

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : **27.09.2019**

DELIVERED ON : **22.01.2020**

CORAM:

THE HONOURABLE MR.JUSTICE **V.BHARATHIDASAN**

Election Petition No.15 of 2016

and

O.A.No.712 of 2018

Duraisamy V.P.

.. Petitioner

Vs.

1. Dr.V.Saroja
2. Kuppusamy.C
3. Arjun.K
4. Arunkumar.C
5. Chinnathambi.K
6. Bharathi.P
7. Pushpagandhi.J
8. Senthil.A
9. Duraisamy.P.V.
10. Kuraisamy.P
11. Manickam.S.M.

.. Respondents

Prayer: Election Petition filed under Sections 81, 77, 100(1)(b), 100(1)(d)(ii), 100(1)(d)(iv), 123(1)(A)(B), 123(4), 123(6) Sec.123(7)(f), 129(2)(C) of the Representation of the People Act, 1951 r/w Rule 2 of Rules of the Madras High Court-Election Petition, 1967, to declare the election of the first respondent as returned candidate on 19.05.2016 from No.92, Rasipuram (Reserved) Assembly Constituency as null and void.

For Petitioner : Mr.V.Arun

For Respondent 1 : Mr.T.V.Ramanujam
SC for Mr.S.Senthil

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ORDER

The Election Petition has been filed for a declaration to declare the election of the first respondent as returned candidate from No.92, Rasipuram (Reserved) Assembly Constituency as null and void.

2. The averments made in the election petition, in brief, is as follows:

(i) The election petitioner is a member of the Dravida Munnetra Kazhagam (in short 'DMK') and he belongs to Arunthathiyar community, which is a sub-caste of Scheduled Castes. He served as a Member of the Rajya Sabha from 1996 to 2002 and he was also elected from Sankari (Reserved) Assembly constituency for a period from 2006 to 2011. During the said period he has served as the Deputy Speaker of the Tamil Nadu State Assembly. However, he lost in the 2011 General Election.

(ii) In the Assembly general elections conducted in the year 2016, he has contested from Rasipuram (Reserved) Assembly Constituency as a DMK party candidate against the first

respondent herein and defeated in the said election by a margin of 9631 votes.

(iii) During the 2014 General Election conducted for Lok Sabha, there were huge bogus voters found in the electoral list. Hence, representations were made to the Election Commission of India, against the then Chief Electoral Officer of Tamil Nadu, and thereafter, a new Chief Electoral Officer was appointed to rectify the entire electoral list for the forthcoming 2016 Tamil Nadu State Assembly General Election.

(iv) On 15.09.2015, a draft Electoral List was published for the entire State of Tamil Nadu and it contains nearly 16 lakhs bogus voters. Therefore, various political parties raised objections for inclusion of bogus voters, but without considering the objections a final voters list was published containing the very same bogus voters and no purification drive was effectively done by the Chief Electoral Officer.

(v) After publication of the final electoral list, a delegation of DMK Party met the Chief Electoral Officer to take effective step to

rectify the incorrect and multi entries found in the final electors list. A complaint was also filed before the Election Commission of India. A random verification was conducted by the Election Commission of India, in Tambaram Assembly Constituency and large number of bogus voters were found. On the advice of the Election Commission of India the bogus voters list was submitted for 62 Assembly constituency, and for the Rasipuram Assembly Constituency as many as 20,271 bogus voters have been identified and the list was also submitted to the Election Commission of India.

(vi) In the final electoral list for Rasipuram Assembly Constituency, the petitioner found that 17,757 bogus voters were found place and it was brought to the notice of the Returning Officer by giving the details of bogus voters. But the Returning Officer refused to delete the names. Hence, a complaint has been filed before the Chief Electoral Officer and after considering the petitioner's complaint only 2,514 bogus voters names have been removed and kept the remaining bogus voters in the electoral list.

(vii) In the meanwhile, on 04.03.2016, the Election Commission of India declared Model Code of Conduct to hold free

and fair General Election for four States and one Union Territory including the State of Tamil Nadu. As per the schedule of election announced by the Election Commission of India, filing of nominations commenced from 22.04.2016, the Election was scheduled to held on 16.05.2016, and counting of votes was to be held on 19.05.2016.

(viii) The first respondent / returned candidate, contested in the AIADMK party symbol, which was the ruling political party at that time. When the model code of conduct was in force, the first respondent along with her Chief Election Agent, Mr.Kaliyappan and other party office bearers opened Election Office at Rasipuram-Athur road near Rasipuram New Bus stand on 09.04.2016, for which, the first respondent, hired 2000 voters from Rasipuram Assembly Constituency through various commercial vehicles and also distributed dhotis and sarees bearing her party's flag colour border and apart from that they were given Rs.200/- as gift.

(ix) Immediately, the petitioner's party Rasipuram Town Secretary Mr.Shankar (P.W.2), lodged a complaint to the

Returning Officer regarding modal code of conduct violations. But no action was taken. The opening of the election office was widely published in the local news paper 'Dinakaran' dated 10.04.2016.

(x) On 20.04.2016, the ruling political party leader Ms.J.Jayalalitha held election campaign meeting at Salem, where she introduced her party candidates. The first respondent was one among them. For the above meeting, the first respondent has gathered huge crowd from Rasipuram Assembly Constituency and took them to Salem Town for the said election meeting. The first respondent herself has engaged in transporting as many as 5,000 voters in various commercial vehicles and also paid Rs.500/- per head. The transportation of voters to the meeting place from Rasipuram was personally supervised by one Mr.Raju, Deputy Superintendent of Police, Rasipuram Taluk. Immediately, Mr.Shankar (P.W.2) lodged a complaint to the Returning Officer (Rasipuram), but he has expressed his inability to take action. This was also published in the local Tamil daily 'Dinakaran'.

(xi) The ruling AIADMK political party leaders were working on stashing money in various places of entire state of Tamil Nadu for distributing cash for votes to voters. Similar activities were also carried out by the first respondent and her Election Agent Mr.Kaliyappan, along with her party functionaries.

(xii) Large scale violation of model code of conduct and distribution of money to the voters was brought to the notice of the concerned authorities, but no action was taken. The transportation of money illegally to the Rasipuram Assembly Constituency was not effectively prevented by the officers in charge of the elections.

(xiii) On 30.04.2016, a Tamil local daily carried out a news items that, AIADMK Head Quarters office bearers distributed money to the tune of Rs.1,00,000/- to various welfare associations / political outfits / cast and community outfits for supporting AIADMK party and DMK party advocates have lodged a complaint to the Election Commission of India and the Chief Electoral Officer to that effect.

(xiv) On 30.04.2016, at about 09.00 a.m. The petitioner's party functionary one Mr.M.Ganesan of Ayilpatty village, informed the petitioner that one Mr.Ramasamy, a AIADMK party functionary along with the first respondent had a meeting at one Sibi Sago Factory owned by Mr.Ramasamy and money transportation activities are carried out there, and at about 03.30 p.m. Mr.Ganesan informed the petitioner about some suspicious vehicle movement in the above sago factory premises. At about 07.30 p.m. Mr.Raju, DSP, Rasipuram, visited the sago factory and assisted in transportation of money. Hence, complaint was lodged to the Election Observers with regard to the money transportation at the Sago factory. On receiving his complaint, Election Expenditure Observers including Income Tax Officials inspected the sago factory premises and that inspection went on till 03.00 a.m. On 01.05.2016, without giving any information, the officials left the sago factory. Thereafter, Mr.Ganesan and one Mr.K.S.Rajamanickam lodged separate complaints to the Election Observer about involvement of Mr.Raju, DSP. But no action was taken in this regard and DSP Mr.Raju freely assisted the first

respondent and her party functionaries which materially affected the results of the election.

(xv) On 03.05.2016, one Mr.Karnan @ Periyasamy, a resident of O Sowthapuram village in Vennadhur Panchayat Union, informed the petitioner that the Block Development Officer (BDO) of Vennadhur Union along with the first respondent's election agent Mr.Kaliyappan, and other Government staff distributed money at the rate of Rs.200/- per head in the above village under the 'Food for Work' scheme. Immediately, a complaint was lodged with the Returning Officer. Further on 04.05.2016, one Mr.Sathishkumar and Mr.Ravikannan informed him that, BDO, Namagiripet Union along with Government staff distributing Rs.200/- per head under the work for food scheme in the presence of Mr.Kaliyappan, the election agent of the first respondent. For that also complaint was given to the Returning Officer.

(xvi) On 04.05.2016, one Mr.Krishnamurthy of JJ Nagar Colony, Kakkavaari Village informed the petitioner that

Mr.Kaliappan along with AIADMK party people offered a sum of Rs.1,00,000/- to the above villagers for construction of Mariamman temple and asked them to give assurance to vote for the first respondent, but that did not materialise.

(xvii) One Mr.K.S.Rajamanickam, one of the office bearer of the petitioner's party gave a complaint against DSP Mr.Raju for alleged involvement in money transportation in favour of the first respondent was threatened by DSP Mr.Raju to withdraw his complaint, for which also a complaint was also given to the Director General of Police (Elections).

(xviii) On 05.05.2016 and 06.05.2016, the petitioner came to know that the husband of the first respondent, Mr.L.Logaranjan, her sister Dr.Lakshmi, and her brother Mr.Soundhararajan distributed money to the first respondent party functionaries for distributing the same to the voters on the advice of the first respondent. Even though a complaint has been lodged to the Returning Officer, without taking any action, the Returning Officer and DSP Mr.Raju allowed the relatives and

family members of the first respondent to distribute money to the voters, which materially affected the result of the election.

(xix) On 07.05.2016, one Mr.P.S.D.Ravi of Palanthinnipatti village in Venandur Union, informed the petitioner that the first respondent's sister and her brother prepared chicken biriyani for about 300 people and the first respondent served the food to the voters and requested them to vote for her and this has also materially affected the result of the election.

(xx) For casting of votes by postal ballots, the modified process for postal ballots notified by the Election Commission of India has not been followed by the Returning Officer and thereby more than 50% of the election duty officials were unable to cast their votes and this has materially affected the result of the election.

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(xxi) On 14.05.2016, the last date of election campaign, petitioner was informed that in a Government press release then Chief Minister's made an appeal to voters of all Assembly

constituencies in Tamil Nadu, to vote for their candidates in gross violation and abusing government machineries.

(xxii) During the entire election, the first respondent, her party election agents and the party functionaries spent huge money for posters, wall paintings, placing PVC palcards, bursting crackers, mass feeding etc., exceeding the prescribed election expenditure. When the petitioner requested the Returning Officer to issue a copy of the election expenditure details, he refused to issue the same and hence the petitioner filed an application under the Right to Information Act seeking details of election expenditure and videograph taken by the election expenditure monitoring team and other authorities, which were not given to him.

(xxiii) After the election, at the time of counting, the votes were not properly counted.

Thus, the first respondent has involved in the above corrupt practices which has materially affected the result of the election. Hence, the present election petition has been filed to set aside the election of the first respondent.

3. The first respondent filed a detailed counter affidavit stating inter alia as follows:

(i) The first respondent denied almost all the averments made in the election petition.

(ii) That the averments contained in paragraphs 1 to 7 are vague, bald and uncharitable allegations made against the election officials.

(iii) The representation said to have made by the petitioner's party with regard to the bogus voters is only a general allegation and there is no specific allegation for the Rasipuram Assembly Constituency.

(iv) So far as the allegation regarding opening of election office at Rasipuram is concerned, it is vague and the petitioner failed to give any names and vehicle numbers on the other hand simply said 2000 voters have been brought by various commercial vehicles. The allegation regarding payment of Rs.200/- per head

to the voters and distribution of dhotis and sarees to the voters are also denied. The said allegation of corrupt practice are very vague and not in consonance with the provision of the Representation of the People Act. The petitioner failed to give material facts and full particulars of the alleged corrupt practice namely distribution of money to voters and giving dhotis and sarees to them.

(v) With regard to the complaint given by one Mr.Shankar, the same has not been produced before the Court. The newspaper reports are only hearsay and particularly 'Dinakaran' newspaper is the DMK party affiliated newspaper and as such the news articles published in the said newspaper cannot be the basis for the allegations in the election petition.

(vi) So far as the allegation regarding transportation of 5000 voters from Rasipuram Assembly Constituency to Salem in commercial vehicles and payment of Rs.500/- per head is also denied and the said allegations are bald and untenable and is also bereft of material particulars. The particulars of persons who received the said money was not given and the registration

number of the vehicles used for transportation of voters were also not stated in the election petition and that the alleged complaint given by one Mr.Shankar was also not produced before the Court.

(vii) The other allegation regarding distribution of money to the party functionaries, who, in turn, distributed the same to the voters is also vague and it is only stated that money has been distributed at various places to local body representatives to quickly distribute the same to voters but the election petitioner has not given the name of the place, vehicle registration number and the voters to whom the said money was given. According to the first respondent these are all false and invented allegations and the various complaints given by the petitioner's party was also not related to Rasipuram Assembly Constituency.

(viii) The next allegation regarding distribution of money from AIADMK Head Quarters is also very vague and no material particulars have been given for the same.

(ix) The allegation regarding the distribution of money by one Mr.Ramasamy owner of Cibi Sago factory, is also very vague.

Even though complaint is stated to have been given to the Election Officer, the copy of the said complaint has not been produced before the Court. The presence of Mr.Raju, DSP in the Sago factory do not disclose any cause of action for the election petition. Thus, the allegation that money distribution activities and some suspicious vehicle movements had taken place in the sago factory are vague, unsubstantiated and unconfirmed allegations which are not sufficient to set aside the election of the first respondent. The allegation that DSP Mr.Raju helped the first respondent is also totally false.

(x) The allegation regarding distribution of money by Block Development Officer of Panchayat Unions are concerned, the election petitioner has not given any particulars of the Block Development Officer and the Government officials who are all involved and the persons to whom money was distributed. The petitioner is expected to plead by giving material facts and full particulars. That apart, no complaint has been given to the Returning Officer or other Election Officials to substantiate the same.

(xi) The allegation that Rs.1,00,000/- was promised for construction of Mariamman Temple is denied and absolutely there is no truth in it. The said allegation is false and imaginary. No material has been placed before the Court to substantiate the said allegation. The election petitioner only makes false allegations against the Government Officials without any substantial materials and this will not give rise to any cause of action for filing the present election petition.

(xii) The allegation of distribution of biriyani for about 300 people by the first respondent, her sister and brother is also denied.

(xiii) So far as election expenses are concerned, the first respondent denies the allegations made by the election petitioner and that no material has been produced to support his allegation except producing an application filed by him under the Right to Information Act. According to the first respondent, the election expenditure are well within the prescribed limit.

(xiv) When the election petitioner has come forward with the allegation of corrupt practices, he is expected to give material facts and full particulars regarding the alleged corrupt practices

and he cannot make out a case of corrupt practice by making bald and frivolous allegation without any material particulars.

4. On the above pleadings, the following issues were framed for trial and adjudication:

(i) Whether the election petitioner is entitled to a declaration that the election of the 1st respondent/returned candidate is void ?

(ii) Whether the 1st respondent has committed corrupt practice within the meaning of Section 123(1)(a)(b), 123(4), 123(6) and 123(7)(f) of the Representation of People Act, 1951 ?

(iii) Whether the election of the first respondent is void within the meaning of Sections 100(1)(b), 100(1)(d)(ii), 100(1)(d)(iv) of the Representation of People Act, 1951 and liable to be set aside under the said provisions ?

(iv) Whether the Election Petition as framed is maintainable ?

(v) To what other reliefs the parties are entitled to ?

5. During trial, Mr.V.P.Duraisamy, the petitioner herein, examined himself as P.W.1 and he also examined three more witnesses viz., Mr.N.R.Shankar as P.W.2, Mr.N.Boopathy as P.W.3

and Mr.K.S.Rajamanickam as P.W.4 and marked as many as 6 documents viz., Ex.P1 (Schedule for General Election for 2016), Ex.P2 (RTI application for disk from 22.04.2016 to 19.05.2016 – Election Expenses Monitoring Wing), Ex.P3 (RTI application for campaigning cost of Chief Minister), Ex.P4 (RTI application to provide compact disk for the period from 22.04.2016 to 19.05.2016 of the Election Expenses Monitoring Wing), Ex.P5 (RTI application for compact disk for the period from 22.04.2016 to 19.05.2016 from Election Expenses Monitoring Wing) and Ex.P6 (Complaint to DGP (Election) dated 05.05.2016. On the side of the first respondent, Dr.V.Saroja examined herself as R.W.1 and no documents were marked. Mr.N.S.Balasubramanian, Returning Officer of Rasipuram Assembly Constituency was examined as C.W.1, and marked Ex.C1 a copy of the permission granted to AIADMK party to open Election Office at Rasipuram.

6. Earlier, on an application filed by the first respondent in O.A.No.270 of 2017, paragraph Nos.11, 14, 15 and 17 were struck off from the pleading by an order dated 07.12.2017.

7. Heard Mr.V.Arun, learned counsel appearing for the petitioner and Mr.T.V.Ramanujam, learned senior counsel appearing for the first respondent and perused the records carefully.

8. Issue Nos.1 and 2 are taken up together. The election petition has been filed to set aside the election of the first respondent mainly on the following allegations:

(i) There were as many as 17,757 bogus voters in the Rasipuram Assembly Constituency and only 2,514 bogus voters have been removed but the remaining bogus voters were permitted to vote in the election which materially affected the election result.

(ii) On 09.04.2016, the first respondent opened the party office, wherein, she has distributed sarees and dhotis to more than 2000 voters from the constituency and distributed Rs.200/- per head.

(iii) On 20.04.2016, election campaign meeting was held at Salem presided over by their party leader Ms.J.Jayalalitha, wherein 47 candidates, including the first respondent, contesting in and around Salem district were introduced by her, for which, the first respondent has transported about 5,000 people and paid Rs.500/- per head.

(iv) One Mr.Kaliappan, chief election agent of the first respondent has offered Rs.1,00,000/- for the JJ Nagar people for construction of a temple for casting their votes in favour of the first respondent.

(v) Two Block Development Officers of Venanthur Panchayat Union and Namagiripet Panchayat Union along with other Government officials and Mr.Kaliappan, chief election agent of the first respondent distributed Rs.200/- to the villagers under the "food for work scheme".

(vi) The first respondent husband, her sister and brother handed over money to various party functionaries for the purpose

of distributing the same to the voters in the Rasipuram Assembly constituency.

(vii) The first respondent's sister and brother also offered biriyani to nearly 300 voters in the Rasipuram Assembly constituency.

(viii) The first respondent with the help of one Mr.Ramasamy, owner of Cibi Sago Factory distributed money to the party functionaries from the Sago Factory premises with the help of one Mr.Raju, DSP, Rasipuram and on a complaint given by the petitioner a raid was conducted by the Election Expenditure Observer with the help of Income Tax Officials.

(ix) The election expenditure of the first respondent exceeded the prescribed limit and the first respondent did not account the election expenditure properly.

Thus, according to the election petitioner, all the above corrupt practices committed by the first respondent has materially affected the election and the first respondent has violated the

provisions of Section 123 of the Representation of the People Act, 1951.

9. Before considering all the above allegations, it will be useful to refer to the relevant provisions in the Representation of the People Act, 1951 which are alleged to have been violated by the first respondent:

"123. Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) ***

(3) ***

(4) *The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.*

(5) ***

(6) *The incurring or authorizing of expenditure in contravention of section 77.*

(7) *The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of*

the Government and belonging to any of the following classes, namely:—

- (a) ****
- (b) ****
- (c) ****
- (d) ****
- (e) ****
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and]”*

10. The High Court deciding a election petition is a Tribunal deciding an election dispute and its powers are by creature of Statute, under which, the Tribunal is empowered to hear the election petition. It is settled law that any election petition is not an action at law or a suit in equity, but it is purely a statutory proceedings and the Courts possess no common law power. The statutory provision of the election law are to be strictly construed and its requirements should be strictly observed. A right to be

elected is neither a fundamental right nor a common law right, it is only a statutory right and the Courts cannot go beyond the pleadings of the parties. There must be a proper pleadings and it should be established by adducing acceptable evidence that by the alleged illegality or irregularity the result of the election has been materially affected.

11. So far as charges of corrupt practices in the election, it is trite law that allegation of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences, it not only vitiates the election of the candidate concerned but also disqualifies him/her from taking part in future elections for a considerable period. In such circumstances, the trial of an election petition being in the nature of an accusation and it is as same as in a criminal trial, the returned candidate is presumed to be innocent until the guilt is proved against him. The onus is on the election petitioner to establish each and every charge by clear and impeccable evidence beyond reasonable doubt.

12. The Hon'ble Supreme Court in ***Jeet Mohinder Singh Vs. Harminder Singh Jassi*** reported in **(1999) 9 SCC 386** in paragraph 40, has held as follows:

"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. [See: Jagan Nath Vs. Jaswant Singh, Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe].*

(ii) Charge of corrupt practice is quasi-criminal in character. If substantiated, it leads not only to the setting aside of the

election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial. [See: Quamarul Islam Vs. S.K. Kanta, F.A. Sapa Vs. Singora, Manohar Joshi etc. Vs. Damodar Tatyaba alias Dada Saheb Rupwati etc. and Ram Singh Vs. Col. Ram Singh]."

13. In yet another judgement the Hon'ble Supreme Court in ***Daulat Ram Chauhan Vs. Anand Sharma*** reported in **(1984) 2 SCC 64** has held in paragraph 18 as follows:

"18. We must remember that in order to constitute corrupt practice which entails not only the dismissal of the election petition but also other serious consequences like disbarring the candidate concerned from contesting a future elections for a period of six years, the allegations must be very strongly and narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings:-

(1) Direct and detailed nature of corrupt practice as defined in the Act.

(2) details of every important particular must be stated giving the time, place, names of persons, use of words and expressions, etc.

(3) it must clearly appear from the allegations that the corrupt practices alleged

were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent."

14. Keeping the above principles in mind, let us consider the issues involved in the election petition.

15. The first allegation regarding inclusion of bogus voters in the voters list is concerned, even though it is alleged that as many as 20,271 bogus votes have found place in the final electoral list published by the Chief Electoral Officer, in Rasipuram Constituency, according to the election petitioner, out of which, only 2,514 bogus voters have been removed on the complaint given by the election petitioner and the remaining bogus voters were permitted to vote, which has materially affected the election. But, absolutely no particulars have been provided by the petitioner to substantiate his claim namely, name of the bogus voters, name of the ward or village, it is only a bald allegation without any material. Another allegation that, throughout the State of Tamil Nadu bogus voters were included, is only a general allegation and the petitioner has not produced, any material

evidence, before the Court, to substantiate the said allegation. That apart, there is no allegation that it is the first respondent has included all these bogus voters and all the bogus voters have voted for the first respondent. Even assuming that bogus voters have been included in the electoral list, the first respondent cannot be blamed for the same in the absence of any substantial pleading and evidence to establish that it is only on behalf of the first respondent, the bogus voters have been included in the list. That apart, if at all there is any discrepancy in the electoral rolls it can only be challenged in accordance with the machinery provided under the Act, and the electoral list cannot be challenged in the election petition. Further, the petitioner who has examined himself as P.W.1, admitted in his evidence that he has not given the list of bogus voters to the Returning Officer, and there is no material available to show that during polling the election agents representing the petitioner has raised any objection while the alleged bogus voters voted in the election.

16. So far as the allegation of opening of election office by the first respondent and distribution of money to 200 voters and

free distribution of sarees and dhotis is concerned, P.W.1 in his cross examination has admitted that only P.W.2, Mr.N.R.Shankar (P.W.2) who was functioning as Rasipuram Town Secretary of DMK party has informed him about the opening of election office and a news item also has been published in the Dinakaran newspaper dated 09.04.2016, and he has no personal knowledge about it. Further P.W.2 in his evidence has stated that the election office was opened on 09.04.2016 and 2000 voters from Rasipuram Assembly Constituency were brought there and dhotis and sarees were distributed to them and the first respondent personally paid Rs.200/- each to 200 voters. It is contended by the learned senior counsel appearing for the first respondent that at the time of opening of election office on 09.04.2016, the first respondent was not announced as a candidate and she has been named as the candidate of Rasipuram Assembly Constituency only on 26.04.2016 and she has filed her nomination papers on 28.04.2016. The Returning Officer (C.W.1) in his evidence has categorically stated that the first respondent did not apply for opening of the election office and the AIADMK party only has sought for permission and accordingly permission was granted to

the AIADMK Party for opening the election office at Rasipuram. The copy of permission granted for opening of the election office is marked as Ex.C1. From a perusal of Ex.C1, it could be seen that against the column 'name of the candidate' it was mentioned as 'not finalised'. Hence, it is clear that on the date when permission for opening the election office was sought for, the first respondent was not officially declared as AIADMK candidate for Rasipuram Assembly Constituency and permission was not granted on her request. Regarding distribution of money, dhotis and sarees on that date, except the oral evidence of P.W.2, there is no other evidence available on record to establish the same. Even though it is stated by P.W.2 that he has given a complaint regarding the same to the Returning Officer, the said complaint was not marked in evidence before this Court. In the above circumstances, this Court is of the opinion that the above allegation has not been substantiated by material evidence.

17. The next allegation is with regard to transportation of 5000 voters from Rasipuram in commercial vehicles, at the instance of the first respondent, to participate in the public

meeting held at Salem on 20.04.2016, in which, Ms.J.Jayalalitha has introduced 47 candidates belonging to her political party and the first respondent has paid Rs.500 per head. The petitioner, who examined himself as P.W.1, in his evidence has stated that for the above meeting, the first respondent spent around Rs.6,00,000/- for hiring vehicles and Rs.1,00,000/- was spent towards food apart from paying Rs.500/- to each of the voters. To substantiate the same except the oral evidences of P.Ws.1 and 2, there is no other material placed before this Court, P.Ws.1 and 2 were not in a position to substantiate it. P.W.1 in his cross examination simply stated that he will establish the case with the help of other evidence, but he has not able to establish the same, and hence the above allegation also is not proved beyond reasonable doubt.

18. Distribution of money under the Food for Work scheme to the voters by one Mr.Kaliappan, the chief election agent of the first respondent along with the Block Development Officers of the Vennanthur Panchayat Union and Namagiripettai Panchayat Union respectively was the next allegation. It is the contention of the

first respondent that Mr.Kaliappan is not her election agent and the first respondent's husband Dr.Logaranjan was her chief election agent, and the first respondent has never appointed Mr.Kaliappan as her chief election agent. Even in the cross examination of R.W.1, it has been clearly established that it is only Dr.Logaranjan, the husband of the first respondent has been appointed as her chief election agent and not Mr.Kaliappan, as claimed by the election petitioner. The said allegation of distribution of money under the Food for Work scheme is concerned, the allegation is very vague, and it is also pertinent to state that the names of the BDO of Vennanthur Panchayat Union, BDO of Namagiripettai Panchayat Union and the other Government officials who alleged to have distributed money has not been mentioned and to whom the money was distributed was also not stated either in the pleadings or in the evidence. Once again, it is only the oral evidence of P.Ws.1 and 2 and no material evidence has been exhibited to substantiate the said allegation. Even in the oral evidence, P.W.1 has admitted that he has no personal knowledge about the same and he was informed about it by one Mr.Ravikannan and Mr.Sathishkumar. But they were not

examined by the petitioner to substantiate the allegation. Even though the petitioner stated to have given a complaint to the Returning Officer, the copy of the complaint was not marked before this Court. In the above said circumstances, in absence of any substantial material to establish that money was distributed to the voters under the Food for Work scheme through BDOs and other Government Officials, the said allegation cannot be held to be proved by the petitioner.

19. The next allegation of corrupt practice is relating to money distribution from Cibi Sago Factory owned by one Mr.Ramasamy to first respondent's party functionaries. P.W.1, P.W.3 and P.W.4 have spoken about the above said occurrence. According to P.W.1, one Mr.Ganesan, his party functionary has informed him about suspicious movement of vehicles at the sago factory and also informed him that money was kept in the factory for distribution amongst the voters of Rasipuram Assembly constituency. On receiving the said information, P.W.1 has informed the same to election observers. When the DSP, Mr.Raju went inside the sago factory, there was an agitation and P.W.1

along with other party members sat outside the factory. Thereafter, Income Tax officials conducted a inspection in the said premises on 30.04.2016 from 10.15 am to 03.00 am on 01.05.2016. After the conclusion of the raid, P.W.1 approached the officials but they refused to divulge any information, and the voters in the Rasipuram Constituency believe that the money kept in the sago factory was for the benefit of the first respondent and Mr.Ganesan also lodged a complaint before the Returning Officer. When a specific question has been put to P.W.1, during the course of cross examination as to whether any money was recovered from Mr.Ramasamy, the owner of Cibi sago factory, P.W.1 stated that the Income Tax Officials and Election officials did not disclose anything to him about the recovery of money from the sago factory. Likewise, P.W.3 stated that one Mr.Ganesan has informed him about the suspicious movement of vehicles in the sago factory and DSP Mr.Raju went inside the factory and came out in a jeep carrying money along with him. But in the cross examination, P.W.3 has stated that the news have been published in the newspapers and in other media, and he has not specifically mentioned that the money has been taken in the DSPs vehicle.

Likewise, P.W.4 Mr.K.S.Rajamanickam has stated that he has seen DSP Mr.Raju coming out of the Sago factory in a jeep and he has seen sacks of money kept inside the jeep, which was meant for distribution to the voters through the Panchayat Secretaries and he has also given a complaint to the DGP (Elections) in this regard and the same is marked as Ex.P6. But, during the course of cross examination, he has only stated that the people who received the money from the sago factory informed others also to receive the money, that is how he came to know that money has been distributed from the sago factory. From the above evidence, it could be seen that a raid was conducted by the Income Tax officials in the sago factory belonging to one Mr.Ramasamy, but absolutely there is no material to connect Mr.Ramasamy with the first respondent, and there is no evidence to show that money has been seized from the sago factory by the Income Tax officials and Election officials and also there is no evidence that money has been distributed to the voters from the Sago factory. Even the evidences of P.W.3 and P.W.4 contradict each other regarding carrying money by DSP Mr.Raju. In the absence of any substantial evidence that, money has been kept inside the Sago

factory, which belongs to the first respondent for being distributed to the voters, in my considered view, the allegation has not been proved with material evidence.

20. The next allegation of corrupt practice stated by the petitioner is that Mr.Kaliannan has approached the villagers in JJ Nagar at Rasipuram for voting in favour of the first respondent and offered them a sum of Rs.1,00,000/- for construction of Mariamman temple, P.W.1 has stated that one Mr.Krishnamurthy, a party functionary from the said area has informed him about the said incident. But the said Mr.Krishnamurthy was not examined by the petitioner, whereas, P.W.2 Mr.N.R.Shankar in his evidence has stated that only the first respondent's nephew Mr.Ramesh Babu has promised Rs.2,00,000/- for construction of temple to the JJ Nagar people and it is clear contradiction between the evidences of P.W.1 and P.W.2 with regard to the promise to pay the amount for construction of the temple. Except their oral evidence, there is no other material evidence to substantiate the said allegation and therefore the said allegation also, in my view, has not been proved.

21. With regard to the allegation of distribution of money by the sister and brother of the first respondent to party functionaries to distribute the same to the voters, even though in the election petition the petitioner has given the Registration number of the cars which are alleged to have been involved in the money transaction, the Registration Certificate of the car has not been produced to establish that the car belonged to them. That apart, P.W.2 who is stated to be an eye witnesses to the said occurrence, has only stated that Dr.Lakshmi and Mr.Soundararajan got down from the car and they carried two big suitcases into the house of the former Rasipuram Town Secretary, and based on his complaint a Central Election Squad also came to the spot, but it is not known whether any amount has been seized from them. Merely because some suitcases were taken inside the house of the Town Secretary, it cannot be assumed that it contained money and that the said money has been given to the party functionary for distributing the same to the voters. Hence, this allegation is also very vague and not substantiated.

22. That apart, another allegation regarding distribution of biriyani to 300 voters by the brother and sister of the first respondent is concerned, except the oral evidence of P.W.1 that one voter Mr.P.S.D.Ravi informed him about the same there is no other evidence. The election petitioner has also not examined the said Mr.P.S.D.Ravi to substantiate the same. Thus, except the said oral evidence of P.W.1 which is only hearsay there is no other evidence available to corroborate his evidence and hence the said allegation is also not substantiated.

23. Arguments have been advanced by the learned counsel appearing for the election petitioner that the first respondent / returned candidate has spent more than the prescribed limit in violation of Section 123(6) r/w Section 77 of the Representation of People Act. Absolutely there is no material placed before this Court showing the details of expenses incurred by the first respondent to show that the first respondent has spent more than the prescribed limit. The learned counsel for the petitioner would submit that applications were filed under RTI seeking for particulars, but no further steps have been taken to get a copy of

the accounts details submitted by the first respondent. Hence, the said allegation is also not sustainable.

24. The petitioner has relied upon newspaper reports to corroborate his allegations mainly from Dinakaran Tamil daily, which allegedly supports the petitioner's political party. Now, it is well settled that a statement of fact contained in a newspaper is only hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. The Hon'ble Supreme Court in **Quamarul Islam Vs. S.K.Kanta** reported in **1994 Supp (3) SCC 5** in paragraph 48 has held as follows:

"48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, PW4 by itself cannot amount to proving the contents of the newspaper

reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act.....”

Hence the petitioner cannot rely upon newspaper reports in the absence of examining the Reporter or the Editor to that effect.

25. As already stated to prove the charges of corrupt practice in an election petition, the proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the onus is on the person who brings forth that charge to prove it by leading reliable, trustworthy and satisfactory evidence and the Election cannot be set aside on mere possibilities, unless the allegation of corrupt practices are satisfactorily proved, election of the returned candidate cannot be set aside.

26. In the instant case, the evidence is hopelessly wanting. The petitioner has come out with vague pleadings in his election petition and absolutely there is no substantial evidence to

substantiate the allegation of corrupt practice. With the available evidence on record, it is not possible to connect the first respondent with any of the corrupt practices alleged in the election petition. The election petitioner has miserably failed to prove the allegations made in the petition with clear and cogent evidence. Hence the issue Nos 1 and 2 is decided against the election petitioner.

27. As far as issue No.3 is concerned, the election petitioner has failed to prove that any corrupt practices has been committed by the first respondent or her election agent or that the corrupt practice has been committed at the instance of the first respondent. That apart, there is no material available on record to prove that there is any non-compliance, or any violation of the provisions of the Representation of the People Act. As the petitioner has miserably failed to prove that the first respondent has committed any corrupt practice in the election, the election of the first respondent cannot be set aside on the allegation of corrupt practice. Hence issue No.3 is decided in favour of the first respondent.

28. An application in O.A.No.712 of 2018 has been filed seeking to amend the verification affidavit in paragraphs 1, 2, A to U in Form 25 along with the election petition. Under Section 83(1) of the Act, the election petitioner who alleges corrupt practices has to file an affidavit in the prescribed form, in Form 25, under Rule 94(a) of the Conduct of Election Rules, in support of the allegation of such corrupt practices and other particulars thereof. According to the petitioner, at the time of filing of the election petition some of the allegations, which found place in the election petition has not been included in the affidavit and hence filed the above application to amend the verification affidavit. The said application has been opposed by the first respondent by filing a counter affidavit. Considering the fact that it is only a minor defect and for that the election petition should not suffer a dismissal. The Hon'ble Supreme Court in **Umesh Chaliyill Vs. K.P.Rajendran** reported in **(2008) 11 SCC 740** in paragraph 12 has held as follows:

"12. Both the defects which have been pointed out by learned Single Judge were too innocuous to have resulted in dismissal of the

election petition on the basis of the preliminary objection. The Courts have to view it whether the objections go to the root of the matter or they are only cosmetic in nature. It is true that the election petition has to be seriously construed. But that apart the election petition should not be summarily dismissed on such small breaches of procedure. Section 83 itself says that the election petition should contain material facts. Section 86 says that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117. But not of defect of the nature as pointed out by the respondent would entail dismissal of the election petition....."

In the above circumstances, I am inclined to allow the application permitting the petitioner to amend the verification affidavit.

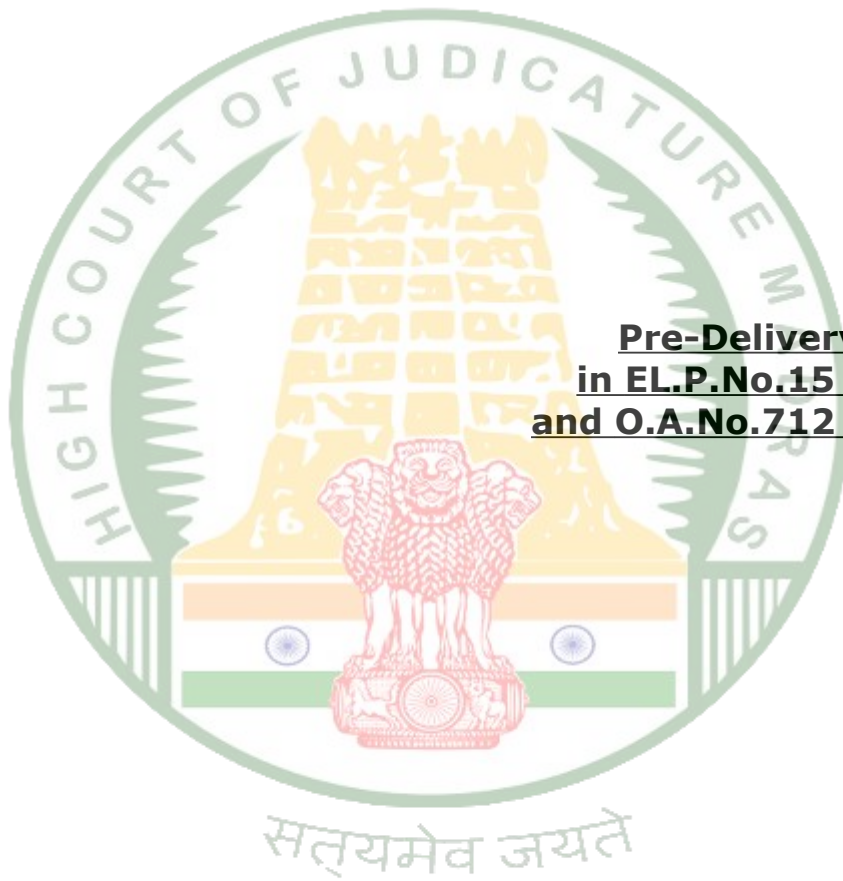
29. In the result, this Court finds no merit in the election petition and it deserves only to be dismissed and accordingly dismissed. No costs.

22.01.2020

Index : Yes / No
Internet: Yes / No
kk

V.BHARATHIDASAN, J.

kk



Pre-Delivery Order
in EL.P.No.15 of 2016
and O.A.No.712 of 2018

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RESERVED ON : **27.09.2019**

DELIVERED ON : **22.01.2020**