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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 06-03-2025

PRONOUNCED ON: 18.03.2025

CORAM

THE HONOURABLE MR JUSTICE G.K. ILANTHIRAIYAN

O.A.No.128 of 2025

in

ELP NO. 5 of 2024

Anniyur Siva @ Sivashanmugam.A

Petitioner(s)

Vs

1.M.Rajamanickam

S/o.Maasaanam, No.124, Koovanur, Pillur Post,
Sivagangai - 630 561.

2.Chief Election Commissioner,
Election Commission of India, Nirvachan Sadan,
Ashoka Road, New Delhi- 110 001.

3. Chief Electoral Officer
Public Elections Department, Secretariat, Fort St.
George,
Chennai - 600 009.

4. Returning Officer
75-Vikravandi Assembly Constituency, Vikravandi Taluk Office,
Villupuram District – 605652

5. Mahendiran
S/o.Subiramani, 364, Vinayagar Koil Street, Saalaiyaampalayam,
Villupuram 605608

6. S. Sekar
S/o.Subiramani,



No.70, Aasaakulam, Saalaamedu, Villupuram 605 401

7. S. Ulaganathan

S/o.Sagadevan,

No.44/50, Vanniyar Street, Poonthottam, Villupuram 605 602

8. S. Vijaya

W/o.Selvaraj,

No.3/2523, Bhuvaneswari Colony, Sakkimangalam, Illamanur Main Road, Illamanur, Madurai 625 201

9. K. Raja Stalin

S/o.N.Kandasamy, No.1/77, North Street, U. Nemili Village, Pandoor Post, Ulundurpet Taluk, Kallakurichi Dt 606 102

10. J. Janardhanan

S/o.Jayaraman,

No.28/16, Ayyasamy Cross Street, Tindivanam Taluk, Villupuram District 604 001.

11. Dr.A.V.Narendiran

S/o.A.Varadappan,

No.6, First Street, E.S.T. Nagar, Podaturpet, Pallipettu Taluk, Tiruvallur District 631 208.

12. Dr.K. Padmarajan

S/o.K..Kunchambu Nair,

No.3/3 - 23 A, Padma Nivas Building, Raman Nagar Post, Mettur Dam - 636 403 Salem District.

13. Agni Alwar

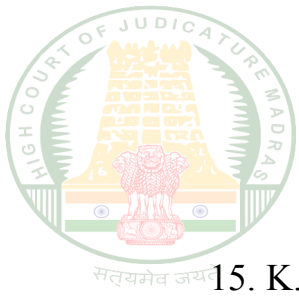
S/o. Nallappan,

No.6, Nagamarai Main Road, Nagamarai Pudur, Nagamarai Post, Pennagaram 636 810 Dharmapuri Dt.

14. S. Muthiah

S/o.Srinivasan,

No.9/7, Mottaiyan Street, Tindivanam, Villupuram 604001



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15. K.Santhamoorthy

No.4, Murugan Kovil Street, Vinayagapuram, Semangalam, Vanur Taluk,
Villupuram District 605109.

Respondent(s)

PRAYER: This Application has been filed to reject the Election Petition no.5 of 2024 on the file of this Court under the Representation of the People Act, 1951.

For Petitioner(s):

M/s. N.R.Elango, Sr.counsel for
Mr.A.S.Aswin Prasanna

For Respondent(s):

M/s. T.Sivagnanasambandan for R1

ORDER

This petition has been filed to reject the election petition in E.L.P.No.5 of 2024 filed by the first respondent herein.

2.The first respondent filed E.L.P.No.5 of 2024 for declaration, to declare that the rejection of his nomination filed for the Tamil Nadu Legislative Assembly Constituency no.75, Vikravandi Constituency on 24.06.2024 as illegal and also for declaration, to declare 'acceptance of the nomination filed by the petitioner herein for the Tamil Nadu Legislative Assembly by election to No.75, Vikravandi Constituency on 24.06.2024 as illegal'. The petitioner also sought for the following prayers, viz.,



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(i) To declare that the rejection of the nomination of the petitioner, filed in the Tamil Nadu Legislative Assembly Bye election to no.75-Vikravandi Assembly Constituency on 24.06.2024 is unjust, illegal, invalid and against the Statutory Law, R.P.Act, and thereof.

(ii)to declare that the acceptance of Nomination filed by the 4th respondent in the Tamil Nadu Legislative Assembly Bye election to no.75-Vikravandi Assembly Constituency on 24.06.2024 is illegal and against the Statutory law, R.P.Act, and thereof.

(iii)to declare that the non-submissions of accounts by the 4th respondent as per Section 77 of R.P.Act, 1951, is violative of R.P.Act, is disqualify as per Section 10-A of the R.P.Act.

(iv) to declare that the election held on 10.07.2024, results announced and declare of the 4th respondent as elected on 13.07.2024 to no.75-Vikravandi Assembly Constituency Bye election of Tamil Nadu Legislative Assembly.

3.Pending the election petition, the petitioner who is the 4th respondent in the election petition filed this petition to reject the election petition on the ground that the election petition has not filed as per the



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mandatory provisions under Section 83 of the Representation of the People

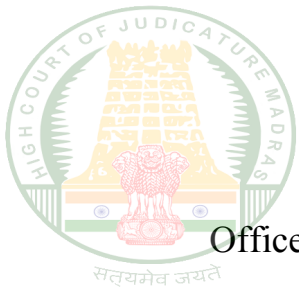
Act, 1951 (herein after referred to as "the Act") and not verified properly. It

does not contain a conscience statement of material facts on which the election petitioner relies and thereby does not satisfy the mandatory requirement of Section 83(1) of the Act. Therefore, the election petition itself is barred by law. The election petition has been filed without cause of action. There is no whisper in the election petition with regard to the cause of action for filing the same. Mere rejection of nomination would not give any cause of action to file election petition, that too for declaration of the returned candidate as Member of the Legislative Assembly for the Vikravandi Legislative Assembly Constituency as null and void. The election petition has been filed on the ground of improper acceptance of the petitioner's nomination, improper rejection of the nomination of the first respondent, and the Returning Officer acted in a biased manner and supported the case of the petitioner herein. In order to substantiate the first ground that the improper acceptance of the petitioner's nomination, the first respondent must plead and prove that the result of the election insofar as it concerned, the returned candidate has been materially affected by improper acceptance of nomination as contemplated under Section (1)(d)(i) of the



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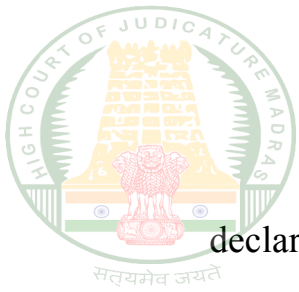
Act. However, there is no whisper about how the result of the returned candidate has been materially affected in the election petition. The first respondent stated in his election petition that the petitioner failed to fill in part (a) of Column 6(a) in the Form 26 Affidavit and it was left blank as against the prescribed format. The petitioner had filled paragraph nos.5 and 6 as "not applicable" and the same was rightly accepted by the Returning Officer. Further, the allegations levelled in the election petition that the petitioner failed to fill in paragraph no.6(a) of the nomination is of no importance as it is not the case of the first respondent that the petitioner had suppressed any criminal case registered against him. Thus, the voters had complete knowledge of the fact that there are no cases pending against the petitioner. Therefore, even as per the pleadings of the first respondent in the election petition, there is complete compliance of Section 33(a) of the Act. The petitioner had duly filled in "not applicable" in paragraph no.5 & 6 of the nomination as prescribed in the said Classes of Form 26. Therefore, non filling of "not applicable" in paragraph no.6(a) of the nomination has been overlooked by the Returning Officer, as the same cannot be called as defective of substantial character. Though the first respondent alleged that the petitioner's nomination was mechanically accepted by the Returning



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Officer and it is against law framed in conduct of elections, there is no whisper about the manner in which the Returning Officer acted upon while receiving the petitioner's nomination. Therefore, the election petition is barred by law and liable to be rejected.

4.Per contra, on perusal of counter affidavit filed by the first respondent and the submissions made by Mr.T.Sivagnanasambandan, learned counsel for the first respondent revealed that the petitioner failed to fill in paragraph nos.5 and 6 in Form 26 of the nomination and he being the ruling party candidate, his nomination was improperly accepted by the Returning Officer. Even according to the petitioner, part(a), column 6(a) of Form 26 had been left blank. It is against the directions issued by the Hon'ble Supreme Court of India that all the columns in Form 26 has to be filled in and no column shall be left blank. Therefore, it is fatal to the election declaration and as such, the first respondent filed a petition for declaration to declare the election of the petitioner as null and void. The first respondent was not given an opportunity while returning his nomination. Further, the Returning Officer did not even state any reason for returning his nomination. Therefore, these grounds are clearly attracted to



declare the election of the petitioner as null and void.

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5. Heard the learned counsel on either side and perused the entire material available on record. The petitioner, the first respondent and the respondents 5 to 15 had contested for the Member of Legislative Assembly for no.75, Vikravandi Legislative Assembly Constituency By election and filed their nominations. The candidates shall submit their nominations in Form 26 as prescribed along with requisite Form 26 affidavit duly filled in as prescribed along with Form A and B. There are totally 64 persons submitted their nominations to contest for the post of Member of Legislative Assembly to the Vikravandi Legislative Assembly Constituency. After scrutinizing all the nominations, 35 nominations were rejected out of 64 and 29 nominations were accepted by the Returning Officer. As far as the first respondent's nomination is concerned, it was rejected for the reason that in Form-26, affidavit in part (a) column (2), he stated his name is enrolled as Madurai West whereas, in part (b) where abstract to be given from column 1 to 10 of part (9) column 3 stated as 75, Vikravandi. Further, he also stated his address as No.124, Koovanur, Pillur Post, Sivagangai District. When the first respondent's name found in the voters list of Madurai West



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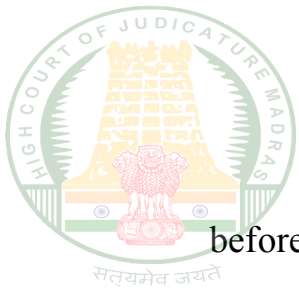
constituency as Serial no.748, ward no.193, he wrongly stated his address at Sivagangai and also his constituency name as no.75, Vikravandi. Therefore, the Returning Officer had rightly rejected his nomination by order dated 24.06.2024 for the reason that there is discrepancy in details given in the affidavit of Form 26 form (9) Serial (2) and part (b) Serial no.3.

6.On perusal of Form 26 affidavit of the petitioner, it is revealed that part (a) column no.5 in form 26, the petitioner declared that there is no pending criminal case against him. If there is no criminal case pending, he has to write as "not applicable" insofar as the details of the case in column 5(2). Accordingly, the petitioner had filled it as "not applicable". The column no.6 shows about conviction case. The petitioner had not declared that he has not been convicted for any criminal offence, if he has not been convicted, he has to write "not applicable" in the other details column of details of cases. Accordingly, the petitioner, after his declaration as he has not been convicted in any criminal case and fill it as "not applicable" in other columns. Therefore, there is no column left out by the petitioner to reject his nomination as improper one.



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7. The Election petition itself has been filed on three main grounds, viz., (i) nomination of the first respondent/Election petitioner was improperly rejected by the Returning Officer, (ii) the nomination of the applicant/4th respondent in ELP was improperly accepted by the Returning Officer, (iii) the Returning Officer had acted in a biased manner and supported the nomination of the petitioner who contested the election under the banner of ruling party. As explained above, the first two grounds to file the election petition for declaration, cannot be accepted for any of the declaration prayer. Insofar as the Returning Officer acted in a biased manner also, cannot be accepted since there is absolutely no averment to substantiate the said ground in the election petition. On perusal of the election petition, there is no whisper in the entire pleadings of the election petition with regard to the cause of action for filing the election petition. Mere repetition of allegations and provisions of the statute will not make out cause of action to file the election petition. Further, mere rejection of nomination of the petitioner will not give rise of any cause of action to file election petition. In fact, the first respondent categorically admitted that his nomination itself was defective one and the said defect is not a curable one. Therefore, the first respondent was not given any opportunity for hearing



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before the rejection of his nomination. The election petition has been filed on one of the ground that the nomination of the petitioner was improperly accepted by the Returning Officer. Therefore, the first respondent must plead and prove that the result of the election in respect of the petitioner as the returned candidate has been materially affected by improper acceptance of nomination. While accepting the nomination, the Returning Officer need not to state any reasons. On perusal of the provision under 36(6) of the Act shows that the Returning Officer shall endorse on each nomination before his decision except to reject the same and if the nomination is rejected shall record in writing to prove the statement of his reason for such rejection. Therefore, the contention of the first respondent that there was no compliance of the provision under Section 36(6) since the Returning Officer had simply endorsed the acceptance of the nomination of the petitioner without recording any reason, cannot be accepted. It is relevant to rely upon the provision under Section 100 (1)(d)(i) in this regard.

Section 100:Grounds for declaring election to be void-(1)

Subject to the provisions of Sub-section (2), if (the High Court) is of the opinion-

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



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

8. Thus, it is clear that the election is liable to be declared as void on the ground of improper acceptance of the nomination since such improper acceptance of the nomination would materially affect the result of the election. Here, the first respondent failed to state that the acceptance of the nomination of the petitioner was materially affected the result of the election.

9. The provision under Section 83(1)(a) of the Act read with Order VII Rule 11 of CPC contemplates that the election petition must contain a conscience of statement of material facts, on which the petitioner relies. The bald and vague averments made in the election petition do not satisfy the requirements of pleadings of material facts within the meaning under Section 81(9) of the Act read with Order VII Rule 11 of CPC, which mandates that the election petition shall contain a conscience of statement of material facts on which the petitioner relies. The material facts required to be stated or those facts which can be considered as materially supported the allegations made, there must be such facts have to afford a basis for the allegations made in the objection and would constitute a cause of action as



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contemplated in the CPC. In fact, omission of single material fact leads to an incomplete cause of action and the statement of claim becomes bad, as held by the Hon'ble Supreme Court of India. The non mentioning of the particulars as to how such improper acceptance of nomination had materially affected the result of the election is apparent on the face of the election petition. Further, the pleadings of the election petition have to be precisely substantiate and unambiguous. Therefore, the allegations contained in the election petition did not set out as contemplated under Section 100(1)(d)(1) and did not conscience with the requirement of Section 83(1)(a) of the Act r/w Order VII Rule 11 of the CPC.

10. In view of the above, the Election petition no.5 of 2024 cannot be sustained and it is liable to be rejected. Accordingly, O.A.No.128 of 2025 is allowed and consequently, ELP.No.5 of 2024 is rejected. No costs.

18-03-2025

Index : Yes/No
Neutral citation : Yes/No
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To
1. Chief Election Commissioner
Election Commission of India,

13/15



Nirvachan Sadan,
Ashoka Road,
New Delhi- 110 001.

2. Chief Electoral Officer
Public Elections Department, Secretariat, Fort St. George,
Chennai - 600 009.

3. Returning Officer
75-Vikravandi Assembly Constituency, Vikravandi Taluk Office,
Villupuram District - 605652



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G.K. ILANTHIRAIYAN.J.,
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Pre-Delivery Order in
O.A.No.128 of 2025
in
ELP NO. 5 of 2024

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