

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY CIVIL ORIGINAL JURISDICTION)

DATED : 12-11-2019

CORAM:

THE HONOURABLE MR. JUSTICE S.M.SUBRAMANIAM

O.A.No.996 of 2019

in

ELP.No.5 of 2019

Mr.A.Muthuramalingam,
South Mutharamman Koil Street,
Srivaikuntam-628 601,
Tuticorin District.

..Applicant/Proposed Petitioner

Vs.

1.Mrs.Tamilisai Soundararajan
W/o.Mr.Soundararajan,
No.7, Logaiah Colony,
4th Cross Street,
Saligramam,
Chennai-600 093.

..Respondent-1/Petitioner

2.Mrs.Kanimozhi,
D/o.M.Karunanidhi,
No.14, First Main Road,
CIT Colony,
Mylapore,
Chennai-600 004.

3.The Chief Election Commissioner,
O/o.Election Commission of India,
Nirvachan Sadan,

Ashoka Road,
New Delhi-110 001.

4.The Returning Officer,
No.36, Thoothukudi Constituency,
O/o.District Collector,
Korampallam,
Thoothukudi-628 101.

..Respondents-2to4/Respondents

This Original Application is filed under Order XIV Rule 8 of Original Side Rules read with Section 110(3)(c) of The Representation of the People Act, 1951 to order for substituting the applicant as the petitioner in Election Petition No.5 of 2019.

For Petitioner : Mr.K.Srinivasamurthy for
Ms.K.Kanimozhi.

For Respondent-1 : Mr.S.Ravi for
Mr.R.Soundararajan.

For Respondent-2 : Mr.Richardson Wilson for
M/s.P.Wilson Associates.

For Respondents-3&4 : Mr.Niranjan Rajagopalan

O R D E R

The Original Application in O.A.No.996 of 2019 is filed under Order XIV Rule 8 of the Original Side Rules read with Section 110(3)(c) of The Representation of the People Act, 1951, for the relief that why the applicant/petitioner Mr.A.Muthuramalingam should not be substituted in the place of original applicant, who filed the petition in Election Petition No.5 of

2019.

2. The applicant/petitioner states that the election to the Thoothukudi Parliamentary Constituency was held on 18.04.2019. The applicant/petitioner had cast his vote in the said Election held on 18.04.2019. In the said Election, respondents 1 and 2, namely, Mrs.Tamilisai Soundararajan and Mrs.Kanimozhi contested the election on behalf of two major political parties. The results were declared on 23.05.2019 and the second respondent, namely, Mrs.Kanimozhi was declared as an elected candidate for the Thoothukudi Parliamentary Constituency.

3. The applicant/petitioner states that he had taken keen interest in observing the election campaign and in the electoral process. The applicant/petitioner came to know through news paper reports that the first respondent, namely, Mrs.Tamilisai Soundararajan had filed Election Petition No.5 of 2019 to declare the election of the second respondent as void. The applicant/petitioner also came to know that the first respondent was appointed as Governor of Telangana and had chosen to withdraw the Election Petition from the High Court.

4. This Court also issued an order of direction to effect publication regarding the notice of withdrawal in the Official Gazette as well as in two widely circulated newspapers. Accordingly, notice of withdrawal was published in the Official Gazette on 23.10.2019, which was widely circulated through Whatsapp immediately.

5. The applicant/petitioner obtained a copy of the Gazette Publication dated 23.10.2019 and found in his capacity as an Elector that he is entitled to approach the Hon'ble High Court for substituting himself as the petitioner in the place of the original election petitioner/first respondent. The applicant/petitioner states that he is interested in pursuing the election petition with reference to the grounds raised by the original petitioner in the Election Petition/first respondent.

6. The second respondent in the original application filed a counter-affidavit stating that the general elections to the 17th Lok Sabha from the No.36, Thoothukudi Lok Sabha Parliamentary Constituency were held on 18.04.2019. The Notification of the Election was issued by the Election Commission of India on 19.03.2019, inviting nominations of the candidates for all Constituencies in Tamil Nadu, including the No.36,

Thoothukudi Lok Sabha Parliamentary Constituency.

7. As per the Schedule of Election, the last date for filing nominations for the Constituency was 26.03.2019. The second respondent, namely, Mrs.Kanimozhi filed her nomination on 25.03.2019. The second respondent was sponsored by the Dravida Munnetra Kazhagam (DMK) Party to contest from the No.36, Thoothukudi Lok Sabha Constituency with the DMK Party symbol of 'Rising Sun'. The scrutiny of the nomination was held on 27.03.2019 and the Returning Officer, on being satisfied that the papers submitted by the second respondent were in order, accepted her nomination. The date of polling was on 18.04.2019. The counting of votes was on 23.05.2019 and the second respondent, namely, Mrs.Kanimozhi was declared as the elected candidate from the No.36 Thoothukudi Lok Sabha Parliamentary Constituency for having defeated the runner up Mrs.Tamilisai Soundararajan of the BJP Party by a margin of 3,47,209 votes and secured 5,63,143 votes in total and the Returning Officer issued Election Certificate on the same day.

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8. The first respondent, namely, Mrs.Tamilisai Soundararajan filed the Election Petition No.5 of 2019 to declare the election of the second

respondent, namely, Mrs.Kanimozhi as void. Subsequently, the first respondent Mrs.Tamilisai Soundararajan was appointed as the Governor of State of Telengana and thereafter, she filed an application to withdraw her election petition. The Hon'ble High Court permitted her to withdraw the petition subject to the condition of publication of notice for withdrawal in the Gazette. Pursuant to the publication, the applicant/petitioner Mr.A.Muthuramalingam filed the present original application for substituting himself in the place of the original election petitioner.

9. The learned counsel, appearing on behalf of the second respondent, contended that the original application is liable to be rejected mainly on the ground that the applicant has not disclosed the material facts in his application and therefore, he has not approached this Court with clean hands and consequently, the said original application is to be rejected in limine.

10. In support of the contentions, the learned counsel for the second respondent made a submission that the applicant/petitioner Mr.A. Muthuramalingam is a member of the Bharatiya Janata Party and was holding the post of District President of the Thoothukudi Advocates Wing of

the BJP Party and had actively involved in the election campaign of the original election petitioner Mrs.Tamilisai Soundararajan. Thus, the applicant/petitioner suppressed these vital facts and had projected as if he had keen interest in observing the election campaign.

11. In order to substantiate the said contention regarding the suppression of material facts, the learned counsel for the second respondent solicited the attention of this Court with reference to the typed set of papers filed along with the counter-affidavit, wherein three documents are enclosed. The first document is a complaint by the applicant/petitioner to the Inspector of Police, Srivaikuntam dated 08.12.2017, the second document is the acknowledgment receipt of the said complaint dated 08.12.2017 and the third document is the photographs establishing that the applicant/petitioner Mr.A.Muthuramalingam is a member of the Bharatiya Janata Party and is the President of Thoothukudi Advocates Wing of Bharatiya Janata Party. सत्यमेव जयते

12. The learned counsel for the second respondent relied on certain judgments to show that suppression of material fact is a vital ground for the dismissal of the main case itself. A person, who approaches this

Court with unclean hands is not entitled for any relief. In this point, the learned counsel for the second respondent cited the judgment of the Hon'ble Supreme Court of India in the case of **Dalip Singh vs. State of U.P., [(2010) 2 SCC 114]**, wherein in paragraph-24, it has been held as follows:-

"24. From what we have mentioned above, it is clear that in this case efforts to mislead the authorities and the courts have transmitted through three generations and the conduct of the appellant and his son to mislead the High Court and this Court cannot, but be treated as reprehensible. They belong to the category of persons who not only attempt, but succeed in polluting the course of justice. Therefore, we do not find any justification to interfere with the order under challenge or entertain the appellant's prayer for setting aside the orders passed by the prescribed authority and the appellate authority."

13. As far as the judgment, cited supra, is concerned, the appeal was filed before the Supreme Court in Civil Appeal No.5239 of 2002 against the order dated 21.05.2001 passed by the Allahabad High Court is illustrative of how unscrupulous litigants can mislead the authorities

entrusted with the task of implementing the provisions of the U.P. Imposition of Ceiling on Land Holdings Act, 1960 and the courts for retaining possession of the surplus land. The tenure-holder, Praveen Singh did not file statement in terms of Section 9(2-A) of the Act in respect of his holding as on 24-1-1971. After about four years, the prescribed authority issued notice dated 29-11-1975 under Section 10(2) of the Act and called upon Shri Praveen Singh to show cause as to why the statement prepared under Section 10(1) of the Act may not be taken as correct and his land may not be declared surplus accordingly.

14. The said Shri Praveen Singh failed to submit a statement/have furnished incomplete/incorrect statement in respect of all his holdings in the State of Uttar Pradesh, including holdings of his family members with all the required particulars within the time mentioned in the notice in CLH Form 1, published under Section 9. The said litigant before the Supreme Court furnished certain incorrect statements for the purpose of gaining some benefits under the provisions of the Act and under these circumstances, this Court is of the considered opinion that the judgment, cited supra, has no direct application with reference to the facts and circumstances of the case and the material facts, which were suppressed,

leading to grant of main relief, cannot be compared with the substitution petition now filed for the purpose of continuing the Election Petition filed by the original petitioner in the Election Petition No.5 of 2019.

15. The learned counsel for the second respondent cited the judgment of the Hon'ble Supreme Court of India in the case of **K.D. Sharma vs. SAIL [(2008) 12 SCC 481]**, wherein in paragraphs 31, 33 and 38, it has been held as under:-

"31. SAIL in its written submissions contended that the appeal filed by the appellant is liable to be dismissed on account of suppression of material facts and deliberate misrepresentation by him. An impression was sought to be created by the appellant, submitted the counsel, that the appellant could not complete the work given to him and it was assigned to Respondent 2. It is clear that after Tender Notice 4 was cancelled, albeit illegally as held by the High Court and by this Court, Tender Notice 5 was issued. The bid of the appellant was accepted and the contract was given to him. It was for 2002-2005 i.e. for three years. The appellant was allowed to complete the said period and the contract had not been terminated or abruptly discontinued during the

said period. It was over in 2005 by efflux of time. What was done by SAIL was to implement the order of the High Court in connection with Tender Notice 4 which was not acted upon. In that process, parties were called for negotiations, offer of Respondent 2 was accepted and work was given to him. It is, therefore, not correct to say that the appellant had suffered. The appellant wanted to continue the work even though the period of Tender Notice 5 was over and he had taken the benefit thereunder. The appellant had no right or reason to make grievance so far as Tender Notice 4 was concerned. Hence, the appellant is not entitled to any relief.

33. The learned counsel for SAIL is also right in urging that the appellant has not approached the Court with clean hands by disclosing all facts. An impression is sought to be created as if no notice was ever given to him nor was he informed about the consideration of cases of eligible and qualified bidders in pursuance of the order passed by the High Court in review and confirmed by this Court. The true facts, however, were just contrary to what was sought to be placed before the Court. A notice was issued by SAIL to the appellant, he received the notice, intimated in writing to SAIL

that he had authorised Ramesh of Rithwik Projects to appear on his behalf. Ramesh duly appeared at the time of consideration of bids. Bid of Respondent 2 was found to be lowest and was accepted and the contract was given to him (under Tender Notice 4). The said contract had nothing to do with Tender Notice 5 and the contract thereunder had been given to the appellant herein and he had completed the work. Thus, it is clear that the appellant had not placed all the facts before the Court clearly, candidly and frankly.

38. The above principles have been accepted in our legal system also. As per settled law, the party who invokes the extraordinary jurisdiction of this Court under Article 32 or of a High Court under Article 226 of the Constitution is supposed to be truthful, frank and open. He must disclose all material facts without any reservation even if they are against him. He cannot be allowed to play "hide and seek" or to "pick and choose" the facts he likes to disclose and to suppress (keep back) or not to disclose (conceal) other facts. The very basis of the writ jurisdiction rests in disclosure of true and complete (correct) facts. If material facts are suppressed or distorted, the very functioning of writ courts and exercise would become

impossible. The petitioner must disclose all the facts having a bearing on the relief sought without any qualification. This is because "the court knows law but not facts".

16. In the judgment, cited supra, the Hon'ble Supreme Court made an observation that the appellant has not come forward with all the facts. He has chosen to state the facts in the manner suited to him by giving an impression to the writ court that an instrumentality of State (SAIL) has not followed doctrine of natural justice and fundamental principles of fair procedure. The said approach of the litigant was held as improper by the Supreme Court and therefore, this judgment is also of no avail to the second respondent to establish that the petition filed for substitution is filed with suppression of material facts.

17. In the case of **The Holy Health and Educational Society (Regd.) Vs. Delhi Development Authority [1999 (50 DRJ 416]**, wherein in paragraphs 15 to 19, the Delhi High Court held as under:-

"15. In fact, it was held by the Division Bench that the respondent had not come to the Court with clean hands and had also suppressed material facts from the Court with a view to gain

advantage in the second suit, which amounted to over-reaching the Court and in that view of the matter, the Division Bench directed for dismissal of the suit itself.

16. *The principles laid down in the said case and the ratio of the decision, in my considered opinion, are fully applicable to the facts and circumstances of the present case. The plaintiff while filing the present suit did not disclose to the Court about the plaint and the application in the earlier suit and also did not disclose to the Court about the proceedings in the earlier suit, particularly, the fact of rejection of the prayer for interim injunction and dismissal of the appeal therefrom to the Court. The plaintiff did not disclose to the Court either in the plaint or in the application as to what had transpired in the Court on the dates when the said suit was fixed, nor it was disclosed to the Court that injunction had not been granted in its favour by the Court and the relief claimed in the application in the earlier suit was almost similar to the relief as claimed in the present suit for the earlier Suit was based on the show cause notice issued to the plaintiff whereas, the present suit is based on the final notice issued to the plaintiff cancelling the lease.*

17. I am therefore, of the considered opinion that the plaintiff did not come to this Court with clean hands and has also suppressed material facts from this Court with a view to gain advantage in the second suit and this is clearly over-reaching the court In coming to the aforesaid conclusions. I am fortified by the decision of the Division Bench in Satish Khosla (supra). Thus, an attempt has been made by the plaintiff to over-reach the Court and the plaintiff has played fraud upon the Court as well as upon the opposite party and thus, the suit filed by the plaintiff itself is liable to be dismissed, in view of suppression and concealment of material facts by the plaintiff and his failure to come to the Court with clean hands.

18. The submission of the learned counsel for the plaintiff that the subject matter of the two suits were not identical and, therefore, there was no suppression of material facts is also baseless. In the earlier suit filed by the plaintiff in the Court of the Civil Judge, Delhi, the relief sought for in the plaint was for passing a decree of permanent injunction restraining the defendant from cancelling allotment of land as well as the lease of the suit property. in the present suit, the relief sought for by the plaintiff is also for a decree of permanent

injunction restraining the defendant from giving effect to the letter dated 17.8.1995 issued by the defendant cancelling the allotment of land as well as the lease. The reliefs sought for in both the suits, therefore, are identical and almost similar. Even otherwise, the two suits relate to the same suit property and, therefore, all material and relevant facts were to be disclosed in the present suit filed by the plaintiff including the fact of rejection of the prayer of interim injunction by the Trial Court and the Appellate Court.

19. *The other submission of the learned counsel for the plaintiff that the objection/issue regarding alleged suppression of material facts cannot be considered by Court unless the same is specifically raised by way of an application is also without any merit. The defendant has raised the issue in the pleadings filed by way of reply and on the basis thereof, the Court is competent to decide the issue as the same relates to the conduct of the parties in approaching the Court, which goes to the root of the matter."*

18. In the case of **Abhyudya Sanstha vs. Union of India,**

(2011) 6 SCC 145, wherein the Hon'ble Supreme Court, in paragraphs-18

to 20, held as under:-

"18. We have considered the respective submissions and carefully examined the records. In our view, the appellants deserve to be non-suited because they have not approached the Court with clean hands. The plea of inadvertent mistake put forward by the learned Senior Counsel for the appellants and their submission that the Court may take lenient view and order regularisation of the admissions already made sounds attractive but does not merit acceptance. Each of the appellants consciously made a statement that it had been granted recognition by NCTE, which necessarily implies that recognition was granted in terms of Section 14 of the Act read with Regulations 7 and 8 of the 2007 Regulations. Those managing the affairs of the appellants do not belong to the category of innocent, illiterate/uneducated persons, who are not conversant with the relevant statutory provisions and the court process. The very fact that each of the appellants had submitted application in terms of Regulation 7 and made itself available for inspection by the team constituted by WRC, Bhopal shows that they were fully aware of the fact that they can get recognition only after fulfilling the conditions specified in the Act and the Regulations

and that WRC, Bhopal had not granted recognition to them. Notwithstanding this, they made a bold statement that they had been granted recognition by the competent authority and thereby succeeded in persuading this Court to entertain the special leave petitions and pass interim orders. The minimum which can be said about the appellants is that they have not approached the Court with clean hands and succeeded in polluting the stream of justice by making a patently false statement. Therefore, they are not entitled to relief under Article 136 of the Constitution. This view finds support from a plethora of precedents.

19. In *Hari Narain v. Badri Das* [AIR 1963 SC 1558] , *G. Narayanaswamy Reddy v. Govt. of Karnataka* [(1991) 3 SCC 261] and a large number of other cases, this Court denied relief to the petitioner/appellant on the ground that he had not approached the Court with clean hands. In *Hari Narain v. Badri Das* [AIR 1963 SC 1558] , the Court revoked the leave granted to the appellant and observed: (AIR p. 1558)

"It is of utmost importance that in making material statements and setting forth grounds in applications for special leave made under Article 136 of the

Constitution, care must be taken not to make any statements which are inaccurate, untrue or misleading. In dealing with applications for special leave, the Court naturally takes statements of fact and grounds of fact contained in the petitions at their face value and it would be unfair to betray the confidence of the Court by making statements which are untrue and misleading. Thus, if at the hearing of the appeal the Supreme Court is satisfied that the material statements made by the appellant in his application for special leave are inaccurate and misleading, and the respondent is entitled to contend that the appellant may have obtained special leave from the Supreme Court on the strength of what he characterises as misrepresentations of facts contained in the petition for special leave, the Supreme Court may come to the conclusion that in such a case special leave granted to the appellant ought to be revoked."

20. In *G. Narayanaswamy Reddy v. Govt. of Karnataka* [(1991) 3 SCC 261] the Court noted that the appellant had concealed the fact that the award could not be made by the Land Acquisition Officer within the time prescribed under Section 11-A of the Land Acquisition Act because of the stay order passed by the High Court and observed: (SCC p. 263, para 2)

"2. ... Curiously enough, there is no reference in the special leave petitions to any of the stay orders and we came to know about these orders only when the respondents appeared in response to the notice and filed their counter-affidavit. In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected. It is well settled in law that the relief under Article 136 of the Constitution is discretionary and a petitioner who approaches this Court for such relief must come with frank and full disclosure of facts. If he fails to do so and

suppresses material facts, his application is liable to be dismissed. We accordingly dismiss the special leave petitions."

19. In the case of **G. Narayanaswamy Reddy vs. Government of Karnataka [(1991) 3 SCC 261]**, wherein the Hon'ble Supreme Court of India held that "In our view, the said interim orders have a direct bearing on the question raised and the non-disclosure of the same certainly amounts to suppression of material facts. On this ground alone, the special leave petitions are liable to be rejected".

20. The learned counsel for the second respondent cited the judgment of this Court passed in the case of **Southern Alloy Foundries Private Limited vs. Collector of Chennai [2019 SCC Online Mad 7521]**, wherein, in paragraph-8, this Court made the following observations:-

"8. This being the fatum of the case, this Court is of an opinion that the present writ petition is absolutely misconceived and filed with incorrect facts and this Court would like to place on record that certain suppressions are also made by the writ petitioner with reference to the facts and

circumstances. This being the nature of the case on hand, this Court has no hesitation in holding that the relief as such sought for in the present writ petition deserves no merit consideration."

21. It is reiterated that in several judgments, the Constitutional Courts across the country have held that suppression of material fact is fatal and on this ground alone the petitions are liable to be rejected in limine.

22. The learned counsel appearing on behalf of the applicant Mr.A.Muthuramalingam disputed the said contentions in entirety. At the first instance, he urged this Court by stating that the typed set of papers filed by the second respondent in this application has no relevance, as the complaint dated 08.12.2017 has no bearing in respect of the Parliamentary Elections conducted in the year 2019. The complaint was of the year 2017 and the photographs were taken during that point of time. This apart, the applicant even in case of a member of a particular Party or the Bharatiya Janata Party, the same would not preclude him from filing a substitution petition, which is his statutory entitlement with reference to Section 110(3)(c) of the Representation of the People Act, 1950. Therefore, the documents filed by the second respondent has no relevance with reference to the substitution

petition filed under Section 110(3)(c) of the Representation of the People Act, 1950.

23. The learned counsel for the applicant/petitioner further contended that the entire arguments advanced by the learned counsel appearing on behalf of the second respondent has no relevance or substance with reference to the Election Petition and the suppression of material facts means the facts which all are required for the purpose of allowing a substitution petition or to consider the substitution petition and not all the facts, including the personal facts and other facts relating to elections or otherwise.

24. The learned counsel for the applicant/petitioner emphasised that the the present petition is filed only for substitution to substitute the applicant in the place of the original election petitioner Mrs.Tamilisai Soundararajan, mainly on the ground that she was appointed as the Governor of State of Telangana and, he being a voter under Section 81 of the Representation of the People Act, is entitled to get himself substituted under Section 110(3)(c) of the Representation of the People Act, 1950. Therefore, what are all the facts required for the purpose of substituting the

applicant as the original petitioner is to be considered as material fact and not necessarily the other facts, which all are no way connected with the substitution petition has no bearing or relevancy in respect of the issues to be considered in the substitution petition.

25. The applicant filed three documents. The first document is the Voter's Identity Card, which shows that the said Card was issued by the Election Commission of India and the Identity Card Number is UHX0321349, wherein the name of the substitution petitioner Mr.A.Muthuramalingam, S/o.Arumugam is mentioned. The second document is in respect of the extract of the particulars of the substitution petition. The third document is the copy of voters list, wherein the name of the substitution petitioner is found in Serial Number 295 and his Voter ID No.UHX0321349 is also mentioned in the voters list. In the voters list also relating to the Constituency concerned, namely, Thoothukudi Parliamentary Lok Sabha Constituency. The place namely Srivaikuntam falls within the Parliamentary Lok Sabha Constituency of Thoothukudi at No.36. Therefore, the substitution petitioner has established that he is a voter and is holding a valid ID Card and his name is found in the voters list published by the Election Commission of India and these all are the material facts, which are

all necessary to consider the substitution petition and therefore, the very contention of the second respondent that the applicant has not stated that he is a member of the Bharatiya Janata Party or he is the District President of the Advocates Wing of the BJP Party absolutely has no relevance and cannot be construed as a material fact, so as to consider or decide the substitution petition with reference to Section 110(3)(c) of the Representation of the People Act, 1950.

26. The learned counsel for the applicant solicited the attention of this Court with reference to the ingredients to be considered for the purpose of considering the substitution petition under Section 110(3)(c) of the Representation of the People Act. The abovesaid Section reads as under:-

"a person who might himself have been a petitioner may, within fourteen days of such publication, apply to be substituted as petitioner in place of the party withdrawing, and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit."

27. With reference to the above provision, it is relevant to consider Section 81 of the Act, which stipulates the presentation of petitions. Accordingly, an elector is also entitled to file an election petition, challenging the election. In the present case, the candidate himself filed the election petition in Election Petition No.5 of 2019. On account of the fact that the original petitioner was appointed as the Governor of the State of Telangana, the applicant has filed a petition to substitute himself in the place of the original election petitioner for the purpose of continuing the election petition in his capacity as a voter/elector in the Thoothukudi Lok Sabha Parliamentary Constituency.

28. This Court is of the considered opinion that the provision unambiguously stipulates that any elector shall be entitled to be substituted. The language employed in Section 110(3)(c) of the Representation of the People Act, is that apply to be substituted as petitioner in the place of the party withdrawing and upon compliance with the conditions, if any, as to security, shall be entitled to be so substituted and to continue the proceedings upon such terms as the High Court may deem fit. Therefore, the eligibility of the person is to be considered at the first instance. Secondly, whether such a person has complied with the

conditions or not and if these ingredients are satisfied, then such a person is entitled to be substituted for the purpose of continuing the election proceedings under the provisions of the Act.

29. Let us consider the eligibility of the person. The applicant Mr.A.Muthuramalingam is able to establish that he is a voter/elector of the Constituency concerned, namely, Thoothukudi Lok Sabha Parliamentary Constituency. Secondly, the place, namely, Srivaikuntam is admittedly falling within the Thoothukudi Lok Sabha Parliamentary Constituency. Thirdly, the applicant produced Voter Identity Card issued by the Election Commission of India, wherein the Voter Identity Card Number is also found. The extract of the website copy also reveals the same EPIC Number. Fourthly, the voters list published by the Election Commission with reference to the said Parliamentary Constituency reveals that the name of the applicant is found in Serial Number 295 in the same EPIC Number as UHX0321349.

30. Therefore, the applicant has established that he is a voter/elector of the Thoothukudi Lok Sabha Parliamentary Constituency and hence he is entitled to be substituted in the place of the original election

petitioner, namely, Mrs.Tamilisai Soundararajan. The second consideration is that whether he has complied with the conditions or not. This Court, on receipt of the substitution petition, ordered for deposit of security and the learned counsel for the applicant made a submission that the security deposited had already been made and the order of this Court had been complied with. This being the ingredients to be considered for the purpose of considering the substitution petition, this Court is of the opinion that the entitlement of a voter/elector under the provisions of the Representation of the People Act, cannot be denied if the substitution petitioner is able to establish that he is eligible and complied with the terms and conditions of the orders of the High Court, if any, passed.

31. As far as the allegation of suppression of material fact is concerned, which is raised by the second respondent, this Court is of the considered opinion that it is not as if the applicant has suppressed the material facts for the purpose of considering the substitution petition. The informations regarding the membership of the applicant with the Bharatiya

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Janata Party or his position as a District President of the Advocates Wing of the BJP Party may not have any relevance or bearing in respect of the substitution petition, which is to be considered for the purpose of continuance of the election petition filed by the original petitioner Mrs.Tamilisai Soundararajan. Therefore, the material facts does not mean that all the facts relating to a person concerned or all his activities in various capacities. The material facts are to be placed before the Court with reference to a litigation means, the facts, which all are necessary and vital to decide the issues and the facts are to be considered for arriving a decision in a particular matter and not all facts, which may not be relevant for the purpose of considering the applications. Thus the material facts means relevant facts, which all are to be necessary for the purpose of deciding the issues.

32. As far as the present substitution petition is concerned, the capacity of the applicant as a District President of the Advocates Wing of the BJP Party or his position as a member of the BJP Party, it may not be relevant for the purpose of considering the substitution petition filed with reference to Section 110(3)(c) of the Representation of the People Act.

33. As far as the material facts, which all are to be considered in the substitution petition is concerned, whether the substitution petition is a voter/elector or a candidate and when he is able to establish such factors through the documents, the documents now produced by the substitution petitioner reveals that he is a voter of the Thoothkudi Lok Sabha Parliamentary Constituency and further the name was included in the voters list published by the Election Commission of India and under these circumstances, there is every reason to substitute the applicant in the place of the original election petitioner Mrs.Tamilisai Soundararajan for the purpose of continuing the election petition. The objection raised by the second respondent in this regard has no substance and devoid of merits. Accordingly, the substitution petition filed by the applicant in O.A.No.996 of 2019 stands allowed. However, there shall be no order as to costs.

34. The learned counsel for the second respondent made a submission that in the event of considering the application, a cost should be awarded in favour of the applicant. This Court is of the considered opinion that awarding of costs is a discretion. However, the High Court has to consider the facts and the circumstances, while awarding costs. In the present case, it is not as if the original election petitioner has chosen to

withdraw the election petition in a casual manner. In fact, the original election petitioner Mrs.Tamilisai Soundararajan was appointed as the Governor of the State of Telangana, which made her to file a petition to withdraw the election petition.

35. Therefore, there is every reason to accept such a genuine grounds for the withdrawal of the election petition and under these circumstances, the applicant Mr.A.Muthuramalingam has chosen to file the present petition for substitution of his name in the election petition. Under these circumstances, the parties have expressed their bona fides for the purpose of filing the withdrawal petition as well as the substitution petition. Under these circumstances, this Court is not inclined to award any costs.

36. The learned counsel for the second respondent undertakes that he will file a written statement within two weeks. Thus, list the Election Petition for filing written statement on 26.11.2019.

Index : Yes/No
Internet : Yes/No
Speaking Order/Non-Speaking Order
Svn

31/33

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To

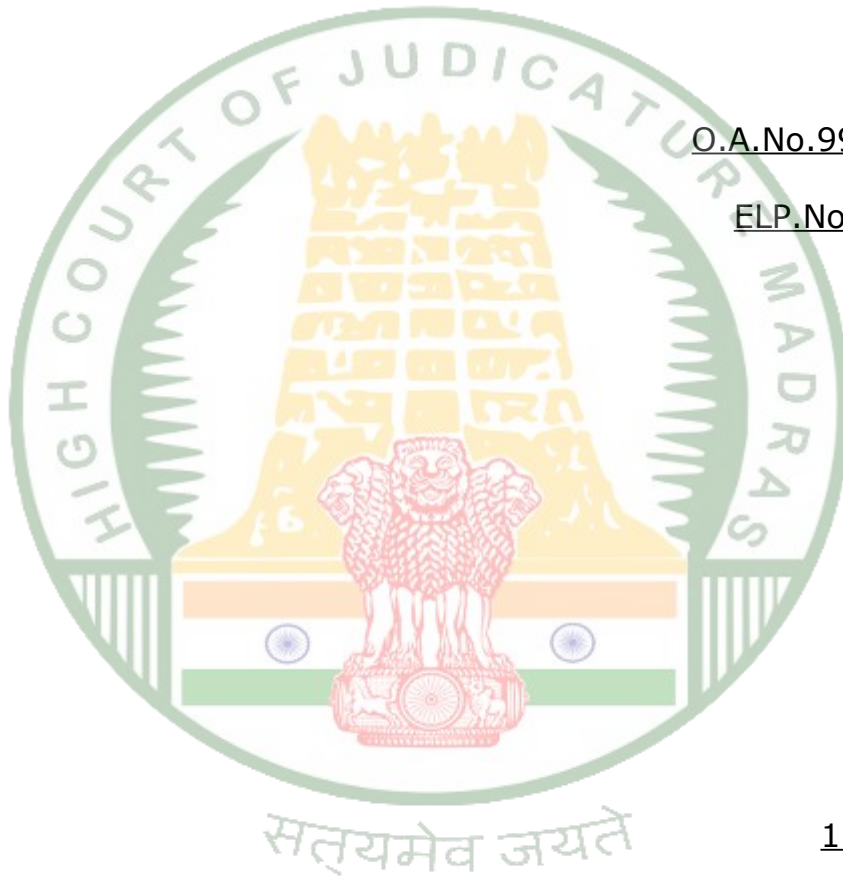
1.The Chief Election Commissioner,
O/o.Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi-110 001.

2.The Returning Officer,
No.36, Thoothukudi Constituency,
O/o.District Collector,
Korampallam,
Thoothukudi-628 101.



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S.M.SUBRAMANIAM, J.



O.A.No.996 of 2019
in
ELP.No.5 of 2019

12-11-2019

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