



E.L.P. No.10/2021

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
20.11.2023	22.12.2023

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

E.L.P. NO.10 OF 2021

AND

APPLN. NOS.620 OF 2021 & 632 OF 2022

S.K.Vetharathinam

.. Petitioner

- Vs -

1. O.S.Manian
2. R.Panneerselvam
3. P.S.Arumugam
4. K.Rajendran
5. Dr. T.Sundaravadivelan
6. Mohamed Ali
7. R.Ramamurthy
8. T.Ramajayam
9. R.Kathirvel
10. P.V.Theenathayalan
11. V.Veerakumar
12. The Election Commission of India
Rep. By its Chief Election Commissioner
Nirvachan Sadan, Ashoka Road
New Delhi 110 001.



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13. The Chief Electoral Officer, Tamil Nadu
Election Commission of India
Public (Elections) Department, Secretariat
Fort St. George, Chennai 600 009.

14. The District Collector-cum-
District Returning Officer
District Collector Office
Nagapattinam District
Tamil Nadu 611 003.

15. The Returning Officer
165-Vedaranyam Assembly Constituency
Vedaranyam Taluk, Nagapattinam Dist.
Tamil Nadu 614 810.

16. D.Dhuraimurugan

17. DRO-cum-Election Nodal Officer
165-Vedaranyam Assembly Constituency
Vedaranyam Taluk, Nagapattinam Dist.
Tamil Nadu 614 810.

.. Respondents

(RR-12 to 15 & 17 struck off as
Respondents from ELP as per order of
Court dated 14.12.2021 in OA 638/2021)

Election Petition filed under Sections 80, 80A, 81, 84 r/w Sections 77, 78,
100, 101, 123, 126, 127-A & 129 of the Representation of People Act, 1951 r/w
the Conduct of Election Rules, 1961.



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For Petitioner : Mr. Richardson, for
M/s. Wilson Associates

For Respondents : Mr. T.V. Ramanujun, SC, for
M/s. B. Arvind Sreevatsa for R-1
No Appearance for RR-2 to 11 & 16

ORDER

The hallmark of democracy is the conduct of free and fair elections. Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done, but must also seem to be done; similarly, elections should not only be fairly and properly held, but also seem to be so conducted as to inspire confidence in the mind of the electors that everything has been done aboveboard and has been done to ensure free elections. The Representation of Peoples Act (for short 'the Act') envisages the manner in which the elections should be conducted, from the time of its announcement to the declaration of results.

2. Once an election is notified, it shall not be stalled by any authority, even be it the Court, except in exceptional circumstances and upon the declaration of



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results, the parties, who were the candidates in the election, could have their grievance ventilated only through an election petition by following the rigours of trial. The test on the conduct of free and fair elections being a test on the mandate of the people in the choice of their candidate, necessarily, it is incumbent upon all concerned, be it the winner and the losers, who have lost in the election and also any other aggrieved party to challenge the election at an early date and it is also for the Court to render its verdict at an early date, which alone would strengthen the confidence of the voters in the democratic process. Therefore, it becomes necessary for all the stakeholders in the election petition to rein in all their resources to complete the case, so that the election process attains finality, else, it would be nothing but disrespecting the mandate of the people mandate.

3. Each and every day, a returned candidate holds the post as a Member of the Legislative Assembly, upon being declared successful in the election, which is put to test, his election is shrouded with suspicion and, therefore, it is the duty of the Court to render its verdict on the election process at an early



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date, which would only be the way the Court recognizes and approves the Will of the people as the supreme power in the democracy.

4. The present case is one, which is the off-shoot of the General Elections to the 16th Tamil Nadu Legislative Assembly, 2021 (for short 'the elections'). Notification for the elections were notified on 26.02.2021 by the Election Commission of India. The schedule for the elections so notified is as hereunder :-

Commencement of Nominations	12.03.2021
Last Date for filing Nominations	19.03.2021
Date for scrutiny of Nominations	20.03.2021
Last Date for withdrawal of candidature	22.03.2021
Date of Poll	06.04.2021
Date of counting and declaration of results	02.05.2021

5. The petitioner was sponsored by the recognized political party, viz., Dravida Munnetra Kazhagam (for short 'DMK') for No.165-Vedaranyam Assembly Constituency, Nagapattinam District to contest under the symbol 'Rising Sun'. The petitioner, including the various respondents filed nomination on the appropriate dates, which were accepted by the Election Commission and they were permitted to contest under the various symbols allotted to them.



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6. It is the case of the petitioner that elections to the 234 constituencies including 165-Vedaranyam Constituency on 6.4.2021 and the 1st respondent was declared as the returned candidate on 2.5.2021, wherein the petitioner was said to have secured 66,390 votes as against 78,719 votes secured by the 1st respondent and the margin of victory being 12,329 votes.

7. It is the case of the petitioner that the election of the 1st respondent to 165-Vedaranyam constituency (for short 'the constituency') is liable to be declared as void on the ground of corrupt practices defined u/s 123 of the Representation of People Act (for short 'the RP Act').

8. It is the case of the petitioner that the 1st respondent flouted and violated many of the provisions of the RP Act and Conduct of Election Rules and various notifications issued by the Election Commission of India, which materially affected the result of the elections and hampered the prospects of the petitioner to win the elections. It is the further case of the petitioner that the 1st respondent, at the material point of time, being the Minister for Ministry of



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Handlooms and Textiles, Government of Tamil Nadu, the entire Government machinery and Government servants were rendering assistance for furthering the prospects of the 1st respondent in the elections and all the illegalities committed by the 1st respondent were blindly turned down by the election authorities, which materially affected the elections.

9. It is the further case of the petitioner that upon being named as the candidate for AIADMK in the constituency, out of fear that he would be turned down by the Will of the people and the prospect of the petitioner winning the election looming large, with the consent, knowledge, instruction and authorisation of the 1st respondent, the AIADMK Town Secretary, Mr.Namachivayam and the agents and party workers of AIADMK party indulged in various corrupt practices in offering illegal gratification to the voters by distributing cash to the tune of Rs.2000/- and also Horlicks bottle, worth about Rs.240/- throughout the constituency from 25.3.2021 to 2.4.2021, when the Model Code of Conduct was in force and also distributed silk saree and cash to the tune of Rs.5000/- on the day of polling and also used the official machinery in achieving this object.



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10. It is the further case of the petitioner that booklets with photographs of the 1st respondent along with photographs of the former Chief Minister as well as Former Deputy Chief Minister and Former Chief Minister and General Secretary of AIADMK party were printed, published and circulated throughout the constituency. It is the further case of the petitioner that each booklet contains 54 pages with dimension of 20.6 cms x 13.3 cms. approximately costing Rs.200/- per booklet, carrying colour photographs of the party leaders and the erstwhile chief ministers. It is the case of the petitioner that these booklets were distributed as a manual containing details of the completed plans and developments in the constituency done by the 1st respondent during 2016-2021. However, curiously, the name of the printer and publisher and the number of copies printed are not mentioned in the booklet, which is in violation of Notification dated 25.7.2016. The booklets were distributed through the constituency to approximately 1,92,000 voters, thereby costing about Rs.3,84,00,000/-, but the said amount has been intentionally suppressed in the election expenditure account of the 1st respondent, which is in violation of Section 77 of the RP Act.



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11. It is the further case of the petitioner that the booklets were intentionally distributed from 1.3.2021 to 3.3.2021 in order to deceive the voters and secure their votes in favour of the 1st respondent. It is the further averment of the petitioner that a huge amount was spent towards printing and distributing the booklet, which has not been reflected in the expenditure account of the 1st respondent. The distribution of the booklet not only materially affected the election of the 1st respondent, but is against the provisions of the Act. It is the further averment of the petitioner that on 25.3.2021, a complaint was filed by one M.Anbarasu, advocate of the petitioner with regard to distribution of booklets by the 1st respondent and his agents, which expenditure has been suppressed in the statement of election expenditure and called for enquiry to be conducted and to take appropriate action against the 1st respondent.

12. It is the further averment of the petitioner that the excess expenditure spent by the 1st respondent has materially affected the election of the 1st respondent and it is further averred that had action been taken against the 1st respondent, by initiating enquiry on the complaint, with regard to suppression of



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expenditure, the violations would have come to light, which would have rendered the election of the 1st respondent from being the successful candidate.

13. It is the further averment of the petitioner that the name and address of the printer and publisher and the number of copies printed have also not been mentioned in the book distributed at the instance of the 1st respondent by his agents, acting under his consent, knowledge, instructions and authorisation. It is the further averment of the petitioner that the printing and distribution of the booklets is in violation of the notification dated 25.7.2016 in Ref. No.4/LET/ECI/FUNC/JUD/SDR/2016.

14. It is the further averment of the petitioner that another booklet of 19 pages containing the pictures of the former Chief Ministers and General Secretary of AIADMK party, and the then Chief Minister and Deputy Chief Minister were printed in the booklet and the said booklet also contains the photograph of the 1st respondent and the book was titled “Details of the Patta to be issued to the people residing in temple land as per the order of the then Chief Minister Eddapadi K.Palanisamy”. It is the further averment of the petitioner



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that the cost of the booklet would be roughly Rs.75/- per booklet, in all costing around Rs.5,73,300/-, which amount has also not been accounted under the election expenditure of the 1st respondent. It is the further averment of the petitioner that the aforesaid promise to issue patta to the temple lands is against the decision of this Court in W.P. Nos.17248/2013, etc., dated 4.11.2020. It is the further averment of the petitioner that the above promise is a false promise made by the 1st respondent to the people with an intention to secure votes with the help of Government officials.

15. On 19.3.2021, Mr. M.Anbarasu, Advocate of the petitioner once again made a complaint to the 15th respondent bringing to light the false promises made by the 1st respondent, but no action has been taken against the 1st respondent for suppression of the election expenditure account, which is in violation of Section 77 of the Act.

16. It is the further case of the petitioner that on 9.1.2021, one V.Senthilnathan, made a written request to the Revenue Divisional Officer u/s 6 (1) of the Right to Information Act, seeking information regarding preparation of



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list of people residing in temple lands, who will be issued with patta and the reply in this regard, revealed that no such measures for preparation of list of people to be issued with patta are taken by the HR & CE Department. Thus, the 1st respondent made false promise to issue patta to the people residing in temple lands.

17. It is the further submission of the learned counsel that on the day of polling, when the voters were waiting in the polling booths to cast their votes, the agents of the 1st respondent issued tokens with AIADMK party symbol to each and every voters promising to provide silk sarees, cash of Rs.5000/- and gift hampers after they vote for the 1st respondent and this happened in broad daylight when all the voters were standing in the queue, which act is in clear violation of the Act and also the Model Code of Conduct. It is the further averment of the petitioner that though the said violation was brought to the notice of the flying squad by the Chief Election Agent of the petitioner, which act is a clear violation of Section 123, 130 (a) and (b) of the Act and is a cognizable offence, the said act had materially affected the election of the 1st respondent as



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the tokens and illegal gratification was given to secure votes in favour of the 1st respondent with knowledge, consent and cost to the 1st respondent.

18. It is the further averment of the petitioner that about 50,000 tokens were printed, which cost has been suppressed in the election expenditure and the said printing would have cost atleast Rs.5,00,000/-. The issuance of token and, thereafter the distribution of cash, sarees and other gift hamper had materially affected the election of the 1st respondent and the nominal cost towards the silk sarees, cash and gift hampers would work out to about Rs.47,50,00,000/-. Though the said details have been furnished by the election agent of the petitioner, however, the said amount has not been reflected in the election expenditure account and further the distribution of illegal gratification played a vital role in the election process and for the success of the 1st respondent.

19. It is the further averment of the petitioner that Section 77 of the Act mandates the candidate to maintain separate and correct accounts relating to expenditure incurred by him and his agents with regard to the election and the



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said accounts have to be submitted to the District Election Officer appointed by the Election Commissioner. However, the 1st respondent has not submitted the true and correct accounts as per Section 77 of the Act as he has not disclosed the actual expenditure in printing the aforesaid booklets, tokens and other expenditure, including giving illegal gratification to the voters, as Table 1 under Rule 90 of the Conduct of Election Rules, 1961, provides for a maximum expenditure by a candidate for Assembly Elections in Tamil Nadu at Rs.30,80,000/-. However, the expenditure does not find place in the election expenditure accounts submitted by the 1st respondent and the said act is a corrupt practice under Section 123 (6) of the Act.

20. It is the further averment of the petitioner that an advertisement in the newspaper criticizing the DMK party, running to four pages, was given in the newspaper, but no permission for printing the advertisement has been obtained by the 1st respondent. Further, the cost of the said advertisement, which would roughly be Rs.9,50,000/- has not been reflected in the election expenditure of the 1st respondent. It is the further averment of the petitioner that the newspaper advertisement was placed in the newspapers and circulated on



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5.4.2021, though the closing time for canvassing ended at 7.00 p.m. on 4.4.2021, thereby, the 1st respondent had violated the Model Code of Conduct and the directions of the Election Commission of India and no prior permission was obtained. Based on the complaint given by one Rajalakshmi of Flying Squad, FIR No.169 dated 5.4.2021 came to be registered u/s 143, 341, 188, 269 and 270 IPC and Section 126-B of the Act, which was on the basis of the telephonic information given by Mr.Anbarasu to the Flying Squad Team.

21. It is the further averment of the petitioner that Form 12-D votes pertaining to physically challenged voters and voters above 80 years of age, though was to be secured in the presence of agents of all the candidates, who were contesting in the elections, however, without following the schedule given for collecting the Form 12-D votes, the votes were collected to the exclusion of the agents of the petitioner but with the agent of the 1st respondent. It is the further submission of the petitioner that the agents of the 1st respondent, with his knowledge and consent had distributed Horlicks bottles and cash of Rs.2000/- to the said voters, who had given their Form 12-D votes. It is the further averment of the petitioner that the agents of the 1st respondent took the



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officers in-charge for collecting Form 12-D votes to the residence of the voters, who had received Rs.2000/- and Horlicks bottle to secure their votes in favour of the 1st respondent, which act played a vital role and materially affected the election results in favour of the 1st respondent.

22. It is the further averment of the petitioner that the 1st respondent, who belongs to AIADMK party, during his campaign in Thalaigayar Bazar on 30.03.2021 at about 9.00 p.m., had made certain allegations defaming the petitioner and promoting hate between the community and castes stating that the petitioner is against his own community people. The 1st respondent, had thereby, instilled and promoted hatred and enmity between the people on the ground of caste and community to turn the people belonging to a particular community against the petitioner and other by suggesting that the petitioner is acting against the interest of his own community people, which act is an electoral offence u/s 125 of the Act and had also materially affected the election.

23. It is the further averment of the petitioner that a huge expense had been incurred by the 1st respondent towards wall painting advertisements and



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wall posters by the 1st respondent's agents with his knowledge, consent and authorisation. It is the further case of the petitioner that the wall paintings, other advertisements and flex banners, containing the photograph of the 1st respondent would have approximately costed about Rs.11,77,500/-. Further, a case was also registered for defacing the wall of one Panneerselvam for which an FIR was registered. However, the expenditure incurred for the wall paintings and flex banners have been suppressed in the election expenditure account. Further, political advertisements in the electronic media have also been resorted to by the 1st respondent, which would have cost about Rs.3,15,000/-, which has also been suppressed, which has materially affected the election results.

24. It is the further averment of the petitioner that the agents and party workers of the 1st respondent had distributed cash of Rs.2000/- and Horlicks bottle to every household in the constituency, thereby, incurring a cumulative expenditure of about Rs.13,44,00,000/-, which vitiates the election of the 1st respondents. It is the further averment of the petitioner that the cumulative expenditure incurred by the 1st respondents runs to about Rs.65,13,15,800/-,



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which has been suppressed in the election expenditure and this act vitiates the election of the 1st respondent.

25. It is the further averment of the petitioner that without approval of the Government or any Government Order issued, a new bus-stop and a car shed was opened at the behest of the 1st respondent by the Government Officials, thereby, the Government machinery was used for the purpose of canvassing for the 1st respondent. Further, electricity had been used from the Anganwadi building without obtaining any permission for the election meetings and campaigns of the 1st respondent, thereby misusing the government machinery, which is in violation of Section 100 and 123 (7) of the Act. Further, the 1st respondent, using the Government machinery and officials, had caused hindrance to the election campaign of the petitioner in the conduct of meeting.

26. It is the further averment of the petitioner that if not for the illegal and corrupt acts, perpetrated by the 1st respondent, as detailed above, the petitioner had a fair and bright chance of coming out successful in the election by being declared as the winning candidate. The huge and rampant corrupt acts



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of the 1st respondent had hampered the success of the petitioner and the act of the 1st respondent is a direct affront on the democratic election process, which, if not interfered by this Court, would be nothing but a slur on the democratic process of election and the persons, who had lawfully cast their votes to the petitioner would have had their right defeated. Therefore, the present petition has been filed assailing the election of the 1st respondent.

27. Counter statement has been filed by the 1st respondent, in which it is averred that the allegations contained in the petition, taken on its face value, does not disclose a cause of action, much less the cause of action that is sought to be projected and the present petition is liable to be dismissed *in limine*. It is the further averment of the 1st respondent that the petition does not fulfil Section 83 of the Act as the allegations in the petition are general, vague, false, baseless and the election petition does not contain any material facts or full particulars. It is the further averment of the 1st respondent that the pleading of the petitioner do not fall within the ambit of material facts and the allegation of corrupt practice, as provided u/s 123 of the Act have not been made out.



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28. It is the further averment of the 1st respondent that the allegations relating to corrupt practice pleaded by the petitioner is wholly baseless and vague and that it has hampered the election of the petitioner is wholly erroneous. Further, the allegation that the 1st respondent had misused the government machinery and its officials are also not made out by any materials. It is the further averment of the 1st respondent that the evidence with regard to the petitioner gaining popularity is more based on surmises and conjectures, assumptions and presumptions and not based on any valid materials and, therefore, the same cannot be the basis for the Court to come to any finding in favour of the petitioner.

29. It is the further averment of the 1st respondent that the allegation that the 1st respondent, through his agents had paid Rs.2000/- and given a Horlicks bottle and also paid Rs.5000/- and a silk saree to the voters are wholly denied. Further, the printing of a booklet containing 54 printed pages in different colours, alleged to have approximately cost Rs.200/- per booklet is also denied. It is the further averment of the 1st respondent that there is no material to link the printing and circulation of the booklet with the 1st respondent and the



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allegation that it has been printed and circulated at the instance and authorisation of the 1st respondent is without any material. The allegation that the booklet was printed at a cost of about Rs.3.84 Crores and circulated to all the voters in the constituency is without any basis and it is mere surmise on the part of the petitioner. It is the further averment of the 1st respondent that the allegation of distribution of booklet at the instructions of the 1st respondent is wholly without any basis and material and it is further averred that the 1st respondent has not violated any notification.

30. It is the further averment of the 1st respondent that though in the election petition the petitioner has alleged that as many as five persons had received the booklet, alleged to have been printed and distributed by the agents of the 1st respondent, however, only one booklet alone has been filed, which clearly shows that the names provided in the table in the election petition is created for the purpose of the present case and, there is no material to substantiate the same.



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31. It is the further averment of the 1st respondent that though the alleged distribution of booklet is between 1.3.2021 and 3.3.2021, however, the complaint has been lodged on 25.3.2021, after a period of 21 days from the alleged date of distribution. Further, the names of the persons, who are alleged to have received the booklet are persons belonging to DMK political party and, therefore, it would be unsafe to rely on their statement.

32. It is the further averment of the 1st respondent that insofar as the printing and distribution of booklet containing 19 pages relating to details of patta to be issued is concerned, the expenditure for the said booklet was not included in the election expenditure account of the 1st respondent, as the same was not printed or distributed with the knowledge of the 1st respondent or through the persons, authorised by the 1st respondent. When the 1st respondent has not authorised the distribution of the said booklet, the stand of the petitioner that the said act of issuance of patta relating to temple land is in violation of the orders of this Court, cannot be put against the 1st respondent.



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33. It is the further averment of the 1st respondent that the complaint of Anbarasu dated 19.3.2021 is a fabricated piece of document, as the contents of the letter dated 19.3.2021, marked as Document No.6 and the alleged contents as found in the election petition do not tally with each other, which clearly shows that the allegations are bereft of substantive proof and are invented only for the purpose of the present election petition. Further, the place where the booklet, which is alleged to have been printed by the 1st respondent, had been distributed had not been spelt out by the petitioner, which itself shows that it is only fabricated for the purpose of the present case.

34. It is the further averment of the 1st respondent that the issuance of token to voters, who have cast their votes, are not substantiated by any material particulars and it is fabricated document, created for causing detriment to the 1st respondent. It is further averred that the persons, who are said to be beneficiaries of the said tokens are created for the purpose of the present petition and there are no other materials, which connects the 1st respondent with the tokens.



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35. It is the further averment of the 1st respondent that the distribution of silk sarees and cash to the tune of Rs.47,50,00,000/-, as alleged by the petitioner, is based on mere presumptions and assumptions of the petitioner and the 1st respondent had not revealed anything in the election expenditure for the reason that such sums were not incurred by the 1st respondent. Therefore, mere allegations, without any material connecting the 1st respondent with the same cannot be the basis to allege corrupt practice on the part of the 1st respondent.

36. It is the further averment of the 1st respondent that insofar as the allegation relating to the printing of tokens to the tune of about Rs.5,00,000/-, the said allegation is wholly based on surmises and conjectures and that the 1st respondent had been regularly filing the accounts of the election expenses before the Election Observer, which have been accepted to be correct and, therefore, the said allegations, being bereft of any materials, is wholly baseless and does not merit acceptance.

37. It is the further averment of the 1st respondent that the advertisement alleged to have been printed in the newspapers costing about Rs.9,50,000/- is



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also not borne out by any substantive material connecting the 1st respondent with the same. Further, the allegation with regard to circulation of advertisements along with the next day newspapers dated 5.4.2021 on the basis of which an FIR has been filed is also not established through proper materials. Mere allegation in the absence of any proof as to the complicity of the 1st respondent in the said act cannot be put against the 1st respondent.

38. Similarly, the allegation with regard to procuring of votes in Form 12D to the effect that the party agent of the 1st respondent had taken the same without the accompaniment of the election agent of the petitioner is denied, as the said votes were secured in the midst of the election officials and when all the election agents of the other candidates were present. Likewise, the alleged payment of monetary consideration to the tune of Rs.2,000/- and Horlicks Bottle is also not supported by any materials.

39. It is the further averment of the 1st respondent that the allegation with regard to the 1st respondent promoting enmity on the basis of caste by portraying the petitioner as if he is acting against the interest of his caste and



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community and that the said act is an electoral offence is *ex facie* vexatious and false and there is no material connecting the said allegation with the 1st respondent. Further, the contents of the CD, which is placed on record to establish that the 1st respondent had made statements inciting caste feelings amongst the community members, is not acceptable as an evidence as it does not satisfy the necessities of Section 65B of the Indian Evidence Act and, therefore, is *per se* inadmissible.

40. It is the further averment of the 1st respondent that the allegation with regard to the election expenditure which is excess in respect of wall paintings and flex boards, is wholly an imagination on the part of the petitioner. The amount, which has been arrived at by the petitioner, and alleged as not reflected in the election expenditure is based on the surmise of the petitioner with regard to the same and the same cannot be the basis to claim that the amount has not been reflected in the election expenditure.

41. The 1st respondent further averred that the cost towards the live shows telecasted in television and the broadcasting expenses are not



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attributable to the 1st respondent and in the absence of any specific material placed, the plea that the minimum estimate of expenditure incurred by the 1st respondent to the tune of about Rs.65,12,15,800/- is based on imagination of the petitioner and are not borne out by records and that the non-revelation of the same in the election expenditure cannot be put against the 1st respondent as the surmises of the petitioner cannot be the basis for showing the said amount in the election expenditure, when it has not been incurred by the 1st respondent.

42. It is the further averment of the 1st respondent that all through the election process, the petitioner has not raised any grievance about the expenses incurred by the 1st respondent and only upon declaration of results, being unsuccessful, based on imagination, a vexatious claim is being made by the petitioner attacking the expenditure and alleging corrupt practice by the 1st respondent, which is not substantiated by the petitioner. Further, the involvement of the government officials in the election campaign and drawing of electricity from anganwadi building, which have been alleged by the petitioner have not been established through any documentary evidence and, therefore, the claim of the petitioner with regard to the same does not deserve acceptance.



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Therefore, it is prayed that this election petition is devoid of merits and is not maintainable and, therefore, deserves to be dismissed.

43. At the time of admitting the election petition, the following substantial questions of law were framed for consideration :-

- i) *Whether the election of the 1st respondent from 165-Vedaranyam Assembly Constituency to the 16th Tamil Nadu Legislative Assembly, 2021, is liable to be declared as illegal, ab initio void and set aside?*
- ii) *Whether the petitioner has established the malpractices allegedly committed by the 1st respondent u/s 123 (1)(A)(b), 123 (3-A) and 123 (7) of the Representation of Peoples Act, 1951 which renders the election liable to be set aside u/s 100 (1)(b) and (d)(ii) of the Representation of Peoples Act and whether the said malpractices alleged to have been committed by the 1st respondent have been established before this Court?*
- iii) *Whether the 1st respondent has suppressed the expenditure incurred under various heads in his election accounts, thereby exceeding the permitted election expenditure and, thus violated Rule 90 of the Code of Conduct Rules r/w Section 77 of the RP Act thereby*



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rendering the election liable to be set aside u/s 100 (1) (b) & (d)(ii), (iii) and (iv) of the RP Act?

- iv) *Whether the Returning Officer has violated the directions of the Election Commission of India with regard to conduct of polling relating to physically challenged voters, thereby, affecting the election and thus rendering the election of the 1st respondent to be set aside u/s 100 (1) (d) (iii) of the RP Act?*
- v) *Whether the election petitioner is entitled for a declaration declaring the petitioner as being duly elected to the 165-Vedaranyam Assembly Constituency in Tamil Nadu with effect from 2.5.2012?*

44. At the time of trial, the petitioner examined himself as P.W.1 and examined P.W.s 2 to 25 and through the witnesses, Exs.P-1 to P-44 were marked. On the side of the 1st respondent, the 1st respondent examined himself as R.W.1. No documents were marked on the side of the 1st respondent. The records relating to the elections were marked as Exs.C-1 to C-21.

45. Learned counsel appearing for the petitioner submitted that the election expenditure incurred by the 1st respondent has not been properly



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accounted, thereby, there is a clear violation of the provisions of the Act, which, by itself is a corrupt practice, which necessitates this Court to declare the election as void.

46. It is the further submission of the learned counsel that Ex.P-4 booklet had been printed and circulated by the party functionaries and agents on the instructions of the 1st respondent. However, the booklet, Ex.P-4, neither contains the name of the printer/publisher and the number of copies printed, which is a clear violation of the provisions of the Act.

47. It is the further submission of the learned counsel that the expenditure incurred for the printing of Ex.P-4 has not been revealed in the election expenditure relating to the 1st respondent, which is clearly against Section 123 (6) of the Act and, therefore, the act falls within the four corners of corrupt practice, requiring this Court to declare the election as void.

48. It is the further submission of the learned counsel that though the expenditure permitted for the election is about Rs.30 Lakhs and odd, however,



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the expenditure relating to the printing of Ex.P-4 alone runs to about Rs. 3.84 Crores, premising that the cost per book is placed at Rs.200/-, as the booklet has been distributed to all the 1,92,000 voters in the locality.

49. It is the further submission of the learned counsel that the distribution of booklet between 1.3.2021 and 3.3.2021 by the agents of the 1st respondent, under his authorisation, has been clearly deposed by P.Ws.2 and 3, which act of the 1st respondent squarely falls within Section 123 of the Act and would by itself be a corrupt practice to declare the election void, as the expenditure incurred for the said printing has not been reflected in the election expenditure submitted by the 1st respondent.

50. Further, it is the submission of the learned counsel that while the 1st respondent has denied the printing of the booklet in his evidence before this Court, however, the printing of the said booklet, Ex.P-4 has been admitted by the 1st respondent in his statement to the show cause notice before the election authorities, which clearly shows that the present deposition of the 1st respondent runs counter to the statement given by him at the earliest point of



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time. Therefore, the 1st respondent, cannot, at this distant point of time, feign ignorance to the printing of the said booklet, Ex.P-4 and its distribution amongst the voters in the locality.

51. It is the further submission of the learned counsel that the other booklet, Ex.P-6, outlining the grant of patta with regard to the temple lands, which has been printed and distributed by the 1st respondent, through his agents, clearly shows that the temple lands were sought to be divested and patta was to be issued in favour of the persons, who have been shown as beneficiaries, notwithstanding the fact that divesting of temple lands have been deprecated by this Court in its order and no patta could be given in respect of temple lands. However, the said booklet has been printed only to divert the voters and secure their votes, which act, by itself, is a corrupt practice, as it is misleading the voters under the garb of providing them some benefit, which could not be provided.

52. It is the further submission of the learned counsel that on the day of election, viz., 6.4.2021, the agents of the AIADMK party, to which the 1st respondent is attached, had been distributing tokens with the symbol of the



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party, with a promise that those persons, who cast the votes would be provided with a silk saree and cash on their establishing that they had cast their vote. This act has been done with the explicit authorisation of the 1st respondent and P.W.3 had made a complaint about the said act to the flying squad, resulting in the registration of FIR. The act of the 1st respondent in bribing the voters to cast votes either in his favour or against the other persons, who are competing in the elections, is a clear violation of Section 123 (1) of the Act and renders the election of the candidate void.

53. It is the further submission of the learned counsel that advertisements were given in the newspapers, the cost of which has not been reflected in the election expenditure of the 1st respondent, which is a violation of Section 123 (6) of the Act. It is the further submission of the learned counsel that Ex.P-10 is the newspaper advertisement and the expenses towards the same has not been revealed in the election expenditure, which is in violation of Ex.P-12, the notification issued by the election commission.



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54. It is the further submission of the learned counsel that Form 12-D votes were secured by the agents of the 1st respondent in connivance with the government official without the presence of the agents of the petitioner, which is a mandatory condition while securing Form 12-D votes. It is the submission of the learned counsel that without informing the agents of the petitioner, the agent of the 1st respondent had obtained the Form 12-D votes and the voters, as is evidenced from Ex.P-14, who have cast their votes were paid Rs.2,000/- and provided with a Horlicks Bottle, which is nothing but an act of bribery, directly attracting Section 123 (1) of the Act.

55. It is the further submission of the learned counsel that the 1st respondent, in his speech to the public on 30.03.2021, had incited communal hatred amongst the members of a particular community by portraying the petitioner as a person, who has not done any good to the community to which he belongs. The speech of the 1st respondent is nothing but an act of inciting communal disharmony, thereby, would fall within the four corners of corrupt practice as envisaged u/s 123 (3) and (4) of the Act. To substantiate his submission, learned counsel drew the attention of this Court to Ex.P-16, the text



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of the speech given by the 1st respondent and also Ex.P-17, the notification of the election commission on this aspect.

56. It is the further submission of the learned counsel that the expenditure incurred on wall paintings and flex boards have not been properly accounted for by the 1st respondent in his election expenditure. Taking this Court through the various paintings, Ex.P-18 series and also pointing to the complaint given by the various individuals, in whose walls, the paintings have been done, it is submitted by the learned counsel that the said act of the 1st respondent is in gross violation of the Model Code of Conduct and also is in violation of the provisions of Section 123 relating to election expenditure. However, the complaints have not been properly considered by the election commission in relation to the amount spent for the election expenditure, which if considered properly, would have resulted in declaration of the election of the 1st respondent as void and, in turn, the petitioner, being the next successful candidate, would have been declared as the returned candidate.



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57. It is the further submission of the learned counsel that the government officials have been misused by the 1st respondent to garner the votes in the constituency. In support of the above, learned counsel drew the attention of this Court to Exs.P-22, P-23 series, P-24 and P-31 to submit that projects, which have not been approved by the Government have been inaugurated to mislead the general public that due to the efforts of the 1st respondents the projects have been approved, though in actuality the said projects have not been approved, which would be evident from the reply obtained under the RTI Act, viz., Exs.P-34 and P-35. It is the further submission of the learned counsel that this act on the part of the 1st respondent is a corrupt practice to mislead the general public to cast their vote in his favour, which attracts the rigours of Section 123 of the Act.

58. It is the further submission of the learned counsel that the expenditure relating to telecast made in local cable TV by the 1st respondent has not been accounted for in the election expenditure by the 1st respondent, which renders his candidature being successful as void. In this regard reliance is placed on Exs.P-27 to P-29 and P-32. Further, the misuse of electricity of the Anganwadi



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for the election campaign of the 1st respondent, though had been lodged as a complaint/representation by P.W.3 under Ex.P-30, however, no action has been taken by the Election Commission, which clearly shows that the government machinery has been misused for the personal gain of the 1st respondent.

59. It is the further submission of the petitioner that inspite of the fact that canvassing stood closed by 6.00 p.m. on 4.4.2021, however, in a clandestine manner, canvassing in the form of keeping advertisement pamphlets in the newspapers were circulated by the agents of the 1st respondent throughout the constituency, with the approval and on the instruction of the 1st respondent and, thereby, the 1st respondent has violated the notifications issued by the Election Commission as also the Model Code of Conduct, which disqualifies his candidature and, thereby, renders his election in the said constituency as void.

60. In fine, it is the submission of the learned counsel for the petitioner, that there is stark and glaring violations of Section 123 of the Act and the 1st respondent has not only perpetrated corrupt practice, but has not adhered to the Model Code of Conduct and had not followed the Notifications issued by the



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Election Commission from time to time, thereby, the election of the 1st respondent to 165 Vedaranyam Constituency is void and, therefore prays for allowing the present election petition.

61. In support of the aforesaid submissions, learned counsel for the petitioner placed reliance on the following decisions :-

- i) *Dravida Munnetra Kazhagam – Vs – UOI & Ors. (W.P. No.20027/2020 – Dated 17.03.2021);*
- ii) *Shivaji Balaram Baibatti – Vs – Avinash Maruthi Pawar (2018 (11) SCC 652);*
- iii) *Nand Kishore Lalbhai Mehta – Vs – New Era Fabrics Pvt. Ltd. & Ors. (2015 (9) SCC 755);*
- iv) *Bachhaj Nahar – Vs – Nilima Mandal & Anr. (2008 (17) SCC 491);*
- v) *S.Subramaniam Balaji – Vs – State of TN & Ors. (2013 (9) SCC 659);*
- vi) *Arikala Narasa Raddy – Vs -Venkata Raman Reddygari & Anr. (2014 (5) SCC 312);*
- vii) *State of M.P. – Vs – Bansilal Behari (1957 SCC OnLine MP 83);*
- viii) *Arjun Panditrao Khotkar – Vs – Kailash Kushanrao Gorantyal & Ors. (2020 (7) SCC 1);*



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- ix) *Harbans Singh Jalal – Vs – UOI (1997 SCC OnLine P&H 766);*
- x) *Manohar Joshi – Vs – Nitin Bhaurao Patil & Anr. (1996 (1) SCC 169);*
- xi) *Shiv Chand – Vs – Ujagar Singh & Ors. (1980 (2) SCC 197);*
- xii) *Mohinder Singh Gill & Anr. – Vs – Chief Election Commissioner (1978 (1) SCC 405);*
- xiii) *Krishnamoorthy – Vs – Sivakumar & Ors. (2015 (3) SCC 467);*
- xiv) *Indira Nehru Gandhi – Vs – Raj Narain (1975 (Supp) SCC 1);*
- xv) *Common Cause (A Regd. Society) – Vs – UOI & Ors. (1996 (2) SCC 752); and*
- xvi) *L.R.Shivaramagowda & Ors. – Vs – T.M.Chandrashekar (Dead) by LRs & Ors. (1999 (1) SCC 666)*

62. Per contra, learned senior counsel appearing for the 1st respondent submitted that the entire allegation as to the printing of Ex.P-4 and the circulation thereof by the agents of the 1st respondent has not been established by the petitioner. It is the further submission of the learned senior counsel that though the petitioner claims that the booklets were printed by the 1st respondent and distributed through his agents and that the cost of printing is not



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reflected in the election expenditure, yet there is no iota of material to connect the printing of Ex.P-4 to the 1st respondent.

63. It is the further submission of the learned senior counsel that is also no material, except bald allegations from the petitioner, that the agents of the 1st respondent had distributed the books among all the voters in the constituency and that the total cost of printing has been arrived at an imaginary figure of Rs.3.84 Crores. It is the submission of the learned senior counsel that the petitioner has not spoken about the names of the persons, who had distributed the booklet. In the absence of any particulars with regard to the persons, who had distributed the booklets and enquiring them at the time of trial with regard to the distribution of booklets, merely alleging that the persons, who had distributed the booklets are the agents of the 1st respondent is wholly imaginary and is woven only for the purpose of the present election petition.

64. It is the further submission of the learned senior counsel that Section 123 of the Act, in clear and unambiguous terms stipulate that acts should have been done either by the candidate or his agent, with clear and explicit



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authorisation from the candidate. Yet, there is only a mere allegation that there has been authorisation from the 1st respondent, but there is no material to infer and establish that any such authorisation has flown from the 1st respondent to his agents for circulation of any booklet, muchless Ex.P-4. Further, it is the clear and direct answer of R.W.1 in his deposition that he neither has any personal knowledge about the printing and distribution of the booklets nor the distribution of the booklet by persons, who are alleged to be agents of the 1st respondent, under his authorisation. In the absence of the petitioner placing any particular proof with regard to the direct involvement of the 1st respondent and authorising his agents to distribute Ex.P-4, which is further shown to have been printed at the instance of R.W.1, the allegation has no legs to stand.

65. It is the further submission of the learned senior counsel that the printing of Ex.P-4 by the 1st respondent has not been established. There is only a bald allegation that it has been printed by R.W.1 and amount to the tune of about Rs.3.84 Crores have not been shown in the election expenditure. Neither there is any material connecting R.W.1 with the said printing nor there is any



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material to show that Ex.P-4 was distributed at the explicit authorisation of R.W.1.

66. To impress upon this Court on the aforesaid submission, learned senior counsel drew the attention of this Court to the deposition of P.W.1, wherein to a pointed question as to where the booklets were issued and received, there was a hazy deposition by P.W.1 that it was Exs.P-4 and P-6 were issued to each house, viz., 1,92,000 in the entire constituency. Further, P.W.1 has categorically deposed that he has not witnessed the distribution of the booklet, Ex.P-4 and Ex.P-6 in person and that complaint was given by P.W.3, his advocate.

67. It is the further submission of the learned senior counsel that there is no material to infer that the cost of printing a copy of Ex.P-4 is Rs.2,00/- based on which the value has been arrived at Rs.3.84 Crores. Merely on presumption as to the cost of booklet, P.W.1 cannot arrive at a tentative cost when neither the printer, who has printed the booklet has been examined, nor the person, who had placed order for printing has been examined. It is the further



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submission of the learned senior counsel that when the 1st respondent had not printed and distributed Ex.P-4, no occasion arises for the 1st respondent to reflect the imaginary figure arrived at by the petitioner in the election expenditure, as such an expense was not incurred by the 1st respondent.

68. It is the further submission of the learned senior counsel that irrespective of the aforesaid factual position, the person who distributed the booklet, the person, who received it and the person who witnessed it have not been divulged in the election petition, but the allegation is a vague and bald allegation that the 1st respondent, through his agents had authorised the distribution of the booklet to the persons in the constituency and such a vague allegation cannot be the basis to declare the election as void.

69. It is the further submission of the learned senior counsel that though P.W.4 is stated to have received the booklet, Ex.P-4 from one Ilangovan in the presence of one J.Balachandran, who is said to be the relative of P.W.4, however, the deposition of P.W.4 in cross reveals that he belongs to DMK party, as that of the petitioner. Though P.W.4 claims to have received the booklet on 3.3.2021 at



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about 3.00 p.m., however the details of the same have not been found in the tabular column shown in the election petition. It is the further submission of the learned senior counsel that though P.W.1 claims that the booklet was distributed to all the persons in the constituency, yet, except for P.W.4, who belongs to the petitioner party, viz., DMK, no independent witness has been examined to show that such a booklet was distributed by persons, who were authorised by R.W.1. It is therefore the submission of the learned senior counsel that in the absence of examination of any independent witness, who had received the booklet, Ex.P-4 from the agent of AIADMK under the authorisation of R.W.1, alleging that such distribution was under the authorisation of R.W.1 is wholly imaginary and fabricated for the purpose of the election petition.

70. It is the further submission of the learned senior counsel that there is no material placed by the petitioner to show that the cost of printing Ex.P-4 is Rs.200/-. To substantiate the aforesaid submission, learned senior counsel drew the attention to the deposition of P.W.2, wherein to a pointed question as to how P.W.2 had fixed the cost of Ex.P-4 at Rs.200/- for which P.W.2 had deposed that he had enquired with the local press. This itself clearly shows that the



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quantum arrived at by the petitioner with regard to the value of printing each booklet is on assumption and not supported by any material. Further, it is the submission of the learned senior counsel that though P.W.2 claims to be the chief election agent of P.W.1, yet, on the alleged distribution of Ex.P-4, no complaint has been lodged by P.W.2, but after a period of 20 days, a complaint has been lodged at the behest of P.W.3, that too without the mandatory and requisite details.

71. It is the further submission of the learned senior counsel that P.W.3 though has deposed that he has given the complaint, Ex.P-24 on 25.3.2021 with regard to the alleged distribution of Ex.P-4 on 1.3.2021, 2.3.2021 and 3.3.2021, yet the names of the persons, who are alleged to be agents of R.W.1 and acting under his instructions and authorisation are distributing the booklet, has not been spelt out in Ex.P-24 nor in the affidavit to the election petition is there any reference to the persons, who were distributing the booklet. In the absence of any particulars with regard to the persons, who had distributed the booklet, Ex.P-24, alleging that such distribution was at the instance of R.W.1 and under



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his authorisation is wholly imaginary and made out specifically for the purpose of this election petition.

72. It is the further submission of the learned senior counsel that R.W.1 had flatly denied the printing and distribution of Ex.P-4 through his agents in the constituency. In fact, the expenditure shown in Ex.C-20, even as per the deposition of R.W.1 relates to some other booklet, which is not the issue in the present election petition and, therefore, the petitioner cannot be allowed to change his case with regard to the said booklet. It is the further submission of the learned senior counsel that in the cross examination of R.W.1, the reference to Ex.P-4 has not at all been made and it has been given a go-by, which clearly shows that the distribution of Ex.P-4 is an allegation on the imagination of the petitioner.

73. It is the further submission of the learned senior counsel that the entries in Ex.C-17 relating to the number of copies printed and the rate per copy, which was, in fact, 3000 and Rs.27/- per copy, were written in reverse, thereby meaning that 27 copies were printed at the cost of Rs.3000/- per copy. This is a



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clerical error which cannot form the basis of the election petition and the booklet, which is the subject matter of the above, is not the booklet, which is the subject matter in issue in the present election petition.

74. Similarly, insofar as Ex.P-6 booklet relating to issuance of patta to 7644 beneficiaries is concerned, it is the submission of the learned counsel that there is no material placed by the petitioner to show as to who printed and distributed the booklet, but for an allegation that it was done by the 1st respondent. It is the submission of the learned senior counsel that allegation cannot partake the character of proof and it is for the petitioner to establish that Ex.P-6 was in fact printed and distributed by the 1st respondent or through this agents on his specific authorisation.

75. It is the further submission of the learned senior counsel that even the persons, five in number, who are alleged to have distributed Ex.P-6, only one person has been examined as P.W.6, but the said witness has not spoken anything about the distribution of Ex.P-6. Likewise the receipt of Ex.P-6 by P.W.5 is also shrouded in mystery as P.W.5 does not reveal as to why on receiving Ex.P-



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6, he had handed over the same to the cadre of DMK party, though it is claimed by P.W.5 that he is not a member of any political party. Therefore, the testimony of P.W.5 is beyond belief.

76. It is the further submission of the learned senior counsel that even the complaint of P.W.3, viz., Ex.P-25 only alleges that 1st respondent made false propaganda with respect to issuance of patta relating to temple lands, though the said deposition has been negated through Ex.C-6, the report of the Village Administrative Officer, marked through C.W.20, which report states that there was no distribution of Ex.P-6 and that there was no such campaign.

77. It is the further submission of the learned senior counsel that even in respect of the tokens, Ex.P-7, it is merely an allegation of the petitioner and there are no materials evidencing that the said tokens were distributed by the agents of the 1st respondent under his authorisation. It is the further submission of the learned senior counsel that the election is bereft of any materials with regard to the persons, who had distributed the tokens, but a mere allegation is made that the tokens were distributed by the cadre members of AIADMK. The



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said statement would not be suffice to bring home the allegation that the tokens were distributed at the instance of R.W.1.

78. It is the further submission of the learned senior counsel that the evidence of P.W.s 1 to 3 with regard to distribution of tokens are totally contradictory in nature. While P.W.3 claims that he informed P.W.2 to lodge a complaint with the flying squad, however, P.W.2 does not speak anything about his alleged discussion with P.W.2. Further, P.W.3 claims that FIR was registered at his instance and marked as Ex.P-9, however the name of P.W.3 does not find place in the FIR. Further, there is no allegation about the 1st respondent being instrumental in the distribution of the tokens.

79. P.W.s 6 and 7 have been examined for the purpose of showing that bribe was paid on receiving the tokens. Though P.W.6 claims that he went to the place and handed over the token, however, he has deposed that he has not given any complaint. However, the evidence of P.W.7 is interested, in that he had stated that he had given the token to the Division Secretary of DMK, though the said individual was not examined before the court. Further, his name does not



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find place either in the election petition or in the verification or in the affidavit in Form 25.

80. It is the further submission of the learned senior counsel that Ex.P-7 was lodged by P.W.17. However, her evidence reveal that on the date of election, viz., 6.4.2021, when she reached the place of incident, one person from AIADMK party was caught by the workers of DMK party alleging that he was distributing tokens, but it is the deposition of P.W.17 that no tokens were retrieved from the possession of the said individual. P.W.17 has further deposed that she had not seen any distribution of tokens by the cadre members of AIADMK party.

81. It is the further submission of the learned senior counsel that with regard to the allegation of printing and circulation of advertisement in the newspaper on 5.4.2021, Ex.P-10, the entire paper, which was circulated has not been placed and, therefore, no reliance could be placed on Ex.P-10. Further the evidence of P.W.6, who is an interested witness, has deposed that Ex.P-10 was



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not printed by Dinamalar, yet Ex.P-10 was not shown for comparison with the other paper on which P.W.6 relies to give the said deposition.

82. It is the further submission of the learned senior counsel that P.W.14 has clearly stated in her deposition that she has not seized any goods or cash in this election and the FIR in Ex.P-37, in which P.W.14 is the complainant, had stated in cross examination that the name of the 1st respondent does not find place in Ex.P-37.

83. It is the further submission of the learned senior counsel that P.W.23, the Senior chief Reporter of Dinamalar has deposed that Ex.P-41 is the original newspaper dated 4.4.2021 and the advertisement given therein was given by AIADMK Headquarters and it does not speak anything about the Vedaranyam Constituency or the 1st respondent.

84. It is the further submission of the learned senior counsel that the allegation relating to obtaining Form 12D votes only AIADMK agents and details not provided to the agents of the petitioner is wholly imaginary. It is the

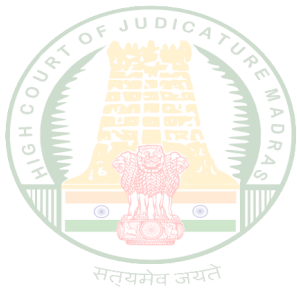


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submission of the learned senior counsel that the said allegation is spoken to by P.W.16, however, the deposition of P.W.16 in chief and cross is shrouded with contradictions and, therefore, the said witness is not a reliable witness, whose deposition could be believed. Though P.W.10 was examined to speak about the bribe of Rs.2000/- and Horlicks bottle given to the voters under Form 12-D, however, the said witness, in chief examination deposed that he was informed that Rs.2000/- and Horlicks bottle were given under the instructions of the 1st respondent, however, in cross examination, has deposed that he has not seen the distribution of money and horlicks bottle. Further the persons, who were given the amount and horlicks bottle has also not been stated by the petitioner.

85. Placing reliance on the deposition of P.W.20, the Returning Officer, learned senior counsel submitted that it is the categorical deposition of P.W.20 that there was no violation in collection of ballot papers from disabled persons and voters above 80 years, brought to his notice from the respective officers. The above evidence of P.W.20 clearly shows that the allegation made by the election petitioner is an imaginary and vexatious claim.



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86. It is the further submission of the learned senior counsel that the contention with regard to promoting communal disharmony by the 1st respondent through his speech is not established. Further, the speech of the 1st respondent has to be taken as a whole and a dissection of a particular passage is not permissible. The 1st respondent has spoken about the election petitioner and his acts as a whole and it has nothing to do with the caste or community. Further, the evidence of P.W.8, who had deposed about recording the speech in his Samsung cellphone cannot also be trusted for the simple reason that the said recording has not been produced before this Court and that his name has neither been shown in the election petition nor in the verification.

87. Insofar as the wall paintings and flex boards are concerned, learned senior counsel submitted that the deposition of P.W.1 that he has not made any complaint between the Model Code of Conduct and till the declaration of the results is a testimony that the present allegation is to bolster the case in the election petition. P.W.1 has further deposed in his evidence that no complaint was made ever by the petitioner with the Election Official or expenditure observer with regard to the above. It is the further submission of the learned



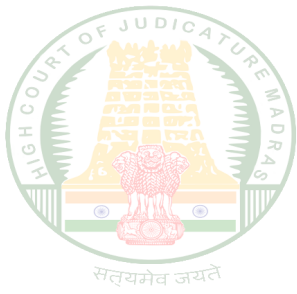
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senior counsel that P.W.2, though has deposed that the wall paintings were done at the instance of R.W.1, yet has not spoken anything about the persons, who had done the wall paintings.

88. Similarly, the evidence of P.W.11, who is a member of the DMK party has been projected to speak about the wall paintings, who has deposed that when enquired with a person, named Mathiyazhagan, a member of the AIADMK party. However, P.W.11 is an interested witness and the name of the said Mathiyazhagan has been roped in only for the purpose of giving an impetus to the allegation and it is purely hearsay evidence on which no reliance could be placed.

89. It is the further submission of the learned senior counsel that P.W.15, who had given Ex.P-38 complaint, had not referenced to any particular individual, who had done the paintings on the wall of his house. The complaint merely relates to not whitewashing the wall and P.W.15 has categorically deposed that there is no connection between the complaint in Ex.P-38 and the election petition.



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90. Further, it is submitted that the allegation with regard to distribution of Rs.2000/- and one horlicks bottle to every household is a wild allegation formulated by the petitioner without any evidence. It is further submitted that insofar as telecasting in TV is concerned, P.W.21 has been examined, who has deposed that the telecast was done at his instance and not at the instance of the 1st respondent and that he has not charged any amount for the said telecast. The permission for the said telecast has also been marked as Ex.P-40. Further, P.w.20 has deposed that he had called P.W.21 for enquiry regarding the telecast and has further deposed that there was no violation in the said telecast.

91. With regard to alleged utilisation of Government machinery, it is submitted that R.W.1 has deposed that only stone laying foundation was conducted for the bus stand and car shed and that no bus stand and car shed was opened. Pointing out to the deposition of P.W.19 and P.W.22, it is submitted that only enter upon permission was granted for the establishment of the car shed and bus stand and no activity had taken place. It is the further deposition of



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P.W.19 that land was allotted for construction of the bus stand by the Government.

92. Insofar as theft of electricity from Anganwadi building, it is the categorical deposition of P.W.20 that upon the complaint of P.W.3, the same was examined and it has been proved that nothing of that nature had happened, which is evident from Ex.C-1 and, therefore, the stand of the petitioner with regard to theft of electricity is wholly false. Likewise the alleged disturbances caused during the election campaign of the petitioner, alleged by the petitioner against the 1st respondent by misusing the Government authorities, however the same has not been proved through any proper witnesses, who were in the thick of things at the relevant point of time and, therefore, the allegations requires to be negatived.

93. In fine, it is the submission of the learned senior counsel that all the allegations raised by the petitioner against the 1st respondent are mere allegations, without there being any proper provable materials, to substantiate the same and the said allegations, in the absence of any materials, cannot form



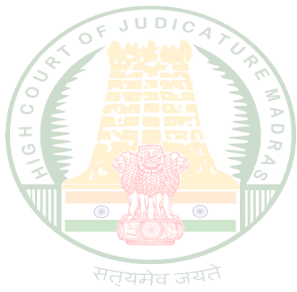
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the basis of making out the corrupt practice, as provided for u/s 123 of the Act and the testimonies in this regard being interested testimonies, which have not been duly supported by the testimonies of the official witnesses and also the documentary evidence marked through the official witnesses, the prayer of the petitioner to declare the election of the 1st respondent as void is wholly unsustainable and the petition deserves to be dismissed.

94. In support of the aforesaid submissions, learned senior counsel for the 1st respondent placed reliance upon the following decisions :-

- i) *Jyoti Basu – Vs – Debi Ghosal (1982 (1) SCC 691);*
- ii) *Dhartipakar Madan Lal – Vs – Rajiv Gandhi (1987 (Supp) SCC 93); and*
- iii) *Mangani Lal Mandal – Vs – Bishnu Deo Bhandari (1982 (1) SCC 691)*

95. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the depositions of the witnesses, as also the material documents, which have been marked and the



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various decisions on the aforesaid subject, which have been placed before this Court in support of the aforesaid submissions.

96. The present election petition seeks to declare the election of the 1st respondent as void as it is alleged that the 1st respondent has committed acts, which are corrupt, and directly attracts Section 123 of the Act.

97. Section 100 of the Act provides the grounds on which the election of a returned candidate can be declared as void which is quoted hereunder for better appreciation :-

"100. Grounds for declaring election to be void.-

(1) Subject to the provisions of sub-section (2) if the High Court is of opinion-

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or



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(d) that the result of the election, insofar as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act, The High Court shall declare the election of the returned candidate to be void."

98. From a careful perusal of Section 100, it transpires that sub-section (b) and (d) of Section 100 would be the pivotal grounds on which the election of a returned candidate could be declared as void.

99. The whole election petition is premised on the basis that the acts of the 1st respondent amounts to corrupt practice as provided for u/s 123 of the Act. Therefore, it becomes necessary for this Court to advert to the ingredients of Section 123 of the Act to find out as to what are the acts, that would fall within the four corners of "*corrupt practices*". So before embarking upon



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analysing the evidence and depositions to find out the nature of the act, it would be just and proper for this Court to advert to Section 123 of the Act, which is quoted hereunder :-

“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—

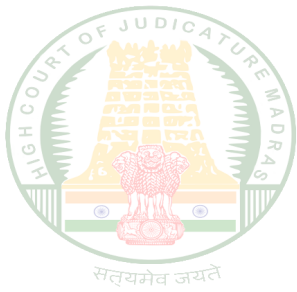
(i) a person for having so stood or not stood, or for [having withdrawn or not having withdrawn] his candidature; or

(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



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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) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free



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exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

[(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

[Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.]

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.]



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[(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).]

(4) The publication by a candidate or his agent or by any other person 4[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) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person [with the consent of a candidate or his election agent], [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:



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Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

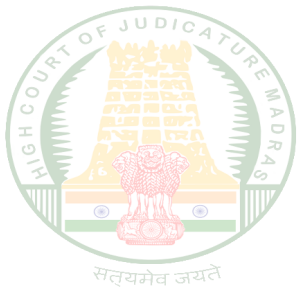
Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(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 1[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 in the service of the Government and belonging to any of the following classes, namely:—

(a) gazetted officers;



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(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

[(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]

(g) such other class of persons in the service of the Government as may be prescribed:

[Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.]

[(8) booth capturing by a candidate or his agent or other person.]



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Explanation.—(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent 1 * * of that candidate.]*

[(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and (ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.]

[(4) For the purposes of clause (8) , "booth capturing" shall have the same meaning as in section 135A.]”

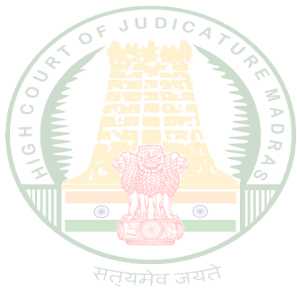


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100. According to the petitioner, the acts of the 1st respondent squarely attracts sub-section (1), (2), (3), (6) and (7) of the Act. The details of the corrupt practices, that have been alleged to have been committed by the 1st respondent, have been detailed in extensor, both in the election petition as well as at the time of submissions made on behalf of the petitioner. In the aforesaid backdrop, this Court has to find out whether there are substantive and acceptable materials, which unerringly point to the corrupt practice committed by the 1st respondent so as to grant the relief of declaring the election of the 1st respondent as void, as prayed for by the petitioner.

101. The first and foremost contention placed on behalf of the petitioner for alleging corrupt practice is with regard to the non-disclosure of the amounts spent in the election expenditure, which is over and above the permissible limit, as permitted by the Election Commission and is not reflected in the election accounts, which is a corrupt practice u/s 123 (6) of the Act.

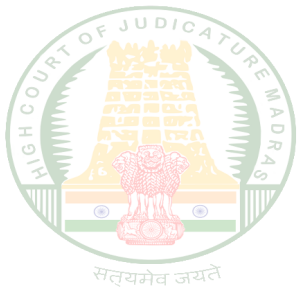


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102. The main thrust of the excess expenditure is predicated upon Exs.P-4 and P-6, which are the booklets, which are alleged to have been printed and distributed to all the voters in the constituency by the 1st respondent through his agents. It is the case of the petitioner that the cost of printing of Ex.P-4 runs to about Rs.3.84 Crores and that of Ex.P-6 runs to about Rs.5,73,300/-. However, the said amounts have not been reflected in the election expenditure, thereby, it is a corrupt practice warranting declaration of the election of the 1st respondent as void.

103. To substantiate that Exs.P-4 and P-6 were printed and distributed amongst the voters in the constituency, P.W.s 1 to 5 have been examined. A careful perusal of the deposition of P.W.s 1 to 5 through their proof affidavit reveals that all of them, in unison, have alleged that Exs.P-4 and P-6 were printed and distributed at the instance and authorisation of R.W.1 by his agents. However, what is more crucial to be noted here is the fact that twin ingredients are codified in Section 100 (1)(b) and 100 (1)(d) of the Act for the Court to enter into the dispute and set aside the election as void. The above said provisions



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have been construed by the Apex Court in *Krishnamoorthy's case (supra)* and the relevant portion is quoted hereunder :-

"62. As is clear from the provision, if the corrupt practice is proven, the Election Tribunal or the High Court is bound to declare the election of the returned candidate to be void. The said view has been laid down in M. Narayan Rao V. G. Venkata Reddy & Others and Harminster Singh Jassi (supra).

63. At this juncture, it is necessary to elucidate on one essential aspect. Section 100(1)(d)(ii) stipulates that where the High Court is of the opinion that the result of the election has been materially affected by any corrupt practice, committed in the interest of the returned candidate by an agent, other than his election agent, the High Court shall declare the election of the returned candidate to be void. This stands in contra distinction to Section 100(1)(b) which provides that election of a returned candidate shall be declared to be void if corrupt practice has been committed by a returned candidate or his election agent or by any other person with his consent or with the consent of the returned candidate or his election agent. Thus, if the corrupt practice is proven on the foundation of Section 100(1)(b), the High Court is not to advert to the facet whether result of the election has been materially affected, which has to be necessarily recorded as a finding of a fact for the purpose of Section 100(1)(d)(ii).



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64. In this context, we may refer to the authority in *Samant N. Balkrishna and Anr. V. George Fernandez and Others*, wherein *Hidayatullah, C.J.*, speaking for the Court opined thus:

"If we were not to keep this distinction in mind there would be no difference between Section 100(1)(b) and 100(1)(d) insofar as an agent is concerned. We have shown above that a corrupt act per se is enough under Section 100(1)(b) while under Section 100(1)(d) the act must directly affect the result of the election insofar as the returned candidate is concerned. Section 100(1)(b) makes no mention of an agent while Section 100(1)(d) specifically does. There must be some reason why this is so. The reason is that an agent cannot make the candidate responsible unless the candidate has consented or the act of the agent has materially affected the election of the returned candidate. In the case of any person (and he may be an agent) if he does the act with the consent of the returned candidate there is no need to prove the consent of the returned candidate and there is no need to prove the effect on the election."

65. In *Manohar Joshi V. Nitin Bhaurao Patil and Anr.*, a three-Judge Bench reiterated the principle by stating that:

"The distinction between clause (b) of sub-section (1) and sub-clause (ii) of clause (d) therein is significant. The ground in clause (b) provides that the commission of any



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corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent by itself is sufficient to declare the election to be void. On the other hand, the commission of any corrupt practice in the interests of the returned candidate by an agent other than his election agent (without the further requirement of the ingredient of consent of a returned candidate or his election agent) is a ground for declaring the election to be void only when it is further pleaded and proved that the result of the election insofar as it concerns a returned candidate has been materially affected."

The distinction between the two provisions, as has been explained by this Court is of immense significance. If the corrupt practice, as envisaged under Section 100(1)(b) is established, the election has to be declared void. No other condition is attached to it. Keeping this in view, we are required to advert to the fundamental issue whether non- disclosure of criminal antecedents, as has been stipulated under Section 33A and the Rules framed under the 1951 Act, would tantamount to corrupt practice and if so, how is it to be proven."

104. Therefore, there are two limbs in the corrupt practice, insofar as declaring an election of a returned candidate to be void, which operate



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separately and not in tandem; the first limb being the satisfaction of Section 100

(1) (b), wherein commission of corrupt practice by a returned candidate is proved and the second limb being commission of corrupt practice by an agent with the authorisation of the returned candidate or the election agent and that the said corrupt practice should be pleaded and proved. Even if one of the conditions are fulfilled, then the election of the returned candidate can be declared as void.

105. On the basis of the aforesaid ratio laid down with regard to corrupt practice, this Court is required to look into the questions of law that have been framed for consideration.

Issue Nos.2& 3 :

Whether the petitioner has established the malpractices allegedly committed by the 1st respondent u/s 123 (1)(A)(b), 123 (3-A) and 123 (7) of the Representation of Peoples Act, 1951 which renders the election liable to be set aside u/s 100 (1)(b) and (d)(ii) of the Representation of Peoples Act and whether the said malpractices alleged to have been



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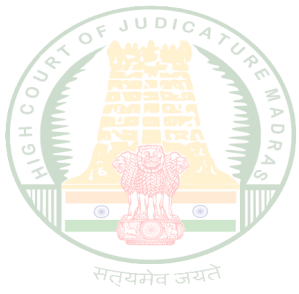
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committed by the 1st respondent have been established before this Court.

Whether the 1st respondent has suppressed the expenditure incurred under various heads in his election accounts, thereby exceeding the permitted election expenditure and, thus violated Rule 90 of the Code of Conduct Rules r/w Section 77 of the RP Act thereby rendering the election liable to be set aside u/s 100 (1) (b) & (d)(ii), (iii) and (iv) of the RP Act.

106. Issue Nos. 2 and 3 framed go together and, therefore, both the issues are taken together for consideration.

107. To strengthen the argument insofar as the aforesaid issues are concerned, Exs.P-4 to P-6 are pressed into service by the petitioner, so also the evidence of P.W.s 1 to 5. Exs.P-4 and P-6 are booklets, which are alleged to have been printed and circulated among the voters in the constituency, but the expenditure has not been reflected in the election expenditure, which is a corrupt practice u/s 123 (6) of the Act.



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108. In this regard, a careful perusal of the depositions of P.W.s 1 to 5 reveal that all have alleged that the booklets, Exs.P-4 and P-6 were printed on the authorisation of the 1st respondent and distributed through his agents to all the voters, numbering 1,92,000 in the constituency. In fact, it is to be pointed out that it is the stand of the above witnesses that Ex.P-4 was distributed on 1.3.2021, 2.3.2021 and 3.3.2021 under the authorisation of R.W.1 by his agents. Even on the said date, P.W.s 1, 2 and 3 had knowledge about the distribution.

109. In fact, P.W.1, in his proof affidavit has nowhere stated about the authorisation granted by the 1st respondent to his agents to distribute the booklets. Similarly, P.W.2, the election agent of P.W.1, in his proof affidavit and also in cross examination has not spoken about the specific authorisation granted by the 1st respondent to his agents towards printing and distribution of booklets. But for the pleading in the election petition alleging that R.W.1 had authorised the printing and distribution of Exs.P-4 and P-6 to all the voters in the locality, there are no materials which point to the fact that R.W.1 had indulged in printing and directing distribution of Ex.P-4 in the locality. Therefore, the direct



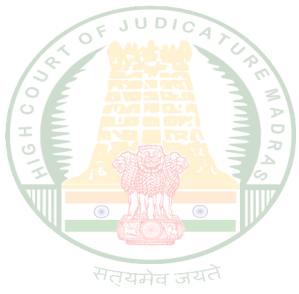
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involvement of R.W.1 in the said corrupt act has not been made out either through the evidence of P.W.s 1 and 2.

110. P.W.3 in his proof affidavit had stated that he had lodged the complaint on 25.3.2021 in respect of distribution of Ex.P-4 between 1.2.2021 and 3.3.2021. Even if this Court is not taking into consideration the delay in the lodging of the complaint, Ex.P-24, the contents of the proof affidavit of P.W.3 shows that Ex.P-4 was being distributed at the instance of R.W.1 by his agents. However, the names of the agents, who were distributing Ex.P-4 has not been spelt out in Ex.P-24. In fact, Ex.P-24 speaks about the distribution of the booklet to all the voters in the constituency, yet no independent voter, who is not affiliated to the party, has been examined to prove that such a booklet was distributed by the cadre members belonging to AIADMK party.

111. Further, P.W.4, who has spoken about the receipt of Ex.P-4 has, in his proof affidavit, stated that the booklet was distributed by one Ilangovan on 3.3.2021 in his house, which was witnessed by his uncle Balachandran and, thereafter, the booklet was given to the party cadres. P.W.4 has deposed in

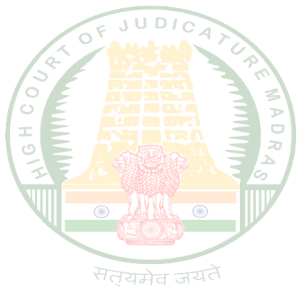


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cross examination that he belongs to DMK party. P.W.4, in his statement, does not speak that the said Ilangovan had distributed Ex.P-4 under the authorisation of the 1st respondent. Further, there is no statement by P.W.4 that Ilangovan belongs to the party to which the 1st respondent belongs.

112. On a careful perusal of the evidence of P.W.s 1 to 4, it clearly transpires that neither there is any proof to the effect that the distribution of Ex.P-4 was under the authorisation of the 1st respondent and the said booklet was distributed by the agents under the authorisation of the 1st respondent or his election agent. Therefore, Section 100 (1) (d) cannot stand attracted to the the issue on hand relating to corrupt practice u/s 123 (6).

113. Likewise, Ex.P-6, which is stated to be the booklet allegedly printed and distributed in respect of issuance of patta to 7644 persons in temple lands, the same version, as has been stated by P.W.s 1 to 4 finds repetition with regard to the distribution of the said booklet. It is the case of R.W.1 that he has not printed Exs.P-4 and P-6 and he has not authorised any agent or any person in his cadre to distribute the same amongst the voters in the constituency. When

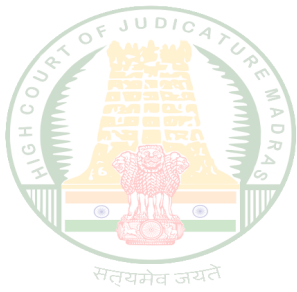


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there is a clear denial by the 1st respondent that he has not printed and distributed the booklets to the voters in the constituency, the burden lies on the petitioner to prove that printing was done at the instance of the 1st respondent and distribution of the booklet amongst the voters in the constituency was made on the authorisation of the 1st respondent. However, both the printing and distribution under authorisation of the 1st respondent have not been proved. There is material in the form of booklet, Exs.P-4 and P-6, but linking the said booklet with the 1st respondent is not available, except for an allegation made by the petitioner.

114. In this regard, petitioner tries to draw inspiration from the decision of the Apex Court in *Common Cause case (supra)*, wherein the Supreme Court held as under :-

“23. Any expenditure in connection with the election of a candidate which according to him has been incurred by his political party shall be presumed to have been authorised by the candidate or his election agent. But the presumption is rebuttable. The candidate shall have to show that the said expenditure was in fact incurred by a political party and not by him. The candidate shall have to rebut the presumption by the evidentiary standard as



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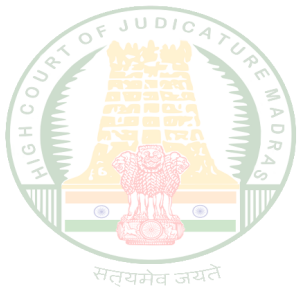
applicable to rebuttable presumptions under the law of evidence.

*An entry in the books of account of a political party maintained
.....”*

115. The above view of the Apex Court is not only highlighted by the petitioner for the purpose of proving the corrupt practice u/s 100 (1) (b) and 100 (1) (d) more particularly with regard to Exs.P-4 and P-6, but also with regard to the advertisements in the newspapers, Ex.P-10.

116. Drawing the attention of this Court to Ex.P-10, it is the stand of the petitioner that the advertisement, which has been given by the AIADMK party, necessarily the expenditure towards the same should be drawn to the head of the election expenses of the 1st respondent, which is not reflected in the election expenditure submitted to the election commission, which by itself is a corrupt practice under Section 123.

117. Though such a contention is advanced, what is to be pointed out is that, though the said advertisement has been made in the newspaper, yet, Ex.P-



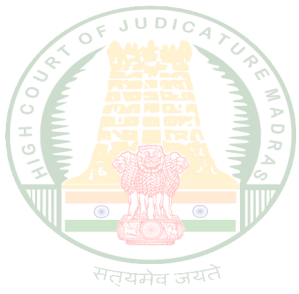
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10 does not show the entire newspaper, but only a portion of a paper, which is said to have been published on the particular day. Further, an objection has been raised by the 1st respondent with respect to the said document, Ex.P-10, as according to the 1st respondent, the said document is not a complete document on which reliance could be placed as the genuineness of the document itself is doubtful. Therefore, to that extent, this Court cannot deliberate much on the said document.

118. Section 77 of the Act is taken in aid by the petitioner to show that the expenditure incurred by the political party other than the expenditure of travel by the leaders shall be expenses incurred by the candidate for the election process and, therefore, the advertisements given would have to be taken in as the expenditure of the candidate, which, having not reflected in the accounts, is a suppression of expenditure, incurring the wrath of Section 123 of the Act as being a corrupt practice.

119. Section 77 provides that every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all

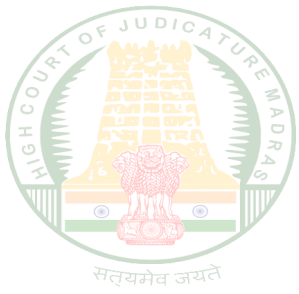


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expenditure in connection with the election incurred or authorised by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive and Explanation 1, therefor provides that the expenditure incurred by the leaders of a political party on account of travel by air or by any other means of transport for propagating programme of the political party shall not be deemed to be the expenditure in connection with the election incurred or authorised by a candidate of that political party or his election agent for the purposes of this sub-section.

120. However, be that as it may. The issue that is before this Court pertains to the advertisement given in the newspaper, Ex.P-10. As stated above, Ex.P-10 is objected to by the 1st respondent, as the full newspaper, which had been published on the said day has not been filed before this Court for being taken as a material document. Further, the 1st respondent nowhere accepts that such an advertisement was placed by him in the newspapers. It is only a stray answer of R.W.1 that it may have been given at the instance of the headquarters of the political party. R.W.1 has not, through any direct admission, admitted to him or the political party giving the said advertisement. Further, the case of the

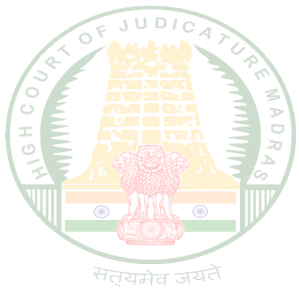


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petitioner hinges on the non-reflection of the cost in the election expenditure.

However, the fact remains that the election expenditure of the political party is not placed before this Court and, therefore, if at all, the said advertisement, Ex.P-10 was given by the political party, whether the said expenditure was reflected in the election accounts of the political party is not exhibited before this Court. Such being the case, this Court cannot come to any definitive conclusion that there is a falsification of the election accounts of the 1st respondent, which makes his election as the returned candidate void. It is only in cases where there is a definitive admission by the returned candidate that the expenditure was incurred by the political party, which is in connection with the expenditure for the election of the candidate, then it is necessary for the 1st respondent to prove, by way of rebuttal, and not otherwise. When there is clear negation by the 1st respondent as to Ex.P-10 having not been given by him and in the absence of any material to show that the expenditure such advertisement, if at all made by the political party, has not reflected in the election expenses of the political party, then the election expenditure accounts submitted by the 1st respondent would be prone to attack. However, in the absence of the above materials with regard



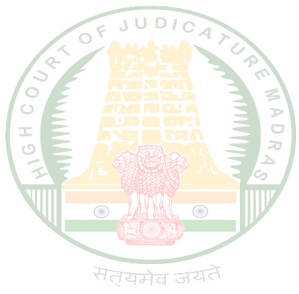
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to Ex.P-10, this Court cannot fasten any liability on the 1st respondent with regard to the said expenditure.

121. Further, what is more material here is the fact that upon the complaint of P.W.3, P.W.20, the Returning Officer had issued show cause notice to the 1st respondent and the 1st respondent was heard and the issue was closed. Such being the position, when the election officials have acted on the complaint and closed the issue and there being no material either to doubt the genuineness of the enquiry or a direct link of the 1st respondent with the printing and distribution of Exs.P-4 and P-6, the corrupt practice as alleged under Section 123 have not been made out to attract the rigours of Section 100 (1) (b) and 100 (1) (d) (ii).

122. The respondent also drew the attention of this Court to Ex.C-17, the register for Maintenance of day to-day accounts of the 1st respondent and submitted that though the petitioner contends that permission was given for 5000 copies to be printed, however, in Ex.C-17, it is shown that under the head “quantity”, it has been mentioned as 27, while under the head “rate per unit” it

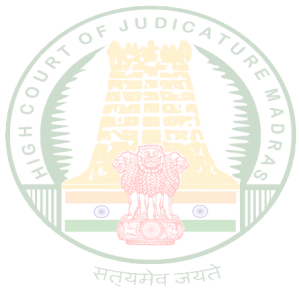


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has been entered as 3000, which according to the learned senior counsel for the 1st respondent is an inadvertent error, which has crept in, where the numbers are written in the wrong columns. A perusal of Ex.C-17 reveals the above from which it could very well be deciphered that it is a clerical error, which has crept in while filling the columns, where the figures stand interchanged in the columns “quantity” and “rate per unit”. The said discrepancy cannot be said to be a material discrepancy falling within the broad contours of corrupt practice, nor could it be said that the said discrepancy had materially affected the election results.

123. Similarly, the alleged circulation of advertisements, which were circulated on 5.4.2021, there is no material that could be connected with the 1st respondent or his election agent and other agents to show that the said advertisements have been circulated along with the newspapers on 5.4.2021 by the 1st respondent. In this regard, the deposition of P.W.23 shows that Ex.P-10 was printed at the instance of the AIADMK headquarters and it has no connection with R.W.1. Further, the said advertisement, even through the deposition of P.W.23 shows, that it does not pertain specifically to Vedaranyam



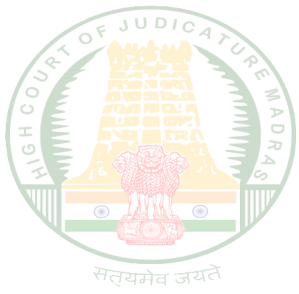
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constituency of the 1st respondent. Therefore, fastening of any liability on the 1st respondent cannot be resorted to by this Court, merely on the allegation of the petitioner.

124. Now coming to the alleged issue of tokens by the party cadre of the 1st respondent on the day of the elections, it is the case of the petitioner that tokens with the symbol of AIADMK were printed and issued to the voters and persons who had voted, were asked to submit the token for which cash of Rs.5,000/- and a silk saree was given amounting to a few crores of rupees being expended, which amount have not been shown in the election expenditure of the 1st respondent, which by itself is a corrupt practice u/s 123 (1) necessitating the declaration of the election of the returned candidate as void.

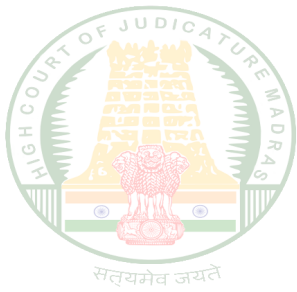
125. The tokens, which were alleged to have been distributed have been marked as Ex.P-7 series. A careful perusal of the tokens reveal that it carries the symbol of the 1st respondent party. However, there is no other distinguishing feature to connect the said token with any person, be it the 1st respondent or the political party to which it belongs.



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126. A careful perusal of the statements of P.W.s 1, 2 and 3 in their respective proof affidavit reveal that P.W.1 has not spoken anything about Ex.P-7, but had merely deposed in cross examination that it is possible that the voters may not have voted for the particular party inspite of getting the tokens and then getting paid the illegal gratification on return of the tokens, as it is always done on the basis of trust and belief. Therefore, to that extent there is no benefit that could be derived by the petitioner from his evidence.

127. Coming to the evidence of P.W.s 2 and 3, it is seen that P.W.3 had informed P.W.2 about the alleged distribution of Ex.P-7 and asked P.W.2 to make a complaint with the flying squad, but P.W.2 had not made the complaint. It is the further deposition of P.W.3 that he went to the spot and caught one Thangavel red-handed and handed him over to the flying squad and, thereafter, the complaint came to be filed. To a pointed question in cross examination as to whether P.W.3 had personally seen the distribution of tokens, Ex.P-7 by Thangavelu, P.W.3 had replied in the affirmative and had even gone on to

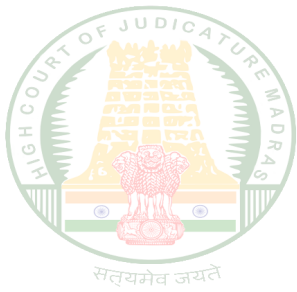


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depose that neither his name is found in Ex.P-9 complaint nor the catching and handing over of Thangavelu by P.W.3.

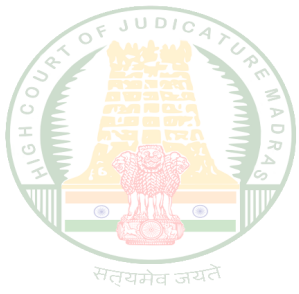
128. In this regard, the evidence of P.W.17, the Deputy Block Development Officer, assumes significance. P.W.17 had lodged Ex.P-9 on the information to the Flying Squad about the disbursal of illegal gratification to the voters. To the questions in cross examination, P.W.17 had deposed that when she went to the incident place, one person from AIADMK party was caught by DMK party workers by saying that he was distributing tokens to the voters, but there was no tokens in the possession of the said person. P.W.17 had further gone on to depose that she had not seen the tokens being distributed by AIADMK party workers. Therefore, the evidence of P.W.3 gets negated by the evidence of P.W.17 that the said Thangavelu was in the process of distributing tokens, when he was apprehended and handed over to the flying squad. Further, it is also to be pointed out that there is no material to connect the 1st respondent with the distribution of tokens and also with the payment of the alleged illegal gratification to the voters, who had cast their votes in the said election.



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129. When there is no direct material, which connects the 1st respondent with the printing and distribution of tokens, Ex.P-7 series, the 1st respondent cannot be brought within the ambit of Section 123 (1) of the Act to hold that the 1st respondent had perpetrated bribery amongst the voters through his agents, to come out successful, which act had materially affected the election results of the returned candidate and, therefore, neither the aid of Section 100 (1) (b) nor the aid of Section 100 (1) (d) could be derived by the petitioner.

130. Insofar as the 1st respondent taking the aid of the Government official/machinery in the election process, which, as has been alleged, has materially affected the election results is concerned, it is mere allegation on the part of the petitioner without there being any material, which points to the said act having been perpetrated by the 1st respondent. In this regard, the evidence of P.W.19 and P.W.22 does not in any way support the case of the petitioner, as there is a categorical deposition by both the witnesses that all the acts done by the government officials were only in accordance with the directions issued by the Government and also in furtherance of the issuance of Government Orders. That being the specific deposition of P.W.s 19 and 23, which thwarts the



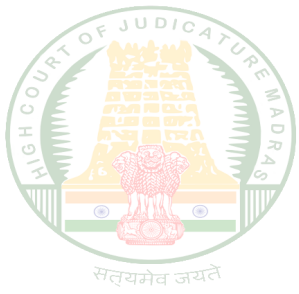
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allegation of the petitioner, the corrupt practice, alleged against the 1st respondent u/s 123 (7) of the Act has not been made out.

131. Likewise, the alleged excess expenditure relating to wall painting alleged by the petitioner against the 1st respondent, P.W.11 has spoken about the same. However, a perusal of the deposition of P.W.11 reveals that he had enquired with one Mathiazhagan, who was a member of AIADMK standing nearby when the wall painting was done, who had stated that it is done at the instance of the 1st respondent. However, P.W.11 has deposed that he belongs to DMK party and, therefore, necessarily, he is an interested witness. Further, the name of Mathiazhagan is deposed, who is said to be a member of AIADMK party, who has informed P.W.11, but the said Mathiazhagan has not been examined as a witness. Therefore, at best, the evidence of P.W.11 could only be treated to be a hearsay evidence, without there being any corroborative material with regard to the same.

132. Further, the complaint, Ex.P-38, which is alleged to have been lodged by one Pannerselvam relates to some wall painting done on the wall of his



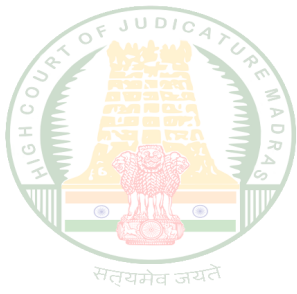
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house. However, the complaint is only with regard to the wall not being white washed thereafter and it in no way relates to wall paintings, which had attracted alleged excess expenditure, which have not been disclosed in the election expenditure.

133. One other allegation of corrupt practice, which has been pointed at the 1st respondent is the alleged communal speech, said to have been made by the 1st respondent. The portion of the speech, which is alleged to have a communal flavour, thereby, leading to an incitement of communal hatred is marked as Ex.P-16 and the complete speech has been marked as Ex.P-15, though it has been objected to on behalf of the 1st respondent as it does not meet the requirements of Section 65-B of the IT Act.

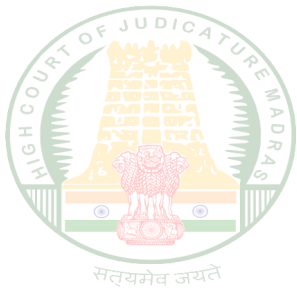
134. Be that as it may. The whole crux of the speech of the 1st respondent is to the effect that the petitioner has not done anything for the community to which he belongs and that he has betrayed his community.



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135. Section 125 of the Act speaks about promoting enmity between classes in connection with election, which is brought as an electoral offence. Any person, who in connection with an election promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of citizens, is made a penal offence, which attracts imprisonment along with fine.

136. In the case on hand, a careful perusal of Exs.P-15 and 16, the whole text and the portion of the text of the speech, reveals that the feelings of two different classes of people of different community is not the issue, which has been spoken by the 1st respondent. The 1st respondent, as a part of the election campaign, has merely attacked the manner in which the petitioner had acted against his very own community people and had gone on to state that the petitioner has betrayed his own community people. This speech, by no stretch, can be taken to mean that there is a kindling of communal feelings of two different groups, which would lead to communal disharmony.

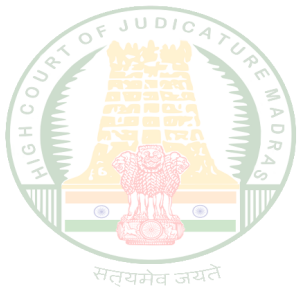


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137. It is within the boundaries of the 1st respondent's election campaign to point out the merits of himself and the demerits of his opponent. The demerits of the opponent, be it on his community basis, cannot be taken to mean that it is an attack on the communal feelings of the particular community. A person is estopped, in the course of election campaign, from kindling the communal feelings of different classes of people, as that would lead to disharmony amongst the people living in the locality and would lead to an unhealthy atmosphere for conducive living, but that would deter a candidate from pointing out the demerits of the opposing candidate with regard to the promises, which he has not done for his community. So long as the speech that does not kindle the communal feelings between two different classes of community, the said speech could not be brought within the ambit of inciting communal feelings.

138. In the aforesaid backdrop, as stated above, a careful perusal of the speech of R.W.1 disclose that he has attacked the petitioner with regard to not keeping up his promises relating to his community and that could not be said to



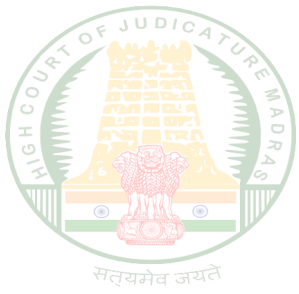
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be an act inciting communal feelings and, therefore, the said contention does not merit acceptance.

139. Similarly, the petitioner has alleged broadcasting on Kalai TV the election campaigns of the 1st respondent and has stated that the expenditure is not reflected in the election expenditure of the 1st respondent. It is the specific case of R.W.1 that he had not given any broadcasting to the TV and, therefore, no amount has reflected in the election expenditure. In this regard, the perusal of the deposition of P.W.21 reveals that he is the Managing Director of Kalai TV and that he had broadcasted the video on his own and that he has not charged any amount to the 1st respondent. P.W.21 had further gone on to depose that he had obtained permission, which has been marked as Ex.P-40 and that he had attended the enquiry conducted in pursuance of the representations, viz., Exs.P-27, P-28 and P-29.

140. P.W.20, the Returning Officer, in cross examination had deposed that he had enquired P.W.21 based on the complaint Exs.C-9, C-10 and C-15 regarding the complaint of telecasting the campaign on TV and found that there

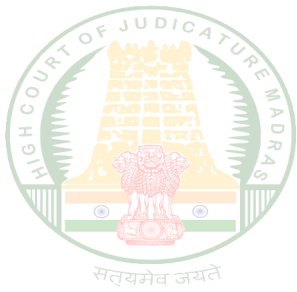


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was no violation. From the above depositions it is amply clear that the 1st respondent had neither telecasted nor authorised any person to telecast anything in the television and any telecast by P.W.21 on his own volition cannot be put against the 1st respondent.

141. From a careful perusal of the depositions of the witnesses, coupled with the documents, both marked by the petitioner as well as by the official witnesses under the 'C' series, it transpires, that but for the allegations raised against the 1st respondent, there is no iota of evidence, which directly points a finger at the 1st respondent as having authorised or by the election agent of the 1st respondent having authorised such acts to be done by the agents of the 1st respondent, which would attract the rigours of Section 100 (1) (b) of the Act. Likewise, there is no material, apart from pleading, in the form of proof, which establishes that the agents under the authorisation of the 1st respondent or his election agents had commissioned certain acts, which have materially affected the outcome of the election in favour of the returned candidate, thereby attracting the rigours of Section 100 (1) (d) of the Act. None of the two limbs, which are material for this Court to declare the election of the returned

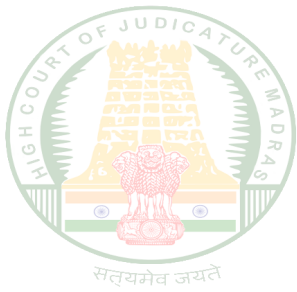


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candidate as void having been established before this Court, and all the submissions, merely being allegations in a bald and vague nature, this Court cannot topple the democratic process through which the 1st respondent has been elected by the voters in the election, which had been conducted for the 165-Vedaranyam constituency, on the ground of corrupt practice. In fine, though the petitioner has made pleadings with regard to the corrupt practice, alleged to have been committed by the 1st respondent, however, in the absence of any substantive proof, which unerringly point to the 1st respondent indulging in corrupt practice, the decision in *Krishnamoorthy's case (supra)* stand squarely attracted and, therefore, necessarily the petitioner has miserably failed to establish the pleadings with proper proof. Therefore, ***Issue Nos. 2 and 3 are answered against the petitioner.***

Issue No.4 :

Whether the Returning Officer has violated the directions of the Election Commission of India with regard to conduct of polling relating to physically challenged voters,



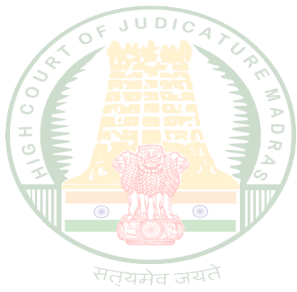
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thereby, affecting the election and thus rendering the election of the 1st respondent to be set aside u/s 100 (1) (d) (iii) of the RP Act?

142. The main grievance expressed by the petitioner is that the officers in-charge of collecting Form 12-D did not collect the votes at the timings specified. It is the further allegation of the petitioner that the 1st respondent, through his party workers, distributed Rs.2000/- cash and a Horlicks bottle to each of the voters, who were given Form 12D. Therefore, according to the petitioner, the act of the 1st respondent is a corrupt practice, attracting Section 123 (1) of the Act and, therefore, the election of the 1st respondent should be declared as void.

143. The petitioner relies upon Exs.P-14 and P-26 in this regard. P.W.3 had deposed in cross that with regard to Form 12D distribution, only a request was given under Ex.P-26 and that no complaint was lodged to which P.W.3 had answered in the affirmative stating that it is only a request. This clearly shows that there was no complaint lodged, which goes to prove that the election

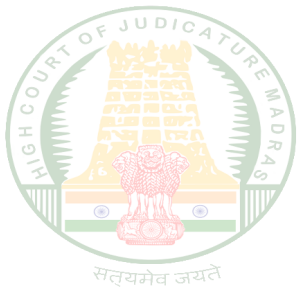


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officials in-charge had not acted in a manner which was beneficial to the 1st respondent.

144. Further, the other evidence with regard to discrepancy in Form 12D votes is that of P.W.16, who is stated to be the legal advisor of the election agent. According to P.W.16, he had deposed that he gave a representation on 31.03.2021, marked as Ex.P-39. It is the deposition of P.W.16 that he had given the aforesaid representation stating the discrepancies in the postal votes and that he had deposed that he got information on the same. However, the source of his information nor the names of the persons, who had given him the information is not available, which clearly shows that it is a hearsay evidence and is not backed with any corroborative evidence. Further, the deposition of P.W.16 also does not disclose the names of the officials, who had gone along with the AIADMK agents to collect the votes.

145. Even a careful perusal of the deposition of P.W.16, it reveals that the said witness is blowing hot and cold. While on the one hand, he claims to have personal knowledge with regard to Form 12D votes, on the other hand he claims

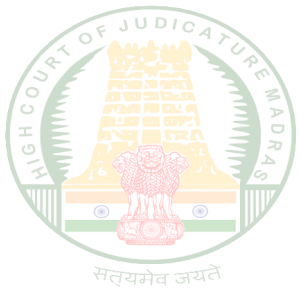


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to have knowledge through the agents. However, the names of the agents, who had given him the information are not mentioned. Neither there is any mention about the names of the agents of AIADMK who had gone and collected the Form 12D votes. The overall deposition of P.W.16 is to the effect that he has a suspicion with regard to Form 12-D votes. However, the said deposition is not backed by any substantive or corroborative material.

146. P.W.10 is projected to be another witness to the wrongful collection of postal ballots and payment of illegal gratification. The deposition of P.W.10, even on a bare perusal, reveals that P.W.10 had deposed that he was informed that one Ravi had collected the postal ballot by paying Rs.2000/- and a Horlicks bottle was given, which were under the instructions of the 1st respondent. However, the said allegation is not supported by any other corroborative material. However, in cross-examination P.W.10 had deposed that he had not seen the alleged distribution of Rs.2000/- and Horlicks bottle and that he was not in the place when the Form 12-D votes were obtained.

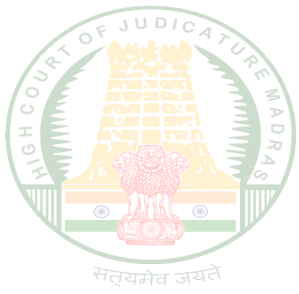


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147. P.W.20 is the Returning Officer, who in his evidence has deposed that the report of the officers who had gone to collect the ballot papers from the disabled persons and voters above 80 years do not disclose any violation and that no complaint has also been lodged in that regard. A perusal of Ex.P-14 also reveals the reports of the officials/observers with regard to collection of Form 12-D votes and all the reports, in unison, are on the line that the whole process was held as per procedure and that it was videographed and that there was no allegation of distribution of bribe either in the form of cash or kind.

148. There are no materials tabled before this Court to establish that either there is a procedural infraction in the collection of form 12-D votes or that there is a corrupt practice in the form of giving bribes to the voters, either in the form of cash or kind or both. The petitioner only alleges that cash and horlicks bottle were paid to the voters, from whom Form 12-D votes were obtained. Without there being proper proof in the form of oral or documentary evidence, mere allegation cannot form the basis for this Court to come to the conclusion that there is violation of collection of Form 12-D votes when all the officials/observers, in unison and one voice have stated that there was no



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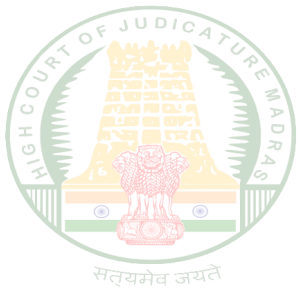
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violation. Further the collection of votes was also videographed and if at all there was any violation, the petitioner could have summoned the videograph as a part of his case to prove that illegal gratification had been passed on to the voters. In the absence of any conclusive material, the case of the petitioner that there was malpractice in the obtainment of Form 12-D votes is wholly inconceivable and unsustainable. Accordingly, ***Issue No.4 is answered against the petitioner.***

Issue Nos.1 & 5 :

Whether the election of the 1st respondent from 165-Vedaranyam Assembly Constituency to the 16th Tamil Nadu Legislative Assembly, 2021, is liable to be declared as illegal, ab initio void and set aside?

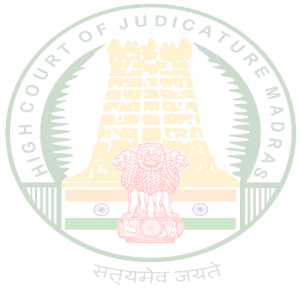
Whether the election petitioner is entitled for a declaration declaring the petitioner as being duly elected to the 165-Vedaranyam Assembly Constituency in Tamil Nadu with effect from 2.5.2012?



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149. On a holistic consideration of the entire materials, coupled with the depositions of the witnesses as also the various decisions that have been placed before this Court, it comes out as a cropper that the petitioner has not established the ingredients found in Section 100 (1) (b) and 100 (1) (d) so as to term the acts of the 1st respondent as corrupt practice as provided for u/s 123 (1), (2), (3), (6) and (7) of the Act. All the allegations are mere allegations without there being any proper evidence substantiating and corroborating the same and the said allegations, in the absence of any conclusive materials, would not partake the character of proof so as to enable this Court to strike out the election as void, thereby, ridiculing the mandate of the people, who had returned the 1st respondent as the successful candidate. This Court has to necessarily submit itself to the people's mandate when the petitioner has not established the corrupt practice perpetrated by the 1st respondent through any credible and corroborative evidence. Therefore, necessarily this Court has to answer the issue Nos.1 and 5 against the petitioner. Accordingly, ***Issue Nos.1 and 5 are answered against the petitioner.***



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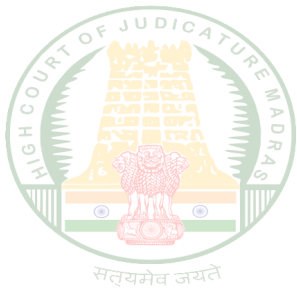
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150. In the result, the election petition fails and, accordingly, the same is dismissed. Consequently, connected applications are closed. There shall be no order as to costs.

22.12.2023

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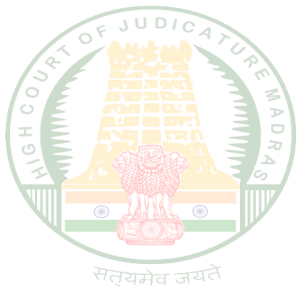


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List of Witnesses :

S. No.	Witness No.	Description/Name
1	P.W.1	S.K.Vetharathinam
2	P.W.2	K.Azhagirisamy
3	P.W.3	M.Anbarasu
4	P.W.4	R.Selvakumaran
5	P.W.5	V.Srinivasan
6	P.W.6	N.Mariyappan
7	P.W.7	Ramesh
8	P.W.8	S.Prabhakaran
9	P.W.9	Senthilnathan
10	P.W.10	T.R.Dravidamani
11	P.W.11	Srinivasan
12	P.W.12	Udayasuriyan
13	P.W.13	T.Illayaraja
14	P.W.14	Rajalakshmi, Zonal Deputy Block Development Officer
15	P.W.15	Panneer Selvam
16	P.W.16	Vetrivel
17	P.W.17	Ramya, Deputy Block Development Officer – Noon Meal)
18	P.W.18	A.Sathish Kannan, Surveyor
19	P.W.19	Pradhana Babu, Municipal Engineer
20	P.W.20	Duraimurugan, Spl. Deputy Collector (Stamps)
21	P.W.21	Kavitharan
22	P.W.22	G.Maheswari, Municipal Commissioner
23	P.W.23	K.Chandrasekar, Sr. Chief Reporter of Dinamalar
24	P.W.24	Anbzhagan
25	R.W.1	O.S.Manian

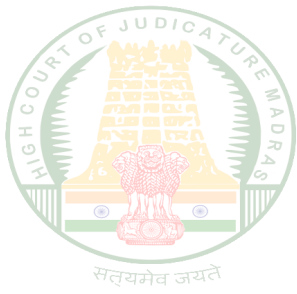


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List of Documents Marked by the Petitioner :

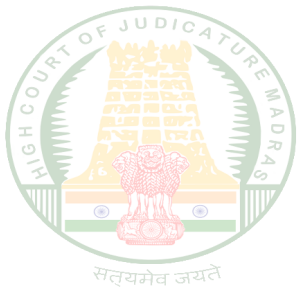
S. No.	Date	Exhibit	Description of Document
1	18.03.2021	P-1	Photocopy of Nomination filed by the petitioner
2	13.03.2021	P-2	Photocopy of Nomination filed by the 1 st respondent
3	02.05.2021	P-3	Photocopy of form 20 – Final Result Sheet
4		P-4	Booklets on Plans and Developments by the 1 st respondent from 2016 to 2021 as Minister of Handlooms and Textiles Department, printed and distributed by the 1 st respondent and his agents
5	25.07.2016	P-5	Photocopy of Election Commission of India Notification No.4/LET/ECI/FUNC/JUD/SDR/2016
6		P-6 Series	Booklets on grant of Patta printed and distributed by the 1 st respondent and his agents (2 Nos.)
7		P-7 Series	Tokens printed and distributed by the 1 st respondent and his agents for distribution of illegal gratification to the voters (3 Nos.)
8	02.04.2021	P-8	Colour Photocopy of FIR No.145
9	06.04.2021	P-9	Photocopy of FIR No.172
10	04.04.2021	P-10	Copy of paper Advertisement criticising DMK printed in the form of newspaper by the 1 st respondent
11	24.08.2024	P-11	Photocopy of Election commission of India



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			Notification No.3/9/2004/JS-II
12	16.10.2007	P-12	Photocopy of Election Commission of India Notification No.3/9/2007/JS-II
13		P-13	Photocopy of Representation regarding circulation of Newspaper
14	25.03.2021	P-14	Photocopy of regarding collection process of Form 12-D votes issued by the 15 th respondent
15	03.03.2021	P-15	Communal speech by the 1 st respondent
16	30.03.2021	P-16	Photocopy of Text of speech given by the 1 st respondent
17	07.10.2008	P-17	Photocopy of Election Commission of India Notification No.3/7/2008/JS-II
18		P-18 Series	Photographs of wall paintings and flex boards (4 Nos.)
19		P-19	Video of Flex Boards and wall paintings done by the 1 st respondent
20	25.10.2013	P-20	Photocopy of Election Commission of India Notification No.491/SM/2013
21	17.03.2021	P-21	Photocopy of Election commission of India Press Note No.ECI/PN/31/2021
22	24.03.2021	P-22	Photocopy of Representation of DMK worker regarding inauguration of bus stand by the 1 st respondent
23		P-23 Series	Photographs relating to inauguration of projects after announcement of 2021 elections (6 Nos.)



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24	25.03.2021	P-24	Representation given by the petitioner's advocate to the 15 th respondent regarding distribution of booklets (Ex.P-4) by the 1 st respondent
25	19.03.2021	P-25	Representation given by the petitioner's advocate to the 15 th respondent regarding distribution of Ex.P-6
26	19.03.2021	P-26	Representation given by the petitioner's advocate to the 15 th respondent regarding postal votes of COVID victims
27	19.03.2021	P-27	Representation given by the petitioner's advocate to the 15 th respondent regarding telecast of canvassing in local cable TV by the 1 st respondent
28	20.03.2021	P-28	Second representation given by the petitioner's advocate to the 15 th respondent regarding telecast of canvassing in local cable TV by 1 st respondent
29		P-29 & P-32	Two DVD recordings of campaign which was telecasted in Kalai TV 65-B certificate for the Two DVD marked as Ex.P-32
30	19.03.2021	P-30	Representation given by the petitioner's advocate to the 15 th respondent regarding illegally used electricity at Anganvadi
31	22.03.2021	P-31	Second representation given by the petitioner's advocate to the 15 th respondent regarding usage of official machinery by the 1 st respondent
32	05.04.2021	P-33	FIR No.170
33	09.01.2021	P-34	Representation of V.Senthilnathan seeking



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			information under Right to Information Act, 2005
34	16.03.2021	P-35	Photocopy of Information regarding preparation of list for grant of patta to people residing in lands belonged to temple obtained under RTI Act
35	05.04.2021	P-36	FIR No.171
36	05.04.2021	P-37	FIR No.169
37	23.03.2021	P-38	FIR No.159
38	31.03.2021	P-39	Representation regarding discrepancies in Form 12-D votes
39	29.03.2021	P-40	Original Permission granted by District Election Officer
40	04.04.2021	P-41	Copy of Tamil Daily Newspaper namely "Dinamalar"
41		P-42	Computer generated invoice raised for the advertisement in Ex.P-41
42	17.03.2023	P-43	A copy of the RTI application with original acknowledgment
43	10.04.2023	P-44	Original reply

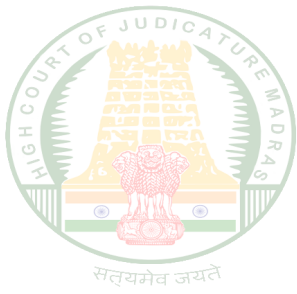
List of Official Exhibits Marked :

S. No.	Exhibit	Description of Document
1	C-1	Photocopy of representation dated 19.03.2021 given by Mr.M.Anbarasu along with the photocopy of the report dated 17.03.2021 issued by Mr.Swaminathan, Flying Squad



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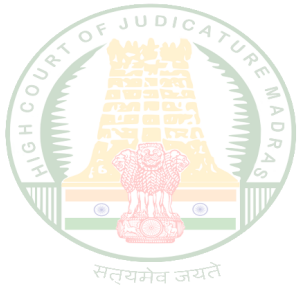
		Officer (compared with original)
2	C-2	Original proceedings dated 26.03.2021 about the collection of postal votes from the persons about 80 years and persons with disability along with tabular column showing the teams formed for collection of said votes
3	C-3	The original representation dated 22.03.2021 given by Mr.M.Anbarasu along with the original report received from the officials
4	C-4	The original letter dated 22.03.2021 written by the Returning Officer to the Block Development Officer seeking the report on the representation dated 22.03.2021
5	C-5	The original office report on the representation dated 22.03.2021
6	C-6	The original representation dated 19.03.2021 given by Mr.M.Anbarasu along with the reports received from the official on the said representation
7	C-7	Original representation dated 10.03.2021 sent by Mr. P.Venkateswaran, Advocate of DMK Party Vedaranyam to Returning Officer along with the report received from the official on the representation (Complaint for the P-6 series)
8	C-8	Original representation dated 19.03.2021 given by Mr.M.Anbarasu to the Returning Officer regarding the list of voters to the BLA-2 agents
9	C-9	Original representation dated 18.03.2021 given by Mr.P.Venkateswaran to the Returning Officer regarding the advertisement telecasted on Kalai TV
10	C-10	Original representation dated 19.03.2021 given by Mr.M.Anbarasu to the Returning Officer regarding the advertisement telecasted on Kalai TV



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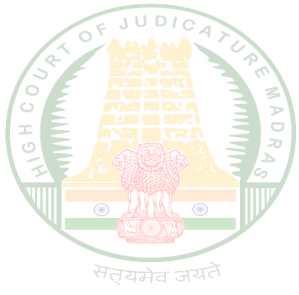
11	C-11	Original complaint dated 24.03.2021 given by Mr.A.Paribalan regarding the inauguration of land for opening a bus stand.
12	C-12	Original representation dated 25.03.2021 given by Mr.M.Anbarasu to the Returning Officer regarding the distribution of 54 pages booklets to the voters along with the report received in this regard
13	C-13	Original representation dated 5.4.2021 given by Mr.M.Anbarasu to the Returning Officer regarding the paper advertisement along with the reports received from the official (Ex.P-10 is the subject matter of C-13 representation)
14	C-14	Original representation dated 31.03.2021 given by Mr.P.Vetrivel to the Returning Officer regarding the collection of votes from the voters above 80 years along with the reports received from the officials
15	C-15	Original note file dated 20.03.2021 regarding the representation dated 19.03.2021
16	C-16	Photocopy of the affidavit filed by the 1 st respondent regarding his election expenditure (compared with the original)
17	C-17	Original Register for maintenance of day to-day accounts (Volume-I) of the 1 st respondent
18	C-18	Original register for maintenance of day to-day accounts (Volume-II) of the 1 st respondent
19	C-19	Original register for maintenance of day to-day accounts (Volume-III) of the 1 st respondent
20	C-20	Original shadow observation register for maintenance of



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		day accounts (Volume – I & II) of the 1 st respondent
21	C-21	Original final result sheet and election records submitted by the Sub Treasury, Vedaranyam



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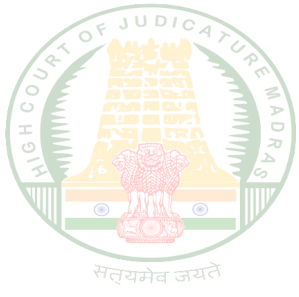


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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
E.L.P. NO.10 OF 2021**



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E.L.P. No.10/2021

**Pronounced on
22.12.2023**