O.A.No.910 of 2019
and ELP.No.2 of 2016

Dr.G.JAYACHANDRAN, J

This Court, on 01.10.2019, after the completion of trial and hearing the counsels, passed order of recounting of the Postal Ballots and the EVM's of 19th, 20th and 21st rounds of counting and fixed 04.10.2019 as date of counting at High Court premises.

2. This Petition is filed by the first respondent, who is the Returned candidate, seeking stay of the operation of the above order of this Court, for a period of three weeks, on the ground that he intends to prefer an appeal under Section 116 A of the RP Act before the Hon'ble Supreme Court.

3. In fact, today, the learned Senior Counsel appearing for the first respondent circulated the case status of the Supreme Court, wherein, the petitioner has filed an application before the Hon'ble Supreme Court today at 10.36 a.m.

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4. The point canvassed by the learned Senior Counsel for the first respondent to support his stay application is that against any order passed under Sections 98 and 99 of the RP Act, by the High Court, an appeal will lie

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before the Supreme Court under Section 116 A. The High Court shall entertain application to stay its own order by invoking Section 116 B of the RP Act, if the aggrieved person intend to prefer appeal before Supreme Court.

5. As far as this case is concerned though no order was passed under Sections 98 or 99 of the RP Act, question of public importance has been considered by this Court whether Middle School Headmaster are Gazetted Officers are not to attest the Form – 13 A. Therefore, if the Postal Ballot covers are opened, it will loose the secrecy, which cannot be reversed. Further, under Section 87 of the RP Act, the provisions of CPC has to be applied as nearly as possible. Since, in this case, to meet the ends of Justice Court shall invoke Section 151 of the CPC and grant stay of the order for enabling the petitioner herein to workout his remedy before the Hon'ble Supreme Court in the SLP petition filed.

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6. The learned Senior Counsel appearing for the Election petitioner would submit that when the order passed by this Court is not under Section 98 and 99 of RP Act and the petitioner has already moved the Hon'ble Supreme Court under Section 116 A, bar under Section 116 B will come into operation. The High Court cannot entertain a petition for stay, when appeal

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filed. Further, the learned Senior Counsel for the petitioner would also submit that Section 151 of CPC which is the inherent powers of the Court cannot be invoked in this case, since Section 87 of the RP Act is confined to trial stage, whereas, now the present case has crossed that stage.

7.Court Finding:-

The Counting of Postal Ballots and recounting of round 19th, 20th and 21st no way going to prejudice the right of the parities to prefer appeal before the Hon'ble Supreme Court, after completion of counting and final order passed. Section 87 of RP Act starts with a subjective clause that CPC has to be applied as nearly as possible during the trial, subject to the provisions of RP Act and any rules made there under. When we look at Section 116 A, (Appeal to Supreme Court) it starts with non obstante clause. While so, Section 116 B of the RP Act, specifically restrains the High Court from entertaining stay petition, after appeal is preferred to the Supreme Court. Presently, in this case, the first respondent has already moved the Supreme Court. In isolation, if Section 116 B is read, the present stay petition is not maintainable.

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8. The reading of Section 98 confines to decision dismissing the election petition or declaring of election petition void. Section 99 of RP Act is in respect of any other orders, which are enlisted under the Section. The predicament of the first respondent is that if Postal Ballots are opened, pursuant to the orders of this Court, the secrecy will be lost and also the SLP which he has preferred will become infructuous.

9. This Court is unable to countenance the said submission of the first respondent. It is only counting and not declaration of result fixed on 04.10.2019. The SLP petition, which is filed by the petitioner herein before the Supreme Court, will not become infructuous by counting the votes. Since no final orders have been passed by this Court, even after the completion of the counting, the petitioner will have ample time to decide whether he has to purse his SLP or not. Therefore, I find no force in the submission to stay the order of this Court. Hence, this petition is dismissed.

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10. The Standing Counsel for the Election Commissioner would submit that besides 24 staff to assist the counting process, the Election Commission may require two more experts in EVM device. Hence, two Officers of BEL may also be permitted in the counting Hall to assist the counting, in case of necessity.

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11. Accordingly, the Registrar General of this Court shall permit two service Engineers of BEL besides other officers mentioned in the order of this Court, dated 01.10.2019.

03.10.2019

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Note: Issue order copy by 03.10.2019.

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Dr.G.Jayachandran,J.

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