

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 5TH DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Election Petition No. 22 of 2016
and

O.A NOS. 84 TO 86 OF 2017

ELP No.22 of 2016

S.Ramesh,
No.39, Nilaya Street,
Shanmugapuram,
Puducherry 605 009.

... Petitioner

-VS-

1.N.S.J.Jayabal @ Ayyanar,
No.16, Second Cross,
Ramanapuram, Kadirgamam,
Puducherry 605 009.

2.The Returning Officer III,
7-Kadirgamam Assembly Constituency,
O/o.The Registrar of
Co-operative Societies,
2nd Floor, VVP.Nagar, Thatavanchavady,
Puducherry 605 009.

3.The Chief Electoral Officer,
O/o.The Chief Electoral Officer,
Puducherry, Villianur Main Road, Lawsthottam,
Reddiarpalayam,
Puducherry 605 010.

4.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi 110 001.

5.S.Radhakrishnan,
No.29, Second Street,
Puratchi Thalaivi Nagar,
Dharmapuri,
Puducherry 605 009.

6.M.R.Govindan,
No.1, PIPDIC Main Road,
Mettupalayam,
Puducherry 605 009.

7.A.Sivashanmugam,
No.26, New Street,
Pavazha Nagar,
Puducherry 605 005.

8.R.Somasundaram,
No.10, Hospital Street,
Mettupalayam,
Puducherry - 605 009.

9.K.Ezhumalai,
No.2, Santhai Thoppu Street,
Dharmapuri,
Puducherry 605 009.

10.S.Murugesan.
No.7, iyanar Koil Street,
G.N.Palayam,
Arumparthapuram,
Puducherry 605 110.

11.D.Ramesh,
No.5, Second Cross,
Radha nagar,
Muthupillaipalayam,
Puducherry 605 009.

12.V.Mourougayan,
No.11, Nilaya Street,
Shanmugapuram,
Puducherry 605 009.

... Respondents

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

(a) Declare the election of the 1st respondent as
returned candidate from 7-Kadiringam Assembly
Constituency, Puducherry at the general election held on
16.05.2016 accepting the nomination papers of the 1st
respondent as null and void; and

(b) Declare the petitioner herein as duly elected
member of the legislative assembly from 7-Kadiringam
Assembly Constituency as he has secured next higher votes
to the 1st respondent/returned candidate as per section 101

of the Representation of People Act, 1951; and

(c) Direct the respondents to pay the cost of this Election Petition.

OA.No.84 TO 86 of 2017

- 1.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi 110 001.
- 2.The Chief Electoral Officer,
O/o.The Chief Electoral Officer,
Puducherry Villianur Main Road, Lawsthottam,
Reddiarpalayam,
Puducherry 605 010.
- 3.The Returning Officer III,
7-Indira Nagar Assembly Constituency,
O/o.The Registrar of
Co-operative Societies, 2nd Floor,
V.V.P.Nagar, Thattanchavady,
Puducherry 605 009.

... Applicants/ Respondents 4,3 & 2

- 1.S.Ramesh,
No.39, Nilaya Street,
Shanmugapuram,
Puducherry 605 009. ... Respondent/Election Petitioner
- 2.N.S.J.Jayabalan @ Ayyanar,
No.16, Second Cross,
Ramanapuram, Kadirgama,
Puducherry 605 009.
- 3.S.Radhakrishnan,
No.29, Second Street,
Puratchi Thalaivi Nagar,
Dharmapuri,
Puducherry 605 009.
- 4.M.R.Govindan,
No.1, PIPDIC Main Road,
Mettupalayam,
Puducherry 605 009.
- 5.A.Sivashanmugam,
No.26, New Street,
Pavazha Nagar,
Puducherry 605 005.

6.R.Somasundaram,
No.10, Hospital Street,
Mettupalayam,
Puducherry - 605 009.

7.K.Ezhumalai,
No.2, Santhai Thoppu Street,
Dharmapuri,
Puducherry 605 009.

8.S.Murugesan.
No.7, Iyanar Koil Street,
G.N.Palayam,
Arumparthapuram,
Puducherry 605 009.

9.D.Ramesh,
No.5, Second Cross,
Radha Nagar,
Muthupillaipalayam,
Puducherry 605 009

10.V.Mourougayan,
No.11, Nilaya Street,
Shanmugapuram,
Puducherry 605 009.

...Respondents/Respondents

This Original Application No.84 of 2017 praying that this Hon'ble Court be pleased to strike off the 2nd Respondent as Respondent in the Election Petition No.22 of 2016.

This Original Application No.85 of 2017 praying that this Hon'ble Court be pleased to strike off the 3rd Respondent as Respondent in the Election Petition No.22 of 2016.

This Original Application No.86 of 2017 praying that this Hon'ble Court be pleased to strike off the 4th Respondent as Respondent in the Election Petition No.22 of 2016.

The above Election Petition and Original Application having been heard on 11.12.2017 before this Court in the presence of Mr.S.Sathiaseelan, advocate for the Election Petitioner/1st Respondent, Mr.G.Masilamani, Senior Counsel for Mr.T.Sathiyamoorthy, Advocate for the 1st respondent/2nd respondent and Mr.Niranjan Rajagopalan, advocate for M/s.G.R.Associates, advocates for the respondents 2 to 4/applicants 1 to 3 on OA.Nos.84 to 86 of 2017 herein; and upon reading the petition and affidavit of S.Ramesh filed in ELP.No.22 of 2016, the Common Counter Affidavit of S.Ramesh filed in OA.Nos.84 to 86 of 2017, Judges summon and affidavit of Dr.V.Candavelou in OA.Nos.84 to 86 of 2017 and the evidence adduced therein and the exhibits marked thereon and this court having stood over for consideration till this date and coming on this day before this court for orders, **The Court made the following order:**

For the sake of convenience, the petitioner and the first respondent will be referred to as the Election Petitioner and the Returned Candidate respectively.

2 The dispute that is required to be resolved by this Tribunal in this election petition lies in a very narrow compass and that is, as to whether the non-submission of Form A by the Returned Candidate to the Chief Electoral Officer of the Union Territory of Puducherry before 3.00 p.m. on the last date of filing of the nomination papers, i.e., 29.04.2016, would invalidate his election.

3 The facts admitted by both sides are as under:

a The general election to the Legislative Assembly of Puducherry was notified by the Election Commission of India, under which, the last date for submission of nomination was before 3.00 p.m. on 29.04.2016; scrutiny of nomination was held on 30.04.2016; the last date for withdrawal was 02.05.2016; the date of poll was 16.05.2016 and the counting of votes was on 19.05.2016.

b The Election Petitioner and the Returned Candidate contested from the Kadirgama Assembly Constituency. The Election Petitioner contested as an independent candidate and was allotted the "Pot" symbol and the Returned Candidate contested on the All India N.R.Congress (for short "the AINRC") ticket and was allotted the "Jug" symbol. The Indian National Congress and DMK were in alliance. The other candidates included All India Anna Dravida Munnetra Kazhagam (AIADMK), Pattali Makkal Katchi (PMK), Communist, etc.

c The AINRC is a registered and recognised political party of Puducherry and its President was the Returned Candidate (and is the Returned Candidate) and the General Secretary of the said party was one Mr.V.Bhalan.

d The candidates put up by the AINRC contested in all the 30 seats to the Puducherry Assembly, of which, Mahe Assembly Constituency is located near Calicut District in Malabar area of Kerala State and Yanam is located in Andhra

Pradesh State. The AINRC candidates won in 8 seats and the Government has been formed by the Indian National Congress-DMK combine.

e The Returned Candidate filed his nomination papers with the Returning Officer on 29.04.2016 at 1.10 p.m. along with Form A and Form B.

f The Returning Officer posted the nomination papers of all the candidates in the website of the Election Commission of India as well in the notice board of his Office.

g On 30.04.2016, at the time of scrutiny of the nomination papers, none including the Election Petitioner, had raised any objection on the nomination papers filed by the Returned Candidate.

h None objected to the effect that the Returned Candidate was not the official candidate of the AINRC and that he should not be given the "Jug" symbol.

i After the counting of votes, the Election Commission of India announced the results by which the Returned Candidate secured 11,690 votes and the Election Petitioner secured 7,888 votes and hence, the Returned Candidate was declared elected by a margin of 3,802 votes.

j While so, one Mr. Sivaswamy, General Secretary of Puducherry Congress Committee belonging to Indian National Congress submitted an application dated 28.06.2016 (Ex.P.6)

under the Right to Information Act, 2005 (for short "the RTI Act") to the Chief Electoral Officer, Puducherry,

seeking the following information:

"We request you to kindly furnish the particulars regarding the date and time of delivery of Form A under the Election Symbols (Reservation and Allotment) Order, 1968 to the Chief Electoral Officer by the candidates of the All India NR Congress during the general elections to Puducherry Legislative Assembly Elections, 2016."

k In response to the aforesaid application, Mr. Rudhra Goud (P.W.1), Joint Chief Electoral Officer, Puducherry, addressed a reply dated 30.06.2016 (Ex.P.7), (wrongly dated as 30.06.2015), wherein, it is stated as follows:

"AINR Form A & B not received but a letter C dated 29.04.2016 (received on 30.04.2016) stating that Form A & B in respect of their candidates have been submitted to the Returning Officers of the concerned Assembly Constituencies within the stipulated time has been received."

l Concededly, the DMK and the Indian National Congress were in alliance in the Puducherry poll and therefore, it is the case of the Election Petitioner that he obtained a copy of the reply letter dated 30.06.2016 from Mr.Sivaswamy and has filed the present election petition contending that the failure of the Returned Candidate to submit Form A to the Chief Electoral Officer before 3.00 p.m. on 29.04.2016 should result in his election being declared as void.

m Apart from this Election Petition, 4 other Election Petitions, viz., Election Petition Nos.12, 14 18 and 21 of 2016 have been preferred by losers on the same

ground, viz., non-submission of Form A to the Chief Electoral Officer, against four Returned Candidates of the AINRC and therefore, the Hon'ble Chief Justice directed the trial of all the five Elections Petitions by this Tribunal. Hence, five election petitions have been preferred before this Tribunal on the same ground by the defeated candidates. Common order is not passed by this Tribunal in all the five election petitions, because, if a common order is passed, drafting of decree will be difficult for the Registry since the name of the parties will change. Therefore, this Tribunal has chosen to pass separate orders so that individual decrees can be drafted by the Registry.

4 The sum and substance of the Election Petitioner's contention finds place in paragraph 7(b), 8 and 9 of the Election Petition, which read as under:

"7(b) It is submitted that but for the illegal and improper acceptance of the first respondent's nomination paper by the second respondent, the first respondent could not have contested the election at all. As the petitioner herein secured 2nd highest votes in the above election, in the event of the 1st respondent's election declared illegal and null and void, consequently, the petitioner herein should be held as successful candidate in the place of the 1st respondent.

8 The petitioner submits that the first respondent/returned candidate presented his nomination papers without delivering required supportive documents for valid nomination and consequently, had not complied with the Election Symbols (Reservation and Allotment) Order, 1968 and Section 33 and 33B of the Representation of People Act, 1951. As already submitted, last date for submission of Form A and B was 29.04.2016, 03.00 p.m. i.e., the last date for receipt of nominations and not beyond that. Such non-compliance of

mandatory requirements under the Representation of the People Act, 1951 and the Election Symbols (Reservation and Allotment) Order, 1968 by the 1st respondent/returned candidate vitiates his nomination itself, consequently, the acceptance of his nomination paper tantamount to illegal and improper acceptance, thereby the result of the election, insofar as 7-Kadargam Assembly Constituency electing the 1st respondent has been materially affected as stated supra under Section 100 (1) (d) (i) and (iv) of the Representation of the People Act, 1951.

9. The petitioner submits that it is therefore a clear case of non-compliance of mandatory requirement under Section 33 of the Representation of the People Act, 1951 and the Election Symbols (Reservation and Allotment) Order, 1968 in that the incomplete nomination paper had been presented by the first respondent and the same was illegally and improperly accepted by the Returning Officer thereby making the resultant election of the respondent/returned candidate being materially affected by the improper acceptance of the nomination by the Returning Officer tantamount to non-compliance with the provisions of the Constitution of this Act, Rules and Orders made under the Act as per Section 100 (1) (d) (i) and (iv) as quoted above."

5 The Returned Candidate filed his reply statement denying the allegations and attacking the election petition on several grounds like improper verification, etc. However, the following paragraphs in the reply statement would form the essence of his defence:

"20 The Form A contains both the names of CEO & RO one below the other, which conveys that the candidate's Form A should mention the CEO & RO as mentioned in Form A format. The said format had been simply adopted/copied, the blanks duly filled and submitted to the Returning Officer who is to scrutinize the nomination. Returning Officer is an Officer nominated and authorised to perform the duties relating to election for and on behalf of Chief Electoral Officer of the State/Union Territory. Therefore, the submission of Form A to Returning

Officer substantially complies with the requirement.

21 The submission of Form A by this respondent was perfectly in terms of Form A format. The submission of Form A to Returning Officer was informed to CEO through a letter on the same date of scrutiny of nomination papers on 29.04.2016 which appears to have been acknowledged by Chief Electoral Officer on 30.04.2016. The said letter was neither objected to nor rejected by Chief Electoral Officer. The said act of Chief Electoral Officer prove beyond doubt that the procedure for submission of Form A by this respondent has been done properly and correctly and in any event, the said submission of nomination paper with Form A and Form B was in substantial compliance of the form and procedure prescribed. Even assuming without admitting that Form A was not submitted to Chief Electoral Officer, the non submission of Form A to Chief Electoral Officer do not warrant the cancellation / rejection of first respondent's nomination accepted already without objection from anyone including the petitioner and his election agent cannot be called in question, that too, after the election is over and in which this respondent was declared as the returned candidate. The contention of the petitioner is hit by laches.

30 With regard to Para 7(a) and (b), the first respondent submits that S.36(4) of the Representation of People Act, 1951 specifically stipulates that 'nomination cannot be rejected if the defect is not of substantial character'. Rule 4 of the Conduct of Election Rules, 1961, clearly stipulates that any defect as to declaration of symbols in a nomination paper does not amount to a defect of substantial character within the meaning of S.36(4) of the Representation of People Act, 1951. The first respondent had submitted the Form A and Form B to the returning officer within the date and time.

(a) This respondent submits that even assuming without admitting that a copy of Form A had to be submitted to the Chief Electoral Officer individually within the stipulated date and time. The non-compliance to the same is not a ground to invalidate the nomination paper of this respondent, especially when the same was not objected to by other candidates and found to

be valid, proper and declared so by the returning officer."

(b) This respondent submits that the Election Commission of India in its Handbook to the Returning Officer 2014, has specifically stipulated that submission of Form A and Form B to the Returning Officer is substantial compliance for acceptance of nomination and the non-submission of Form A to the Chief Electoral Officer is not a ground for rejection of nomination. The said instruction is as follows:

"8.4 Allotment of Symbols to Candidates:

8.4.2 (q) . . . N.B. The notices in Form A and Form B signed in original must reach you not later than 3 p.m. on the last date for making nominations. The presentation of these Forms to the Chief Electoral Officer alone will not be treated as compliance with the provisions of para 13 of the Election Symbols (Reservation and Allotment) Order, 1968. It shall be the responsibility of the candidate or the political party concerned to ensure that the documents reach the Returning Officer in time. However, the submission of these Forms to you within the prescribed time will be considered as substantial compliance of the legal requirements, even if the same have not reached the Chief Electoral Officer."

Thus, there is no illegality in the acceptance of the nomination of the first respondent/returned candidate."

6 The Election Petitioner filed a reply to the reply statement filed by the Returned Candidate. Paragraph 10 of the reply to the reply statement, wherein, the relevant legal provision has been extracted and expanded, requires to be re-produced:

Election Symbols (Reservation & Allotment) Order, 1968, as follows:

For the purpose of an election from any parliamentary or Assembly Constituency to which this order applies, a candidate shall be deemed to be set up by a political party in any such parliamentary or assembly constituency, if, and only if, -

- (a)
- (aa)
- (b)
- (c)

(d) The name and specimen signature of such authorised person are communicated by the party, in Form A, to the Returning Officer of the Constituency and to the Chief Electoral Officer of the State or Union Territory concerned, not later than 3 p.m. on the last date for making nominations; and

- (e)

Provided no facsimile signature or signatures by means of rubber stamp etc. of any such bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted."

It cannot be said that non-submission of Form A is not a substantial defect to reject the nomination papers. Section 36(4) of the Representation of People Act, 1951 only stipulate that nomination paper shall not be rejected on the ground of any defect which is not in substantial character. Therefore, what is defect in substantial character is to be answered in the light of legal mandate under Order 13 of the Election Symbols (Reservation & Allotment) Order, 1968. If there is any defect in submission of nomination paper and such defect does not attract to any of the provisions of the statute governing the election, then, it can be said that such defects are not in substantial character. In the case on hand, the defect in non-submission of Form A to the third respondent, the Chief Electoral Officer is running diametrically contrary to the Order 13 of the Election Symbols (Reservation and Allotment) Order, 1968. Therefore, in the line

of the language employed in the above statute, the submission of Form A to the Chief Electoral Officer is mandatory in nature and any non-compliance will be tantamount to defect in substantial character which would in turn attract the rejection of nomination itself."

7 On these pleadings, this Tribunal heard both sides on the issues to be framed and framed the following issues on 11.08.2017:

"1. Whether the Election Petition, as framed and filed by the petitioner, is maintainable?

2. Whether the Election Petition filed by the petitioner is in order?

3. Whether the Election Petitioner is entitled to get himself declared as elected, in the event of his succeeding in unseating the 1st respondent on the sole basis that he had secured the next higher votes than the 1st respondent, who was declared elected in No.7 Kadirgamam Assembly Constituency, Union Territory of Puducherry?

4. Whether the petitioner is entitled to a declaration that the election of the 1st respondent as returned candidate from No.7 Kadirgamam Assembly Constituency, Puducherry at the general election held on 16.05.2016 accepting the nomination papers of the 1st respondent as null and void?

5. Whether the non-submission of Form A to the Chief Electoral Officer (Respondent 3) before the stipulated time and date in compliance with Order 13 of the Election Symbols (Reservation and Allotment) Order, 1968 and Section 33(1) of the Representation of the People Act, 1951 will invalidate the nomination filed by the 1st respondent?

6. Whether the Returning Officer-III of the No.7 Kadirgamam Assembly Constituency (2nd respondent) had improperly accepted the nomination filed by the 1st respondent contrary to Order 13 of the Election Symbols (Reservation and Allotment) Order, 1968 and Section 33(1) of the Representation of the People Act, 1951?

7. Whether the submission of Forms A & B in

respect of his candidature by the 1st respondent to the Returning Officer and not to the Chief Electoral Officer would amount to substantial compliance with the provisions of law relating to election in the constituency?

8. Whether non-submission of a copy of the Form A and Form B to the Chief Electoral Officer within the stipulated time, but, submitting the same to the Returning Officer, would amount to a defect of substantial character coming within the meaning of Section 36(4) of the Representation of People Act, 1951?

9. Whether the parties are entitled to cost of the proceedings?"

8 Though the Election Petitioner had cited a long list of names for being examined on his side, credit should be given to Mr. Sathiaselvan, learned counsel for the Election Petitioner for giving up irrelevant witnesses and confining himself to the facts in issue and the relevant facts by examining Mr. Rudhra Goud (P.W.1), Joint Chief Electoral Officer, Puducherry and Dr. A.S. Sivakumar (P.W.2), Returning Officer, Kadirgama Constituency.

9 On the directions of this Tribunal, the learned Standing Counsel for the Election Commission of India produced the original files from the office of the Chief Electoral Officer for the perusal of both sides and photocopies of relevant records were furnished to both sides.

10 Mr. Rudhra Goud (P.W.1), Joint Chief Electoral Officer, Puducherry, in his evidence, explained the significance of Form A and Form B and stated that the office of the Chief Electoral Officer, Puducherry, did not receive Form A from the Returned Candidate before 3.00 p.m.

on 29.04.2016, but, received a letter dated 29.04.2016 on 30.04.2016 from Mr. V. Bhalan, General Secretary of the AINRC, which is marked as Ex.P.8, giving the official list of the names of the AINRC candidate for each of the 30 constituencies and at the bottom of the list, it is stated as follows:

"The following candidates had already filed the Form A and Form B of our party along with their nomination papers before Returning Officer's.

This is for your kind notice.

Yours faithfully,

Place: Pondicherry

(V. Bhalan)

Date: 29/04/2016

General Secretary

All India N.R. Congress"

Mr. Rudhra Goud (P.W.1) also stated that Mr. Sivaswamy of the Indian National Congress had given a letter dated 28.06.2016 (Ex.P.6) seeking information under the RTI Act, in response to which, the office of the Chief Electoral Officer had issued a reply letter dated 30.06.2016 (Ex.P.7) stating that Form A and Form B were not received by the Chief Electoral Officer from the Returned Candidate, but, a letter dated 29.04.2016 was received on 30.04.2016, in which, it is stated that Form A and Form B have been submitted to the Returning Officers of the concerned Assembly Constituencies within the stipulated time.

11 It may be relevant to extract the following part of the evidence of Mr. Rudhra Goud (P.W.1).

Q:- Whether as per the format of Form A, Form A is addressed to the Chief Electoral Officer and the Returning Officer?

A:-Yes.

Witness voluntarily states that though in the format, it is stated that Form A is to be sent to the Chief Electoral Officer and to the Returning Officer, yet, the Election Commission of India has issued clarification in Handbook for Returning Officer, 2014 in para 8.4.Q in page nos.111 and 112 which reads as:

"However the submission of these forms to you within the prescribed time will be considered as substantial compliance of the legal requirements, even if the same have not reached the Chief Electoral Officer."

Q:- Whether the Handbook for the Returning Officer stated to be issued by the Election Commission of India in the Government Gazette?

A:-The Returning Officer's Handbook will not be gazetted. The directions of Election Commission of India given from time to time for the guidance of Election Conducting Authorities need to be complied with in terms of Article 324 of the Indian Constitution.

Q:-What is the impact of merely addressing Form A to the Chief Electoral Officer but not submitting the same within the stipulated time and date?

A:- The Election Commission of India has clarified regarding the non-submission of the Form-A and Form-B in terms of para 8.4.(q) in page nos.111 and 112 of the Handbook for Returning Officer, 2014, which is extracted above.

According to the Election Commission of India, submission of Form A to the Returning Officer is substantial compliance."

12 In the examination-in-chief, the learned counsel for the Election Petitioner tried to build up a case by asking Mr. Rudhra Goud (P.W.1) as to what ink, i.e., whether fountain pen ink or ball point pen ink has been used for signing Form A and Form B, for which, the witness

stated that he is not an ink expert. Certain blank columns in Form A (Ex.P.3) and Form B (Ex.P.4) were shown to Mr. Rudhra Goud (P.W.1) and he was asked certain questions to show that the said forms were not completely filled and that certain portions were not struck off. The answers given by Mr. Rudhra Goud (P.W.1) to the said questions would have no significance, because, the Election Petitioner had not pleaded these aspects nor were any issue framed in this regard. That apart, the said blanks are indeed very trivial in nature and they can, by no stretch of imagination, have the effect of unseating the victor.

13 Mr. Rudhra Goud (P.W.1) was cross-examined by the learned counsel for the Returned Candidate though there was not much scope in his cross-examination since he had stated the facts based on records.

14 The entire file relating to the nomination papers submitted by the Returned Candidate was marked as Ex.P.1 and in that file, the nomination form of the Returned Candidate was marked as Ex.P.2; Form A and Form B filed by the Returned Candidate were marked as Ex.P.3 and Ex.P.4 respectively; the file relating to the communications sent by various political parties, including the AINRC, the letter of Sivaswamy and the reply sent to Mr. Sivaswamy, was marked as Ex.P.5; the letter dated 28.06.2016 sent by Mr.Sivaswamy to the Chief Electoral Officer was marked as Ex.P.6; the reply letter dated 30.06.2016 sent by the Office of the Chief Electoral Officer to Mr. Sivaswamy was

marked as Ex.P.7 and the communication dated 29.04.2016 addressed by Mr. V.Bhalan, General Secretary of the AINRC to the Chief Electoral Officer, Puducherry, furnishing the list of official candidates of the AINRC, was marked as Ex.P.8.

15 Dr. A.S. Sivakumar, Returning Officer of Kadirgama Constituency, who was examined as P.W.2, in his evidence, stated that he received the nomination papers of the Returned Candidate along with Form A and Form B on 29.04.2016 at 1.10 p.m. He further deposed that after receipt of the nomination papers with enclosures, copies of them were taken and they were displayed in the notice board and posted in the website of the Election Commission of India, so that any person can raise objections.

16 In the cross-examination of Dr. A.S. Sivakumar (P.W.2), Returning Officer, the learned counsel for the Returned Candidate marked the order dated 30.04.2016 passed by the Returning Officer accepting the nomination of 12 candidates, including that of the Election Petitioner and the Returned Candidate and rejecting the nomination papers of five candidates as Ex.R.1 and Pages 107 to 114 of Chapter VIII of the Handbook for Returning Officer, 2014 (for short "the Handbook") as Ex.R.2.

17 With the examination of Mr. Rudhra Goud (P.W.1), Joint Chief Electoral Officer and Dr. A.S. Sivakumar (P.W.2), Returning Officer of Kadirgama Constituency, the Election Petitioner closed his side of evidence. No

witness was examined on the side of the Returned Candidate.

18 This Tribunal heard Mr. S. Sathiaseelan, learned counsel for the Election Petitioner, Mr. G. Masilamani, learned Senior Counsel representing Mr.T.Sathiamoorthy, learned counsel on record for the Returned Candidate and Mr. Niranjan Rajagopalan, learned Standing Counsel for respondents 2 to 4.

19 After the close of oral arguments, both sides submitted written arguments.

20 Submission on behalf of the Election Petitioner:

a For non-submission of Form A to the Chief Electoral Officer before 03.00 p.m. on 29.04.2016, the Returning Officer should not have accepted the nomination papers of the Returned Candidate and should have rejected the same.

b Paragraph 13 of the Election Symbols (Reservation and Allotment) Order, 1968, (for short "the Election Symbols Order") uses the expressions "deemed" and "if and only if" and that these two expressions should be given their full weightage and if that is given, the acceptance of the nomination papers of the Returned Candidate should be held as improper.

c Compliance with Paragraph 13 of the Election Symbols Order is mandatory and its non-compliance would attract the grounds for declaring the result of the Returned Candidate as null and void.

d The Handbook (Ex.R.2) has no statutory force.

e Non-submission of Form A to the Chief Electoral Officer in violation of Paragraph 13 of the Election Symbols Order, which reads as under, is a substantial defect and therefore, the nomination papers of the Returned Candidate should not have been accepted by the Returning Officer.

"13 When a candidate shall be deemed to be set up by a political party:

For the purposes of an election from any Parliamentary or Assembly Constituency to which this Order applies, a candidate shall be deemed to be set up by a political party in any such Parliamentary or Assembly Constituency, if, and only if, --

a the candidate has made the prescribed declaration to this effect in his nomination paper.

aa the candidate is a member of that political party and his name is borne on the rolls of members of the party.

b a notice by the political party in writing, in Form B, to that effect has, not later than 3 p.m. on the last date for making nominations, been delivered to the Returning Officer of the Constituency.

c the said notice in Form B is signed by the President, the Secretary or any other office bearer of the party and the President, Secretary or such other office bearer sending the notice has been authorised by the party to send such notice;

d the name and specimen signature of such authorised person are communicated by the party in Form A, to the Returning Officer of the constituency and to the Chief Electoral Officer of the State or Union Territory concerned not later than 3 p.m. on the last date for making nominations; and

e Forms A and B are signed in ink only by the said office bearer or person authorised by the party:

Provided that no facsimile signature or signature by means of rubber stamp, etc., of any such office bearer or authorised person shall be accepted and no form transmitted by fax shall be accepted."

21 Judgments relied upon by the learned counsel for the Election Petitioner for the following propositions of law:

I For the non-compliance of mandate under Paragraph 13 of the Elections Symbols Order, by operation of legal fiction employed under Paragraph 13, the Returned Candidate not deemed to be a candidate set by recognised political party.

- a Roop Lal Sathi vs. Nachhattar Singh Gill (1982) 3 SCC 487] - Paragraph nos. 12 to 18
- b Ramesh Rout vs. Rabindra Nath Rout (2012) 1 SCC 762-Paragraph nos.14,39 to 46 and 48
- c Jitu Patnaik vs. Sanatan Mohakud & Others (2012) 4 SCC 194 - Paragraph no.39
- d Ram Phal Kundu vs. Kamal Sharma (2004) 2 SCC 759 - Paragraph nos. 18 to 19.1
- e Krishna Mohini vs. Mohinder Nath Sofat (2000) 1 SCC 145 - Paragraph no. 34

II What is a defect of substantial character?

- a Rafiq Khan & another vs. Laxmi Narayan Sharma (1997) 2 SCC 228 - Paragraph no.8
- b Mathura Prasad vs. Ajeem Khan (1990) 3 SCC 659

III Scope of a deeming provision - Legal Fiction

- a Harish Tandon vs. Additional District Magistrate, Allahabad, U.P. & others (1995) 1 SCC 537 - Paragraph nos.13 to 16

- b Ittinam and others vs. Cherichi @ Padmini
(2010) 8 SCC 612 - Paragraph nos.15 to 18

IV There cannot be an estoppel for not objecting during scrutiny:

- a A.C. Jose vs. Sivan Pillan and Others
(1984) 2 SCC 656 - Paragraph no.38
- b Harikrishna Lal vs. Babu Lal Marandi
(2003) 8 SCC 613 - Paragraph no.17

V If an act has to be done in a particular manner, it should be done only in that particular manner:

- a Narbada Prasad vs. Chhaganlal and Others
[AIR 1969 SC 395] - Paragraph no.5
- b Chief Information Commissioner and another vs. State of Manipur and another
(2011) 15 SCC 1 - Paragraph no.40
- c Resurgence India vs. Election Commission of India and another
(2014) 14 SCC 189 - Paragraph no.23

22 SUBMISSIONS ON BEHALF OF THE RETURNED CANDIDATE:

a Pleadings in the election petition have not been verified as required under Section 83(1)(c) of the Representation of the People Act, 1951 (for short "the R.P. Act") read with Order VI Rule 15 C.P.C. and though this defect was pointed out by the Returned Candidate in paragraph 35 of his reply statement dated 04.01.2017, the Election Petitioner has not chosen to correct the same with

b The Election Petitioner has not pleaded that the result of the election insofar as it concerns the Returned Candidate has been materially affected by the improper acceptance of the Returned Candidate's nomination or by the non-compliance with the provisions of Paragraph 13 of the Election Symbols Order.

c Form A (Ex.P.3) has been addressed to both the Chief Electoral Officer, Puducherry and to the Returning Officer, Kadirgamam Constituency and it complies with the format given in the Election Symbols Order.

d The format given in the Election Symbols Order, by itself, contemplates addressing it to the Chief Electoral Officer and the Returning Officer and it does not say that the same should be made in duplicate so as to give one to the Chief Electoral Officer and the other to the Returning Officer.

e The object and purpose of Paragraph 13 of the Election Symbols Order is that the Returning Officer must be satisfied that the candidate has been sponsored by a registered and recognised political party, for which, he would require Form A and Form B to be filed along with the nomination papers.

f No duty is cast upon the Returning Officer to insist that the candidate has to submit Form A to the Chief Electoral Officer nor is there any duty cast on the Returning Officer to verify from the office of the Chief Electoral Officer as to whether Form A has been submitted

to him.

g The Election Commission of India has framed the Handbook by virtue of Paragraph 18 of the Election Symbols Order. Paragraph 8.4.2 (q) of the Election Symbols Order clearly states that submission of Form A to the Returning Officer would be substantial compliance; thus, it is not open now for the Election Petitioner to contend that the same is not substantial compliance.

h Neither the Election Petitioner nor anyone else raised any objection during scrutiny nor did anyone say that the Returned Candidate was not the official candidate of the AINRC.

i The Returning Officer is bound to follow the Handbook.

j Even if the Returned Candidate's election is set aside, the Election Petitioner cannot be declared as elected.

23 Judgments relied on by the learned Senior Counsel appearing for the Returned Candidate for the following propositions of law:

I Verification of pleadings should be as prescribed under Section 83 of the R.P. Act.

- a L.R. Shivarama Gowda vs. T.M. Chandrasekar (1999) 1 SCC 666 - Paragraph 12A
- b Bitra vs. Nanaji Sitaram Shamkule 2010 SCC Online Bom 1101- Paragraphs 33 to 39

II Mere non-compliance with provisions of the Constitution of India or the R.P. Act or rules or orders made thereunder does not render the election void, unless the Election Petitioner pleads and proves that the result of the election insofar as the Returned Candidate is materially affected.

- a Uma Ballav Rath vs. Maheswar Mohanty (1999) 3 SCC 357 - Paragraph 7
- b Mangani Lal Mandal vs. Bishnu Deo Bhandari (2012) 3 SCC 314 - Paragraphs 11 to 14
- c Ram Sukh vs. Dinesh Agarwal (2009) 10 SCC 541 - Paragraphs 21 to 25

**II Handbook for Returning Officer, 2014, is issued
I in exercise of statutory function by the Election Commission and it is binding on the Returning Officer and it has to be followed in letter and spirit.**

- a Ram Sukh vs. Dinesh Agarwal (2009) 10 SCC 541 - Paragraph 23

IV Even if the Returned Candidate's election is set aside, the Election Petitioner cannot be declared as elected.

- a Prakash Khandre vs. Vijayakumar Khandre (2002) 5 SCC 568 - Paragraphs 14 to 24

24 This Tribunal gave its anxious consideration to the rival submissions.

25 Sir Winston Churchill was very sceptical and cynical about our ability to survive as a democratic country and this is what he said in the British Parliament on the 6th of March 1947 during the discussion on Indian independence:

"In handing over the Government of India to these so called political classes, we are handing over to men of straw, of whom, in a few years, no traces will remain".

We have proved him wrong, thanks to the innate democratic sense of the people of India, the independence of the Election Commission of India and the belief of the Indian political parties in the power of the ballot than on bullet.

26 The Parliament, in its wisdom, has vested the power to adjudicate election disputes arising in Parliamentary/Legislative Assembly elections on a Tribunal presided over by a Judge of the High Court, because, only such a Presiding Officer, whose removal can be only by impeachment, will be able to decide the dispute dispassionately by balancing the mandate of the electorate on the one hand, with the victory if obtained by violation of the Constitutional and statutory provisions, on the other hand. Unlike the election process in the U.S., our election process is simple and straightforward based on universal adult suffrage. The Constitution of India has entrusted the onerous task of conducting free and fair elections with the Election Commission of India and the people wait in serpentine queues to cast their votes reposing faith on the independence of the Election Commission of India and are also confident that if any irregularity is committed in the conduct of the election, another Constitutional body called the High Court, though wearing the garb of a Tribunal, would interfere at the appropriate stage. Political parties in India have also reconciled to this game rule.

27 Section 100 of the R.P. Act reads as under:

"100. Grounds for declaring election to be void:

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; 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, insofar as it concerns a returned candidate, has been materially affected--

i by the improper acceptance of any nomination, or

ii by any corrupt practice committed in the interests of the returned candidate 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."

Section 100 of the R.P. Act has been crafted in such a manner that violation of a rule will not *ipso facto* render the election of a Returned Candidate void. To attract Section 100(1)(d)(i to iv), it should be shown that on account of the alleged infraction, the result of the election, insofar as it concerns the Returned Candidate, has been materially affected. This pre-requisite is not necessary for setting aside the election on the grounds enumerated in Section 100 (1)(a)(b) and (c), *ibid*. The reason for this dichotomy is not far to seek. Sub-clauses (a) to (c) in Section 100 (1) of the R.P. Act directly touch upon the foundational aspects of purity in elections and that is why, the caveat as found in Section 100(1)(d), *ibid*, is not available therein. Supposing a corrupt or partisan Returning Officer improperly rejects the

nomination of a prospective Chief Ministerial candidate of a political party in order to favour a rival party candidate, then, it is not necessary for the former to show that the improper rejection had materially affected the result of the election, because, he was not allowed to contest and therefore, he cannot establish by surmises that had his nomination been accepted, he would have won the election or would have split the votes resulting in some other candidate winning the election. Likewise, if the Returned Candidate had adopted any corrupt practice, that, by itself, is enough to set aside his election without anything more. However, in the case of an improper acceptance of a nomination or violation of any legal provisions in the acceptance of the nomination of a candidate, the aggrieved is required to plead and prove that the result of the election, insofar as it concerns the Returned Candidate, has been materially affected. Unfortunately, in the whole of this election petition, the expression to the effect that, the result of the election, insofar as it concerns the Returned Candidate, has been materially affected by the non-submission of Form A to the Chief Electoral Officer, does not find a place. Only in paragraphs 8, 9 and 10 of the election petition, the expression "materially affected" has been vaguely employed and the said paragraphs are extracted below:

<https://hcservices.ecourts.gov.in/hcservices/>⁸ . . . Such non-compliance of mandatory requirements under the Representation of the People Act, 1951 and the Election

Symbols (Reservation and Allotment) Order, 1968 by the 1st respondent/returned candidate vitiates his nomination itself, consequently, the acceptance of his nomination paper tantamount to illegal and improper acceptance, thereby, the result of the election, insofar as 7-Kadargam Assembly Constituency electing the first respondent has been materially affected as stated supra under Section 100(1)(d)(i) and (iv) of the Representation of the People Act, 1951.

9. The petitioner submits that it is therefore a clear case of non-compliance of mandatory requirement under Section 33 of the Representation of the People Act, 1951 and the Election Symbols (Reservation and Allotment) Order, 1968 in that the incomplete nomination paper had been presented by the first respondent and the same was illegally and improperly accepted by the Returning Officer thereby making the resultant election of the respondent/returned candidate being materially affected by the improper acceptance of the nomination by the Returning Officer tantamount to non-compliance with the provisions of the Constitution of this Act, Rules and Orders made under the Act as per Section 100 (1)(d)(i) and (iv) as quoted above.

10. The Returning Officer has been totally oblivious to the aforesaid non-compliance and violations and the nomination paper of the respondent/returned candidate ought to have been rejected but the same had been accepted, thus materially affecting the result of the election by the violation of the above cited statutory provisions and the orders."

The context in which the expression "materially affected" has been used in the above paragraphs does not satisfy the requirements of Section 100 (1)(d) of the R.P. Act. At this juncture, it may be relevant to quote Section 83(1)(a) and

86(1) of the R.P. Act which read as under:

<https://hcservices.ecourts.gov.in/hcservices/>

"83 Contents of petition: (1) An election

petition --

(a) shall contain a concise statement of the material facts on which the petitioner relies;"

"86 Trial of election petitions: (1) The High Court shall dismiss an election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117."

Failure to plead material facts would entail even dismissal of the election petition under Order VII Rule 11 C.P.C. The expression "material facts" used in Section 83(1)(a) of the R.P. Act should be in relation to Section 100 (1)(d), *ibid*, that the result of the election insofar as it concerns the Returned Candidate has been materially affected.

28 This Tribunal is aware that the Election Petitioner need not extract the expression from the statute verbatim in the election petition and it would suffice, if the pleadings satisfy the requirements of the statute. Unfortunately, for the Election Petitioner, his pleadings do not satisfy the requirements of the statute, inasmuch as, he has not averred as to how the acceptance of the nomination papers of the Returned Candidate, despite non-submission of Form A by him to the Chief Electoral Officer, had materially affected the result of the election, insofar as it concerns the Returned Candidate.

29 The learned counsel for the Election Petitioner placed strong reliance on the judgment of the Supreme Court

in **Jagjit Singh Vs. Dharam Pal Singh and Others [1995 Supp**

<https://hcservices.ecourts.gov.in/hcservices/>

(1) SCC 422], wherein, the Supreme Court has held as under:

"21. The trial Judge has held that since there is no averment in the petition that the result of the election was materially affected by improper rejection or acceptance of votes, it is devoid of cause of action. We are unable to agree that the absence of such an averment in the facts of this case is fatal. As pointed out by this Court, there may be cases where the obvious conclusion to be drawn from the circumstances is that the result of the election has been materially affected and that Section 100(1)(d) of the Act is not intended to provide a convenient technical plea in a case where there can be no dispute at all about the result of the election being materially affected by the alleged infirmity. (See: *Durai Muthuswami v. N. Nachiappan* [(1973) 2 SCC 45 : (1974) 1 SCR 40] .) In the present case, the appellant in the election petition has stated that he has lost by a margin of 80 votes only. From the various averments in the election petition it was evident that the number of valid votes of the appellant which are alleged to have been improperly rejected is much more than 80. From the averments contained in the election petition it is thus obvious if the appellant succeeds in establishing his case as set out in the election petition the result of this election, insofar as it concerns the returned candidate, would be materially affected."

30 In **Haryana Financial Corporation vs. Jagdamba Oil Mills [(2002) 3 SCC 496]**, the Supreme Court held that a judgment cannot be read as Euclid's theorem. It may be relevant to quote Lord Halsbury in **Quinn vs. Leatham [1901 AC 495]**, quoted with approval by the Supreme Court in **Rajindra Singh vs. State of U.P. and another [(2007) 7 SCC 378]**:

"A case is only an authority for what it actually decides. I entirely deny that it can be quoted for a proposition that may seem to logically follow from it. Such a mode of reasoning assumes that the law is necessarily a

logical code, whereas, every lawyer must acknowledge that the law is not always logical at all."

31 In **Jagjit Singh** (supra), the High Court had dismissed the Election Petition at the threshold by ignoring the pleadings relating to material facts in the election petition. In paragraph nos. 5 and 12, the Supreme Court has extracted the essence of the pleadings in the election petition which can be profitably extracted here as well:

"5.The case of the appellant is that counting of votes took place behind an iron net. The counting agents were made to sit 5-6 feet behind the net and as such could not take down the numbers properly. But he had given full particulars of the valid votes which, according to the appellant, were improperly rejected.

12. With regard to complaint about missing votes, we find that though in paragraph 22 a general allegation has been made in respect of 49 votes stated to be missing the necessary facts setting out the booth number, the number of votes and table number are contained in paragraph 24. The mere fact that the total number of votes in respect of which these facts are mentioned in paragraph 24 is less than 49, does not justify the conclusion that the averments in the said paragraphs do not contain a concise statement of material facts."

*(Appellant in this case was the Election
Petitioner)*

In spite of such pleadings, the High Court had dismissed the election petition at the threshold and in those circumstances, the Supreme Court has held so in paragraph

Supreme Court has held as under:

" . . . We are not able to agree that the absence of such an averment in the facts of this case as fatal . . . (Emphasis supplied)

32 In the facts of the case at hand, this Tribunal is unable to fathom as to how the failure to submit Form A to the Chief Electoral Officer would have, in any manner, affected the result of the election, insofar as it concerns the Returned Candidate. To this, the learned counsel for the Election Petitioner contended that the Returning Officer should not have accepted the nomination papers of the Returned Candidate for not having submitted Form A to the Chief Electoral Officer and in that event, the Returned Candidate would not have been able to contest the election and as a sequel, the Election Petitioner would have won the election. Only in spurious democracies, such a sly manner of ejecting a likely winner from the election race will be resorted to. Indian democracy is authentic and not spurious. That apart, Section 36(4) of the R.P. Act itself says that the nomination papers of a candidate should not be rejected on the ground of any defect which is not of a substantial character. Section 36(4) of the R.P. Act is usefully extracted hereunder:

"36 Scrutiny of nominations: (4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character."

33 The learned counsel for the Election Petitioner contended that the "nomination paper" referred to in Section 36(4) of the R.P. Act would mean the nomination paper submitted by the Returned Candidate in Form No.2-B prescribed by virtue of Rule 4 of the Conduct of Election Rules, 1961 and it would not have saved the non-submission of Form A to the Chief Electoral Officer which is mandated by Paragraph 13(d) of the Election Symbols Order.

34 To answer this question, it may be necessary to answer the following two subsidiary questions:

- What is Form A?
- Is it open to the Returning Officer to reject the nomination papers of a candidate set up by a political party for non-submission of Form A to the Chief Electoral Officer?

35 Form A has not been prescribed by the Conduct of Election Rules, 1961, but, has been framed under the Election Symbols Order. It is common knowledge that the Election Commission is vested with the power to allot symbols to political parties and candidates. The format of Form A, as given in the Election Symbols Order, is extracted for ready reference:

"FORM A

Communication with regard to Authorised Persons to intimate names of candidates set up by recognised NATIONAL OR STATE Political party or REGISTERED UN-REGISTERED political party:

<https://hcservices.ecourts.gov.in/hcservices/>

(See paragraph 13(c), (d) and (e) of the Election Symbols

(Reservation and Allotment) Order, 1968)

To

1. The Chief Electoral Officer
..... (State/Union Territory)
2. The Returning Officer for the
..... Constituency.

Subject: General Elections to from
..... (State / Union Territory) -
Allotment of Symbols - Authorisation of persons to
intimate names of candidates."

36 The leader of a political party can himself declare a particular person as the official candidate of the party or he can appoint some other person and delegate him the power to declare a particular person as the official candidate of the party. This delegation of power is permitted, because, in national parties, the leader will be sitting in New Delhi or in any other State or Union Territory and may not be able to issue individual declarations to all his party candidates, especially during Assembly elections. Therefore, for each State, the leader of the political party will appoint one person whose signature he will attest and empower him to declare the official candidate of the party. This is, in essence, the purport of Form A. Thus, Form A will contain the name of the leader of the political party and also the person authorised by him or empowered by him to declare the candidate for a constituency.

<https://hcservices.ecourts.gov.in/hcservices/>

37 In the instant case, Form A which has been marked

as Ex.P.3 has been prepared in the letter head of the AINRC. Mr. N. Rangasamy, the President of the AINRC, has signed in ink in Form A and has authorised Mr.V.Bhalan, General Secretary of the AINRC, to intimate the names of the candidates for thirty constituencies of the Union Territory of Puducherry. Mr.V.Bhalan has affixed his specimen signature at three places in Form A, beneath which, Mr. N. Rangasamy, President of the AINRC has signed. Form B (Ex.P.4) dated 29.04.2016 is the actual authorisation that has been given by Mr.V. Bhalan declaring that the Returned Candidate is the official candidate of the AINRC.

38 In Part III of the nomination papers (Ex.P.2) submitted by the Returned Candidate, he has clearly stated in Tamil that he is set up at this election by the AINRC which is a registered and recognised State party and that the symbol reserved for the above party be allotted to him.

39 To recapitulate, Form 2B is the nomination paper as prescribed by the Conduct of Election Rules, 1961, in which, in Part III, the Returned Candidate has given the above declaration. In support of the above declaration, the Returned Candidate has submitted Form A and Form B to the Returning Officer before 3.00 p.m. on 29.04.2016.

40 Now, Rule 4 of the Conduct of Election Rules, 1961, is relevant and the same reads thus:

"Nomination paper: Every nomination paper presented under sub-section (1) of section 33 shall be completed in such one of the Forms 2-A to

2-E as may be appropriate.

Provided that a failure to complete or defect in completing the declaration as to symbols in a nomination paper in Form 2-A or Form 2-B shall not be deemed to be a defect of a substantial character within the meaning of sub-section (4) of section 36."

Thus, even if there is a defect as to symbols in the nomination paper in Form 2-B, it shall not be deemed to be a defect of substantial character. When this is the legal position, to say that non-submission of Form A to the Chief Electoral Officer would amount to substantial non-compliance and therefore, the Returning Officer ought not to have accepted the nomination papers of the Returned Candidate, sounds incongruous.

41 The learned counsel for the Election Petitioner placed reliance on the following judgments and contended that the failure to follow Paragraph 13 of the Election Symbols Order would be a ground to set aside the election under Section 100(1)(d)(iv) of the R.P. Act.

a In **Roop Lal Sathi** (supra) relied upon by the learned counsel for the Election Petitioner, one Jagmohan Singh filed nomination on behalf of the Indian National Congress (I) for the Moga Assembly Constituency and he was given the "Hand" symbol. One Nachhattar Singh Gill also filed nomination papers and he was allotted "Bow and Arrow" symbol. The Returning Officer wrote a letter to Jagmohan Singh stating that he has been informed by the Secretary,

put up as the official candidate of the Congress Party and therefore, Nachhattar Singh was allotted "Hand" symbol and Jagmohan Singh was allotted "Bow and Arrow" symbol. In that election, Roop Lal Sathi contested on Lok Dal ticket and lost to Nachhattar Singh by a margin of 5,774 votes. Roop Lal Sathi filed election petition contending that Jagmohan Singh had submitted Form A and Form B to the Returning Officer and that he should have been allotted the "Hand" symbol, whereas, the Returning Officer had changed the symbol, on account of which, Nachhattar Singh won and he lost. Roop Lal Sathi had specifically pleaded in Paragraph 15 of the election petition as under:

"... and the result of the election, insofar as it concerns the returned candidate i.e. the respondent, has been materially affected inasmuch as because of the change of symbol Jagmohan Singh got only 242 votes while the respondent could not have secured more than the same number if he had contested on the symbol 'bow & arrow' earlier allotted to him. If the respondent had not been allotted the reserved symbol 'hand' of the Indian National Congress(I), he could not have won the election. In paragraphs 16, 17 and 18, the appellant set out some facts showing how the result of the election, insofar as it concerns the respondent, has been materially affected by the change of allotment of symbols."

The High Court framed a preliminary issue and dismissed the election petitioner of Roop Lal Sathi on the ground that he had not pleaded material facts. Challenging the order of the High Court, Roop Lal Sathi approached the Supreme Court and in that context, the Supreme Court held as follows:

Order was not an order made under the Act and therefore the change of allotment of symbols by the Returning Officer in compliance with the directions issued by the Election Commission, even if it was in breach of para 13 thereof, did not amount to non-compliance with the provisions of the Constitution, or the Act, or any rules or orders made under the Act and therefore the matter fell outside the ambit of Section 100(1)(d)(iv) of the Act. . ."

The learned counsel for the Election Petitioner submitted that in **Roop Lal Sathi** (supra), the Supreme Court has very clearly held that the Election Symbols Order has been issued under Article 324 of the Constitution of India and that it has to be followed scrupulously. This Tribunal has no quarrel with the aforesaid proposition laid down by the Supreme Court that the Election Symbols Order should be followed scrupulously. However, in **Roop Lal Sathi** (supra), the issue was not non-submission of Form A to the Chief Electoral Officer. The issue was, whether the High Court was right in dismissing the Election Petition at the preliminary stage by holding that the failure of the Returning Officer to follow the Election Symbols Order was not fatal on the ground that the Election Symbols Order was not made under the R.P. Act. Had the Returned Candidate in our case not submitted Form A to the Returning Officer, then, the Returning Officer would have rejected the nomination papers of the Returned Candidate by following Paragraph 13 of the Election Symbols Order and would not have allotted the "Jug" symbol to anyone. Unlike in **Roop Lal Sathi** (supra), in the present case, there is no

averment with regard to Section 100(1)(d) of the R.P. Act as to how the result of the election has been materially affected, insofar as it concerns the Returned Candidate.

b In **Ramesh Rout** (supra) relied upon by the learned counsel for the Election Petitioner, one Ranendra Pratap Swain filed four sets of nomination papers as a candidate of Biju Janata Dal (BJD). The Returning Officer rejected the nomination papers of Ranendra Pratap Swain on the ground that Form A and Form B were not signed in ink. In the election, Ramesh Rout won. The election was challenged by Ranendra Pratap Swain for improper rejection of his nomination papers by contending that he had filed four sets of nomination papers and that the first set contained Form A and Form B in original signed in ink, but, only the other three sets had photocopies of Form A and Form B and therefore, his nomination papers should not have been rejected by the Returning Officer. The Orissa High Court allowed the election petition and held that Ranendra Pratap Singh had filed one set of nomination papers with Form A and Form B signed in ink and therefore, the Returning Officer should not have rejected his nomination papers. Ramesh Rout approached the Supreme Court challenging the order of the Orissa High Court. During the course of arguments, Mr. K.K. Venugopal, learned Senior Advocate, submitted before the Supreme Court that Paragraph 13 of the Election Symbols Order cannot be read into Rule 4 of the Conduct of Election Rules, 1961. This argument was

rejected by the Supreme Court. The Supreme Court held in paragraph 49 of the judgment as under:

"49. . . . In other words, it was necessary for the proposed candidate that Forms A and B referable to clauses (b), (c) and (d) of Para 13, 1968 Order were submitted to the Returning Officer duly signed in ink by the authorised person of BJD not later than 3.00 p.m. on 4-4-2009." (emphasis supplied)

Here also, the Supreme Court has reiterated the importance of submission of Form A and Form B to the Returning Officer and not to the Chief Electoral Officer. The Supreme Court dismissed the appeal of Ramesh Rout and confirmed the order of the Orissa High Court. The issue before the Supreme Court was "improper rejection" of nomination papers of Ranendra Pratap Swain, whereas, the case at hand relates to "improper acceptance" of the nomination papers of the Returned Candidate.

c In **Ram Phal Kundu** (supra) relied upon by the learned counsel for the Election Petitioner, Kamal Sharma and Bachan Singh filed nomination papers claiming to be candidates of Indian National Congress Party. The Returning Officer accepted the nomination papers of Bachan Singh as the official candidate of Indian National Congress Party and rejected that of Kamal Sharma. In the election, Ram Pal Kundu who contested on Lok Dal Party ticket was declared elected. Kamal Sharma filed election petition contending

Congress Party and the Returning Officer had improperly rejected his nomination papers. The election petition was allowed by the Punjab and Haryana High Court and the election of Ram Phal Kundu was set aside, challenging which, Ram Phal Kundu approached the Supreme Court. In **Ram Phal Kundu** (supra) also, the issue was improper rejection of the nomination of Kamal Sharma. Therefore, there was no necessity for Kamal Sharma to plead that the result of election, insofar as it concerns the Returned Candidate, has been materially affected. On facts, the Supreme Court noted in paragraph 8.2 of the judgment as under:

"8.2. Thus, there is no dispute that Form B submitted by Bachan Singh contained a categorical statement to the effect that the notice given in Form B earlier in favour of Kamal Sharma as party's approved candidate and Smt Kusum, w/o Shri Kamal as party's substitute candidate is rescinded and the said Form B had been signed in ink by Shri Bhupinder Singh Hooda, who had been nominated as authorised person of the Congress Party. There is also no dispute that Form B submitted by Bachan Singh was later in point of time and had been given at 2.50 p.m. on 3-2-2000 when the last time and date for filing of the nomination paper was 3.00 p.m. on 3-2-2000."

It appears that after the last date of nomination, i.e., 03.02.2000, an enquiry was conducted on 04.02.2000, in which, the Returning Officer is said to have spoken to one Bhupinder Singh Hooda, who was authorised by the Congress high command to issue Form B and that Bhupinder Singh Hooda had filed an affidavit stating that Kamal Sharma is the nominated candidate of the Indian National Congress Party.

Therefore, the Supreme Court framed the following question in paragraph 10:

"10 The question that arises is whether this evidence, which is all subsequent to the last date of filing of the nomination paper, can be looked into in order to ascertain as to who had been set up as a candidate by the Congress party."

While answering the aforesaid question, the Supreme Court has held that Paragraphs 13 and 13-A of the Election Symbols Order should be strictly adhered to and the Supreme Court further went on to emphasise the importance of the deeming fiction and the expression "if and only if" in Paragraph 13 of the Election Symbols Order and has followed **Nazir Ahmad vs. King Emperor [AIR 1936 PC 253]** and has held that if a certain act has to be done in a particular manner, it has to be done only in that manner. Further, in paragraph 18, the Supreme Court held as under:

"18. The learned counsel for the respondent has submitted that Form B of Bachan Singh did not reach the Office of the Chief Electoral Officer and, therefore, there was no valid nomination of his. The High Court has gone to the extent of saying that though Bachan Singh had submitted Form A and Form B along with his nomination paper before the Returning Officer but no Form A in respect of his candidature was submitted by him to the Chief Electoral Officer and, therefore, the same would not have the effect of rescinding the candidature of Kamal Sharma. Learned counsel for the respondent has also referred to the amendment in the Handbook for Returning Officers by which para 10.3(i) was substituted by the following sub-para:"

From the above, it is clear that the Punjab and Haryana

submitted Form A to the Chief Electoral Officer and therefore, the same would not have the effect of rescinding the candidature of Kamal Sharma. Despite this, ultimately, the Supreme Court held that Bachan Singh had submitted Form A and Form B at 2.50 p.m. on 03.02.2000 and therefore, the Returning Officer was right in accepting his nomination papers and rejecting Kamal Sharma's nomination papers. After having held so, the Supreme Court proceeded further to hold as follows in paragraph 27:

"27. . . . It will be apposite to refer to a well-settled principle in election jurisprudence. After referring to earlier decisions in *Jagan Nath v. Jaswant Singh* [AIR 1954 SC 210] and *Gajanan Krishnaji Bapat v. Dattaji Raghobaji Meghe* [(1995) 5 SCC 347] this Court in *Jeet Mohinder Singh v. Harinder Singh Jassi* [(1999) 9 SCC 386] stated as under: (SCC p. 409, para 40)

"40. (i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but also for the public at large inasmuch as re-election involves an enormous load on the public funds and administration."

Thus, the essence of the judgment in **Ram Phal Kundu** (supra)

<https://hcservices.ecourts.gov.in/hcservices/>
 It is clear that Bachan Singh had submitted Form A and Form B with his nomination papers at 2.50 p.m. on 03.02.2000 and

therefore, the election of the Returned Candidate cannot be set aside on that ground, on account of the internecine fight between two persons claiming right to represent a political party. Whereas, the case at hand is distinguishable by the fact that there was no rival claimant for the "Jug" symbol. That apart, this is not a case of improper rejection of nomination papers, but, the improper acceptance of nomination papers, to sustain which, the Election Petitioner has not pleaded the necessary material facts.

d **Krishna Mohini** (supra) relied on by the learned counsel for the Election Petitioner also relates to improper rejection of nomination papers and in that context, the Supreme Court has held that the Returning Officer should have followed Paragraph 13 (a) to (d) of the Election Symbols Order strictly and that Form A and Form B should have been submitted not later than 3 p.m. on the last date of nomination.

42 Before moving away from this topic, it may not be out of place to delve a little more on the oft-quoted proposition of law that when a certain act has to be done in a particular manner, it has to be done only in that manner and not otherwise, as laid down by the Privy Council in **Nazir Ahmad** (supra).

43 In **Nazir Ahmad** (supra), the confession of the accused was not even recorded by the Magistrate as required under Section 164 Cr.P.C. Instead, the Magistrate gave

oral evidence of the confession. Therefore, in that context, the Privy Council held that the confession will stand vitiated, as it has not been recorded in the manner as laid down by the Code. Thus, the Privy Council was dealing with the life and liberty of a prisoner. A confession, *proprio vigore*, is capable of putting a prisoner in the gallows. Therefore, in that context, the Privy Council held so. This principle has been extended by the Courts to cover cases where a particular person had suffered prejudice on the failure of an authority to follow the statutory procedure as laid down, thereby denying him a statutory right. For example, if a Returning Officer improperly rejects the nomination paper of a candidate in violation of the statutory procedure, the candidate loses a statutory right to contest the election. Therefore, it is open for such a candidate to rely upon **Nazir Ahmad** (supra) and say that the Returning Officer had not done an act in a particular manner as mandated by the statute, resulting in his ouster from the election fray. In the humble opinion of this Tribunal, the principle in **Nazir Ahmad** (supra) cannot be pressed into service in a case of this nature, where, the lost candidate says that the nomination papers of the Returned Candidate have been improperly accepted in violation of the rules. In the case at hand, the statutory right of the lost candidate is not in question, because, his nomination papers have been accepted and he has contested the election and lost to the Returned Candidate.

After having bitten dust in the hustings, the lost candidate cannot cry hoarse and say that the principle in **Nazir Ahmad** (supra) should be extended in order to unseat the Returned Candidate.

44 **Question No.2:** Is it open to the Returning Officer to reject the nomination papers of a candidate set up by a political party for non-submission of Form A to the Chief Electoral Officer? The relevance of Form A has already been set out above. To recapitulate, Form A is the authorisation given by the party high command to an office bearer to nominate the official candidate of the party. Form B is the nomination of the individual as the official candidate of the party. Admittedly, the AINRC contested in all the thirty Assembly Constituencies in Puducherry, out of which, they won in eight Assembly Constituencies. This means that in 22 out of 30 constituencies, DMK, AIADMK, Indian National Congress and independents have won.

45 Incontrovertibly, the Returning Officers of 30 Assembly Constituencies in Puducherry have accepted the nomination papers of the AINRC candidates with Form A and Form B, without insisting upon them to submit Form A to the Chief Electoral Officer.

46 The ground taken in this election petition to set aside the election of the Returned Candidate of the AINRC on the ground that Form A was not submitted to the Chief Electoral Officer in compliance with Paragraph 13(d) of the Election Symbols Order was available to set aside the

election of 22 Returned Candidates, some of whom belong to DMK, AIADMK, Indian National Congress, apart from independent candidates. In other words, Section 100 (1)(d) of the R.P. Act does not speak about improper acceptance of the nomination of the Returned Candidate. It merely speaks about the improper acceptance of any nomination (*emphasis supplied*). If the argument of Mr. Sathiaselvan is accepted, it will mean that the Returning Officers of 22 Assembly Constituencies in Puducherry, in which others have won, have improperly accepted the nomination papers of the AINRC party candidates and that would have been a ground for any elector or any unsuccessful candidate, other than the AINRC candidates, to challenge the election of the Returned Candidates, because, under Section 81 of the R.P. Act, an election petition can be filed by any candidate at such election or any elector. This means that even an independent candidate could have filed an Election Petition challenging the election of a DMK or Indian National Congress candidate on the ground that the Returning Officer had improperly accepted the nomination papers of the AINRC candidate, as the AINRC candidate had not submitted Form A to the Chief Electoral Officer. This would have led to disastrous consequences resulting in re-election to the entire Puducherry Assembly and rejection of the people's mandate on an absurd ground. It may sound preposterous, but not improbable.

<https://hcservices.ecourts.gov.in/hcservices/>

Kadiringam Constituency, who was examined as P.W.2, has stated that they followed Paragraph 8.4.2 (q) given in the Handbook uniformly and accepted the nomination papers of the Returned Candidates. It is not the case of the Election Petitioner that the Returning Officers were bribed into acceptance of the nomination papers of the Returned Candidate. The Handbook (Ex.R.2) is a rule book which formulated the rules of the game. All political parties, including the Election Petitioner, accepted the rules of the game as adumbrated in the Handbook and participated in the hustings. Concededly, the nomination papers were kept in public domain and at the time of scrutiny, none, including the Election Petitioner, raised any objection on the issue of Form A not having been submitted to the Chief Electoral Officer. The Returning Officer followed Paragraph 8.4.2 (q) of the Handbook in letter and spirit and accepted the nomination papers. Paragraph 8.4.2 (q) of the Handbook reads as under:

"For the purposes of clauses (ii) of paragraph (o) above, persons(s) authorised by the party shall send to you individual notice (authorization letter) in Form B prescribed by the Commission for the purpose, which is reproduced in Annexure 25 Part III. Printed, cyclostyled and photocopies of Form B may be used by political parties; but these must be signed in ink by authorized office bearer(s) of the political party concerned. Similarly, fax copies of such forms are not acceptable. [N.B. The notices in Form A and Form B signed in original must reach you not later than 3 p.m. on the last date for making nominations. The presentation of these Forms to the Chief Electoral Officer alone will not be treated as compliance with the provisions of para 13 of the

Election Symbols (Reservation and Allotment) Order, 1968. It shall be the responsibility of the candidate or the political party concerned to ensure that the documents reach the Returning Officer in time. However, the submission of these Forms to you within the prescribed time will be considered as substantial compliance of the legal requirements, even if the same have not reached the Chief Electoral Officer."

48 It is contended by the learned counsel for the Election Petitioner that even if there is no objection by anyone, still, the Returning Officer has the power to reject the nomination papers on the ground that Form A was not submitted to the Chief Electoral Officer. This Tribunal concedes the power of the Returning Officer to reject a nomination paper even if there is no objection from anyone, but, not on the ground that Form A was not submitted to the Chief Electoral Officer. All the Returning Officers were directed by the Election Commission of India to follow the Handbook, wherein, Paragraph 8.4.2 (q) makes it clear that submission of forms to the Returning Officer within the prescribed time will be considered as substantial compliance of the legal requirements. If the Election Petitioner is of the view that Paragraph 8.4.2(q) is not correct, then, he should have challenged the said rule as unconstitutional or *ultra vires* Paragraph 13(d) of the Election Symbols Order even before participating in the election.

49 The Marylebone Cricket Club Book of Rules, which is the cricketers' Bible, says that there should be a leg umpire and a straight umpire in every match. Now, two teams

play a match with a straight umpire alone for want of a leg umpire. After having played the match, the lost team cannot snatch away the victory of the winner team on the ground that the match was played with only one umpire, in violation of the Marylebone Cricket Club Book of Rules.

50 The learned counsel for the Election Petitioner placed reliance on **Harikrishna Lal** (supra) and submitted that the failure to raise this ground at the time of scrutiny will not act as an estoppel since there cannot be an estoppel against statute. This Tribunal can have no quarrel with the aforesaid proposition of law. However, the election of the Returned Candidate cannot be set aside on the ground that the Returning Officer should have ignored Paragraph 8.4.2 (q) and should have rejected the nomination papers on the ground that Form A was not given to the Chief Electoral Officer. In the opinion of this Tribunal, the Returned Candidate has followed the mandates of the Election Symbols Order, as could be seen from Form A (Ex.P.3) which is addressed to the Chief Electoral Officer and to the Returning Officer, as per the format of the Election Symbols Order. At the risk of repetition, in the Election Symbols Order, the format is given as follows:

"FORM A

Communication with regard to Authorised Persons to intimate names of candidates set up by recognised NATIONAL OR STATE Political party or REGISTERED UN-REGISTERED political party:

<https://hcservices.ecourts.gov.in/hcservices/>

(See paragraph 13(c), (d) and (e) of the Election Symbols

(Reservation and Allotment) Order, 1968)

To

1. The Chief Electoral Officer
..... (State/Union Territory)
2. The Returning Officer for the
..... Constituency.

Subject: General Elections to from
..... (State / Union Territory) -
Allotment of Symbols - Authorisation of persons to
intimate names of candidates."

In the instant case, Form A (Ex.P.3) submitted by the
Returned Candidate is in conformity with the format and the
same is as follows:

"To:

1. The Chief Electoral Officer
Puducherry Union Territory
2. The Returning Officer for the
Kadingamam Constituency."

51 The Election Symbols Order does not say that Form
A should be made in duplicate and separately for the Chief
Electoral Officer and the Returning Officer. The idea of
Form A is the intimation by the party high command about
the authorisation given to a person to intimate the name of
the candidate for and on behalf of the political party. It
is the Returning Officer who must be provided with all
these forms since he is required to act as a quasi judicial
authority while deciding the acceptance or rejection of
nomination papers. The Chief Electoral Officer has no role
to play in the acceptance and rejection of the nomination
paper. However, it is seen from Ex.P.8 that Mr. V. Bhalan,

General Secretary of the AINRC has sent a communication dated 29.04.2016, which has been received by the office of the Chief Electoral Officer on 30.04.2016, wherein, he has given the names of all the official candidates of the party who have been nominated to contest in the 30 Assembly Constituencies. At the bottom of the said communication, it is stated as follows:

"The following candidates had already filed the Form A and Form B of our party along with their nomination papers before Returning Officer.

This is for your kind notice."

52 The learned counsel for the Election Petitioner placed reliance upon **Jitu Patnaik** (supra) and submitted that the Handbook does not have statutory character and therefore, this Tribunal should ignore the mandates of Paragraph 8.4.2(q) of the Handbook and set aside the election of the Returned Candidate.

53 One should understand the context in which the Supreme Court had held so in **Jitu Patnaik** (supra). In that case, one Akhila Kumar Mohanta filed his nomination papers on 08.04.2009 as an independent candidate and he was allotted TV symbol. But, he breathed his last on 13.04.2009. Polling was held on 23.04.2009 and in the Electronic Voting Machine, the name of Akhila Kumar Mohanta was not deleted. In that election, Jitu Patnaik won. His election was challenged by Sanatan Mohakud before the Orissa High Court on the ground that the Returning Officer

should have followed the Handbook and should have deleted the name of Akhila Kumar Mohanta from the Electronic Voting Machine. Jitu Patnaik filed an application under Order VI Rule 16 and Order VII Rule 11 C.P.C. to strike off the pleading, which was dismissed by the Orissa High Court holding that the Returning Officer should have followed the Handbook. Challenging the said order, Jitu Patnaik approached the Supreme Court. Only in that context, the Supreme Court held that the Handbook is only a book for guidance and failure to follow it without anything more will not give cause of action to maintain the election petition. Holding so, the Supreme Court dismissed the election petition filed by Sanatan Mohakud.

54 However, in **Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari and another** [(2014) 5 SCC 312], a 3 Judge Bench of the Supreme Court has held as under:

"32. It is a settled legal proposition that the instructions contained in the Handbook for Returning Officer are issued by the Election Commission in exercise of its statutory functions and are therefore, binding on the Returning Officers. Such a view stands fortified by various judgments of this Court in *Ram Sukh v. Dinesh Aggarwal* [(2009) 10 SCC 541] and *Uttamrao Shivdas Jankar v. Ranjitsinh Vijaysinh Mohite Patil* [(2009) 13 SCC 131]. Instruction 16 of the Handbook deals with cases as to when the ballot is not to be rejected. The Returning Officers are bound by the Rules and such instructions in counting the ballot as has been done in this case."

Thus, neither the observation in **Jitu Patnaik** (supra) nor the observation in **Arikala Narasa Reddy** (supra) should be

blindly followed by the Tribunal ignoring the circumstances under which the Supreme Court had held so.

55 In the instant case, in all the 30 Assembly Constituencies, the Returning Officers have followed Paragraph 8.4.2 (q) of the Handbook and had accepted the nomination papers of the AINRC candidates without Form A being submitted to the Chief Electoral Officer. In such view of the matter, this Tribunal cannot ignore the mandates of Paragraph 8.4.2 (q) of the Handbook and set aside the election of the Returned Candidate.

56 Further, this Tribunal asks itself the question about the dichotomy in the matter relating to Form A, inasmuch as Paragraph 13 (d) of the Election Symbols Order says that Form A should be submitted to the Chief Electoral Officer and the Returning Officer before 3.00 p.m. on the last date of the nomination, whereas, Paragraph 8.4.2 (q) of the Handbook says that submission of Form A to the Returning Officer would amount to substantial compliance. The Supreme Court, in **Ramesh Rout** (supra), has rejected Mr. K.K. Venugopal's contention and has held that Paragraph 13 of the Election Symbols Order should be read into Rule 4 of the Conduct of Election Rules 1961. The answer for this question is not far to seek. The Election Symbols Order is only a supporting legislation and it cannot supersede the provisions of the R.P. Act. Section 33 of the R.P. Act

reads as follows:

<https://hcservices.ecourts.gov.in/hcservices/>

"33. Presentation of nomination paper and

requirements for a valid nomination:

(1) On or before the date appointed under clause (a) of Section 30, each candidate shall, either in person or by his proposer, between the hours of eleven O' clock in the forenoon and three O' clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under Section 31, a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer.

Provided that a candidate not set up by a recognised political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency." (emphasis supplied)

(The other provisos have been left out since they are not germane.)

57 From a reading of Section 33 of the R.P. Act extracted above, it is clear that the nomination paper of a candidate sponsored by a political party needs only one proposer and that it should be submitted in the prescribed format before 3 p.m. on the last date appointed by the Election Commission of India. In other words, the nomination paper can be filed upto 2.59 p.m.. Mr. G. Masilamani, learned Senior Counsel appearing for the Returned Candidate contended that it will be impossible for a candidate contesting in Mahe Constituency in Kerala and Yanam Constituency in Andhra Pradesh to submit Form A, both to the Returning Officer and the Chief Electoral Officer if the mandates of Paragraph 13(d) of the Election Symbols Order are to be followed blindly, because, the office of the Chief Electoral Officer is located in Puducherry and

therefore, a person cannot be at two places in and around the same time. That apart, it is common knowledge that till the eleventh hour, there will be scramble for party tickets and in several cases, the party high command would announce the list or change the list in the nick of time. In any event, the provisions of the Election Symbols Order cannot frustrate the right conferred by Section 33 of the R.P. Act to submit the nomination papers upto 3.00 p.m. Therefore, the Election Commission of India had stated in Paragraph 8.4.2 (q) of the Handbook which was followed by all the Returning Officers in Puducherry, that the submission of Form A to the Returning Officer would amount to substantial compliance. To reiterate, Form A is not the creature of the R.P. Act or the Conduct of Election Rules, 1961, but, the creature of the Election Symbols Order. Thus, the provisions of the Election Symbols Order cannot be interpreted in such a manner as to frustrate the provisions of Section 33 of the R.P. Act.

58 In fine, this Tribunal holds that the submission of Form A to the Returning Officer before the stipulated time and date for submission of nomination papers is substantial compliance with the extant rules and that the submission of Form A separately to the Chief Electoral Officer has not been stipulated by the Election Symbols Order. The petitioner herein has submitted Form A in the format prescribed by the Election Symbols Order by addressing it to the Chief Electoral Officer and Returning

Officer and has thereby, complied with the requirements of the Election Symbols Order.

59 ANSWERS TO THE ISSUES FRAMED:

Issue nos.1 and 2:

The pleadings of the Election Petitioner do not satisfy the requirements under Section 100(1)(d) read with Section 83(1)(a) of the R.P. Act, inasmuch as he has not pleaded any material fact to show that failure to submit Form A to the Chief Electoral Officer separately had materially affected the result of the election, insofar as it concerns the Returned Candidate. Hence, issue nos.1 and 2 are held against the Election Petitioner.

Issue No.3:

Answer to Issue No.3 does not arise in view of the answers to other issues.

Issue Nos.4 and 5:

These issues are held against the Election Petitioner for the reasons given in the body of this order.

Issue No.6:

The Returning Officer has not improperly accepted the nomination filed by the Returned Candidate.

Issue Nos.7 and 8:

Submission of Forms A and B to the Returning Officer and not to the Chief Electoral Officer would amount to substantial compliance with the provisions of law.

Issue No.9:

The parties to bear their own costs.

60 On behalf of the Election Commission of India, three Original Applications, viz., O.A. Nos.84 to 86 of 2017 have been filed for striking off the Returning Officer, Chief Electoral Officer and the Chief Election Commissioner, respectively, from the array of respondents, by placing strong reliance upon Section 82 of the R.P. Act and the law laid down by the Supreme Court in **Jyoti Basu and others vs. Debi Ghosal and others [(1982) 1 SCC 691]**.

61 The learned counsel on either side fairly conceded the position. However, this Tribunal did not pass any separate orders in these Original Applications, because, that would have resulted in delay in the proceedings as the Registry would be required to carry out corrections and amendments in the pleadings. Hence, these three Original Applications are closed.

62 During the course of oral arguments, Mr. G. Masilamani, learned Senior Counsel appearing for the Returned Candidate submitted in his characteristic and inimitable style that the Election Petitioner has made much ado about nothing, which did incense Mr. Sathiaselvan and as a sequel, Mr. Sathiaselvan brought out his best from within, by placing reliance upon twenty judgments of the Supreme Court to counter the submissions of the learned Senior Counsel.

63 The legal battle was essentially between the two *Sathyas*, viz., Mr. S. Sathiaselvan, counsel for the

Election Petitioner and Mr.T.Sathiyamoorthy, counsel for the Returned Candidate, both promising youngsters of the Madras Bar, who did a commendable job, worthy of recognition.

64 Since Sir Winston Churchill has been quoted in the preamble portion of the discussion part of this order, it will be in the fitness of things to conclude this order with one of his famous quotes and the same reads thus:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper - no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

In the result, this Election Petition stands dismissed as being devoid of merits. No costs.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 05TH DAY OF JANUARY 2018.

SD/-
ASSISTANT REGISTRAR
Original Side - II

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2018

COURT OFFICER(OS)

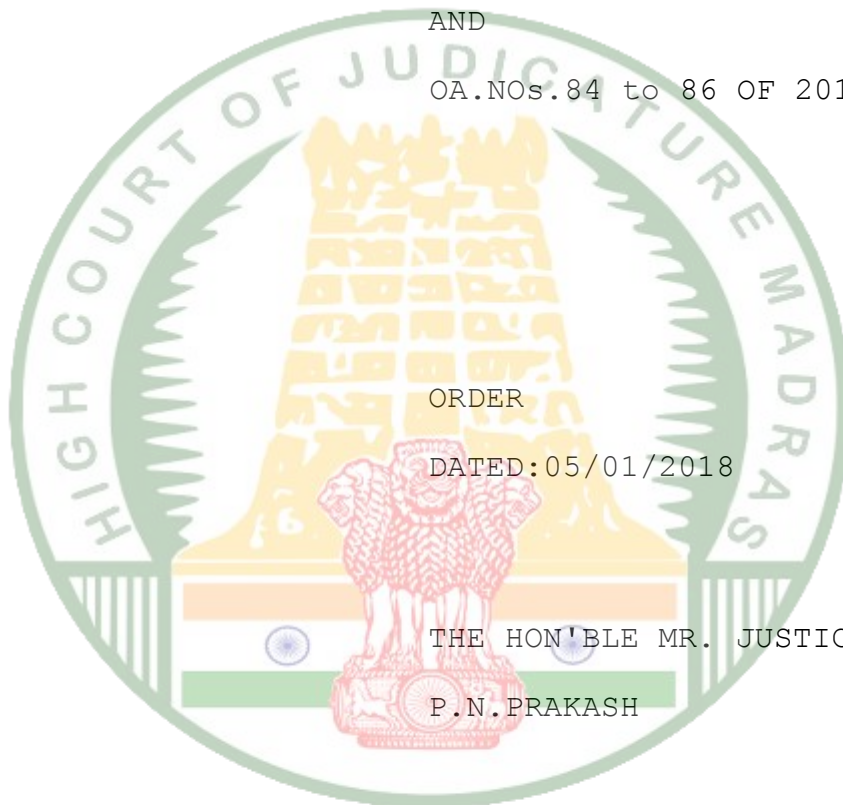
From 25th Day of September 2008 the Registry is issuing copies of the Orders/Judgments/Decrees in this format.
<https://hcservices.ecourts.gov.in/hcservices/>

cns - 29.01.2018

ELP.NO.22 OF 2016

AND

OA.NOS.84 to 86 OF 2017



ORDER

DATED:05/01/2018

THE HON'BLE MR. JUSTICE

P.N.PRAKASH

सत्यमेव जयते

FOR APPROVAL:

APPROVED ON :

WEB COPY

Copy to:

1.The Speaker
Tamil Nadu Assembly
**(Through Secretary
Tamil Nadu Legislative
Assembly Constituency
Chennai - 600 002**

2.The Election Commission
of India
**Through the Secretary,
New Delhi**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 5TH DAY OF JANUARY 2018

THE HON'BLE MR. JUSTICE P.N.PRAKASH

Election Petition No. 22 of 2016
and

O.A NOS. 84 TO 86 OF 2017

ELP No.22 of 2016

S.Ramesh,
No.39, Nilaya Street,
Shanmugapuram,
Puducherry 605 009.

... Petitioner

-VS-

1.N.S.J.Jayabal @ Ayyanar,
No.16, Second Cross,
Ramanapuram, Kadirgamam,
Puducherry 605 009.

2.The Returning Officer III,
7-Kadirgamam Assembly Constituency,
O/o.The Registrar of
Co-operative Societies,
2nd Floor, VVP.Nagar, Thatavanchavady,
Puducherry 605 009.

3.The Chief Electoral Officer,
O/o.The Chief Electoral Officer,
Puducherry, Villianur Main Road, Lawsthottam,
Reddiarpalayam,
Puducherry 605 010.

4.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi 110 001.

5.S.Radhakrishnan,
No.29, Second Street,
Puratchi Thalaivi Nagar,
Dharmapuri,
Puducherry 605 009.

Mettupalayam,
Puducherry 605 009.

7.A.Sivashanmugam,
No.26, New Street,
Pavazha Nagar,
Puducherry 605 005.

8.R.Somasundaram,
No.10, Hospital Street,
Mettupalayam,
Puducherry - 605 009.

9.K.Ezhumalai,
No.2, Santhai Thoppu Street,
Dharmapuri,
Puducherry 605 009.

10.S.Murugesan.
No.7, iyanar Koil Street,
G.N.Palayam,
Arumparthapuram,
Puducherry 605 110.

11.D.Ramesh,
No.5, Second Cross,
Radha nagar,
Muthupillaipalayam,
Puducherry 605 009

12.V.Mourougayan,
No.11, Nilaya Street,
Shanmugapuram,
Puducherry 605 009.

... Respondents

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

(a) Declare the election of the 1st respondent as
returned candidate from 7-Kadargam Assembly
Constituency, Puducherry at the general election held on
16.05.2016 accepting the nomination papers of the 1st
respondent as null and void; and

member of the legislative assembly from 7-Kadargam Assembly Constituency as he has secured next higher votes to the 1st respondent/returned candidate as per section 101 of the Representation of People Act, 1951; and

(c) Direct the respondents to pay the cost of this Election Petition.

OA.No.84 TO 86 of 2017

- 1.The Chief Election Commissioner,
Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi 110 001.
- 2.The Chief Electoral Officer,
O/o.The Chief Electoral Officer,
Puducherry Villianur Main Road, Lawsthottam,
Reddiarpalayam,
Puducherry 605 010.
- 3.The Returning Officer III,
7-Indira Nagar Assembly Constituency,
O/o.The Registrar of
Co-operative Societies,
V.V.P.Nagar, Thattanchavady,
Puducherry 605 009.

... Applicants/ Respondents 4,3 & 2

- 1.S.Ramesh,
No.39, Nilaya Street,
Shanmugapuram,
Puducherry 605 009. ... Respondent/Election Petitioner
- 2.N.S.J.Jayabalan @ Ayyanar,
No.16, Second Cross,
Ramanapuram, Kadargam,
Puducherry 605 009.
- 3.S.Radhakrishnan,
No.29, Second Street,
Puratchi Thalaivi Nagar,
Dharmapuri,
Puducherry 605 009.

Puducherry 605 009.

5.A.Sivashanmugam,
No.26, New Street,
Pavazha Nagar,
Puducherry 605 005.

6.R.Somasundaram,
No.10, Hospital Street,
Mettupalayam,
Puducherry - 605 009.

7.K.Ezhumalai,
No.2, Santhai Thoppu Street,
Dharmapuri,
Puducherry 605 009.

8.S.Murugesan.
No.7, Iyanar Koil Street,
G.N.Palayam,
Arumparthapuram,
Puducherry 605 009.

9.D.Ramesh,
No.5, Second Cross,
Radha Nagar,
Muthupillaipalayam,
Puducherry 605 009

10.V.Mourougayan,
No.11, Nilaya Street,
Shanmugapuram,
Puducherry 605 009.

...Respondents/Respondents

This Original Application No.84 of 2017 praying that this Hon'ble Court be pleased to strike off the 2nd Respondent as Respondent in the Election Petition No.22 of 2016.

This Original Application No.85 of 2017 praying that this Hon'ble Court be pleased to strike off the 3rd Respondent as Respondent in the Election Petition No.22 of 2016.

this Hon'ble Court be pleased to strike off the 4th Respondent as Respondent in the Election Petition No.22 of 2016.

The above Election Petition and Original Application having been heard on 11.12.2017 before this Court in the presence of Mr.S.Sathiaseelan, advocate for the Election Petitioner/1st Respondent, Mr.G.Masilamani, Senior Counsel for Mr.T.Sathiyamoorthy, Advocate for the 1st respondent/2nd respondent and Mr.Niranjana Rajagopalan, advocate for M/s.G.R.Associates, advocates for the respondents 2 to 4/applicants 1 to 3 on OA.Nos.84 to 86 of 2017 herein; and upon reading the petition and affidavit of S.Ramesh filed in ELP.No.22 of 2016, the Common Counter Affidavit of S.Ramesh filed in OA.Nos.84 to 86 of 2017, Judges summon and affidavit of Dr.V.Candavelou, filed in OA.Nos.84 to 86 of 2017 and the evidence adduced therein and the exhibits marked thereon and this court having stood over for consideration till this date and coming on this day before this court for orders, and this Court having observed that this Tribunal did not pass any separate orders in these Original Application, because, that would have resulted in delay in the proceedings as the Registry would be required to carry out corrections and amendments in the pleadings and

IT IS ORDERED AS FOLLOWS :

(i) That the ELP.No.22 of 2016 be and is hereby dismissed as being devoid of merits.

<https://hcservices.ecourts.gov.in/hcservices/>

(ii) That the O.A Nos.84 to 86 2017 in ELP.No.22 of 2016 be and are hereby closed.

(iii) That there shall be no order as to costs.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 5TH DAY OF JANUARY 2018.

SD/-
ASSISTANT REGISTRAR
Original Side - II

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2018

COURT OFFICER(OS)

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

सत्यमेव जयते

WEB COPY

cns - 29.01.2018

ELP.NO.22 OF 2016

AND

OA.NOS.84 TO 86 OF 2017

DECREE

DATED:05/01/2018

THE HON'BLE MR. JUSTICE

P.N.PRAKASH

FOR APPROVAL: 30/01/2018

APPROVED ON : 30/01/2018

Copy to:

1.The Speaker
Tamil Nadu Assembly
**(Through Secretary
Tamil Nadu Legislative
Assembly Constituency
Chennai - 600 002**

2.The Election Commission
of India
**Through the Secretary,
New Delhi**

WEB COPY