

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P. (MD) No.3346 of 2019
and
W.M.P.Nos.2635 to 2638 of 2019

B.Ramkumar Adityan

.. Petitioner

Vs.

- 1.Secretary
Department of Legal Affairs
Ministry of Law and Justice
Shastri Bhavan, New Delhi - 110 001
- 2.The Chief Election Commissioner
O/o. Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi - 110 001
- 3.The Chief Electoral Officer
O/o the Chief Electoral Officer
Tamil Nadu Secretariat
St. George Fort, Chennai - 600 009
- 4.The State Election Commission
O/o. Tamil Nadu State Election Commission
No.208/2, Jawaharlal Nehru Road
Opp. CMBT, Arumbakkam
Chennai - 600 106
- 5.The Home Secretary
Government of Tamil Nadu
Fort St. George, Chennai-9
- 6.The Bharathiya Janata Party
Rep. by its General Secretary/President
New Delhi
- 7.The Indian National Congress
Rep. by its General Secretary/President
New Delhi

- 8.The All India Anna Dravida Munnetra Kazhagam
Rep. by its General Secretary/President
226, Avvai Shanmugam Salai, Royapettah
Chennai
- 9.The Dravida Munnetra Kazhagam
Rep. by its General Secretary/President
Anna Arivalayam, Anna Salai, Chennai - 18
- 10.The Desiya Murpokku Dravida Kazhagam
Rep. by its General Secretary/President
Koyambedu, Chennai
- 11.The Pattali Makkal Katchhi
Rep. by its General Secretary/President
Dindivanam, Vizhupuram District
Headquarters, Chennai
- 12.The Viduthalai Siruthaikal Katchi
Rep. by its General Secretary/President
Velacherry, Chennai
- 13.The Marumalarchi Dravida Munnetra Kazhagam
Rep. by its General Secretary/President
Thayagam, Egmore, Chennai
- 14.The Tamil Manila Munnetra Kazhagam
Rep. by its General Secretary/President
No.14, 5th Cross Street, Ellaiyamman Colony
Chennai
- 15.The Nam Tamilar Katchi
Rep.by its General Secretary/President
Hospital Road, Senthil Nagar, Porur, Chennai
- 16.The Samuthuva Makkal Katchi
Rep. by its General Secretary/President
Chennai, Tamil Nadu
- 17.The Tamil Nadu Muslim League
Rep. by its General Secretary/President
40/33, Maraiyakkar Sreet
Seethakathi Nagar, George Town, Chennai
- 18.The Forward Block
Rep. by its General Secretary/President
Chennai, Tamil Nadu

19.The Amma Makkal Munnetra Kazhagam
Rep. by its General Secretary/President
Chennai, Tamil Nadu

20.Communist Party of India (Marxist)
Rep. by its General Secretary
Chennai, Tamil Nadu
(Modified vide order of the court [NKKJ&SSJ] dated
19.3.2019)

21.The Communist Party of India
Rep. by its General Secretary/President
Chennai

.. Respondents

(Respondents 5 to 21 are suo motu impleaded
vide court order dated 14.2.2019)

Prayer: Writ Petition filed under Article 226 of the
Constitution of India, for a writ of mandamus, directing the 2nd
respondent to mandate all contesting candidates for Lok Sabha
and State Legislative Assembly Election to submit a separate
Election Manifesto specially designed for his or her contesting
constituency in an additional affidavit along with nomination
and affidavit in Form 26 within stipulated time.

For Petitioner : Mr.V.Rajesh Babu
for Karthick Subramanian

Amicus Curiae : Mr.R.Singaravelan, Senior Counsel
Mr.A.Kannan, Advocate

For R2 to R4 : Mr.Niranjan Rajagopalan

For R5 : Mr.E.Manoharan
Additional Government Pleader

For R21 : Mr.S.Arunachalam

For R6 to R21 : No Appearance

ORDER

(Order of this Court was made by S.MANIKUMAR, J.)

Petitioner, an Advocate and claiming to be a social
activist, has filed the instant writ petition for a writ of
mandamus, directing the 2nd respondent, namely the Chief
Election Commissioner, New Delhi, to mandate all the contesting
candidates for Lok Sabha and State Legislative Assembly

Election, to submit a separate Election Manifesto, specially designed for his or her contesting constituency in an additional affidavit along with the nomination and affidavit in Form 26 within stipulated time, as may be specified by this court.

2. Petitioner has stated that he has filed lot of public interest litigations before the High Court and his efforts in many public causes have brought suitable relief to the aggrieved persons. He has filed W.P. No.14986 of 2016 before this court earlier, for a direction to the 2nd respondent not to receive nomination paper from Members of Lok Sabha and Rajya Sabha and those who have resigned from Parliamentary Membership before expiry of the actual term to contest any of the State Legislative Elections, which was dismissed. In yet another writ petition in W.P. No.40483 of 2016, he prayed for a direction to the 2nd respondent herein to ensure that nominations and affidavits filed by the contestants are complete in all respects in all elections by conducting special training programme for the Returning Officers. The said writ petition was disposed of by recording the submission of the learned counsel for Election Commission that they would look into the matter of imparting training to Returning officers on the above aspect. Petitioner has further stated that since the Returning Officer improperly accepted nomination of the Returned candidate, namely Mr.Anitha Radhakrishnan, from Tiruchendur Legislative General Assembly Election 2016, as a voter, the petitioner filed Election Petition No.17 of 2016 to declare election of the Returned candidate as null and void under Section 100(1)(d)(i) of the Representation of Peoples Act, 1951.

3. It is the further contention of the petitioner that the 2nd respondent is an autonomous constitutional authority vested with powers under Article 324 of the Constitution of India to superintendence, direction and control of elections and subsequently enacted the Representation of Peoples Act, 1950 and the Representation of the People Act, 1951. The Hon'ble Apex Court as custodian of Constitution held that where the enacted laws are silent or make insufficient provision to deal with a given situation in the conduct of elections, the 2nd respondent has the residuary powers under the Constitution of India to act in an appropriate manner. The Chief Election Commissioner, New Delhi, also framed the Model Code of Conduct, the Registration of Electors Rules' 1960, and the Conduct of Elections Rules, 1961, Maximum limit of election expenses under conduct of election Rules, 1961 and the Election Symbols (Reservation and Allotment) Order, 1968 and to hold periodic free and fair elections. The 2nd respondent is conducting election for Lok Sabha and Rajya Sabha and State Legislative Assembly and State Legislative Council of all States and Union Territories.

4. It is the further contention of the petitioner that the State Election Commissioner is the constitutional authority under Article 243-K and Article 243-ZA of the Constitution of India read with Section 239 of the Tamil Nadu Panchayat Act, 1994 and the relevant sections of various Acts of the Urban Local Bodies. The State Election Commissioner, is an independent, autonomous Constitutional Authority formed under the Constitution of India as per the provisions of the 73rd and 74th Amendment Acts of 1992. As per Article 243-K and 243-ZA of the Constitution of India, all elections to the Panchayat and Urban Local Bodies are to be held under the superintendence, direction and control of the 5th respondent, namely the Home Secretary, Government of Tamil Nadu.

5. It is the further contention of the petitioner that as per the direction of the Hon'ble Apex Court in Union of India v Association for Democratic Reforms and another reported in 2002 AIR 2112 : 2002(3) SCR 294 : (2002) 5 SCC 294 and People's Union for Civil Liberties (PUCI) vs Union of India reported in AIR (2003) SC 2363 : (2003) 4 SCC 399 and subsequent order of the Chief Election Commissioner dated 28.6.2002 and 27.3.2003, the Chief Election Commissioner insisted that every contesting candidate has to file nomination in Form 2B under Rule 4 of the Conduct of Election Rules, 1961 along with an affidavit in Form 26 under Rule 4A of the Conduct of Election Rules, 1961. Every contesting candidate has to furnish in Form 26 details about his or her income, criminal antecedents, educational qualifications, assets and liabilities and income, assets and liabilities of his or her spouse and dependents.

6. It is the further contention of the petitioner that the Hon'ble Apex Court in Resurgence India vs. Election Commission of India & Anr decided on 13.9.2013, issued specific directions to the Chief Election Commissioner to effectuate meaningful implementation of aforesaid two judgments that : i) The voter has the elementary right to know full particulars of a candidate who is to represent him in the Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution; ii) The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(1) of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information; iii) Filing of affidavit with blank particulars will render the affidavit nugatory; iv) It is the duty of the

Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the right to know of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning officer, the nomination paper is fit to be rejected. Petitioner has contended that the power of Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced; v) We clarify to the extent that para 73 of People's Union for Civil Liberties case (supra) will not come in the way of the Returning Officer to reject the nomination paper when affidavit is filed with blank particulars; vi) the candidate must take the minimum effort to explicitly remark as 'NIL' or 'Not Applicable' or 'Not known' in the columns and not to leave the particulars blank; and vii) Filing of affidavit with blanks will be directly hit by section 125A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, petitioner finds no reason why the candidate must be again penalised for the same act by prosecuting him/her.

7. It is the further submission of the petitioner that despite the instructions of the Hon'ble Apex Court and High court, the Returning officers improperly accepted 34 nominations of the Returned candidates and more than 1000 contested candidates during the Legislative Assembly General Elections 2016 and subsequent bye election. During the bye election which was scheduled to be held on April 2017 for Dr.Radhakrishnan Nagar Legislative Assembly, the Returning Officers, improperly accepted 48 nominations out of 62 nominations filed.

8. Petitioner has contended that during R.K.Nagar by-election in December 2017, totally 145 candidates have filed their nomination. Returning officer rejected 73 nominations on various grounds and 13 candidates have withdrawn their nominations. The Returning officer issued list of 59 contesting candidates in Form 7A on 7.12.2017 of which the Returning officer improperly accepted incomplete and defective nomination of 49 contesting candidates which are substantial in character.

9. Petitioner has contended that in the interest of democracy, petitioner sent e-mails to the Returning Officer on 1, 4, 5 and 7th December, 2017 and representation to the 2nd and 3rd respondents, the District Election Officer, Chennai and the Returning Officer in this regard on 1st and 5th December, 2017. The Chief Election Commissioner, New Delhi alone has replied that since all election process was completed, they will look into the matter in future elections.

10. As per petitioner, according to a research paper

published by Indian Institute of Management, Bangalore, candidates who contested in more than one election, showed increase in wealth.

11. As per petitioner, Association for Democratic Reforms, based on election affidavits filed by the candidates during 2011 and 2016 in Tamil Nadu Legislative Assembly Elections, 393 candidates have declared criminal cases pending against them. Out of them, 23 candidates have involved in serious criminal cases. It is the further contention of the petitioner that each contesting candidate is required to open a separate bank account exclusively for the purpose of election expenditure. No one furnished security deposit details in election affidavit in Form 26.

12. It is the further contention of the petitioner that at present every party has released separate manifesto for National or State level. It is very important that every contesting candidate has to declare before electoral, a separate manifesto for constituency. Then only, after his or her tenure, the voters can evaluate his or her representative. The public debate will definitely generate about the candidates, the comparison between candidates will force political parties to look for selfless candidates.

13. Initially the writ petition was filed before the Madurai Bench of Madras High Court, showing Respondents 1 to 4 alone. At the time of admission, vide order dated 14.2.2019, this court suo motu impleaded the Home Secretary, Government of Tamil Nadu as the 5th respondent and other political parties, namely respondent Nos.6 to 21. In the said order, a Hon'ble Division Bench has requested Mr.R.Singaravelan, learned senior counsel and Mr.A.Kannan, Advocate, who has filed a similar writ petition to make the existing election process as effective one, to assist the court as amicus curiae, in this matter. Subsequently, the matter was adjourned on few occasions and thereafter, based on a notification, the matter came to be listed before us.

14. Prayer in the writ petition is as follows:

"For the reasons stated in the accompanying affidavit, it is most respectfully prayed that this Hon'ble Court may graciously pleased to issue a writ of mandamus, or any other appropriate writ or order or direction in the nature of writ directing the 2nd respondent to mandate all contesting candidates for Lok Sabha and State Legislative Assembly Election to submit a separate Election Manifesto specially designed for his or her contesting constituency in an additional affidavit along with nomination and affidavit in Form 26

within stipulated time and pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

15. Though the petitioner has made several contentions, Mr.Karthick Subramanian, learned counsel for the petitioner submitted that every contesting candidate has to declare before electoral, a separate manifesto for the constituency in which he/she contests in the election and that after their selection to the constituency/Parliament, the voters can evaluate his or her representative, based on the manifesto.

16. Per contra, Mr.Niranjana Rajagopalan, learned counsel for the Election Commission of India, submitted that manifesto is voluntary and it is not mandatory. No duty is enshrined upon a contesting candidate to give any manifesto and that the prayer sought for by the petitioner is not maintainable. More over, the Election Commission of India, has not made manifesto, as a mandatory requirement.

17. Learned counsel for the Election Commission of India, relied on the decision of the Hon'ble Supreme Court in S.Subramaniam Balaji vs. State of Tamil Nadu and others reported in (2013) 9 SCC 659, in support of his contention, wherein the Hon'ble Apex court at paragraph No.84, held as under:

84.Summary:

84.1. After examining and considering the parameters laid in Section 123 of RP Act, we arrived at a conclusion that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law. A reference to a decision of this Court will be timely. In Prof. Ramchandra G. Kapse vs. Haribansh Ramakbal Singh (1996) 1 SCC 206 this Court held that

"21.....Ex facie contents of a manifesto, by itself, cannot be a corrupt practice committed by a candidate of that party."

84.2. Further, it has been decided that the schemes challenged in this writ petition falls within the realm of fulfilling the Directive Principles of State Policy thereby falling within the scope of public purpose.

84.3. The mandate of the Constitution provides various checks and balances before a Scheme can be implemented. Therefore, as long as the schemes come within the realm of public purpose and monies

withdrawn for the implementation of schemes by passing suitable Appropriation Bill, the court has limited jurisdiction to interfere in such schemes.

84.4. We have also emphasized on the fact that judicial interference is permissible only when the action of the government is unconstitutional or contrary to a statutory provision and not when such action is not wise or that the extent of expenditure is not for the good of the State.

84.5. It is also asserted that the schemes challenged under this petition are in consonance with Article 14 of the Constitution.

84.6. As there is no legislative vacuum in the case on hand, the scope for application of Vishaka principle does not arise.

84.7. The duty of the CAG will arise only after the expenditure has incurred.

84.8. Since this petition is fit for dismissal dehors the jurisdiction issue, the issue of jurisdiction is left open.

In the same judgment, the Hon'ble Apex Court, at paragraph Nos.87 to 89 held as follows:

87. Therefore, considering that there is no enactment that directly governs the contents of the election manifesto, we hereby direct the Election Commission to frame guidelines for the same in consultation with all the recognized political parties as when it had acted while framing guidelines for general conduct of the candidates, meetings, processions, polling day, party in power etc. In the similar way, a separate head for guidelines for election manifesto released by a political party can also be included in the Model Code of Conduct for the Guidance of Political Parties & Candidates. We are mindful of the fact that generally political parties release their election manifesto before the announcement of election date, in that scenario, strictly speaking, the Election Commission will not have the authority to regulate any act which is done before the announcement of the date. Nevertheless, an exception can be made in this regard as the purpose of election manifesto is directly associated with the election process.

88. We hereby direct the Election Commission to take up this task as early as possible owing to its utmost importance. We also record the need for a separate legislation to be passed by the legislature in this regard for governing the

political parties in our democratic society.

89. In the light of the above discussion, taking note of statutory provisions of the RP Act, which controls only candidate or his agent, mandates provided under the directive principles, various guidelines such as income limit, preference to women, agricultural labourer etc as detailed in the counter affidavit by the State, we find no merit in the appeal as well as in the transferred case. With the above observation as mentioned in paragraph Nos. 77-80, the appeal and the transferred case are dismissed. No order as to costs.

18. It is the further contention of Mr.Niranjan Rajagopalan, learned counsel for the Election Commission of India, that after pronouncement of the above judgment, Election Commission of India has addressed communications to the President/General Secretary/Chairperson of all recognised National and State political parties, regarding framing of guidelines for election manifestos, guidelines on manifestos and general advisory to political parties on election manifestos. The said communications of the Election Commission of India are included in the Compendium of Instructions on Model Code of Conduct as Instruction Sl.Nos.142 to 147. For brevity, the same are extracted hereunder:

INSTRUCTION Sl. No. 142

ECI Letter No.437/6/Manifesto/2013 dated 19.02.2014 addressed to the President/General Secretary/Chairperson of All recognised National and State political parties.

Sub: Judgment dated 5.7.2013 of the Hon'ble Supreme Court in SLP of CJ No. 21455 of 2008 and TC No. 112 of 2011 -S.SubramaniamBalaji Vs. Govt of TN& Others-framing of guidelines for election manifestos- FINAL GUIDELINES - reg.

I am directed to refer to this office letter of even number dated 31st January 2014 forwarding therewith a set of draft guidelines on election manifestos for inclusion in the model code of conduct wherein it has requested that all recognized National and State political Parties may offer their comments on the said draft guidelines by 07th February 2014. Having considered the suggestions/comments received from the political Parties and having regard to the directions of the Hon'ble Supreme Court mentioned above, the

Commission has finalized the guidelines on Election Manifestos which have now been included as Part VIII of the Model Code of Conduct for the Guidance of the Political parties and Candidates. These guidelines will, henceforth, be applicable and implemented as a part of the Model Code of Conduct for all future elections. A copy of the full text of the Model Code of Conduct for the Guidance of Political Parties and Candidates including Part VIII on Election Manifestos is enclosed for your information. You are requested to bring this to the notice of all concerned for their information and compliance.

INSTRUCTION Sl. No.143

ECI letter No.437/6/Manifesto/2015 dated 24.04.2015 addressed to the President/General Secretary/Chairperson of All recognised National and State political parties.

Sub: Model Code of Conduct-Guidelines on manifestos-instructions- reg.

As you are aware that on the direction of the Hon'ble Supreme Court, the Commission had after consultation with you, framed guidelines for election manifestos and incorporated the same in "Model Code of Conduct for the Guidance of the Political Parties and Candidates". A copy of the said Guidelines is enclosed herewith for your ready reference.

2. The Commission has desired that, whenever a political party releases its manifesto for whichever election conducted by the Commission, a (hard) copy of the same along with a soft copy may be sent to the Commission for its record. This may be done for the elections conducted henceforth.

3. I am to request that you may give suitable instructions to your Party functionaries in this regard.

INSTRUCTION SI. No. 144

ECI letter No.437/6/Manifesto/2015/CC dated 24.04.2015 addressed to the Chief Secretaries and Chief Electoral Officers of all States and UTs.

Sub: Model Code of Conduct-Guidelines on manifestos - instructions- reg.

I am directed to refer to the subject cited and to enclose a copy of Commission's letter of even

number dated 24th April, 2015, on the subject cited, wherein the Commission has requested all the recognized National and State political Parties to send a copy of their Manifestos whenever the same are issued.

2. The Commission has instructed that the Chief Electoral Officers shall also obtain a copy of the manifestos from the political parties, whenever they are issued and analyze them vis-a-vis the Guidelines on the manifestos issued by the Commission and give their comments to the Commission at the earliest.

3. These instructions will be applicable for the elections conducted henceforth.

INSTRUCTION Sl. No.145

ECI letter No.437/6/1NST/2016/CCS dated 23.08.2016 addressed to the President/General Secretary of All recognised National and State political parties.

Sub: General Advisory to Political Parties on Election Manifestos- reg.

The Commission, during the recently held General Elections to the State Legislative Assemblies of Assam, Kerala, Tamil Nadu, West Bengal and UT of Puducherry, has received complaints from various quarters that political parties are not following the guidelines given in "Part VIII Guidelines on Election Manifesto" of Model Code of Conduct for the guidance of Political Parties and Candidates.

The Commission is at the view that the Political Parties and candidates while releasing their election manifesto for any election to the Parliament or state Legislatures, should adhere to the said guidelines, particularly, Para 8(iii):

"(iii) in the interest of transparency, level playing field and credibility of promise, it is expected that manifesto also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those promise which are possible to be fulfilled."

You are, therefore, requested to issue appropriate instructions to all concerned in the regard to ensure compliance.

INSTRUCTION Sl. No.146

ECI letter No. 437/6/INST/2016/CCS dated 27.12.2016 addressed to the Chief Secretaries and Chief Electoral Officers of all States and UTs

Sub: Instruction regarding Election Manifestos-reg.

Ref. ECI letter No.437/6/Manifesto/2015/CCS dated 24.04.2015

I am directed to refer to the subject cited and to enclose a copy of Commission's letter dated December, 2016, on the subject cited, wherein the Commission has requested all the recognized/registered National and State Political Parties to send three copy of their Manifesto along with its Hindi/English version (if the original version is in regional language) to the concerned Chief Electoral Officer within three days of its release. All the political parties have also been requested to submit a declaration along with its manifesto that the program/policies and promises made therein are in consonance with Para-VIII of MCC

2. The Commission has instructed that the Chief Electoral Officers should obtain three copies of the manifesto as well as the declaration from the political parties as well as the candidates (if they issue any manifesto), within three days of its release.

3. These instructions will be applicable for the elections conducted henceforth.

INSTRUCTION Sl. No.147

ECI letter No.437/6/INST/2016/CCS dated 27.12.2016 addressed to the President/General Secretary of All recognised National and State Political parties

Sub: Instruction regarding Election Manifestos-reg.

As you are aware that on the direction of the Hon'ble Supreme Court, the Commission had after consultation with recognised political parties, framed guidelines for Election Manifestos and incorporated the same in the "Model Code of Conduct for the Guidance of the Political Parties and Candidates". The Commission, vide the referred letter, had requested all the political parties to submit their manifestos to the Commission after its release.

2. The Commission has further decided that,

whenever a political party issues its manifesto it must forward three copies of the Manifesto along with its Hindi/English version (if the original version is in regional language) to the concerned Chief electoral officer within three days of its release. Along with it, the parties must also submit a declaration that the program/policies and promises made therein are in consonance with Para VIII of MCC. This may be done for the elections to be conducted henceforth.

3. I am to request that you may give suitable instructions to your party functionaries in this regard.

19. Learned counsel for the Election Commission of India, further submitted that, after receiving the feedbacks on the above said issue, clause 18.3.2. has been included in the Manual on Model Code of Conduct (for the guidance of political parties and candidates) and other related guidelines, March, 2019, prepared for the ensuring election, which stipulates guidelines for election manifesto and the same reads thus:

18.3.2. These guidelines were incorporated as Part VIII of the Model Code of Conduct and it was clarified that the above guidelines would be applicable from the date, a political party issues its manifesto irrespective of whether such date is before or after the date of announcement of the election schedule by the Election Commission. (Annexure XVIII)

These guidelines are as follows:

(i) The election manifesto shall not contain anything repugnant to the ideals and principles enshrined in the Constitution and further that it shall be consistent with the letter and spirit of other provisions of Model Code.

(ii) The Directive Principles of State Policy enshrined in the Constitution enjoin upon the State to frame various welfare measures for the citizens and therefore there can be no objection to the promise of such welfare in election manifesto. However, political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.

(iii) In the interest of transparency, level playing field and credibility of promises, it is expected that manifesto also reflect the rationale for the promises and broadly indicate the ways and means to meet the financial requirement for it. Trust of voters should be sought only on those

promises which are possible to be fulfilled.

20. From the above, it could deduced that when the Election Commission of India has not made it mandatory for the candidates who contest in the Lok Sabha/Assembly election, to issue any manifesto separately for the constituency in which the candidate contests and when there is no duty cast on such candidates to issue manifesto, writ petitioner cannot seek for a mandamus, to submit a separate Election Manifesto specially designed for the candidates who contest for the Lok Sabha / Assembly election, in an additional affidavit along with nomination and affidavit in Form 26. The prayer sought for is not maintainable.

21. On the aspect as to when mandamus can be issued, we deem it fit to consider few decisions.

(i). In State of Kerala v. A.Lakshmi Kutty reported in 1986 (4) SCC 632, the Hon'ble Supreme Court held that a Writ of Mandamus is not a writ of course or a writ of right but is, as a rule, discretionary. There must be a judicially enforceable right for the enforcement of which a mandamus will lie. The legal right to enforce the performance of a duty must be in the applicant himself. In general, therefore, the Court will only enforce the performance of statutory duties by public bodies on application of a person who can show that he has himself a legal right to insist on such performance. The existence of a right is the foundation of the jurisdiction of a Court to issue a writ of Mandamus.

(ii) In Raisa Begum v. State of U.P., reported in 1995 All.L.J. 534, the Allahabad High Court has held that certain conditions have to be satisfied before a writ of mandamus is issued. The petitioner for a writ of mandamus must show that he has a legal right to compel the respondent to do or abstain from doing something. There must be in the petitioner a right to compel the performance of some duty cast on the respondents. The duty sought to be enforced must have three qualities. It must be a duty of public nature created by the provisions of the Constitution or of a statute or some rule of common law.

(iii) Writ of mandamus cannot be issued merely because, a person is praying for. One must establish the right first and then he must seek for the prayer to enforce the said right. If there is failure of duty by the authorities or inaction, one can approach the Court for a mandamus. The said position is well settled in a series of decisions.

(a) In the decision reported in (1996) 9 SCC 309 (State of U.P. and Ors. v. Harish Chandra and Ors.) in paragraph 10, the Hon'ble Apex Court held as follows:

10. ...Under the Constitution a mandamus can be issued by the court when the applicant establishes that he has a legal

right to the performance of legal duty by the party against whom the mandamus is sought and the said right was subsisting on the date of the petition....

(b) In the decision reported in (2004) 2 SCC 150 (Union of India v. S.B. Vohra) the Hon'ble Supreme Court considered the said issue and held that 'for issuing a writ of mandamus in favour of a person, the person claiming, must establish his legal right in himself. Then only a writ of mandamus could be issued against a person, who has a legal duty to perform, but has failed and/or neglected to do so.

(c) In the decision reported in (2008) 2 SCC 280 (Oriental Bank of Commerce v. Sunder Lal Jain) in paragraphs 11 and 12 the Hon'ble Supreme Court held thus,

11. The principles on which a writ of mandamus can be issued have been stated as under in The Law of Extraordinary Legal Remedies by F.G. Ferris and F.G. Ferris, Jr.:

Note 187.-Mandamus, at common law, is a highly prerogative writ, usually issuing out of the highest court of general jurisdiction, in the name of the sovereignty, directed to any natural person, corporation or inferior court within the jurisdiction, requiring them to do some particular thing therein specified, and which appertains to their office or duty. Generally speaking, it may be said that mandamus is a summary writ, issuing from the proper court, commanding the official or board to which it is addressed to perform some specific legal duty to which the party applying for the writ is entitled of legal right to have performed.

Note 192.-Mandamus is, subject to the exercise of a sound judicial discretion, the appropriate remedy to enforce a plain, positive, specific and ministerial duty presently existing and imposed by law upon officers and others who refuse or neglect to perform such duty, when there is no other adequate and specific legal remedy and without which there would be a failure of justice. The chief function of the writ is to compel the performance of public duties

prescribed by statute, and to keep subordinate and inferior bodies and tribunals exercising public functions within their jurisdictions. It is not necessary, however, that the duty be imposed by statute; mandamus lies as well for the enforcement of a common law duty.

Note 196.-Mandamus is not a writ of right. Its issuance unquestionably lies in the sound judicial discretion of the court, subject always to the well-settled principles which have been established by the courts. An action in mandamus is not governed by the principles of ordinary litigation where the matters alleged on one side and not denied on the other are taken as true, and judgment pronounced thereon as of course. While mandamus is classed as a legal remedy, its issuance is largely controlled by equitable principles. Before granting the writ the court may, and should, look to the larger public interest which may be concerned-an interest which private litigants are apt to overlook when striving for private ends. The court should act in view of all the existing facts, and with due regard to the consequences which will result. It is in every case a discretion dependent upon all the surrounding facts and circumstances.

(iv). When a Writ of Mandamus can be issued, has been summarised in Corpus Juris Secundum, as follows:

"Mandamus may issue to compel the person or official in whom a discretionary duty is lodged to proceed to exercise such discretion, but unless there is peremptory statutory direction that the duty shall be performed mandamus will not lie to control or review the exercise of the discretion of any board, tribunal or officer, when the act complained of is either judicial or quasi-judicial unless it clearly appears that there has been an abuse of discretion on the part of such Court, board, tribunal or officer, and in accordance with this rule mandamus may not be invoked to compel the matter of discretion to be exercised in any particular way. This principle applies with full force and effect, however, clearly it may be made to appear what the decision ought to be, or even though its conclusion be disputable or, however, erroneous the conclusion reached may be, and

although there may be no other method of review or correction provided by law. The discretion must be exercised according to the established rule where the action complained has been arbitrary or capricious, or based on personal, selfish or fraudulent motives, or on false information, or on total lack of authority to act, or where it amounts to an evasion of positive duty, or there has been a refusal to consider pertinent evidence, hear the parties where so required, or to entertain any proper question concerning the exercise of the discretion, or where the exercise of the discretion is in a manner entirely futile and known by the officer to be so and there are other methods which it adopted, would be effective."
(emphasis supplied)

22. A writ of Mandamus, can be issued by the court, in its discretion, for which, it must be shown that, there is a non discretionary legal duty upon the authority against whom, the relief is sought for and that the person approaching the High Court under Article 226 of the Constitution of India, has to prove that he has a legal right to be enforced against the authority and for the failure of performance of a legal or statutory duty, by the authority, against whom, the relief is sought for.

In view of the above discussions and decisions, relief sought for by the petitioner, cannot be granted. Writ Petition is not maintainable. Accordingly, the writ petition is dismissed. However, there shall be no order as to costs. Interim orders granted stand vacated and the WMPs are dismissed. However, there shall be no order as to cost.

Sd/-

Assistant Registrar (CS-I)

//True Copy//

Sub Assistant Registrar

Asr

To:

1.The Secretary
Department of Legal Affairs
Ministry of Law and Justice
Shastri Bhavan, New Delhi - 110 001

2.The Chief Election Commissioner
O/o. Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi - 110 001

3.The Chief Electoral Officer
O/o the Chief Electoral Officer
Tamil Nadu Secretariat
St. George Fort, Chennai - 600 009

4.The State Election Commission
O/o. Tamil Nadu State Election Commission
No.208/2, Jawaharlal Nehru Road
Opp. CMBT, Arumbakkam
Chennai - 600 106

5.The Home Secretary
Government of Tamil Nadu
Fort St. George, Chennai-9

+1cc to Mr.Niranjana Rajagopalan, Advocate, S.R.No. 30089
+1cc to the Government Pleader, S.R.No. 29707

W.P. (MD) No.3346 of 2019
and
W.M.P.Nos.2635 to 2638 of 2019

BR(CO)
GN(01/04/2019)