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O.A.No.825 of 2021

O.A.No.825 of 2021
in
E.L.P.No.03 of 2021

C.V.KARTHIKEYAN, J.

Heard both sides.

2. The matter had been listed under the caption 'for being mentioned today'.

3. The original paragraph 69 is re-numbered as paragraph No. 70.

4. With respect to paragraph No.40 in the Election Petition, the words “*with consent knowledge, instruction and authorisation of*”, are struck off. That aspect is also incorporated in paragraph No.72.

5. In paragraph No. 47, the words in para 12 “*acting under the consent, knowledge, instructions and authorization and cost of the 1st respondent*”, may be deleted.

6. In Para 18 the statement “*his chief election agent and his booth agents along with AIADMK party workers acting under the consent knowledge, instructions and authorization of the 1st respondent...*”, has to be struck off and “In para 20 ...*with his consent, knowledge, instruction and*



authorization...” have to be struck off. I would place a burden to prove the statements on the petitioner.

7. Paragraph No. 68 relating to paragraph No. 39 of the Election Petition is re-numbered as paragraph No. 69 and the words “*with the consent knowledge, instruction and authorisation of the 1st respondent*” are struck off.

8. The paragraph No. 70 is re-numbered as paragraph No.71.

9. The paragraph No.70 which is again given is renumbered as paragraph No.72 and is replaced with the following:-

72. In the result, the following sentences/portions in the following paragraphs are directed to be struck off:-

In para 9:

“(i). *that the 1st respondent has violated the various provisions of the Representation of People Act, 1951 various orders issued by Election Commission of India and rules contemplated under the conduct of election rules, 1961 as well as the rules contained in the hand book for returning officers which has thus materially affected the results of the election of the*



1st respondent and has hampered the prospectus of the petitioner as a winning candidate. Since the 1st respondent while contesting the elections was the State Minister for Health and Family Welfare, the entire government machinery, government servants were working and rendering assistance for the furtherance of the prospects of the 1st respondent's election. After polling and during storing of the control units and EVM's in strong rooms they were tampered and during counting also the assistance was given in such a manner that all the illegalities were blindly turned down by the 25th respondent in order to favour and declare the results in favour of the 1st respondent as the elected candidate.

(ii). In para 10, “the petitioner humbly states that the 1st respondent was highly unpopular due to his tainted image during his tenure as the Health Minister. His association with the banned item “Gutka” manufacturers is well documented and is in public domain especially though the search and seizure conducted by the Income Tax Department. His nexus with sand mafia is also well known. This is evident due to the fact that in the Writ Petition filed by one J.Anbalagan MLA in W.P.No.19335 of 2017 seeking the transfer of investigation to CBI, the Income Tax Department has filed a counter affidavit implicating the 1st respondent in receipt of the bribe from the hawala dealer, Mr.Madhav Rao amounting to Rs.56 Lakhs. Considering the involvement of 1st respondent and others to instill confidence in the mind of public, the



Hon'ble First Bench transferred the investigation to CBI by order dated 26.04.2018 and same was confirmed by Hon'ble Supreme Court by its order dated 18.05.2018. However till today the CBI has not filed any final chargesheet in the Gutka Scam. However the role of the 1st respondent in receiving the bribe money from the manufactures of Gutka is clearly captured by the Income Tax Department in various documents seized by it. More so when the 11 RK Nagar Bye election was fixed on 12th April 2017, based upon the search and seizure of various documents and evidences for having disbursed Rs.89 Crores to the voters for the RK Nagar constituency bye-poll, at the official residence of the 1st respondent at Greenways Road by the Income Tax Department the by elections scheduled to be held in 12th April 2017 was rescinded. The mishandling of Covid 19, purchase of various medical equipments, kits etc. at inflated rates when 1st respondent was Health Minister is also well documented and is available in public. Therefore the 1st respondent had a tainted image and had no face to meet the people of this constituency.”

(iii). In para 11, “the 1st respondent after being named as the AIADMK candidate for the 179-Viralimalai Assembly Constituency, the 1st respondent was afraid that he will be rejected by the people of Viralimalai Assembly Constituency, particularly after witnessing the popularity, affection and support of the people for the petitioner, as candidate of the DMK party. Therefore, out of fear that he will be soundly defeated by the



petitioner, the 1st respondent and under his consent, knowledge, instructions and authorization and cost, his agents and party workers indulged in various corrupt practices including but not limited to bribery of voters, offering illegal gratification to the voters such as 1. Rice, 2. Groceries, 3. Vegetables, 4. Pooja Lamp, 5. Brass Vessel, 6. Dhoti & Sarees and 7. Cash to the tune of Rs.2000/- and Rs.5000/-, apart from using the official machinery of the state including government servants including panchayat clerks for campaigning and has also violated various provisions of the Representation of the People Act, 1951 and the Conduct of Election Rules, 1961, Hand book of procedures meant for candidates and Returning Officers. It is submitted that the corrupt practices committed by the 1st respondent, his Chief Election Agent one Mr.V.Ramasamy residing at Mathiyanallur, Annavasal Post, Illupur Taluk, Podhukottai District, agents and party workers of 1st respondent are with the consent, knowledge, instructions and authorization and cost of the 1st respondent, but for which the petitioner would have been elected.”

(iv) “including offering of illegal gratifications, obtaining, procuring with the consent of the 1st respondent, assistance for the furtherance of the prospects of the 1st respondent, usage of official machinery for campaigning in violation to the provisions of the RP Act, 1951, Conduct of Election Rules, 1961 as well as the handbook of procedures meant for candidates and returning officers.”



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(v). In para 12, *“acting under the consent, knowledge, instructions and authorization and cost of the 1st respondent.”* In para the last portion is that *“therefore these cards prove beyond doubt that the party workers on the 1st respondent, under the consent, knowledge and direction of the 1st respondent distributed these cards to each and every voter and through them goods and money for the purpose of offering illegal gratification to the voters to vote for the 1st respondent. These items mentioned in the card were delivered as illegal gratification to the voters by the agents and party workers acting under consent, knowledge, instructions and authorization and cost of the 1st respondent to secure votes in his favour.”* *“...with his knowledge, consent, cost which he hasn't disowned..”* The further statement between the two tabular columns is *“in order to illegally obtain votes in favour of the 1st respondent along with the name of the persons who distributed the illegal gratification of Rs.2000/- to the voters”*. The end of para No. 12 is *“Copies of above said cards distributed by the agents and party workers of the 1st respondent, acting under his consent, knowledge, instructions and authorization and cost are filed along with this petition as document which may be treated as part and parcel of this petition. The items of articles were distributed door to door to each and every voter on the basis of the respective card number in the 179- Viralimalai Assembly Constituency from 12.03.2021 onwards till 06.04.2021. The petitioner's party workers and his agents whose name*



is given in the tabular column saw the aforesaid distribution done by the chief agent and party workers of the 1st respondent on the date and time mentioned in the tabular column. The details of persons who distributed and to whom it was distributed is also mentioned in the tabular column.”

(vi). In para 13, *“with the knowledge and consent of the 1st respondent”*,

(vii). In para 14, *“...his chief election agent and his booth agents along with AIADMK party workers acting under the consent, knowledge, instructions and authorization and cost of the 1st respondent printed, published and circulated throughout the constituency”, and “....It is submitted that this card played a vital in the election as the female voters are very much attracted with the assurance of providing LED TV and gold jewelry and as such the assurance of this illegal gratification made to be delivered in view of the fact the 1st respondent has already offered variety of articles as per the other card mentioned in the above paragraph. It is also to be noted that the full name and address of the printer of this card is not depicted in the card. These cards were distributed by the party workers of the 1st respondent near to the date of polling, with the knowledge, consent and direction of the 1st respondent...” have to be struck off. Since the petitioner cannot place statements on record denigrating 'female voters'.”*



(viii). In para 15, *“Thus, these cards apart from the fact that they were used to distribute illegal gratification to the voters, which secured votes in favour of the 1st respondent, were not revealed in the election expenditure”*.

(ix). In para 16, *“ which were done with the knowledge, consent of the 1st respondent”*.

(x). In para 18, *“ his chief election agent and his booth agents along with AIADMK party workers acting under the consent knowledge, instructions and authorization of the 1st respondent..., has to struck off and “In para 20 ...with his consent, knowledge, instruction and authorization...”*

(xi). In para 23, *“...and with his consent, knowledge, instruction and authorization...”*

(xii). In para 26, the following sentences will have to be, therefore, struck off namely *“The petitioner humbly submits that the 1st respondent was subjected to several income tax raids by the Income Tax Department including search and seizure action on 07.04.2017 based upon which the bye-elections to the 11 RK Nagar Constituency elections which was stated*



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to be held on 12.04.20217 was rescinded on 09.04.2017 by the Election Commission of India. The order dated 9.4.2017 of the ECI may be read as part and parcel of this petition. The conduct and character of the 1st respondent is clearly described at paragraph 12 of the ECI order wherein it is clearly concluded that the 1st respondent in the main person involved in bribing the voters in RK Nagar Assembly constituency which was going to bye-polls on 12.4.2017 and that during the raids of 1st respondent's residence incriminating documents were seized from his accountant Srinivasan indicating distribution of Rs.89 crores to number of AIADMK politicians for further distribution among the voters. On the date of raid a sum of Rs.5 crores was seized from 1st Respondent's confidantes from his native place and this is also found in the order of ECI dated 9.4.2017. The proceedings of Election Commission dated 18.4.2017 nails the involvement of the 1st respondent and infact in the complaint dated 21.4.2017, the Returning Officer of 11 RK Nager constituency by his letter number RDC(N)C No.R3/1981/2017 has referred to search and seizure of certain incriminating documents during raids conducted in the residence of the 1st respondent and seizure of documents involving him which lead to



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an offence punishable under Section 171 E of IPC. This has lead to filing of FIR in crime No.583 dated 27.04.2017 in PS Abiramapuram against unknown persons. The DMK candidate Mr.Marudhu Ganesh has filed W.P.No.27876 of 2017 seeking for a CBI inquiry as the real accused including the 1st respondent were not proceeded with and same is pending on the file of this Hon'ble Court. Infact based on the said raids, the 1st respondent's association with Shri J. Sekar Reddy, and Shri Srinivasulu of SRS Mining and Shri. Madhav Rao, Mohammed Abdullah, M/s. Gridline Surveys Geospatial Pvt.Ltd., R.Gopalakrishnana, R.Vekatesan was found by the Income Tax Department and the 1st respondent's name was correspondingly found in the books of accounts of the above said persons.”

(xiii). In para 32, “.... under the influence of the 1st respondent.....”.

(xiv). In para 34 “... which he has done under the influence of the 1st respondent who was the then sitting Minister of Government of Tamil Nadu...”

(xv). In paragraph 37, “ with the consent knowledge, instruction and



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authorisation of the 1st respondent....”

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(xvi). ”In para 38, *“the consent, knowledge, instruction and authorisation of”*

(xvii). In para 39, *“with the consent, knowledge, instruction and authorisation of.”*

(xviii). In para 40, *“...with the consent, knowledge, instruction and authorisation of.”*

(xix). In para 43 (a) the statement *“...with the consent, knowledge, instruction and authorization of...”*

(b) *“...with the consent, knowledge, instruction, and authorization of..”* have to be deleted.

73. In the result, the application stands partly allowed. No costs. ***Registry is directed to carry out necessary amendment in the Election Petition and in the earlier order copy.***

19.12.2022

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