take judicial note of proof, in support of the same.

16. In paragraph No.10 of the election petition, it is pointed out that while rescinding the earlier "bye-election" notification the election commission has pointed out the corrupt practice and suppression of expenditure by the 5<sup>th</sup> respondent. Having found guilty by the Election Commission for corrupt practice and suppression of expenditure, the 5<sup>th</sup> respondent had not challenged the observation and had accepted it and carrying the tainted observation of the election commission. So the 5<sup>th</sup> respondent is not qualified to contest the election. The newspaper cutting inducing the voters, video clipping screened by Television channels and Youtube are also material particulars which can be adduced during the trial to substantiate the

material facts pleaded in paragraph Nos.11, 12, 13 and 14 of the affidavit. Therefore, the election petition cannot be rejected on the ground that it lacks material particulars.

17. The learned counsel appearing for the election petitioner would submit that, defect if any in the format of the affidavit accompanied with the petition is a curable defect which will not inure any right on the respondent to seek dismissal of the election petition itself. When the time limit prescribed to prefer election petition is only 45 days from the date of declaring the result. Most of the material particulars like video clipping, details of F.I.R, outcome of its investigation etc., and the action taken against the violators are with the possession of the election commission. Due to obvious reasons, the election commission has not come forward to take action against the violators. The election petitioner is ready to bring out all the material particulars at the time of trial. Having placed before the Court the material facts of corrupt practice, violation of election rules and Model Code of Conduct, the petitioner cannot be refused opportunity to prove the allegations on the flimsy reason that the petition does not contain particulars like date, time and place of the alleged electoral misconduct and corrupt practice.

**Discussion**

18. The election petition is filed under Section 83(1)(c) of Representation of People's Act 1951 read with Order VI Rule 15 (4) of C.P.C. The cause of action for the election petition is found in paragraph No.25 of the election petition which reads as under:

*"The cause of action arose within the jurisdiction of this Hon'ble Court for the election petition on when the 1<sup>st</sup> respondent issued notification on 27.11.2017 for Tamil Nadu Assembly Constituency (11-Dr.Radhakrishnan Nagar Assembly Constituency on 24.12.2017) when the counting of votes polled through the electronic voting machines and the petitioner and the respondents 5 to 59 have contested and campaigned, when 5<sup>th</sup> respondent committed electoral misconduct and corrupt practice and when the 11-Dr.Radhakrishnan Nagar Assembly Constituency has been declared on 24.12.2017 and when the petitioner has made several representations to the authorities concerned."*

19. The paragraphs No. 1 to 10 of the election petition contains the long cause title of the contesting parties, notification for the present bye-election and the result which is under challenge, notification of the earlier bye-election which was rescinded, the extract

of the order passed by the election commission rescinding the earlier notification for the bye-election dated 12.04.2017.

20. In paragraph 11 of the election petition, it is contended that, "the election commission though accused the 5<sup>th</sup> respondent namely T.T.V.Dhinkaran for corrupt practice and electoral misconduct in the order rescinding the earlier bye-election notified to be scheduled on 12.04.2017, no case was booked against him which has helped him to go scot free, ended in wasting the tax payers money." This Court wish to point that corrupt practise or electoral misconduct is not an inferential fact to be drawn from the previous conduct of the candidate.

21. The Paragraph Nos. 15 to 21 of the petition relates to deletion of 45,819 voters from the electoral roll. As pointed out by the learned senior counsel appearing for the 5<sup>th</sup> respondent/applicant and also substantially conceded by the learned counsel appearing for the election petitioner, the purification of the voters list was done by the election commission pursuant to the direction of this Court passed in W.P.27709 of 2017. Only after publication of the revised electoral roll, the election was conducted and there was no objection about the deletion carried out by Election Commission from any quarters

including the election petitioner who was not only the candidate in the present election but also a candidate in the election which was rescinded. Therefore, the allegations regarding deletion of voters after declaration of the result is nothing but an afterthought.

22. The Paragraph No.22 of the election petition reads as under:-

*"The 11-Dr.Radhakrishnan Nagar bye election ought to have been held on 12<sup>th</sup> April 2017 was rescinded for the reasons the 1<sup>st</sup> Respondent Election Commission of India felt that free and fair elections could not be held as 35 FIR's been filed, 13 people were arrested for corrupt practice and MCC, also an amount of Rs.18.80 lakhs were seized which was meant for distribution. Whereas the election held on 21<sup>st</sup> December 2017, still was worse that 95 FIR's were filed and 15 people were arrested for corrupt practice and MCC, also an amount of Rs.30.29 lakhs were seized. The reasons explained above, the 1<sup>st</sup> respondent Election Commission of India ought to have come to conclusion that a free and fair election could not be held now too. Arbitrarily and against natural justice 38319 votes were deleted. The 1<sup>st</sup> respondent ought to have taken steps for a free and fair election and should have come to a firm conclusion to conduct a free and fair election and election should have been held. The 1<sup>st</sup> respondent was not serious about conducting a free and*

*fair election, taking cue from the precedents. The role of law should not be a futile exercise. The money power has become the factual reality. When this Hon'ble Court ordered to conduct the election within 31<sup>st</sup> December 2017, the court has not been appraised the factual, it shrunk away from its legal responsibility. The purity of election is affected."*

23. Paragraph No.22 is the comparison of previous "bye-election" and present "bye-election" regarding number of F.I.R's filed and people arrested for corrupt practice and violation of model code of conduct and money seized meant for distribution. It is contented that the F.I.R and money seized have been doubled in the present election. While the election commission was fair enough to rescind the earlier notification for the "bye-election" considering 35 F.I.R's and seizure of Rs.18.08 lakhs, it should have taken the same decision in the present "bye-election" also which has seen registration of 95 F.I.R's and seizure of Rs.30.29 lakhs.

24. It is not the number of F.I.R's registered and amount seized but the veracity of the F.I.R and the source of money seized really matters. The averments in the paragraph No.22 of the petition though mentions the number of F.I.R's registered, it does not carry any other material facts which would really deserves scrutiny by this

Court. These figures are not facts but mere averments. To fall under material facts this allegation should contain who are the complainants in these F.I.R's, against whom these complaints were made. Atleast the name of the police stations which registered these F.I.R's and when, where, from whom and by whom Rs.30.29 lakhs seized.

25. The reading of paragraph No.22 does not provide any of the above mentioned details to form part of material facts. It contains only allegation without any fact. The difference between the allegation and material fact can be illustrated as under:

"If "Z" calls "X" a thief without mentioning what he had stolen and from whom he has stolen it is an allegation without material fact.

At the same time, if "Z" calls "X" a thief who has stolen property of "B", then it is an allegation with material facts."

26. While paragraph No. 23 of the election petition makes a general comment that the returned candidate is disqualified to be chosen to fill the seat since he has committed corrupt practice and the result of the election as far as concerned to the 5<sup>th</sup> respondent has been materially affected the election petition does not contain any further detail. Whereas paragraph 24 is the extract of the election

result as published by the election commission in Form-21 (e).

27. The averments made in the paragraphs "1 to 10" and "15 to 24" are not facts sufficient to formulate any cause of action. Vague allegations with certain figures unsupported by material facts is insufficient to entertain the election petition. The difference between the material facts and material particulars had been discussed at length by Hon'ble Supreme Court in various judgments.

28. On entire scrutiny of the election petition only paragraphs 12, 13 and 14 are the portion of the election petition which has semblance of connection with the cause of action mentioned in paragraph 25 and it has to be tested whether it contains any material particulars to sustain the election petition.

29. Section 100 of Representation of People's Act list out the grounds for declaring the election to be void and Section 123 of Representation of People's Act list out the corrupt practices which will attract disqualification.

30. The content of the paragraphs 12 and 13 does not fall within any of the category mentioned under Section 100 of Representation of People's Act, which may be grounds for declaring the

election void. The violation of Section 126 of Representation of People's Act alleging release of Video clippings of Former Chief Minister during the prohibited 48 hours does not form part of corrupt practice or ground for declaring election as void under Section 100 (1) or Section 101. It is at the most attracts only election offences which the election commission to act upon and cannot be brought under the purview of corrupt practice.

31. The learned counsel appearing for the election petitioner would submit that the release of video clipping showing the Former Chief Minister Selvi J. Jayalalithaa in the hospital by P. Vetrivel the election agent of 5<sup>th</sup> respondent during the period of 48 hours ending with hour fixed for conclusion of the poll, is clear violation of prohibition imposed under Representation of People's Act. Under Section 100 (1) (d) (iv) of Representation of People's Act for non compliance with the provision of the constitution or of Representation of People's Act or of any rules or order made under Representation of People's Act, if the result of the election insofar as is concerns the returned candidate, has been materially affected in the opinion of the High Court, then the election can be declared to be void.

32. It is contended by the counsel that admittedly the video clipping was released within 48 hours from the time fixed for poll and same was screened in various Television channels and this being brought to the notice of the election commission, the screening was stopped. The non compliance of provision of Representation of People's Act namely Section 126 is sufficient for the Hon'ble High Court to formulate the opinion that the result of the election insofar as the returned candidate is materially affected.

33. To buttress the respective arguments, the learned counsels cited the following judgments quoting extensively about the observation made by the Courts in case of rejecting election petition at the threshold for want of material particulars regarding corrupt practice alleged.

34. On behalf of the appellant/5<sup>th</sup> respondent; the following judgment were cited;

(i). ***Ravinder Singh vs Janmeja Singh and Others*** reported in **(2000) 8 SCC 191.**

(ii). ***Anil Vasudev Salgaonkar vs Naresh Kushali Shigoankar*** reported in **(2009) 9 SCC 310.**

(iii). ***C.P.John vs. Banu M.Palissery and others*** reported in **(2014) 10 SCC 547.**

35. On behalf of the Election petitioner/respondent the following judgments were cited;

(i). ***Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh & others*** reported in **2004 (11) SCC 196.**

(ii). ***Virender Nath Gautam Vs. Satpal Singh & others*** reported in **CDJ 2006 SC 112.**

(iii). ***Mahadeorao Sukaji Shivankar vs. Ramaratan Bapu and Others*** reported in **CDJ 2004 SC 903.**

(iv). ***Harkirat Singh vs. Amrinder Singh*** reported in **(2005) 13 SCC 511.**

(v). ***Ajay Arjun Singh vs. Sharadendu Tiwari and Others*** reported in **(2016) 6 SCC 576.**

36. Insofar the allegation made by the applicant/5<sup>th</sup> respondent pointing out the defect in the affidavit accompanying with the election petition, this Court finds that the affidavit does not contain any particulars regarding corrupt practice, except saying the averments made in paragraph No.3 to 27 of the election petition are from legal advice of his counsel and believed to be true to his knowledge and information.

37. As discussed earlier Paragraphs No. "1 to 10" and "15 to 24" in the election petition carries details about the events happened during the previous election process which was later rescinded and about the Court proceedings in the writ petition to purify the voters list which happened prior to the notification of the present "bye-election", which does not form part of the cause of action as mentioned in paragraph 25 of the petition.

38. Section 83 of Representation of People's Act, 1952 contemplates election petition shall contain a concise statement of the material facts on which the petitioner relies. In case if he pleads corrupt practice then the petition shall set forth full particulars of any corrupt practice that he alleges. The act further say that the particulars should include as full as a statement as possible of the name of the parties alleged to have been committed such corrupt practice and date and place of commission of each such practice. The proviso to the said election also mandates that the said petition should accompany an affidavit in the prescribed form [Form-25] in support of the allegations of such corrupt practice and particulars thereof.

39. Form-25 provides the format of the affidavit. When the corrupt practices is alleged special affidavit as perform-25 is mandatory under Rule 94-A. According to the layout of the Form-25,

the allegation relating to the corrupt practice should be mentioned in the affidavit.

40. The Election Petitioner in paragraph 1(d) of the special affidavit has stated as below:-

*" That the statement made in paragraph No.3 to 23 of the said petition about the commission of the corrupt practice of 5<sup>th</sup> respondent viz T.T.V.Dhinkaran and the particulars of such corrupt practice given in paragraph 3 to 23 of the said petition and in paragraph 3 to 23 of the schedule annexed thereto are true to my information."*

41. First of all, not all the paragraphs Nos.3 to 23 relates to allegation of corrupt practice of the 5<sup>th</sup> respondent. Next there is no schedule annexed to the affidavit or to the petition as said in the affidavit. The Court has no hesitation to say that the petitioner had not taken enough seriousness about the statutory requirement while filing the election petition. Keeping this defect aside for a while and look at the allegations made in the election petition, the relevant paragraphs touching upon the cause of action alleged are only paragraphs No.11 to 14. The averments made in these paragraphs and the documents in the typed set of papers filed in support of the petition which are the

complaints alleged to have been sent by this petitioner to the election commission fall short of material facts. All over the petitions as well as the complaints alleged to have been sent by the election petitioner there is only vague reference of election code violation and bald and general allegation that candidates of recognised parties are spending over and above the permissible limit. Without particulars regarding when, how, by whom the alleged violation committed, neither the election commission nor this Court can look into the veracity of the said allegation.

42. In ***Samant N.Balakrishna and another vs. George Fernandez and others*** reported in **(1969) 3SCC 238**;

*"The mandatory nature of the provisions contained in Section 83 was dealt with and consequences flowing from any breach of provision were set out. It was held that Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. The word 'material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party*

*understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action."*

43. Coming to the allegation of releasing the video clipping of Former Chief Minister Selvi J.Jayalalithaa during the prohibited hours does not carry any merit to entertain for the reason that under Section 100 Representation of People's Act, grounds for declaring election to be void is restricted to

*(1) Subject to the provisions of sub-section (2), if the High Court is of opinion—*

*(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act [or the Government of Union Territories Act, 1963 (20 of 1963)]; or*

*(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or*

*(c) that any nomination has been improperly rejected; or*

*(d) that the result of the election, in so far as it*

*concerns a returned candidate, has been materially affected—*

*(i) by the improper acceptance or any nomination, or  
(ii) by any corrupt practice committed in the interests of the returned candidate 5[by an agent other than his election agent], or*

*(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or  
(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, the High Court shall declare the election of the returned candidate to be void.*

*[(2)] If in the opinion of the High Court, a returned candidate has been guilty by an agent other than his election agent, of any corrupt practice but the High Court is satisfied—*

*(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;*

*(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and*

*(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.*

44. The learned counsel for the election petitioner would contend that the release of the video clipping by the agent of the returned candidate is in violation of Section 126 of Representation of People's Act and any violation or non-compliance of the provision under the Act will attract Section 100 (1) (d)(iv) of the Act.

45. On a cursory reading of sections 100 and 126 of the Act along with the allegation made by the petitioner in paragraph No.13 at first instance will give an impression to any one that the contention of the election petitioner is sustainable. In fact Section 100 is subject to provision of sub-section (2) and subject to the opinion of the High Court that any non-compliance of the provision of the constitution or Representation of People's Act or Rule or order made under the Representation of People's Act is being materially affected in the result of the election. Not only in the result of the election but should also concerned to the returned candidate. Also the Court should satisfy that the said violation or non compliance was committed by the candidate or his Agent or by somebody else with the consent of the candidate or his Agent. The allegations made in paragraph No.13 is that the release of video clipping of Former Chief Minister Selvi J.Jayalalithaa during the prohibited hours had induced and alluded the voters since she was three times Chief Minister and the was Member of the said constituency. The election was conducted due to her demise

and there were lot of speculation about her death. The petitioner has left unexplained how release of a video clipping carrying the photograph of Former Chief Minister Selvi J.Jayalithaa in the Hospital induced voters to cast their vote in favour of 5<sup>th</sup> respondent.

46. Whether at all the exhibition of the alleged video clipping will fall foul under Section 126 (1)(b) of Representation of People's Act itself not substantiate. Without the clipping and without any evidence to substantiate that the clipping was released by P.Vetrivel the election agent of the 5<sup>th</sup> respondent, the election petitioner cannot leave all material facts for the Court to take judicial notice.

47. The plea of the election petitioner is that if he is permitted to proceed with the trial, he will be in a position to furnish all the particulars to substantiate his allegation. This request does not pass the test of Section 83 of the Representation of People's Act and the Supreme Court rulings.

48. **In C.P.John Vs. Babu M.Palissery and others** reported in **(2014) 10 Supreme Court Cases 547** at Paragraphs 19 and 20, the Hon'ble Supreme Court has held as follows:

*"To put it differently, when the Election Petition is taken up for consideration, the Court which deals with such an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc. So, that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, in as much as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form-25 and should be sworn before the Magistrate of 1st class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form No.25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are*

*based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.*

*Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94-A and Form No.25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag*

*the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency.”*

49. The reading of the election petition and the affidavit accompanying the petition does not make out any specific material fact which specifically attributes the 5<sup>th</sup> respondent/applicant for corrupt practices. It sounds as if everybody knew that somebody gave money to somebody to secure vote in favour of somebody, but nobody to say who that somebody and when that somebody gave notes for vote and to whom notes were given. As cautioned by the Supreme Court in its judgment cited supra, the majority will of the people of R.K.Nagar Constituency reflected in returning the 5<sup>th</sup> respondent as their representative to the Assembly. He should not be dragged to court to defend vague allegations based on reports in social media and press without any substantive and corroborative materials.

50. The learned counsel appearing for the election petitioner defends his petition on the ground that most of the corrupt practices mentioned in the petition are captured by the Election Commission in the CCTV cameras installed by them and also recorded by the election observers. He is helpless but to approach the court by

way of election petition with the available materials, since the Election Commission failed to act upon his complaint. The above explanation impresses this court only to the extend to hold that the petitioner has not approached the court with any ulterior motive or malice which would have ended up in imposing exemplary cost upon him.

51. For the aforesaid reasons, this court finds that the averments put forth in the election petition lacks material facts to frame triable issues and also it does not satisfy the mandatory requirement laid under Section 83 of the Representation of People's Act. Hence the **Original Application No.393 of 2018 to reject the petition is allowed. Election Petition No. 1 of 2018 is rejected.** No order as to cost.

20.06.2018

speaking/non speaking

Index : Yes/No

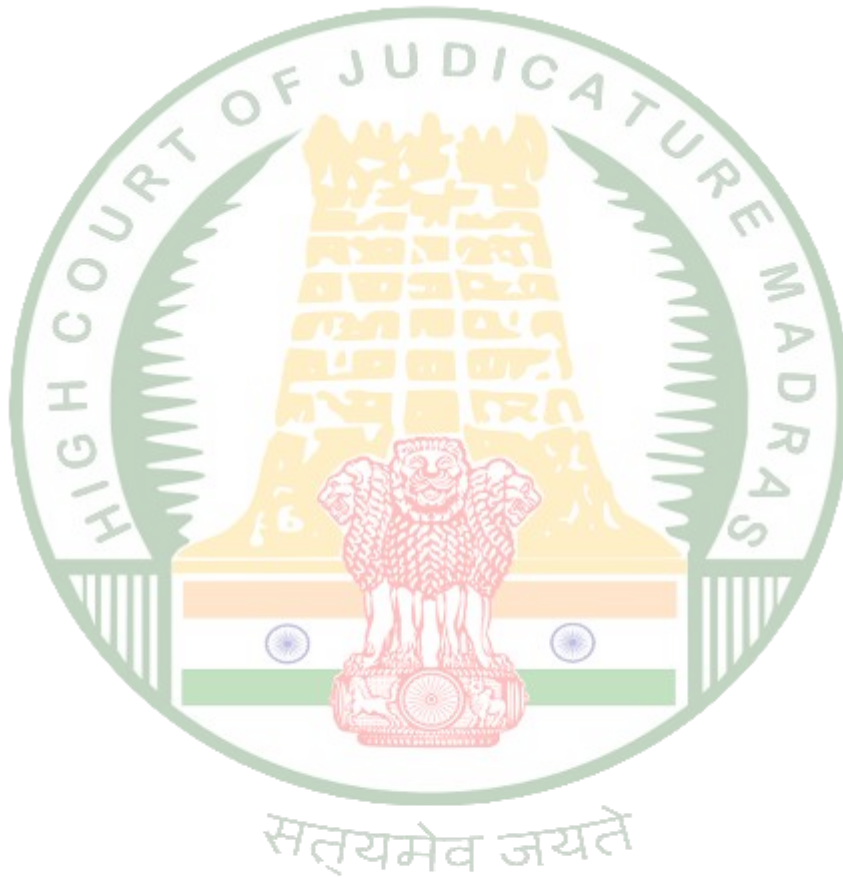
Internet : Yes/No

bsm

To

1. The Election Commission of India,  
Nirvachan Sadan, No.1, Ashoka Road,  
No.11, 88<sup>th</sup> Street, New Delhi-110 001.
2. The Chief Electoral Officer of Tamil Nadu,  
Public (Elections) Department,  
Government of Tamil Nadu, Secretariat, Fort St.George,  
Chennai-600 009.

3. The District Election Officer cum Commissioner  
Greater Chennai Corporation, Chennai-600 003.
4. The Returning Officer,  
No.11, Dr.Radhakrishnan Nagar Assembly Constituency,  
Zone-IV Office,  
Chennai-600 018.



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**Dr.G.Jayachandran,J.**

bsm



Pre-delivery Order made in  
**Original Application No.393 of 2018**  
**in Election Petition No.1 of 2018**

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**20.06.2018**