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O.A.No.668 of 2021 in  
Elp.No.5 of 2021

**O.A.No.668 of 2021**  
**in**  
**Election Petition No.5 of 2021**

**M.SUNDAR, J**

Captioned main Election Petition (main ELP for brevity) has been presented in this Court *inter alia* under Section 81, 77, 100, 123 and 129 of The Representation of People Act, 1951 (Act 43 of 1951) [hereinafter 'RP Act' for the sake of convenience] on 18.06.2021 by an unsuccessful candidate qua '103, Perundurai Assembly Constituency' [hereinafter 'said constituency'] in Erode Revenue district, Tamil Nadu in General Elections 2021 to the Tamil Nadu Legislative Assembly i.e., 16<sup>th</sup> legislative assembly.

2.In the main ELP, there are 8 respondents in all. The unsuccessful candidate shall hereinafter be referred to as 'election petitioner', 'Returned candidate' is arrayed as first respondent and other five unsuccessful candidates have been arrayed as respondents 2 to 6, the Returning Officer of the said constituency and Chief Electoral Officer of Tamil Nadu have been arrayed as respondents 7 and 8 respectively.



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

WEB COPY 3. In this order, from here on and hence forth, the parties will be referred to by their respective ranks in the main ELP for the sake of convenience and clarity. This means that two applicants will be collectively referred to as 'election officers' solely for the sake of convenience. The first respondent shall be referred to as 'election petitioner', the second respondent shall be referred to as 'Returned Candidate' and respondents 3 to 7 shall be referred to as 'unsuccessful co-contestants'.

4. Captioned application has been taken out by the election officers with a prayer to strike of/delete the election officers i.e., respondents 7 and 8 in the main ELP.

5. Captioned application was heard out today. Mr. Niranjana Rajagopalan of M/s. G.R Associates [Law Firm] for the election officers, Mr. K. Sasindran, learned counsel for the election petitioner and Mr. Irfan Sherif, learned counsel on record for the Returned Candidate are before this Court. To be noted, the unsuccessful co-contestants who have been duly served in the main ELP have not chosen to come before this Court. This means that the



O.A.No.668 of 2021 in  
Elp.No.5 of 2021

WEB COPY

unsuccessful co-contestants have not chosen to participate in this election petition. In this view of the matter, captioned application was heard out.

6.In support of prayer for deletion, learned counsel for election officers made two submissions and broadly they are as follows:

(a) Election Officers are not 'proper parties' as there is no concept of 'proper party' in Election Petitions and it is clearly outside the statutory perimeter of an Election Petition under RP Act. In support of this argument, three case laws were pressed into service i.e.,

1. ***Jyoti Basu and Others v. Debi Ghosal and Others*** reported in ***(1982) 1 Supreme Court Cases 691.***
2. ***B.Sundara Rami Reddy v. Election Commission of India and Other*** reported in ***1991 Supp (2) Supreme Court Cases 624.***
3. ***Michael B.Fernandes v. C.K.Jaffer Sharief and Others*** reported in ***(2002) 3 Supreme Court Cases 521.***



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

WEB COPY

(b) The role of the election officers is only to assist this Court.

7.In response to the aforementioned argument of the learned counsel for the election officers, learned counsel for the election petitioner made two submissions and they are as follows:

(a) There is no bar, much less statutory bar under the RP Act for adding the election officers and in this view of the matter Sections 82 and 86(4) of the RP Act are only enabling provisions.

(b) The grounds on which the election petition is predicated turns largely on the counting process and therefore, the presence of election officers is imperative.

8.Learned counsel for the Returned Candidate on instructions submitted that he is not opposing the prayer for deletion . This submission is recorded. Learned counsel has also made an endorsement in this Court and scanned reproduction of the same is as follows:



WEB COPY



O.A.No.668 of 2021 in  
Elp.No.5 of 2021

29/08/2022

No Objection regarding  
the deletion of the  
petitioner in the present  
application in the Main  
Election Petition  
ELP NO. 5/2021

A. J. Irfan Sheriff  
COUNSEL FOR 2<sup>nd</sup> Respondent  
in O.A. 668/2021



O.A.No.668 of 2021 in  
Elp.No.5 of 2021

WEB COPY

9.As regards the first point, it is necessary to advert to the three case laws that were pressed into service. Before advertng to the case laws, this Court reminds itself of the declaration of law made by a Hon'ble constitution bench in the celebrated ***Padma Sundararao Case viz., Padma Sundara Rao Vs. State of Tamil Nadu reported in (2002) 3 SCC 533***. The most relevant paragraph is paragraph 9 and the same reads as follows:

*'9.Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]]. Circumstantial flexibility, one additional or different fact may make a world of difference between*



O.A.No.668 of 2021 in  
Elp.No.5 of 2021

WEB COPY conclusions in two cases.'

10. Therefore, this Court deems it appropriate to refer to the case laws after setting out the facts as could be culled out from the case laws placed before this Court from SCC journal.

11. As regards *Jyoti Basu and Others v. Debi Ghosal and Others* reported in (1982) 1 Supreme Court Cases 691, the unsuccessful candidate sought to dislodge the Returned Candidate from the Barrackpore Parliamentary Constituency in the mid-term parliamentary election held in January 1980. In this election petition, the election petitioner impleaded several respondents in addition to the Returned Candidate and the unsuccessful co-contestants. The parties so added included Hon'ble Chief Minister and two other Hon'ble Ministers. The Electoral Registration Officer was also added. A careful perusal of the facts make it clear that the election petition in *Jyoti Basu* case is predicated on alleged corrupt practices which is clearly different qua case on hand. Therefore, *Jyoti Basu* case is clearly distinguishable facts. In this regard, this Court also notices that in various



O.A.No.668 of 2021 in  
Elp.No.5 of 2021

WEB COPY

portions of the judgment, the Hon'ble Court had taken the view that public persons of the stature of Chief Minister of a State and political leaders of national dimension cannot be casually and spitefully brought in on the basis of seemingly plausible allegations.

12.This takes us to the next case law viz., ***B.Sundara Rami Reddy v. Election Commission of India and Others*** reported in ***1991 Supp (2) Supreme Court Cases 624***. In ***B.Sundara Rami Reddy*** case, it appears that validity of an order made by the Election Commission declaring the polling at one particular polling station as void and directing re-poll appears to have been challenged. It is not clear as to whether this is a stand alone challenge or a ground on which the election petition was predicated. In this view of the matter also ***B.Sundara Rami Reddy case*** is distinguishable qua facts if read in the context of ***Padma Sundararao Case*** declaration of law.

13.This takes us to the next case law viz., ***Michael B.Fernandes v. C.K.Jaffer Sharief and Others*** reported in ***(2002) 3 Supreme Court Cases 521***. In ***Michael B.Fernandes*** case, the facts are not readily available.



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

WEB C  
However, this Court took it upon itself to examine the order dated 05.02.2004 passed by Hon'ble High Court of Karnataka out of which the case arises. In the light of the submissions made by the then learned counsel for the election commission which has been captured in paragraph 3, it comes to light that the allegations made against the Returned Candidate have nothing to do with the election officer or returning officer. Though the order itself is not available, a perusal of some of the proceedings as culled out from the official website brings to light that it turns on a larger question of use of EVMs itself.

14.As all the three case laws pressed into service are clearly distinguishable on facts, suffice to say that these case laws do not come to the aid of the election officers and this takes this Court to the next argument that the election officers are only to assist this Court. This Court deems it appropriate to deal with this argument at the fag end of this order.

15.The argument of the learned counsel for the election petitioner is that there is no bar much less statutory bar under the RP Act. There is no



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

difficulty in accepting this submission that there is no statutory bar. The scope of Sections 82 and 86(4) have been interpreted in a particular manner. In the case on hand, it may not be necessary to go into that aspect of the matter and it would be appropriate to leave it open. It can be decided in a case where the decision qua such legal tussle becomes imperative for answering the question that falls for consideration.

16.A careful perusal of the main ELP brings to light that it is largely predicated and mainly posited on the counting procedure adopted by the election officers. The crux and gravamen of the ground on which the main ELP is predicated is that on the date of counting there was difference which is described as 'mismatch' qua the numbers given to VVPAT machines and the one given on the date of polling. A careful perusal of the election petition also brings to light that according to the election petitioner the alleged discrepancies in VVPAT/EVM units and the votes thereat add upto 28,706 votes whereas the difference of margin by which the Returned Candidate emerged successful is only 14,507 votes. Therefore, if the election petitioner succeeds in establishing his allegations it may well be possible to say that it



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

WEB COPY

has material effect on the outcome. Further, this Court deems it appropriate to make it clear that scope of the application does not warrant expression or opinion on this aspect of the matter.

17.Owing to the crux and gravamen on the ground on which the main ELP is predicated, this Court is of the considered view that the election officer in any case and their records/devices and deposition (if necessary) will become imperative for deciding the ELP. If the deletion prayer is answered in the affirmative, then it may be necessary to resort to subpoena or other summoning process which can turn out to be cumbersome and time consuming. In this view of the matter, this Court reminds itself of sub-section 6 of Section 86 of RP Act which says that the trial of an election petition shall so far as practicable be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.

18.Therefore, this Court deems it appropriate to order the captioned application by neither allowing nor dismissing the same but by saying that



O.A.No.668 of 2021 in  
Elp.No.5 of 2021

WEB COPY

the election officers namely the respondents 7 and 8 in the main ELP will continue to remain as respondents 7 and 8 but as Eo nomine/formal parties. This means that there will be no prayer against the election officers and likewise the election officers also will not make any prayers. It is open to the election officers to respond to the allegations on which the main ELP is pivoted. Though obvious, it is made clear that the election officers shall come before this Court to depose/produce records as and when called for when the trial progresses.

19.This Court is informed that in the main ELP, the 7<sup>th</sup> respondent has been wrongly described as '**Returning Officer, No.103, Perundurai Assembly Constituency cum District Supply Officer, Namakkal District**' and that it should read as '**Returning Officer, No.103, Perundurai Assembly Constituency cum District Supply Officer, Erode District**'. If that be the case, it is open to the election petitioner to take out a suitable amendment application and if it is done, the same will be dealt with on its own merits and this order will not come in the way.



WEB COPY



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

20.Captioned application disposed of in the aforesaid manner. There shall be no order as to costs.

**29.08.2022**

pgp

**(2/2)**



WEB COPY



*O.A.No.668 of 2021 in  
Elp.No.5 of 2021*

**M.SUNDAR, J**

pgp

**O.A.No.668 of 2021**

**in**

**Election Petition No.5 of 2021**

**Dated : 29.08.2022**

**(2/2)**