



E.P.No.9 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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RESERVED ON : 02.09.2024

PRONOUNCED ON : 28.05.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

E.L.P.No.9 of 2021

T.Senguttuvan

... Petitioner

Vs

- 1.Ashokkumar, K.
- 2.Chandramohan, K.M.
- 3.Tamilselvan, S.
- 4.Ameenulla
- 5.Sasikumar, K.S.
- 6.Nirandari, V.
- 7.Ravishankar, R.K.
- 8.Ruthramani, T.
- 9.Vijayakumar, R.
- 10.TVS Gandhi
- 11.Kumaresan, M
12. Gopinath, M.
- 13.Sakthi, K.
- 14.Sivan, C.
- 19.G.Karpagavalli



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(Respondents 15 to 18 struck off in ELP.No.9 of 2021 as per order of this Court dated 11.01.2022 made in O.A.No.672 of 2021 in ELP.No.9 of 2021) ... Respondents

Prayer: Election Petition filed under Sections 80, 80A, 81, 84 r/w Sections 100, 101, 123, 123(6) & 129 of the Representation of People Act, 1951 R/w. The conduct of Election Rules, 1961, for the following reliefs:

i) declare the election of the 1st respondent to No.53, Krishnagiri Assembly Constituency in the State of Tamil Nadu on 02.05.2021 as illegal, void and liable to be set aside.

ii) Declare the petitioner herein as duly elected to the No.53, Krishnagiri Assembly Constituency in State of Tamil Nadu with effect from 02.05.2021.

iii) Direct the 1st respondent to pay the cost of the petition.

For Petitioner : Mr.Richardson Wilson

For Respondent-1 : Mr.P.V.Ramanujam, Senior counsel
for Mr.BAravind Srivatsa



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ORDER

Challenging the election of the 1st respondent as the returned candidate of No.53, Krishnagiri Assembly Constituency, the petitioner is before this Court.

2. The petitioner has sought the following reliefs:

i) Declare the election of the 1st respondent to No.53, Krishnagiri Assembly Constituency in the State of Tamil Nadu on 02.05.2021 as illegal, void and liable to be set aside.

ii) Declare the petitioner herein as duly elected to the No.53, Krishnagiri Assembly Constituency in State of Tamil Nadu with effect from 02.05.2021 and

iii) Direct the 1st respondent to pay the cost of the petition.

3. Petitioner's case:

(i) It is the case of the petitioner that he belongs to Dravida Munnetra Kazhagam (hereinafter referred to as "DMK party") and has been a resident of Velgalahally Village having been born there. The

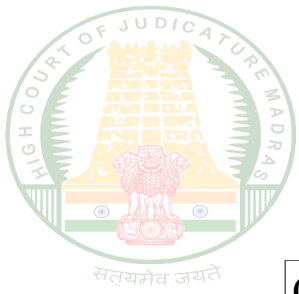


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petitioner has been active in the political arena since his young age having been inspired by great leaders like Periyar, Perarignar Anna and Dr. Kalaighnar M.Karunanidhi. The petitioner, therefore, devoted himself to achieving the objects and philosophies of the DMK party. He has been holding various posts in the party and has successfully contested the last 3 consecutive Tamil Nadu Legislative Elections as the candidate of the DMK party and served as a Member of the Legislative Assembly from the year 2006 to April 2021.

(ii) The General Elections to the 16th Tamil Nadu Legislative Assembly 2021 (hereinafter referred to as “the Elections”) had been notified on 26.02.2021 by the 15th respondent through a press release of the same day. The following was the schedule for the Elections:



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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 candidatures	22.03.2021
Date of poll	06.04.2021
Date of counting and declaration of results	02.05.2021

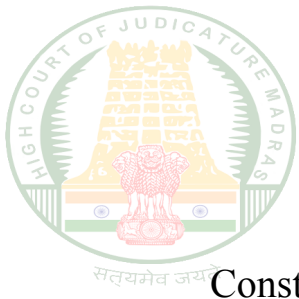
(iii) The petitioner was fielded as the candidate of the DMK Party for the 53, Krishnagiri Assembly Constituency on 12.03.2021 and he was contesting under the symbol 'Rising Sun' which is the party symbol. The petitioner has filed his nomination papers on 17.03.2021 and the nomination was accepted after scrutiny on 23.03.2021. The 1st respondent was fielded by the All India Anna Dravida Munnetra Kazhagam (hereinafter referred to as "AIADMK Party" as the party's candidate. After scrutiny of the nominations, the following list of candidates qualified to contest the elections and given below are their names, their party name and symbol:-



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SL. NO.	NAME OF THE CANDIDATE	PARTY	SYMBOL
1	Senguttuvan. T.	Dravida Munnetra Kazhagam	Rising Sun
2	Ashokkumar. K.	All India Anna Dravida Munnetra Kazhagam	Two Leaves
3	Chandramohan. K.M.	Nationalist Congress Party	Clock
4	Tamilselvan.S	Bahujan Samaj Party	Elephant
5	Ameenulla	All India Majlis-E-Ittehadul Muslimeen	Kite
6	Sasikumar. K.S.	Anna Puratchi Thaiaivar Amma Dravida Munnetra Kazhagam	Jack Fruit
7	Nirandari.V.	Naam Tamilar Katchi	Ganna Kisan
8	Ravishankar. R.K.	Makkal Needhi Maiam	Battery Torch
9	Ruthramani. T.	Desiya Makkal Sakthi Katchi	Foot Ball
10	Vijayakumar. R.	Veerath Thiyagi Viswanatha doss Thozhilalarkal Katchi	Pestle and Mortar
11	TVS Gandhi	Independent	T.V.Remote
12	Kumaresan.M	Independent	Road Roller
13	Gopinath.M.	Independent	Dish Antenna
14	Sakthi.K.	Independent	Computer
15	Sivan.C.	Independent	Television

(iv) The petitioner's son S.Tamilselvan was his Chief Election Agent . The elections to 233 Constituencies including the Krishnagiri

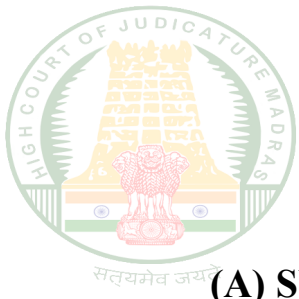


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Constituency, hereinafter referred to as “the constituency”, was held on 06.04.2021 and the 1st respondent had been declared as the returned candidate by the 18th respondent on 02.05.2021. The 1st respondent had secured 96,050 votes and the petitioner herein was the next candidate who secured 95256 votes and the margin of victory was just 794 votes. The 18th respondent, on 02.05.2021, had officially declared the results.

(v) The petitioner seeks to challenge the above election of the 1st respondent from the Constituency, contending that the election was illegal and was liable to be declared as void under Section 100(1)(b)(d)(i)(ii)(iii) and (iv) and Section 123(1)(A) of the Representation of People Act, 1951 (hereinafter referred to as the “RP Act”). The following are the grounds on which the petitioner had sought to declare the election of the 1st respondent as illegal.

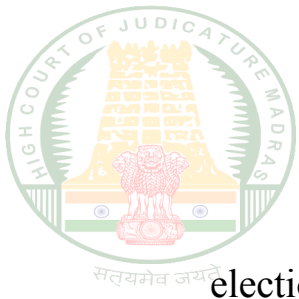


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(A) SUPPRESSION IN FORM-26 AFFIDAVIT:

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The petitioner would contend that the 1st respondent along with his three brothers owned a total extent of 2 acres and 8 cents in S.No.207/2A, Rettiyur Village, Vaniyambadi Taluk, Thirupattur District which was their ancestral property. In a sale deed dated 25.10.2004 executed by the 1st respondent and his brothers in favour of one T.Mahendran registered as Document No.3686 of 2004 on the file of the Sub Registrar Office, Vaniyamadi, the same has been reflected. The 1st respondent and his brothers had sold an extent of 1 acre 81 cents (78,977 sq.ft) to various persons through their Power Agent by dividing it into plots and after the sale, they continued to hold an extent of 23 cents in the aforesaid survey numbers. However, the first respondent has suppressed this piece of land in the Form-26 Affidavit. The petitioner owns a 1/4th share in the aforesaid extent. The petitioner would therefore submit that there was an improper acceptance of the nomination filed by the 1st respondent which has materially affected the



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election of the petitioner.

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(B) DISTRIBUTION OF CASH FOR VOTES:

It is the further contention that the 1st respondent, his Chief Election Agent and his booth agents along with the AIADMK party workers with the consent, knowledge, instructions and authorization and cost of the 1st respondent had distributed a sum of Rs.500/- to the voters in the Constituency as illegal gratification with the idea of securing votes in his favour. This distribution had started from the date of announcement of the poll till the date of poll. This act of the 1st respondent and the persons acting under / through him is a clear violation which falls under Section 123 of the RP Act and the election of the 1st respondent has to be declared null and void. The petitioner has set out a tabulated statement containing the details of the persons who had received the illegal gratification, their addresses along with details of the persons who had so distributed the amount, place, date



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time and person who had witnessed such distribution. Therefore, it is his contention that since a corrupt practice had been adopted, the election of the first respondent has to be set aside.

(C) USAGE OF OFFICIAL MACHINERY BY THE 1ST—RESPONDENT TO SECURE VOTES:

The allegation of the petitioner is that one Nagaraj, who was working as a Supervisor in the Electricity Board and therefore, a Government Servant, had been canvassing for the 1st respondent by wearing a shirt printed with the AIADMK party symbol from 05.03.2021 to 25.03.2021 throughout the constituency, including Kaveripattinam Town, Aalapatti, Palakudi, Madipatti, Vengaleri, Krishnagiri Town, Kuppam Road, by using the Government car which was available in his office. This has been witnessed by the petitioner and his election agent. The use of the petitioner's Machinery for campaigning by the 1st respondent and his agents is, once again a



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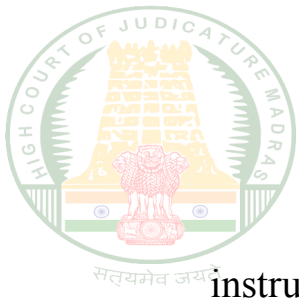
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violation of various provisions of the RP Act therefore, the election of the 1st respondent has to be set aside.

(D) EXCEEDING THE PERMITTED ELECTION EXPENDITURE FOR WALL PAINTING SYMBOL ADVERTISEMENTS APART FROM OTHER VIOLATIONS:

(i) The petitioner would state that the election commission had fixed a sum of Rs.30,80,000/- as election expenditure for every candidate in the Constituency. However, on a cursory consideration of the wall painting advertisements put by the 1st respondent to propagate his name and his party symbol, the petitioner would estimate an expenditure of Rs.20,00,600/-. The wall paintings has been done at the behest and direction of the 1st respondent and has been physically verified by the petitioner and his agents and party workers. The petitioner would submit that on a physical verification by the petitioner, his agents and party workers, they have come to learn that the 1st respondent and his election agents with his consent, knowledge,

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instructions, authorization and cost had painted wall advertisements covering nearly 22330 sq.ft throughout the constituency including all the 44 panchayats and for this alone, a sum of Rs.20,00,600/- was spent by the 1st respondent which exceeds the total permitted limit for a candidate.

(ii) The petitioner has provided a tabulated statement detailing the extent of wall painting including the street name, village and panchayats as also the expenditure incurred by him. Therefore, the petitioner would submit that since the excess expenditure attracts Section 123(6) of RP Act and is a corrupt practice, the election of the 1st respondent is liable to be set aside under Section 100(1)(b) of RP Act.

(E) VIOLATION COMMITTED BY PLASTERING WALL POSTERS WITH PARTY SYMBOLS ON THE WALLS OF THE PUBLIC PROPERTIES APART FROM OTHER VIOLATION:

(i) The contention of the petitioner is that the 1st respondent, his



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chief election agent and party workers have plastered the walls of Government buildings belonging to Krishnagiri Municipality with AIADMK party symbols. They have also not spared the walls of various fly overs which have been listed in detail in paragraph No.13 of the election petition. This plastering of wall posters is stated to have taken place between 03.04.2021 and 04.04.2021. The petitioner's election agents V.Vengattappan, S.Krishnamoorthy, M.Chandrasekar, S.Prakash, M.Velumani noticed this and informed the same to the petitioner and his Chief Election Agent. This act is also a violation of Model Code of Conduct. Despite the representation of the petitioner dated 04.04.2021 to the respondents 16 to 18 and the Election Observer of the Constituency, no action has been taken against the 1st respondent and his party.

(ii) According to Code 16.3(i) of Model Code of Conduct, all wall writing, posters/papers or defacement in any other form, cutout/hoardings, banners, flags etc, on Government property shall be



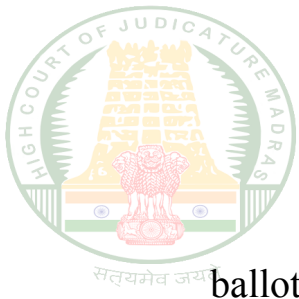
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removed within 24 hours from the announcement of elections by the Election Commission. Since the Municipal body, buildings, railways, flyovers etc. are public properties as contemplated under the Code 16.3(ii) of the Model Code of Conduct, the act of plastering the public property with posters containing AIADMK party symbol after announcement of the election is violative of the Model Code of Conduct. The petitioner would submit that a minimum of Rs.10 would have been spent on each posters for plastering the walls and this expenditure has been suppressed by the 1st respondent though he is bound to maintain such records as per Section 77 of the RP Act. This excess expenditure has not been taken note of by the 18th respondent/Returning Officer or by the Election Observer.

(F) IMPROPER REJECTION OF POSTAL BALLOT VOTES:

- (i) The petitioner would submit that the counting of the postal



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ballots had commenced at 8.00 am in the presence of the Chief Election Agent and other agents. The Chief Election Agent and the other agents of the petitioner had noticed that several postal vote covers were discarded by the officials without assigning reasons. The petitioner's chief Agent, namely S.Tamilselvan had questioned the same. He requested the 18th respondent to show the results of the postal ballots for all the candidates and the agents and to reject the same only if there are any reasonable grounds for rejection. However, the 1st respondent refused to show the results even after the several requests and rejected 605 covers without assigning any reasons.

(ii) In paragraph 17 of the tabulated statement, the petitioner has set forth the reasons given for rejecting the votes and the number of votes rejected under each head. 80 votes which have been rejected under the heads “others” do not fall within the reasons for rejection as provided under Rule 54-A(8) of Conduct of Election Rules(hereinafter



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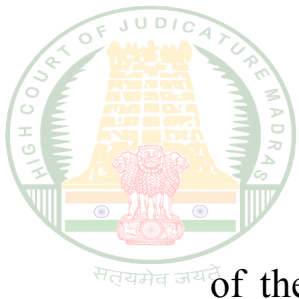
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referred to as “Election Rules). The petitioner also questioned that the rejection under various heads was not in compliance of the Rules. Therefore, the petitioner would submit that the rejection of 605 postal votes without reasons and in contravention of Rules 54A(11) and 54A(8) of Conduct of Election Rules had materially affected the election of the petitioner.

(G) DEFICIENCY AND IRREGULARITIES IN COUNTING

EVM VOTES:

(i) The petitioner would make a complaint about two polling stations. He would state that with reference to polling station No.79, Government High School, Gangaleri with EVM bearing Control Unit No.BCUAF08025, on 06.04.2021, a mock poll was conducted to test the EVM machines. However, without resetting the machines, the polling had commenced and therefore, 50 votes cast in the said EVM were invalid. The Returning Officer has informed the same on the date

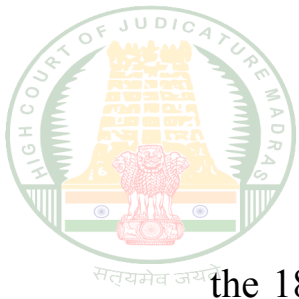


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of the counting and assured that this EVM would be kept aside and counted later through VVPAT. However, contrary to this assurance, it was taken up for counting at a later point in time in the absence of the petitioner and his agents.

(ii) EVM used in polling station 95 bearing Control Unit No.BCUEF88410 was taken up for counting in Round 9 at Table 1. However, the same did not work. The Officer-in-charge of the counting unit was directed by the Returning Officer to keep this control unit separately and to count the votes at the end. However, in this case also, the same came to be counted through VVPAT in the absence of the petitioner and this agents. On 02.05.2021, the petitioner gave a representation to the 18th respondent and the Election Observer of the constituency stating that the entire counting process is doubtful and requesting for recounting of all EVMs and postal votes before the number of votes secured by each candidate were entered in Form-20 by



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the 18th respondent. However, this request was turned down by order in reference No.Na.Ka.No.972/2020/A dated 02.05.2021 under Rule 63(3) of conduct of Election Rules, 1961 stating lack of reasons as a ground for rejection of request. The petitioner would also set out the procedure for counting of VVPATs in the place of votes polled in the EVM. Therefore, the petitioner would submit that since the procedure contemplated under the Act and Rules by the Returning Officer, the election of the petitioner has been materially affected. But for this corrupt practice and these irregularities, the petitioner would have been the successful candidate. The petitioner had bright chances to win and his election prospectus has been greatly impaired and hampered by the corrupt practice adopted by the 1st respondent. Therefore, the petitioner has come forward with this election petition.

CASE OF THE FIRST RESPONDENT / SUCCESSFUL CANDIDATE :

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4. The first respondent had filed a written statement denying the various allegations contained in the election petition and would submit that the very petition lacks legal merits and has to be dismissed. The first respondent would raise the preliminary objection that the allegations made by the petitioner in his election petition is not supported by any conceivable material evidence and therefore, the election petition deserves to be dismissed in limine.

5. The 1st respondent would submit that the allegations made by the petitioner are totally baseless and does not merit consideration. Therefore, relying upon the judgment of the Hon'ble Supreme Court reported in ***(1981) 2 SCC 689 [Aeltemesh Rein Vs. Chandulal Charakar]***, the 1st respondent would submit that where a petition is not supported by sufficient proof, the election petition has to be dismissed in limine. The 1st respondent would further submit that the election petition has to be presented within a period of 45 days from the date of



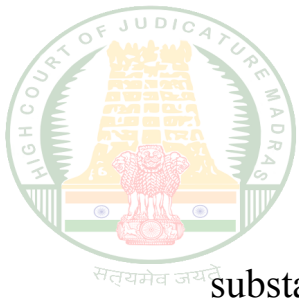
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the election of the returned candidate or if there are more than one candidate and the date of election are different, then the **later** of the dates would prevail. In the instant case, the State assembly election was conducted on 06.04.2021 and the results were announced on 02.05.2021. However, the petition was filed on 30.06.2021 nearly 63 days after the announcement of the election results and therefore, the petition is liable to be dismissed.

6. The 1st respondent would submit that there is no statutory provision for the condonation of delay in filing the election petition and therefore, the instant election petition was not maintainable, as it was filed with a delay of 63 days.

7. The 1st respondent would also submit that the election petition itself has been filed by the petitioner only to avenge his ego and jealousy considering the fact that the petition has been filed without



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substantial proof. He would also rely on the judgment of this Court in the case of ***C.Kuppusamy Vs.Chief Election Commissioner (W.P.No.12996 of 2002)*** where it has been held that if it is proved that the election petition has been filed to appease the ego, and the same would become infructuous and is liable to be dismissed.

8. The 1st respondent would submit that the election petition is liable to be dismissed as it does not comply with the provisions of Section 83(1)(a) of the RP Act. This Section provides that the person filing an election petition should give a concise statement of the material facts on which the petitioner relies. However, such a disclosure has not been made by the petitioner. He would submit that the allegation that the 1st respondent had overspent the election expenditure has not been proved and it fails to meet the requirement under Section 83(1)(a) of the RP Act. He would further state that the averments of the petition does not qualify as ground of corrupt practice



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and satisfy the essential conditions set out in Section 83(1)(b) of RP Act.

9. The first respondent has gone on to answer the allegations contained in the petition as follows :

In answer to the allegation that there is a suppression of facts in Form-26 affidavit, the 1st respondent would submit that the property is not under his ownership and that he has alienated the same much before the date of submission of the nomination Form and this transaction has also been recorded in the encumbrance certificate.

10. With reference to the allegation of distribution of cash for votes, the 1st respondent would submit that the petitioner is trying to prove the same by producing photographs which are not a substantial proof. The veracity of the photographs and the involvement of the 1st respondent has to be proved beyond reasonable doubt. The 1st

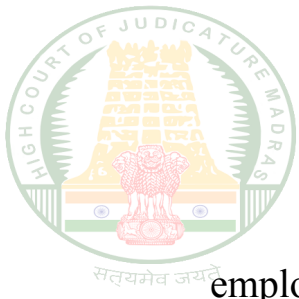


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respondent would further submit that the petitioner has not disclosed the name of the agent or the full particulars with reference to the corrupt practice. Mr.Vinayagam who is alleged to have indulged in the corrupt practice does not belong to the AIADMK party and there is no evidence to prove that the said person is a member of the said party. Further, the petitioner has not made complaint then and there in this regard.

11. With reference to the allegation of propaganda by the Government official wearing the symbol of AIADMK party, the answering respondent would submit that he has no relationship with the said person and he was not aware about him. However, the alleged act has taken place much before the date of election and further the petitioner ought to have reported the same immediately, which admittedly has not been done. That apart, without prejudice to the above submission, the answering respondent would add that an



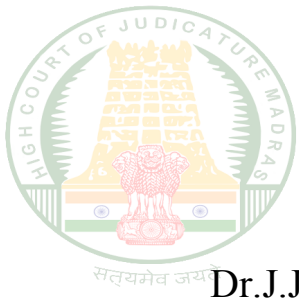
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employee of the Tamil Nadu Electricity Board is not a Government servant and cannot be treated as an official machinery of the state. The 1st respondent would rely on the judgment reported in **(1980) DLT 337 [C.M.Stephen Vs.Atal Behari Vajpayee]**.

12. As regards the excess expenditure of the wall paintings and symbol advertisements, the 1st respondent would clarify that the date on which these acts are stated to have been done was on 03.03.2021 whereas the 1st respondent has filed his nomination only on 12.03.2021. Therefore, the same cannot be treated as an unlawful practice.

13. The 1st respondent would submit that he is a law abiding senior citizen of the Country and has been zealously engaged in public work and constantly works for the benefit of the society at large. He has entered politics only on account of the great leaders who have led the party like Periyar, Dr.C.N.Annadurai, Dr.M.G.Ramachandran and



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Dr.J.Jayalalitha. He had been elected as a Member of parliament in the year 2014 General Assembly Elections and had discharged his duties with utmost dedication. It is his sheer hard work that has got him elected. Therefore, he would seek for the dismissal of the election petition.

ISSUES FRAMED :

14.The following Issues have been framed by this Court in the above Election Petition :-

"1. Whether the election of the 1st respondent from the No.53, Krishnagiri Assembly Constituency to the 16th Tamil Nadu Legislative Assembly, 2021 is liable to be declared as illegal, ab initio void and set aside?

2. Whether the 1st respondent has willfully suppressed his assets in his nomination form and affidavit thereby materially affecting the election of the 1st respondent and rendering his election liable to be set aside under Section 100(1)(d)(i) & (iv)



of the Representation of People Act, 1951?

3. Whether the 1st respondent is guilty of having been committed the corrupt practice under Section 123 of the Representation of People Act, 1951, thereby rendering the election of the 1st respondent liable to be set aside under Section 100(1)(b) & (d) (ii)?

4. Whether the 1st respondent is guilty of having been committed the corrupt practice under Section 123(7) of the Representation of People Act, 1951, thereby materially affecting the election of the 1st respondent and rendering it liable to be set aside under Section 100(1)(b) & (d) (ii) of the Representation of Peoples Act, 1951 ?

5. Whether the 1st respondent has exceeded his permitted election expenditure and thus violated Rule 90 of the Code of Conduct Rules, 1961 r/w Section 77 of the Representation of Peoples Act, 1951, thus committing a corrupt practice under Section 123(6) rendering his election liable to be set aside under Section 100(1)(b) & (d) (ii), (iv) of the Representation of Peoples Act, 1951 ?

6. Whether the 1st respondent, and with his knowledge, consent and direction, his agents and other party workers



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have plastered the walls of Government buildings and public properties with posters thereby violating the Model Code of Conduct, thus rendering the election of the 1st respondent liable to be set aside under Section 100(1)(d)(iv) of the Representation of Peoples Act, 1951 ?

7. Whether the Returning Officer of the No.53, Krishnagiri Constituency committed irregularities and illegalities by improperly rejecting the postal ballot votes and in counting the votes recorded in the EVMs, thereby materially affecting the election of the 1st respondent rendering the election liable to be set aside under Section 100(1)(d)(iii) of the Representation of the Peoples Act, 1951 ?

8. Whether the present election petition is barred by limitation and laches?

9. Whether the present election petition is compliant of Section 81 of the Representation of People's Act 1951 ?

10. Whether the present petition contains sufficient cause of action for this Hon'ble Court to take cognizance and try the same?

11. Whether the Petitioner herein should be declared as



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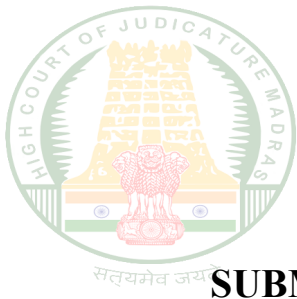
*duly elected to the No.53-Krishnagiri Assembly Constituency
in Tamil Nadu w.e.f. 02.05.2021?*

12. Whether the Petitioner is entitled to costs?

13. To what other reliefs is the petitioner entitled to ?”

TRIAL :

15. On the side of the petitioner (plaintiff), the petitioner has been examined himself as P.W.1 and 17 documents have been marked on his side. The first respondent examined himself as R.W.1 and no documents have been marked on his side. C.W1 to C.W.4 have been examined as Court witnesses pursuant to the summons taken out by the petitioner and Exts.C1 to C17 has been marked through these witnesses. On the side of the respondents, the 1st respondent has been examined as a witness and no documents have been marked on their side.



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SUBMISSIONS :
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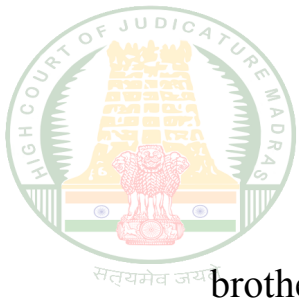
16. Although extensive oral arguments had been adduced on both sides, they have submitted exhaustive written arguments and therefore, this Court is relying upon these written submissions and extracting the submissions made by either side, in a concise manner.

Written submissions of the petitioner:

17. The petitioner has submitted his written submissions on the grounds upon which the election of the 1st respondent is sought to be set aside.

(i) Suppression in Form -26 Affidavit by the 1st respondent:

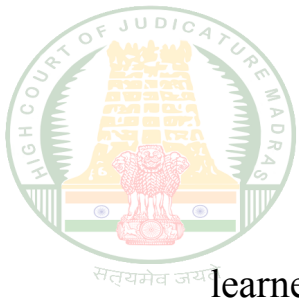
This is covered under issue No.2 of the issues framed by this Court. The petitioner would contend that the 1st respondent and his 3



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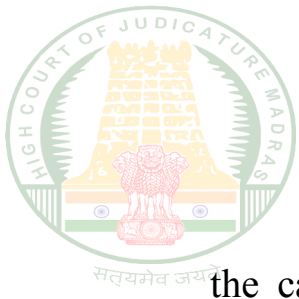
brothers had owned an extent of 2 acres 8 cents in S.No.207/2A, Rettiur Street, Vaniyambadi Taluk, Thirupattur District, Vaniyambadi which is the property they had inherited from their father, Krishnamoorthy. The 1st respondent and his brothers had formed a layout and sold several portions of the property as plots. To prove the sales, the petitioner has filed Ex.P5-Encumbrance Certificate. The learned counsel would submit that out of the extent of 2.08 acres, 1.56 acres was sold leaving behind the extent of 0.52 acres of land. However, the patta which has been marked as P4 still shows an extent of 0.36.35 hectares, i.e 0.89 acres which continues to remain in the name of Krishnamoorthy Gounder and others. The learned counsel would submit that the 1st respondent has not denied this issue in his counter statement, except for stating that in the computer patta, the petitioner's name does not feature and the encumbrance certificate only goes to show that the property has been sold out. This fact is also admitted by the 1st respondent in his cross examination as R.W1. The



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learned counsel would further submit that the failure to submit an explanation for the aforesaid allegation in the counter statement is sought to be addressed through arguments where a new defense is raised that the extent of 0.89 acres constitutes the OSR lands which have been gifted when the layout was formed. An alternate argument was also made for the first time by the 1st respondent that even if there is some land available, this would not in any manner materially affect the election. Such a statement, according to the petitioner is fallacious in as much as Section 100 (1) (d) of the RP Act does not contemplate an investigation into the intent or mens rea like a criminal offence. Suffice it to say that if any of the 4 grounds of this section is attracted, the intent of the candidate pales into insignificance. The candidate has violated the mandatory requirements of disclosure of assets. This is covered by a judgment of the Hon'ble Supreme Court in the case of ***Union of India Vs. Association for Democratic Reforms and Another*** [2002] 5 SCC 294. Sections 33-A and 33-B of the R.P. Act require



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the candidate to mandatorily disclose such information as is sought from him by the Act and Rules. Rule 4A of the Conduct of Election Rules, hereinafter referred to as the “CE Rules”, set outs the Form of Affidavit that is to be filed by the candidate at the time of filing his nomination paper. This is an affidavit sworn by the candidate before a Magistrate of the first class or a Notary in Form 26. Clause 7 of Form 26 requires every candidate to declare his movable and immovable assets, assets of his spouse and dependent children. Therefore, it is the contention of the petitioner that by not including the aforesaid asset in the Form 26, the petitioner has violated the provisions of Section 100(1)(d)(iv) of the R.P. Act and it is fatal to the election which cannot be cured. Therefore, according to the petitioner, issue No.2 has to be answered in favour of the petitioner. He would rely upon the following judgments as well :-

- i. **2015 (3) SCC 467 – Krishnamurthy Vs Sivakumar & Others**
(paragraphs 62 to 65, 81 & 86)



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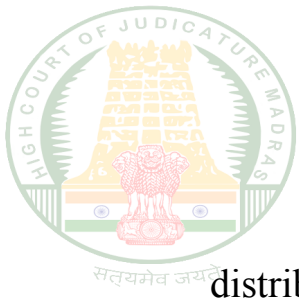


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- ii. **1996 (2) SCC 752 – Common Cause (A Regd. Society) Vs. Union of India & Others** (paragraphs 23 & 26)
- iii. **AIR 2014 SC 2069 - Kisan Shankar Kathore Vs Arun Dattatraya Sawant & Others** (paragraphs 31, 32, 33, 37, 38, 39, 40, 41 & 43)
- iv. **2012 (3) SCC 314 – Mangani Lal Mandal Vs Bishnu Deo Bhandari** (paragraphs 9 to 11)

(ii) Distribution of cash for votes which is covered under Issue No.3

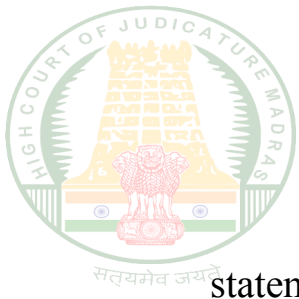
The petitioner would contend that the 1st respondent and under his instructions, his agents and party workers had distributed cash of Rs.500/- to each of the voters of the constituency in exchange for their votes. To prove the above allegation, apart from the petitioner's evidence as P.W1, two other eye witnesses have been examined. P.W3 – Chandersekar would depose that he has himself seen one Vinayakam who is the spokesperson of the AIADMK party and one Arumugam



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distributing Rs.500/- along with a pamphlet to a voter, Akbar asking him to vote for the 1st respondent. P.W3 would contend that that he had taken a photo of the same and this photograph is marked as Ex.P15. The evidence of P.W3 has been extracted in the written arguments. The next witness examined in this regard is P.W4-Velumani, who had deposed that on 04.04.2021, he had seen Vinayakam canvassing for the 1st respondent at Govindapuram Street where he observed Vinayakam placing a Rs.500/- note on a pamphlet bearing the AIADMK symbol to a voter, Yaraf requesting to vote for the 1st respondent. P.W4's evidence in this regard has also been extracted. It is the contention of the petitioner that 1st respondent has raised the defense that the full particulars of the alleged corrupt practice have not been furnished and that apart, there is nothing to show that Vinayakam was a member of the AIADMK party. Therefore, what is to be considered is whether Vinayakam is a Member of the AIADMK party or not. The 1st respondent has attempted to brush aside the



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statement by contending that the said Vinayagam is not a Member of the AIADMK party. To counter the same, the learned counsel for the petitioner would invite the attention of this Court to the evidence of CW4-Vinayakam wherein he has admitted that during the relevant period namely the Election 2021, he was very much a Member of the AIADMK Party. In his chief examination, he had admitted the photograph. This admission was later sought to be retracted by contending that the entire photograph was orchestrated by a DMK Town Secretary. In the cross examination, the witness has admitted that he had shifted from the AIADMK party to DMK party. However, the learned counsel for the petitioner would submit that in response to another question, the witness has clearly answered that he had shifted from the AIADMK party to DMK party only after Ex.P15 was taken. Therefore, the defense that Vinayakam was not a member of the AIADMK at the relevant point in time fails. The learned counsel for the 1st respondent, in oral arguments, had contended that Section 65-B



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certificate given by P.W3 is illegal, since the certificate ought to have been given by Bhavani Studio which had printed the photograph. The said contention is totally misconceived as the responsibility under Section 65-B is fastened on the person who is producing the electronic evidence to certify that the electronic output is an accurate reproduction. Therefore, the person taking the photograph is competent to produce the Section 65B certificate. The learned counsel would further contend that bribery of voters is a serious election offence under Section 123-1(A) of the R.P.Act and such corrupt practice attracts the provisions of Section 100(1)(d)(ii) of the R.P.Act. Therefore, this corrupt practice materially affects the election and issue No.3 is also to be answered in favour of the petitioner. He would rely upon the judgment reported in 2017 SCCOnline Mad 1977 (paragraphs 14, 20, 21, 23, 28 & 29)

(iii) Use of official machinery which is covered under Issue No.4:

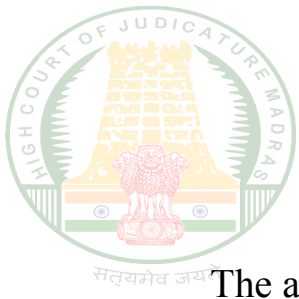
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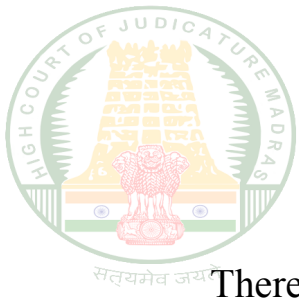
The petitioner's contention is that the 1st respondent had secured the assistance of one Nagaraj, a Supervisor of the Tamil Nadu Electricity Board (now TANGEDCO) who has canvassed for the 1st respondent across the constituency between 05.03.2021 to 25.03.2021 by wearing a shirt which had the AIADMK party symbol printed on it. C.W3-Senthil Kumar has been examined as Court witness No.3 to substantiate the above contention. He had deposed that he had seen the said Nagarajan canvassing for the 1st respondent on 24.03.2021 at Aalapatti within the Krishnagiri Assembly Constituency while wearing AIAMK party symbol. The defense is that the said Nagaraj is not a Government servant within the meaning of Section 123(7) of the R.P. Act and the 1st respondent has not asked him to canvass for votes. Therefore, the petitioner would submit that once there is an admission, there was no necessity to prove the same. The defense that the said Nagaraj is not a Government servant is false. According to the petitioner, the TANGEDCO is fully owned by the State Government.



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The argument of the learned senior counsel for the 1st respondent is that Nagaraj was not an official appointed or deputed by the Election Commission of India in connection with the conduct of the elections and therefore, Section 123(7) of the R.P.Act would not be attracted. The learned counsel for the petitioner, in this regard, would submit that Section 123(7) of the R.P.Act does not envisage the appointment of a specific individual and only contemplates a class of persons who are in the service of the local authority, university, government Company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections. The phrase “appointed” or “deputed” is only attached to the last category i.e., undertakings. The Court has to consider all the facts to determine as to whether TNEB/TANGEDCO can be involved in conducting elections since electricity is an essential service for the conduct of elections. Therefore, the involvement of one of the board members squarely falls within the embargo of Section 123(7) of the R.P.Act.



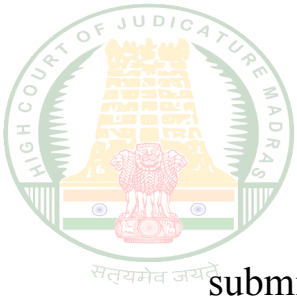
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Therefore, he would submit that the issue No.4 has to be answered in favour of the petitioner.

(iv) Exceeding the permitted maximum expenditure:

The petitioner's contention is that the maximum permitted expenditure is Rs.30,80,000/- per candidate. The petitioner in his pleadings has contended that the 1st respondent has spent over a sum of Rs.20,00,600/-for the wall painting advertisements alone. The wall paintings had been physically verified by the petitioner, his agents and his party workers. P.Ws.2, 5 and 6 have been examined in order to prove the above statement. Exs.P16 and 17 series have been marked through them. In their defense, the 1st respondent has stated that the document submitted by the petitioner to prove the above allegation is prior in point of time from the date of nomination. However, the petitioner would submit that there is no specific denial either specifically or generally to the allegations made. The petitioner would



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submit that the statement of expenditure has not been denied by the 1st respondent. Therefore, taking note of the fact that the 1st respondent has filed expenses to the tune of Rs.15,06,058/- to which, when Rs.20,00,600/- is added, it would be crystal clear that the 1st respondent had exceeded the election expenditure. Therefore, this is violative of Section 77(3) of the RP Act and Rule 90(b) of the C.E. Rules. The failure to adhere to the maximum expenditure limit is also a corrupt practice under Section 123(6) of the R.P. Act which reads as follows:-

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

Therefore, he would pray that the issue No.5 should also be answered in favour of the petitioner.

(v) Painting / Plastering Government Buildings which is covered under Issue No.6:

The petitioner's contention is that the 1st respondent had painted



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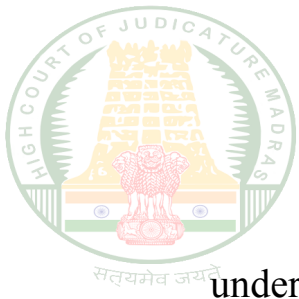
and plastered the walls of the Government buildings belonging to the Krishnagiri Municipality with election advertisements and party symbols. It is the contention of the petitioner that this contention has not been specifically denied by the first respondent. Therefore, the issue No.6 has to be answered in favour of the petitioner. The learned counsel for the petitioner would rely upon the following judgments :

- i. *1996 (2) SCC 752 – Common Cause (A Regd. Society) Vs Union of India & Others* (paragraphs 23 & 46)
- ii. *1999 (1) SCC 666 – L.R.Shivaramagowda & Others Vs T.M.Chandrashekar (dead) by LRs & others* (paragraph 19)

(vi) Improper rejection of postal ballots which is covered under

Issue No.7:

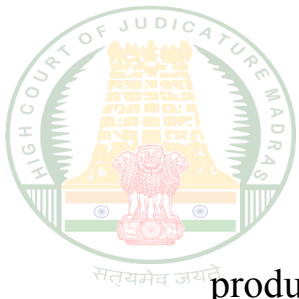
The petitioner would contend that the Returning Officer and other counting officers had not followed the procedures prescribed



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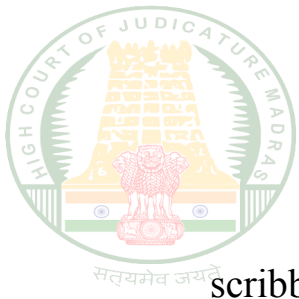
under the R.P.Act for counting and rejecting the postal ballots. The Returning Officer had rejected 605 postal ballots. However, while counting and rejecting the same, the petitioners were not informed about the reasons for the rejection. The petitioner would further contend that at around 1.00 p.m., at the end of the counting of postal ballots neither the tally of rejected votes nor the reasons for rejection were provided to the petitioner and this information was handed over only around 9.30 p.m. At that time, they were informed that 605 votes were rejected out of the total 3318 postal ballots. The petitioner has made a representation under Ex.P10 dated 02.05.2021 requesting the Returning Officer to re-count the votes. It is the contention of the petitioner that only thereafter, Ex.P.11 dated 02.05.2021 came to be issued by the Returning Officer and the reasons for the rejection have been issued. The petitioner has also contended that although Ex.P.11 was the document that was served on the petitioner, however when the same document was subpoenaed from the Returning Officer, and



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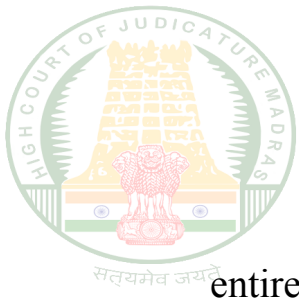
produced as Ex.C3, the total tally had changed. The image of the tabular column had been altered and the number of votes had been changed by hand. He would further submit that, as per the requirement of the law, each postal ballot was to be dealt with separately and the reasons for rejection of the postal ballot should be clearly written on the ballot. It is the contention of the petitioner that Rule 54A of the C.E. Rules had not been followed in the case of postal ballots. The main contention in this regard on the side of the petitioner is that all the valid ballot papers and the rejected ballot papers have to be separately bundled and kept together in a packet which was sealed with the seals of the Returning Officer and of such of the candidates, their election agent or counting agents who shall also affix their seals thereon. According to the petitioner, such a procedure has not been adopted. It is also their contention that though the signatures of their two counting agents had been obtained in the final tally and the result sheet, the calculation sheet or the note sheet where the reasons have been



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scribbled by hand has not been furnished to the Agents and neither are these reasons recorded on the postal ballots. C.W.2-Returning Officer has deposed that she does not remember who has written or to whom it was furnished. The counsel for the petitioner would also submit that C.W.2 had falsely deposed before this Court. On the one hand she would state that the reasons have been explained to the agents and on the other hand, she admitted that the reasons were written by hand by the Assistant Returning officer on a white sheet titled “abstract” and no signatures had been obtained by them. The CCTV footage of the postal ballot marked as Ex.C8 shows the following illegalities committed by the AROs. The reason for rejection was neither communicated nor ballots shown to the candidates or their agents. No ARO can be seen writing any reasons on the ballots. Counting has been done in the absence of the agents. The petitioner has set out the errors committed while viewing the CCTV footage in a tabulated statement in his written arguments. The petitioner had made an application for recounting the

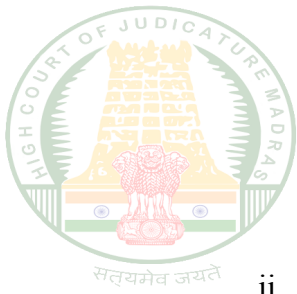


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entire votes including the postal votes under Rule 63 of the C.E Rules which was rejected by the Returning Officer under Ex.P13. The petitioner would also rely upon the Handbook for Returning Officers, 2019 to submit that where the victory of margin is less than the total number of postal ballots received then there should be a mandatory re-verification of all postal ballots. The petitioner had taken out an application in O.A.No.27 of 2024 for re-counting. This application was allowed by this Court. However, on appeal, the Hon'ble Supreme Court had set aside the order in O.A.No.27 of 2024 dated 25.03.2024 and remanded the matter back for fresh consideration. Therefore, he would submit that unless and until the postal ballots are verified, the petitioner's contention that the postal ballots have been rejected illegally, cannot be proved. With reference to this issue, the petitioner has relied upon the following judgments :

- i. **1996 (4) SCC 53 – Vikhesa Sema Vs Adhishe Sema** (paragraphs 6, 14 to 16)



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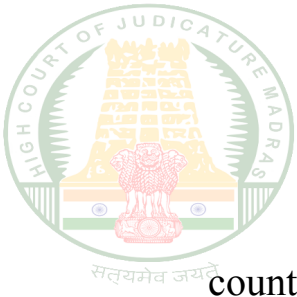
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- ii. **2001 (6) SCC 558 – P.H. Pujar Vs Dr.Kanthi Rajashekhar Kidiyappa & Others** (paragraphs 4, 9 & 10)
- iii. **2014 (5) SCC 312 – Arikala Narasa Reddy vs Venkataram Reddy Reddygari & Another** (paragraphs 13, 15 & 41)

(vii) Illegalities committed in counting EVMs which is covered under Issue No.7:

The petitioner would submit that the illegalities had been committed in the counting of two EVMs. The two allegations are as follows:

(i) In the polling station No.79, Government High Court, Gangleri, in respect of the EVM bearing Control Unit Number BCUAF08025, the mock poll data had not been erased. Originally, the Returning Officer had announced that since the data of mock poll had not been deleted, the EVM would be kept aside. However, later the Returning Officer had announced that votes in the said EVM was



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counted through its VVPAT in the absence of the petitioner and his agents.

(ii) In Polling Station 95, the EVM bearing control unit No.BCUEF88419, when taken up for counting during Round 9 at Table-1, it did not work and showed an error. The officer in-charge was asked to keep the Control Unit separately. However, the said EVM was counted using its VVPAT once again, in the absence of the petitioner and his agent. When the EVM at Polling Station No.79 was checked before this Court, the total votes displayed as 657 which included 50 mock poles. Likewise in the case of EVM of PS 95, the machine initially showed a “Data Digit Error” and when the machine was restarted, it showed the number of votes recorded as 716. According to the petitioner, there was no necessity to count the votes through VVPAT. The petitioner would question the procedure adopted by the Returning Officer in verifying the VVPAT counting, as it was



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contrary to the provisions of Rule 5D of the C.E Rules. He would submit that the Returning Officer had not obtained permission from the election commission for either refusing to delete the mock poll or for counting the votes through VVPAT. Therefore, he would submit that the procedures followed at Polling station numbers 79 and 95 are totally flawed and materially affect the result of the election and therefore, Issue No.7 should be answered in favour of the petitioner.

(iii) As regards the other issues, the petitioner would submit that with reference to the limitation, there was no arguments adduced on the side of the 1st respondent. It is admitted that the election petition was filed within the extended period of limitation granted by the Hon'ble Supreme Court due to the Covid Pandemic. Therefore, he would submit that the issue Nos. 8 to 10 has to be answered in favour of the petitioner.

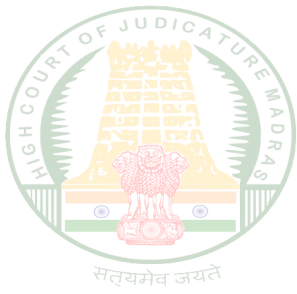


(iv) The petitioner would also rely upon the following judgments:

- i. **2013 (9) SCC 659 – S.Subramanian Balaji Vs State of Tamil Nadu and others**, for the proposition that the instructions issued by the Election Commission of India has the force of law traceable to Article 324 of the Constitution of India.
- ii. **1997 SCCOnline P&H 766 – Harbans Singh Jalal Vs Union of India** – Model Code of Conduct.
- iii. **1996 (1) SCC 169 – Manohar Joshi Vs Nitin Bhaurao Patil & Another**;
- iv. **1980 (2) SCC 197 – Shiva Chand Vs Ujagar Singh and others**.

The judgments in (ii) and (iv) have been submitted in support of their argument that in case of corrupt practices, the election of a returned candidate has to be set aside.

- v. In support of his arguments regarding the credibility of



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witnesses, the learned counsel for the petitioner would rely upon the judgment reported in 1957 SCCOnline MP 83-State of Madhya Pradesh Vs Banshilal Behari.

vi. As regards the argument that a party cannot go beyond the pleadings particularly with reference to Issue Nos.1 and 2, the counsel for the petitioner would rely upon :

- i. ***2018 (11) SC 652 – Sri Shivaji Balaram Haibatti Vs Sri Avinash Maruthi Pawar;***
- ii. ***2015 (9) SCC 755 – Nandkishore Lalbhai Mehta Vs New Era Fabrics Pvt Ltd. & Others;and***
- iii. ***2008 (17) SCC 491 – Bachhaj Nahar Vs Nilima Mandal & Others.***

Written submissions filed on behalf of the 1st respondent:

18.1 The 1st respondent, who is the contesting respondent, has submitted the following written submissions issue wise and their arguments are set out herein below in the same fashion as in their written arguments / submissions.



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A) Issue No.2 : Whether there is a wilful suppression of assets:

(i) The answer to this allegation is that there has been no wilful suppression by the 1st respondent. He would contend that the election petitioner has solely relied upon the encumbrance certificate-Ex.P5 and Ex.P4-patta dated 25.06.2021 to contend that there is a suppression. The 1st respondent would contend that Ex.P4 would clearly show that the patta stands in the name of the 1st respondent's father and not in his name. In Ex.P5- Encumbrance certificate, there are 73 entries regarding Survey No.207/2A for the period between 01.01.1990 to 17.06.2021. The Encumbrance certificate would clearly describe a 15 feet wide pathway being provided to the various purchasers. The layout plan would also indicate these pathways. This area occupied by the passage in the approved layout as also the OSR vests totally with the local body and the plot owners. These lands have not been taken into consideration and the petitioner has simply contended that 23 cents



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continue to remain in the hands of the petitioner. The execution of the Gift Deed to the local body is only a Ministerial Act. Therefore, the 1st respondent would submit that having sold the property to over 73 purchasers and the layout plan clearly shows the existence of the pathway, the petitioner and his family members no longer have any right over this property. The object of the affidavit in Form-26 is only to provide information to the voters. The Hon'ble Supreme Court has clearly stated that the non disclosure should be of a substantial nature and that trivial and inconsequential information cannot be treated as suppression of facts. The 1st respondent would submit no voter has been manipulated on account of this affidavit in Form-26.

(ii) The 1st respondent would contend that from the language in which the issue is couched, it is clear that the suppression has to be wilful. In the instant case, the suppression is neither wilful nor wanton. In support of this statement, he would place reliance upon some



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portions of the cross examination of P.W1 as also R.W1. In answer to a question put to P.W1 as to how the petitioner has come to the conclusion that 23 cents of land is still available in Survey No.207/2A and standing in the name of the 1st respondent, the answer given was that the petitioner had filed Encumbrance Certificate and the patta standing in the name of the 1st respondent's father. The witness has admitted that the 1st respondent's name is not found in Ext.P4, patta, but however his father, Krishnamurthy Gounder's name is mentioned. The witness further admitted that there no documents to show that 23 cents in Survey No.207/2A remains in the name of the 1st respondent and ultimately, stated that it is jointly enjoyed by the petitioner and his brothers. R.W1, during his cross examination, has admitted that the extent of 2 acres and 8 cents was his ancestral properties and that the same stood in the name of his father. R.W1 has categorically denied the allegation that an extent of 23 cents still remains with the family. The first respondent would rely upon the judgment reported in 2024



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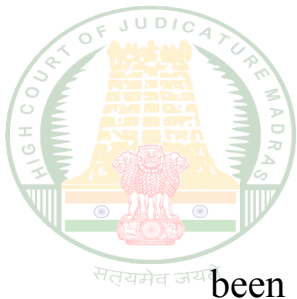
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SCCOnline 519 – Karikho Kri Vs Nuney Tayang and another

(Paragraphs 40, 41, 44 & 45) in support of his arguments.

B) Issue No.3: Whether the 1st respondent is guilty of having committed the corrupt practice under Section 123 of the R.P.Act

(i) With reference to this allegation regarding the distribution of cash for votes, it is the contention of the 1st respondent that the election petitioner has adopted mutually destructive pleas in his petition. While at one place, the election petitioner has alleged that the 1st respondent, his election agent, his booth agents along with AIADMK workers acting under the consent, knowledge, instructions and authorization and cost of the 1st respondent have distributed cash of Rs.500, however, in the very same paragraph (Para No.9), the said allegation has been given a go-by and the petitioner would state that the election agent had distributed the cash. However, the name of the election agent has not

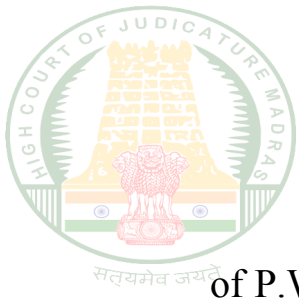


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been mentioned. The tabular column set out in paragraph 10 of the election petition does not clearly state that the persons to whom money was distributed, are voters of the Krishnagiri Constituency. The 1st respondent would further submit that evidence has been created by the election petitioner by examining obliging / interested witnesses who have deposed falsely.

(ii) It is also the contention of the 1st respondent that the election petitioner has not shown how Section 123 of the RP Act is attracted. The 1st respondent would highlight the admissions, the falsity in the petition as well as the deposition of the witnesses. He has also pointed out the admissions made by the witnesses that they have not lodged any complaint with the Returning Officer about the distribution of cash. The witness has also admitted that 8 persons who are alleged to have received the illegal gratification have not been shown in the list. The first respondent has also highlighted the contradictions in the evidence



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of P.Ws 1, 2, 3 and 4 as also the 3rd parties who have been examined as C.W2, C.W3 and C.W4. The 1st respondent would submit that Ex.P15 photograph which has been marked to show the distribution of cash cannot be believed as it has not been proved in the manner known to law. Therefore, in the absence of proof of corrupt practice, issue no.3 has to be answered in favour of the 1st respondent.

C) Issue No.4 : Government employees engaged in the election campaigning for the 1st respondent

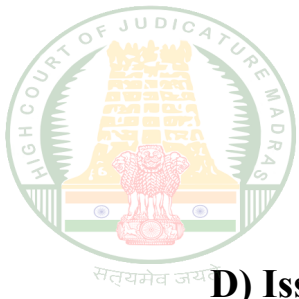
It is the case of the election petitioner that one Nagaraj, who is an Electricity Board Supervisor, has canvassed for the 1st respondent and therefore, the 1st respondent is guilty of misusing the official machinery. In this regard, he would set out the contradictions in the evidence of P.Ws 1 and 2 as also C.W3. The witnesses have not stated that the said Nagaraj is a registered voter of Krishnagiri Constituency. In fact, in answer to a question regarding whether Nagaraj is a



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registered voter of the Uthangarai Constituency, the reply of P.W1 was that his wife stood for election at Uthangarai and Nagaraj is a voter of the Krishnagiri Constituency. The second witness on the petitioner side had undertaken to produce proof that Nagaraj was a registered voter of the Krishnagiri Constituency but however the proof was not produced. C.W3 who has been examined to prove the contention that Nagaraj had canvassed has admitted that he belongs to an affiliated Trade Union of the DMK Party to which party the Election Petitioner also belongs. The witnesses have also contradicted each other with reference to the vehicle alleged to have been used by the said Nagaraj. P.W2 would state that he never saw the vehicle whereas the election petitioner says that it is a Government car. C.W3 would also state that there was no Government vehicle. During the oral argument, a plea was taken that an employee of TANGEDCO is not a Government employee. However, in the written arguments, this plea has not been reiterated.



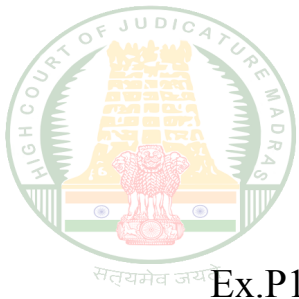
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D) Issue No.5 : Excess expenditure

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The election petitioner has alleged that the 1st respondent had exceeded the expenditure limit fixed for candidates in the Tamil Nadu State Assembly Constituency. P6 is the statement of expenditure filed by the 1st respondent. It is the contention of the 1st respondent that as per Rule 18.17 of the Hand Book for the Returning Officer and Hand Book for the candidates, the candidates are required to maintain the daily expenditure and same is to be checked by the expenditure observer/ shadow observer. However, the election petitioner has not contemporaneously made any complaint to the Election official. The expenses submitted by the election petitioner had been accepted after scrutiny by the election officials. With regard to the wall paintings, photographs had been produced and the 1st respondent would submit that these photographs are inadmissible in as much as the certificate dated 04.09.2023 does not comply with the requirements of Section 65-B of the Indian Evidence Act, 1872. The 15-photographs marked as

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Ex.P16, according to the 1st respondent are all fabricated as there are interpolations. P.W5 through whom Ex.P16 photographs had been marked would state that he has filed a report to the Returning Officer and that report had been filed into Court. However, there is no such document filed into Court and this would clearly prove that the petitioner is setting up a false case. Although the witness would state that he had got an estimate for sum of Rs.20,00,600 from the painter, Surya, he would however conceded that no written estimate was received from the said Surya. The witness was not able to recollect as to when and how the extent of 22,330 sq.ft. was measured. Once again, the 1st respondent has pointed out that no complaint about the above has been given to the Returning Officer. P.W2 has admitted that he has no personal knowledge about the painting done in the other villages except Usaripatti Village. Once again, there is no written complaint to the Returning Officer. The witness P.W5 would submit that he has in all taken 15 photographs which are marked as Ex.P16



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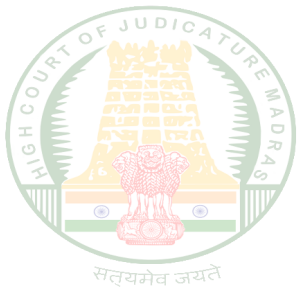
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Series. The 1st respondent would contend that there is absolutely no materials submitted with reference to the wall paintings put up on the government buildings and the paintings put up on the flyovers.

E) Issue No.6: Painting on public properties

The 1st respondent would submit that the contents of Ex.P7 are rather vague and do not relate to wall posters on public properties alleged to have been put up by the 1st respondent. P.Ws.1, 2 and 5 have spoken about the same and the relevant response in cross examination has been extracted. The 1st respondent would submit that a perusal of the above would clearly show that there is no material to indicate as to which public building the wall poster has been put up and there is no document to prove this allegation.

F) Issue No.7: Rejection of Ballots



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The 1st respondent would submit that Ex.C2 which has been filed through the Returning Officer would clearly show the round wise tally and the final tally of postal ballot votes in Krishnagiri Constituency. Ex.C2 is the document recording the tally of votes polled by postal ballots. In this tabulated statement, there is a table for each round and the tally has been typed on the reverse. The counting agents of the petitioner and the 1st respondent have also signed in the serial numbers 1 and 3. Ex.C3 is the representation of the Election Petitioner stating that 700 votes which are invalid votes have to be counted. Ex.C6 is a printed format with a blank pre-prepared sheet by the election petitioner. This according to the 1st respondent would show that it was made for the purpose of the case. Ex.P10 is the pre-prepared format by the Election Commission. The blanks are filled by hand and a different version is given that 605 postal votes have been wrongly rejected. It is the argument of the 1st respondent that a perusal of Exs.C2 to C6 would clearly show how the counting process of postal ballots had been done



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in accordance with the law. A perusal of Exs. C7 and C8- CCTV footages would also clearly display how the Assistant Returning Officer has segregated the valid and invalid votes and showed each ballot paper before the same was either counted or rejected. Therefore, the allegation that there has been improper rejection of postal ballots is totally false. The relevant portions of the evidence of P.Ws.1 and 2, CW2 and R.W1 have also been set out. The 1st respondent would contend that 605 postal ballots have been rightly rejected and after having participated in its counting, the petitioner is now seeking a roving enquiry. The election petitioner had pointed out that 80 postal ballot papers have been rejected on the ground that there was no signature or attestation. The Returning Officer has explained that these ballot papers have come from other constituencies without signature or attestation and since this contingency does not fall under any of the specified headings, it has been marked against the head “others”. The petitioner alleges that the tally of votes had not been informed by the

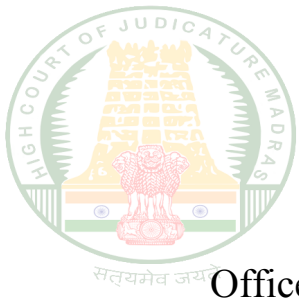


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Returning Officer. The response to the above is that there is no Rule which says that the candidates should be informed about the postal ballots. It should be filled up in Form 20.

18.2 As regards the EVMs in Polling Station Nos. 79 and 95 and the alleged deficiencies and irregularities, the CCTV footages marked as Exs.C7 and C8 would clearly show the manner in which the counting had taken place. The control units marked as Exs.C13 and C14 have been switched on and tested by the Courts. The 1st respondent would further go on to state that Ex.C15, 16 and 17 are relevant. Ex.C16 which is Form 17C clearly shows that the total number of votes polled is 607. However, in Ex.C15, the total number is shown as 657. 50 numbers had been added which related to the mock poll and if these 50 votes are deducted, it would be 607 valid votes. P.W7 has deposed that the election officials when asked to specify the number of mock votes that could be cast by each booth agent. The Returning



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Officer had informed them that 5 to 10 mock votes would be polled by each booth agent.

18.3 With reference to Polling Station Number 95, it is the contention of the 1st respondent that the counting was done on the basis of VVPAT. Ex.C17-Form-17 C Part II tallies for both the EVMs in Polling station Nos.79 and 95. Therefore, the allegations made regarding the above are totally without any basis. The evidence of P.Ws.1,2,7 and C.W2 in this regard has been quoted by the 1st respondent. Ultimately, the 1st respondent had contended that there was no cause of action for filing the election petition and the alleged cause of action is purely imaginary. Therefore, the election petition does not contain any material facts or particulars as required under Section 83 of the R.P.Act. The oral and documentary evidence produced on the side of the election petitioner is self serving and cannot be relied upon. On the contrary, Exhibits that have been marked



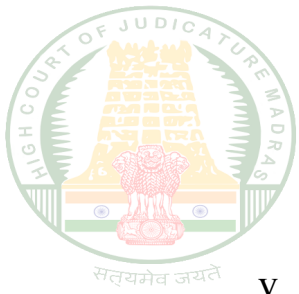
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through the Returning Officer, namely, C16 and C17 make it very clear that the Returning Officer has acted in accordance with the Conduct of Election Rules and no exception can be taken to the same. No grounds have been made out to interfere with the election and the election petition deserves to be dismissed.

18.4 The first respondent's counsel has relied on the following judgments :

- i. ***(2007) 3 SCC 617 – Virender Nath Gautam Vs Satpal Singh and Others;***
- ii. ***(1982) 1 SCC 691 – Jyoti Basu & Others Vs Debi Ghosal & Others;***
- iii. ***(2012) 4 SCC 194 – Jittu Patnaik Vs Sanatan Mohakud & Others;***
- iv. ***(1976) 1 SCC 687 – Bhabhi Vs Sheo Govind & Others;***



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v. *(2014) 5 SCC 312 – Arikala Narasa Reddy Vs Venkata Ram*

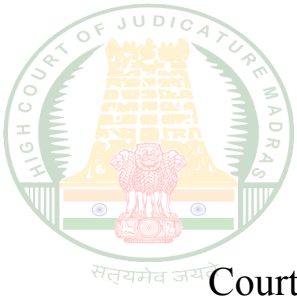
Reddygari & Others; and

vi. *(2024) SCC Online SC 519 – Karikho Kri Vs Nuney Tayang &*

another.

O.A.No.27 of 2024 :

19. O.A.No.27 of 2024 in E.L.P.No.9 of 2021 had been filed to appoint an Registrar to scrutinize the 605 rejected postal ballot votes which have been marked collectively as Ex.C4. This Court had allowed the said application on 25.03.2024 considering the fact that the returned candidate, namely, the 1st respondent herein had won by slender margin and also on account of the fact that at that stage no evidence had been produced to prove that the election petitioner or his agents had been apprised with the reasons for rejection. The said order was challenged before the Hon'ble Supreme Court in Civil Appeal No.4843 of 2024 in SLP(C).No.8233 of 2024 and the Hon'ble Supreme

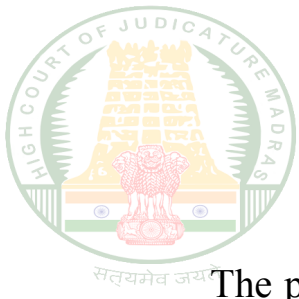


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Court, by its order, had allowed the appeal and set aside the order dated 25.03.2024, directing this Court to decide the election petition on its merits as also O.A.No.27 of 2024. Therefore, this Court is considering the said application on merits as directed by the Hon'ble Supreme Court.

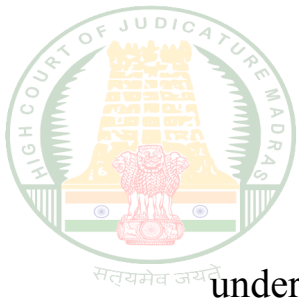
20. The main grievance of the election petitioner with reference to the postal ballots was that the same had been rejected indiscriminately and without assigning proper reasons and that the reasons for rejection apart from not being recorded, were also not communicated to the candidate or his agents. A tabulated statement had been issued to the applicant on 02.05.2021 stating the reasons for rejection of 525 postal ballot votes. However, with reference to 80 votes, the same has been rejected under the head “others” without specifying the reasons. This, according to the election petitioner, was contrary to the procedures contemplated under the C.E Rules, 1961.



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The petitioner would submit that the category “others” is not provided for under Rule 54A (11) of 54 A(8) of the Rules. Rule 54-A(8) of the Rules provides 5 reasons for rejecting the postal ballot votes and nowhere has the Returning Officer being given the authority to record the votes under the heading “others” giving discretion to the Returning Officer to reject the votes. 605 votes, which have been rejected, have been submitted to this Court as Ex.C4 and is in the custody of the Court. C.W2, the Returning Officer to a question as to whether the details were available on the 13C cover would answer that only if the details on 13 C cover are correct, it would be opened to verify as to whether 13C declaration form and 13 B ballot papers are kept separately. Similarly only if the Serial Numbers on 13A and 13B, tally the ballot papers would be opened. If the serial numbers mentioned on the cover of 13B and the serial number mentioned inside the ballot paper differ, the votes would be rejected. The Returning Officer has also given her explanation for categorizing some of the postal ballots



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under the category “others” by stating that the postal ballots received from the other constituencies without attestation, without signature of the voter either in the ballot or in the cover were all rejected under the category “others”, as the Form given to them did not contain such a category and therefore, since the Form given to them, contained a category termed as “others” in serial number 11, these votes were entered into this category.

21. Therefore, in the light of the directions issued by the Hon'ble Supreme Court in Civil Appeal No.4843 of 2024, this Court after reserving the orders had decided to scrutinize the 605 postal votes and verify if the reasons for their rejection has been properly tabulated. This Court also decided to examine the photographs taken at the time of the counting of the postal votes and the videographs, and to understand the functioning of the electronic voting machine, in order to consider the issue with reference to the polling station Nos.79 and 95.



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22. On the Court's direction on 11.12.2024, Mr.Niranjan, learned standing counsel for Election Commission of India, Mr.V.Sreenivasa Rao, Deputy Manager, Bharat Electronics Limited, Bangalore and Mr.K.Marimuth, I-NET Secure Labs Pvt.Ltd., CCTV and Technical Executive, who were present before this Court, had assisted the Court in going through the postal ballots. Thereafter, the Box No.157 was opened in the presence of the Court, Officials from the Election Commission of India and the members of the Registry. This exercise commenced at 3.40 pm and the box was closed at 5.00.pm. Thereafter, the postal ballots were put back into the box and locked in the presence of the aforementioned persons. The key to the box was retained by this Court. On the next day, i.e on 12.12.2024, Mr.V.Sreenivasa Rao, the Deputy Manager, Bharat Electronics Limited had demonstrated and explained how votes are polled in the EVMs. Thereafter, the matter was adjourned to 30.12.2024 for perusing the rejected postal ballots in



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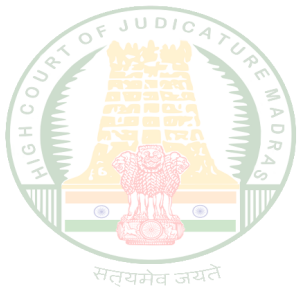
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order to verify as to whether the Rules had been followed. On 30.12.2024, Mr.Ravi, Deputy Registrar, Madras High Court and other officials were present. The perusal of the postal ballots had commenced at 11.50 am. and concluded at 04.00pm. The only exercise undertaken by this Court was to verify as to whether the reasons for rejection had been recorded on the postal ballots. All 605 votes were individually examined. Therefore, this Court has considered the request made in O.A.No.27 of 2024. This Court, without issuing directions to the Registrar has undertaken the said exercise by itself. The EVMs and postal ballots having been marked as exhibits, the exercise was undertaken by the Court.

Discussion :

23. Heard the learned counsels on either side and perused the materials available on record.

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24. The petitioner has filed this election petition seeking to declare the election of the 1st respondent to the No.53, Krishnagiri Assembly Constituency in the State of Tamil Nadu on 02.05.2021 as illegal, void and liable to be set aside and to declare the petitioner as duly elected to No.53, Krishnagiri Assembly Constituency in the State of Tamil Nadu with effect from 02.05.2021 and for costs.

Findings :

25. Considering the fact that the arguments have been addressed issue wise, this Court is returning its findings on the basis of the issues framed, the case of either party and the evidence both oral and documentary are set out under each issue with the conclusion.

ISSUE No.1 & 2 :

(a) The issue Nos.1 and 2 are as follows:

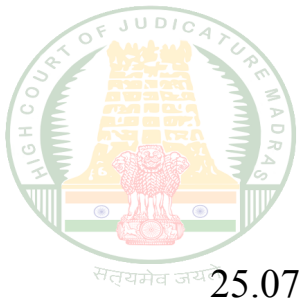


"1. Whether the election of the 1st respondent from the No.53, Krishnagiri Assembly Constituency to the 16th Tamil Nadu Legislative Assembly, 2021 is liable to be declared as illegal, ab initio void and set aside?

2. Whether the 1st respondent has willfully suppressed his assets in his nomination form and affidavit thereby materially affecting the election of the 1st respondent and rendering his election liable to be set aside under Section 100(1)(d)(i) & (iv) of the Representation of People Act, 1951?

(b) Petitioner's case:

It is the case of the petitioner that the 1st respondent along with his 3 brothers had owned a total extent of 2 acres and 8 cents of agricultural land in S.No.207/2A, Rettiyur Street, Rettiyur Village, Vaniyambadi Taluk, Thirupattur District which was their ancestral property. The aforesaid property was bequeathed to the 1st respondent and his brothers by his father through a registered Will dated

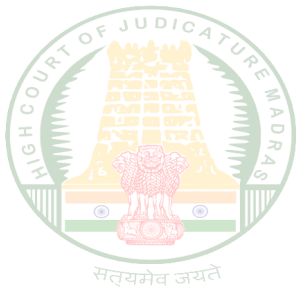


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25.07.1997 and on their father's demise, the Will had come into force.

The registered Sale Deed dated 25.10.2004 executed by the 1st respondent and his brothers in favour of one T.Mahendran would reflect the same. The 1st respondent and his brothers had appointed one A.Murugan as their Power Agent to sell the above property which had been divided into plots. Between the years 2004-2012, an extent of 78,977 sq.ft (acre) was sold to various persons by the said Power Agent. Out of the total extent of 2.08 acres, only an extent of 1.81 acre was sold leaving behind an extent of 23 cents. The patta in respect of the property stood in the name of the 1st respondent's father, Krishnamurthy. The 1st respondent has deliberately suppressed this fact. It is the contention of the petitioner that this suppression has materially affected the election. Considering the fact that the margin of victory between the two was only 794 cotes, the petitioner would submit that the nomination papers of the 1st respondent has been improperly accepted by the election authorities.



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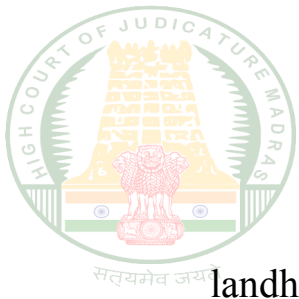
(c) Response to the above:

The 1st respondent would submit that the property was no longer under the ownership of the 1st respondent as he had alienated the same much before the submission of the nomination Form. That apart, the transactions have been recorded in the encumbrance certificate and therefore, the allegation of the petitioner was totally misconceived. He would further submit that the allegations are rather vague.

(d) Oral evidence on petitioner's side.

(i) P.W.1 Senguttuvan

P.W1 has marked Ex.P2 (the same was marked subject to proof and relevancy) which is the nomination form filed by the 1st respondent including Form-26 Affidavit. The document has been marked along with the Certificate under Section 65B of the Indian Evidence Act. P.W1 would state that the 1st respondent has suppressed his



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landholdings in Form-26 Affidavit and his nomination has been improperly accepted by the Returning Officer. P.W1 would once again reiterate the contentions made in the petition with reference to issue Nos. 1 and 2 and state that the 1st respondent had filed a false affidavit. Therefore, the acceptance of his nomination was improper, illegal and contrary to law.

(ii) During his cross examination, to a question as to how the petitioner would state that the first respondent is the owner of he land when the patta stood in the name of Krishnamurthy, the petitioner would respond that the patta stands in the name of the 1st respondent's father, Krishnamurthy.

(iii) To another question as to what documents had been filed to show that the 23 cents of land belonged to the 1st respondent, P.W1 has responded that the same can be deduced from the Encumbrance



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Certificate and the patta that had been issued i.e., Exts.P5 and P4 respectively. The patta stands in the name of the 1st respondent's father.

To a suggestion that since 23 cents did not stand in the name of the 1st respondent, there was no necessity to include the same in the Form-26, P.W1 would respond that this property was being jointly enjoyed by the 1st respondent and his brothers without being subdivided and therefore it ought to have been included in the Form-26 affidavit. P.W1 would state that he had first seen Ex.P2-nomination paper of the 1st respondent only after the election when it was downloaded from the website of the Election Commission and he would fairly admit that no objection had been raised on the date of the scrutiny of the nomination papers.

(iv) In the proof affidavit in lieu of chief examination, the 1st respondent would submit that it is totally incorrect to state that only an extent of 1.81 acres out of total extent of of **2.09** acres in Survey



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No.207/2A had been sold. The 1st respondent would submit that on the date of scrutiny of nominations, the petitioner has not raised any objection as to the non-inclusion of the property in the Form-26 Affidavit. The witness during his cross examination was shown Ex.P14-Sale Deed in favour of Mahendran through the Power Agent of the 1st respondent and his brothers and asked as to whether there was any other Sale Deed apart from Ex.P14 with reference to the said property and the answer was in the negative. Thereafter, when a specific question was put that after the sale, an extent of 23 cents still remained with the family, the 1st respondent would categorically deny the same.

(e) Documentary evidence:

A perusal of Ex.P2-the Nomination Form of the 1st respondent which includes Form-26 affidavit would indicate that the 1st respondent

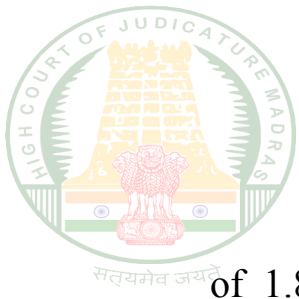


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has clearly stated that he does not own agricultural lands, ancestral lands, self acquired properties or properties that have been purchased by him. Against all these columns, the 1st respondent has stated as “பொருந்தாது”. The petitioner would also rely upon Ext.P4-Patta and Ext.P5-Encumbrance Certificate to contend that the first respondent continues to own an extent of 23 cents.

(f) Conclusion :

(i) A perusal of the pleadings, oral and documentary evidence as also the arguments would indicate that Form-26 Affidavit filed by the 1st respondent before the Election Officer is claimed to be a false affidavit, in as much as the 1st respondent has not disclosed the fact that an extent of 23 cents continues to remain with the petitioner. A reading of the petition and the oral evidence would show that the petitioner has come to Court with a case that out of the total extent of 2.08 acres of the land belonging to the 1st respondent and his brothers, only an extent

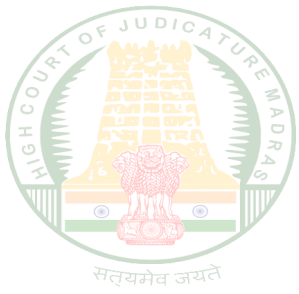


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of 1.81 acre had been sold leaving behind an extent of 23 cents.

However, in the written arguments, the petitioner would state that only an extent of 1.56 cents has been sold leaving behind an extent of 89 cents of land in the hands of the petitioner. This measurement is not pleaded either in the petition or in the evidence and the balance land said to remain in the hands of the petitioner is shown as 23 cents. The petitioner has not extensively cross examined R.W1 to prove the willful suppression. In the course of arguments, the 1st respondent would submit that the excess land constitutes the OSR and roads near the house sites which had been formed into a layout of housing plots for which OSR as well as pathways are mandatory. That apart, the 1st respondent would submit that this does not amount to suppression, leave alone a willful suppression, as no land remains with them. This Court has to consider as to whether the non-disclosure of this fact would materially affect the election.



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(ii) The 4 boundaries would further clarify that roads have been created for accessing these housing plots. The total measurement of this 15' feet pathway has not been factored into the total extent of land that has been conveyed by the Power Agent to various persons. The petitioner has not come forward with a categorical case that the 1st respondent continues to hold a fixed extent of land and has simply arrived at the figure of 23 cents by subtracting the total lands sold from the total land holding. No doubt, in the counter, the 1st respondent has not come out with specifics regarding his holdings. The 1st respondent has clearly stated that he does not own any land in the said survey number. Therefore, the onus is squarely upon the petitioner to prove that the 1st respondent continues to retain the property and also to state that the extent of land that the 1st respondent continues to hold. The petitioner has taken a plea that the first respondent has adduced evidence and advanced arguments without there being a pleading to that effect in the counter statement. However, the petitioner who had

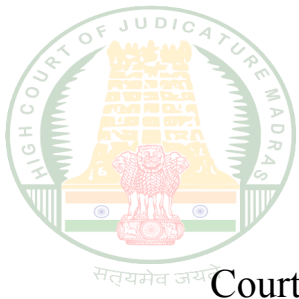


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alleged suppression, has not proved the same and has simply produced Exts.P4 and P5 to substantiate their claim. The petitioner has therefore failed to not only prove the exact extent of land that is retained by the petitioner, but also the fact that by not divulging the same in the Form-26-Affidavit, the 1st respondent has materially altered the result of the election.

(iii) A recent judgment of the Hon'ble Supreme Court reported in **(2024) SCC Online 519 [Karikho Kri Vs Nuney Tayang & another]**, this was a case where the election of the independent candidate Karikho Kri was sought to be set aside on the ground that the nomination submitted by him was improperly accepted by the Returning Officer. The allegation, like in the instant case, was that Karikho Kri had failed to disclose material particulars in the affidavit filed in Form 26, inasmuch as he had not disclosed the details of the vehicles owned by his wife and son. The Itanagar Bench of the High



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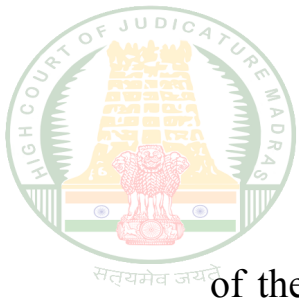
Court of Assam, Nagaland, Mizoram and Arunachal Pradesh held that the non-disclosure of information amounts to a corrupt practice within the meaning of Section 123(2) of the R.P.Act, and held that the acceptance of his nomination was improper. The High Court answered the issue as to whether the non-disclosure was of a substantial nature affecting his election against the returned candidate and held that the disclosure of information as per Form 26 of the C.E.Rules was fundamental to the concept of a free and fair election.

(iv) After discussing the provisions of Section 33 – Scrutiny of nomination, Section 100 – Grounds for declaring the election to be void, and Section 123 – Corrupt Practices as set out in the R.P.Act and the various judicial precedents and relied on the earlier judgment of the Hon'ble Supreme Court in the case of *Vashist Narain Sharma Vs Dev Chandra reported in (1954) 2 SCC 32*, where a three-Judge Bench observed as follows :



“that the burden of proving that the improper acceptance of a nomination has materially affected the result of an election would arise in one of three ways : (i) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes, (ii) where the person referred to above secured more votes, or (iii) where the person whose nomination has been improperly accepted is the returned candidate himself. It was held that in the first case, the result of the election would not be materially affected because if all the wasted votes were added to the votes of the candidate securing the next highest votes, it would make no difference to the result and the returned candidate would retain the seat. However, in the other two cases, the result may be materially affected and insofar as the third case is concerned, it may be readily conceded that such would be the conclusion.”

The Bench went onto the rely upon the Constitution Bench judgment

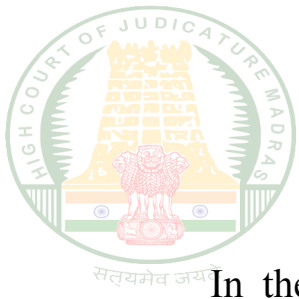


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of the Apex Court in ***Hari Vishnu Kamath Vs Syed Ahmad Ishaque*** reported in ***(1954) 2 SCC 881***, where the Bench considered the scope of enquiry under Section 100(1)(d) of the R.P.Act and observed that an election could be set aside when two conditions were satisfied. The conditions were extracted by the Bench in the following manner :

“It must, firstly, be shown that there has been improper reception or refusal of a vote or reception of any vote which is void, or non-compliance with the provisions of the Constitution or the Act of 1951, or any rules or orders made thereunder, relating to the election or any mistake in the use of the prescribed form and it must further be shown that, as a consequence thereof, the result of the election has been materially affected. The Bench observed that the two conditions are cumulative, and must both be established. It was further observed that the burden of establishing them is on the person who seeks to have the election set aside.”

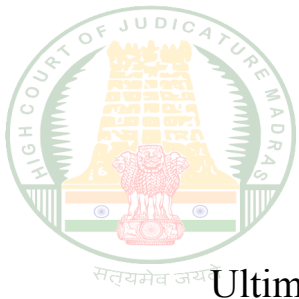


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In the instant case the petitioner has not been able to categorically assert with the evidence that an extent of 23 cents continued to remain in the name of the petitioner and the non-disclosure of this has materially affected the result of the election. The judgment relied on by the petitioner viz., ***Krishnamurthy Vs Sivakumar & Others*** reported in [(2015) 3 SCC 467] was a case where full particulars of the criminal cases against the returned candidate had not been disclosed. The two Judges observed that criminalisation of politics was absolutely unacceptable and corruption in public life was 'indubitably deprecable'. The two Judges observed that :

“ It is not every failure to disclose information that would constitute an undue influence. In the context of criminal antecedents, the failure to disclose the particulars of any charges framed, cognizance taken, or conviction for any offence that involves moral turpitude would constitute an act that causes undue influence upon the voters. ”



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Ultimately, the two Judges observed that the disclosure of criminal antecedents of a candidate at the time of filing nomination was imperative. Therefore, that was a case where criminal antecedents, which would have definitely weighed in the minds of a voter, had been deliberately suppressed, thereby, materially altering the result of the election. However, in the case on hand, the petitioner who claims suppression, has not proved the same and has also not proved that the non-disclosure has materially altered the results. Therefore, the judgment cited by him would not come to the aid of the petitioner. Accordingly, **Issue No.1 & 2 are answered against the petitioner.**

ISSUE No.3

26. Issue No.3 is as follows:-

“3. Whether the 1st respondent is guilty of having been committed the corrupt practice under Section 123 of the



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Representation of People Act, 1951, thereby rendering the election of the 1st respondent liable to be set aside under Section 100(1)(b) & (d) (ii)?”

(a) Petitioner's case:

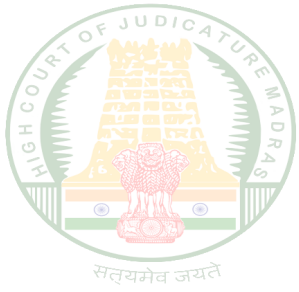
The petitioner's contention is that the 1st respondent, his Chief Election Agent and his booth agents along with their party workers had indulged in distributing a sum of Rs.500/- to the voters in the Krishnagiri Assembly Constituency as an illegal gratification for the purpose of securing their votes along with the pamphlets. It is the petitioner's contention that such distribution has taken place with the consent, knowledge, instruction and authorization of the 1st respondent. The incidents of such distribution of cash have been set out in the form of a tabulated statement, which is extracted herein below:

	Illegal gratification		Gratification to Voters				
1	Akbar	Govindha chetty Street, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK	Residence of the voter	04-3-2021	7.30 PM	C. Settu



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			Party Worker				
2	Madhavan	Kottai Street, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-3-2021	8.30 PM	T.Vasudevan
3	Raja	Anna Nagar, Errahalli, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-3-2021	9.15 PM	S. Prakash
4	Prakash	Savuloorkoot road, Santhapuram Panchayat, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-3-2021	9.30 PM	M.Chandra Sekaran
5	Thirupathi	Mittahalli, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-4-2021	7.00 AM	S. Krishna moorthy
6	Varunkumar	Thomson pettai, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-4-2021	7.20 AM	K. Dharma Kumar
7	Dinesh	Shanmuga chetty Street, kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-4-2021	8.15 AM	C. Settu
8	Yaaraf	Govindhapuram extension, Kaveripattinam	Vinayagam, Kaveripattinam AIADMK Party Worker	Residence of the voter	04-4-2021	8.30 AM	M. Velumani



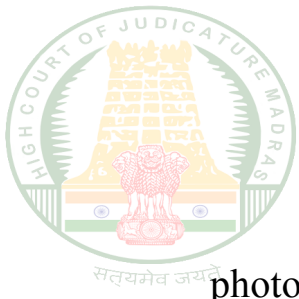
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Therefore, it is the contention of the petitioner that the above said 8 persons had received cash from one Vinayakam who is an AIADMK worker and the witnesses to such distribution of cash have also been detailed in the aforesaid tabulated column. It is the contention of the petitioner that by distributing money for votes, the 1st respondent had indulged in corrupt practice as contemplated under Section 123 of the RP Act thereby rendering the 1st respondent's election liable to be set aside.

(b) Response to the above:

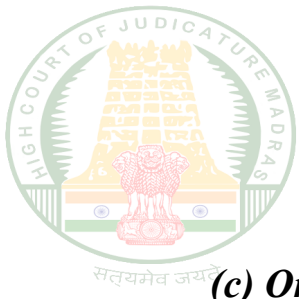
The 1st respondent would submit that the petitioner is trying to make out a case of distribution of cash on the basis of certain



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photographs which is not backed by substantial proof. The 1st respondent therefore called upon the petitioner to prove beyond reasonable doubt that the photographs proves the distribution. He would submit that the petitioner has nowhere described/specified the names of the agents of the 1st respondent with their full particulars indicating that they had indulged in corrupt practice except for a general statement. He would further submit that the said Vinayakam does not belong to AIADMK and that there is nothing to connect him with the party. The material details regarding the persons to whom the money was distributed, the amount so distributed, the person on whose behalf the money has been distributed etc., have not been proved beyond reasonable doubt. Therefore, the 1st respondent would submit that the petitioner has failed to prove that he had indulged in corrupt practice for obtaining votes.



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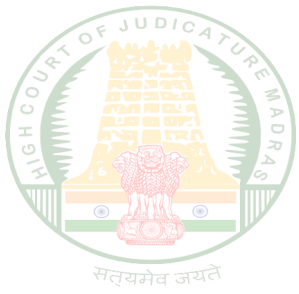
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(c) Oral evidence:

(i) The petitioner as P.W1 in his chief examination has more or less reiterated the statements made in the Election Petition. In his Chief examination once again, the said facts have been set out.

(ii) In his cross-examination, to a pointed question regarding the absence of details in the election petition about the date on which the money was distributed to voters, the petitioner elaborated that the money was distributed on 03.04.2021 and 04.04.2021 all over the constituency, and specifically in Kaveripattinam to Akbar, Raja, Tirupati, and Prakash.

(iii) To a question as to whether the witnesses listed in the tabulated statement were his party workers, the petitioner, while admitting the same, also clarified that they are members of the public.

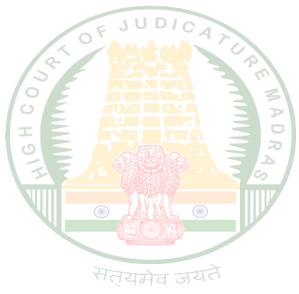


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(iv) P.W2 (S.Tamilselvan) The Chief Election Agent of the Election Petitioner has not deposed about the alleged illegal gratification.

(v) P.W3 (S.M.Chandrasekar) has been examined to prove the contentions that the 1st respondent has indulged in canvassing for votes by giving illegal gratification. He would state that, while he was canvassing for votes for the petitioner at Govinda Chetty Street, he was informed that one Vinayakam, who was a spokesperson of the AIADMK was distributing pamphlets along with Rs.500/- notes for and on behalf of the 1st respondent at Savalurkoot Junction. He would submit that he had gone to the spot where he saw Vinayakam distributing Rs.500/- notes to Akbar asking him to vote for the 1st respondent.



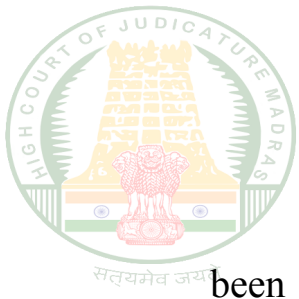
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(vi) P.W4 (M.Velumani) has also been roped in to give evidence about the illegal gratification. He would state that he had seen one Yaraf receiving the money from Vinayakam, the AIADMK worker who was asking him to vote for the 1st respondent at Govindapuram Extension. P.W.4 would submit that he had been appointed as a counting agent or election agent of the election petitioner and that he was only a District-In-charge who moved around at his own discretion. He would also admit that no complaint has been given to the Returning Officer like the case of P.W.3.

(d) Documentary evidence:

Ex.P15 photograph is the only document that has been filed on the side of the petitioner to show that there has been an illegal gratification by the 1st respondent through the distribution of money in exchange for votes. There is nothing to show that a complaint had



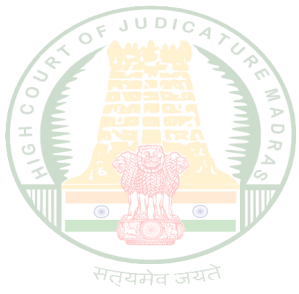
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been lodged with the Election authorities regarding this illegal gratification.

(e) Conclusion:

(i) The petitioner would contend that the 1st respondent had indulged in illegal gratification by distributing money to the voters through his two agents, namely Vinayakam and Arumugam. The petitioner's agent P.W.3, M.Chandrasekaran claims to have taken the photograph-Ex.P15 in his mobile phone, which conveniently has fallen into the water. He would state that he had taken Ext.P15 showing the distribution of cash to one Akbar by Vinayagam. Further, though he claims that the fact was informed to the petitioner on the very same day, it is rather strange that the witness, P.W.3 who had taken the photograph in his mobile phone, has not deemed it fit to forward this photograph to the petitioner by whatsapp or by otherwise.

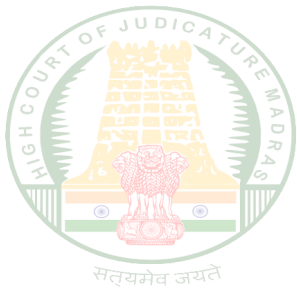


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(ii) In fact to a question that was put by the Court to the witness as to whether at his request the persons giving and receiving the money had posed for the photograph, the witness has affirmed the same. However, during the cross examination of the witness, much later in point in time, he retracted the admission made to the Court, which is clearly an afterthought.

(iii) That apart, a mere perusal of Ex.P15-photograph would clearly show that the persons in the photograph have been asked to stand for a photo. The photographs is supposed to have been taken when canvassing of votes was at its peak. Beyond and around the persons standing in the photograph, there is absolutely no activity to show that an election campaign was on, particularly when it is alleged that it was during the canvassing, the money was distributed. Further, the said Vinayagam, who is the person allegedly distributing the money, has later joined the DMK party to which the petitioner belongs.



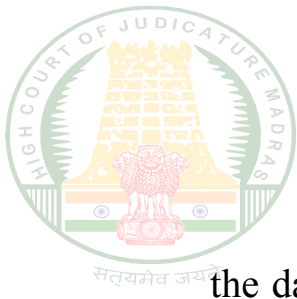
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(iv) The witness, in his answer to the Court, has admitted the fact that persons had posed for a photograph. The mobile phone in which photograph is alleged to have been taken has also not been made available and the excuse given is that it has fallen into the water.

(v) As stated earlier, to a specific question put by the Court as to whether the witness has asked them to stand for a photo, the witness had admitted the same. He would then state that Rs.500/- notes were also distributed to Prakash at Savalurkoot Junction. He was unable then, to take a photo as there was a large crowd.

(vi) In the cross examination, he would submit that he had seen the campaigning and the illegal gratification being given to the voter by Vinayakam and he was there at the spot at 7.30. There is nothing to show either in the chief examination or in the cross examination as to

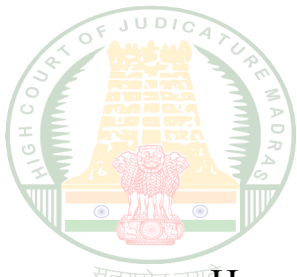


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the date or time on which the photograph was taken. In response to a question as to why the phone was not produced, he would submit that the same had fallen into the water. The witness admits that he has not forwarded the photographs to the Election Petitioner on the very same day that he claims he had taken the same.

(vii) In the petition as well as in the proof affidavit of P.W1, 8 persons are said to have received illegal gratification from the 1st respondent's agent along with two witnesses. However, the petitioner has chosen to examine only two witnesses, both with reference to the alleged illegal gratification at Govinda Chetty Street. In the tabulated statement, P.W3 (Chandrasekar) is shown as the person witnessing the illegal gratification being given to one Prakash at Savalurkoot Road and it is C.Settu who is shown as the witness regarding the alleged illegal gratification to Akbar at Govinda Chetty Street. The said Settu, however, has not been examined on the side of the petitioner.



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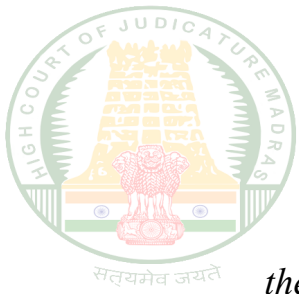
However, P.W.3, Chandrasekaran has adduced evidence regarding the alleged illegal gratification given to Akbar and has claimed to have clicked Ext.P15 photograph. This would go to show that the P.W.3 who claims to have seen Akbar having received the money could not have witnessed the same, since even according to the election petitioner, it was one Settu who had witnessed the exchange of money from the AIADMK worker, Vinayakam to Akbar. Therefore, the petitioner has not proved the exchange of money for votes through concrete evidence. Therefore, **Issue No.3 is answered against the petitioner.**

ISSUE No.4 :

27. Issue No.4 is as follows:

“4. Whether the 1st respondent is guilty of having been committed the corrupt practice under Section 123(7) of the Representation of People Act, 1951, thereby materially affecting

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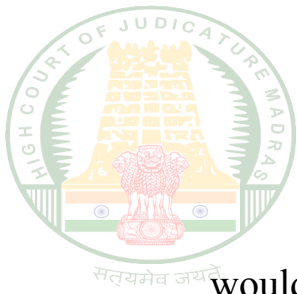
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the election of the 1st respondent and rendering it liable to be set aside under Section 100(1)(b) & (d) (ii) of the Representation of Peoples Act, 1951 ? ”

(a) Petitioner's case:

It is the contention of the petitioner that the 1st respondent had utilized the services of one Nagaraj who is a Supervisor of the Tamil Nadu Electricity Board, now called TANGEDCO for canvassing on his behalf across the constituency between the period 05.03.2021 and 25.03.2021 with a T.Shirt printed with the AIADMK party symbol. The petitioner would allege that the said Nagaraj had misused the Government car for canvassing for the first respondent and the same has been witnessed by the petitioner and his Chief Election Agent, Tamilselvan. C.W3 a third party has been examined to prove the same. He claims that he had witnessed the same on 24.03.2021 at Aalapatti within the Krishnagiri Constituency, where the said Nagaraj was campaigning sporting an AIADMK party towel. In short, the petitioner



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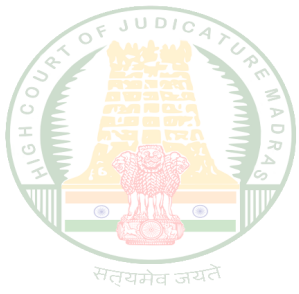
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would contend that a Government employee has openly advertised his allegiance to a particular party.

(b) Response to the above:

The said Nagaraj is not a Government servant and cannot be treated as an official machinery of the State. The 1st respondent would further submit that if the same had taken place, it was well open to the petitioner to lodge a complaint. However, the said complaint has not been lodged. That apart, the petitioner has not been able to prove that Nagaraj is a public servant and was campaigning misusing his post. The 1st respondent would rely on the judgment reported in ***(1980) DLT 337 – ILR 1980 Del 1345 [C.M.Stephen Vs Atal Behari Vajpayee]*** which also dealt with a case involving the misuse of official machinery.

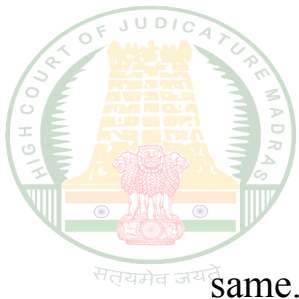
(c) Oral evidence:



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To prove the above said fact, the petitioner has chosen to examine C.W3, Senthil Kumar. During the cross examination, he would state that he had seen Nagaraj canvassing on Wednesday, the 24th day of March 2021 at Aalapatti which falls within the locality of Krishnagiri. In the cross examination by the 1st respondent's counsel, he would submit that he is employed as a Driver with the Tamil Nadu State Transport Corporation. He would submit that in the year 2021, he was plying between the Tiruvannamalai-Bangalore road and that on the said date i.e 24.03.2021, he was on his weekly off. He would also admit that he has no proof to show that Nagaraj was canvassing for the AIADMK party. He would admit that he is the member of the Trade Union, called LPF, which is an affiliate of the DMK party to which the election petitioner belongs. During the cross examination by the learned counsel for the petitioner, a specific question was put as to whether he was a member of any political party, he had denied the



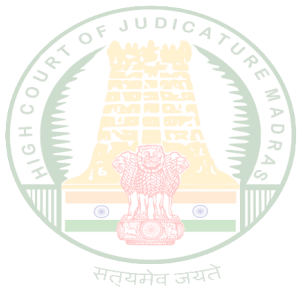
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same. Therefore, the evidence is sought to be disregarded on the ground that he is an interested witness.

(d) Conclusion :

(i) The allegations made in the election petition is that, Nagaraj, a Supervisor in the Tamil Nadu Electricity Board, now TANGEDCO, had canvassed for the 1st respondent from 05.03.2021 to 25.03.2021 by wearing a T-Shirt, on which the AIADMK party symbol was printed; that he had campaigned at Kaveripattinam Town, Aaalapatti, Pazhakudi, Madipatti, Vengaleri, Kuppan Road, Krishnagiri Town by using the Government car. In the election petition, the petitioner would state that it was the 1st respondent and his Chief Election Agent who had witnessed this, and neither in the election petition nor in evidence of PW1, is any reference made to C.W3, Senthil Kumar.

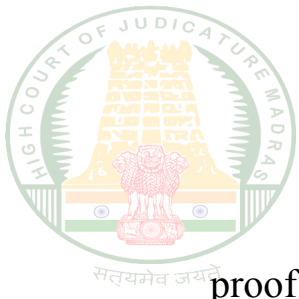


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(ii) In the proof affidavit in lieu of Chief examination, P.W1 would state that Nagaraj's wife was a former MLA of the Uthangarai Constituency from the AIADMK party and that she held office between 2011 to 2016 and 2016-2021. In his cross examination, he would submit that Nagaraj was a voter in the Krishnagiri Constituency, but her wife stood for election in Uthangarai. In his cross examination, he had, however, admitted that he had not given any complaint in writing to the Election Commission regarding the misuse of the official petition for campaigning.

(iii) P.W2 who is the petitioner's Chief Election Agent would submit that he has proof to show that Nagaraj was a voter in the Krishnagiri Constituency, however, proof has not been produced. The witness would fairly admit that nowhere have they given details about the date when they had seen the said Nagaraj voting in various places. The witness would also state that they have filed the document to show



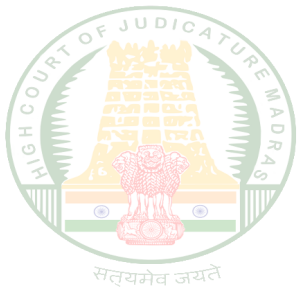
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proof that Nagaraj had campaigned along with the petitioner (however, this document had not been produced / marked by the petitioner).

(iv) P.W2, in response to a question that the said Nagaraj had no connection with Krishnagiri and that he was not a voter from the said Constituency, has responded that his wife was a Chairman of the Krishnagiri Union in the year 1993. The petitioner has roped in C.W3 to adduce evidence with reference to the campaigning by Nagaraj. This witness would state that he had seen Nagaraj at Kaveripattinam Town (answer to questions 20 to 22).

(v) The petitioner, who had also contended that the said Nagaraj was using the official vehicle for campaigning, has not let in any evidence, either documentary or oral, to prove the same.

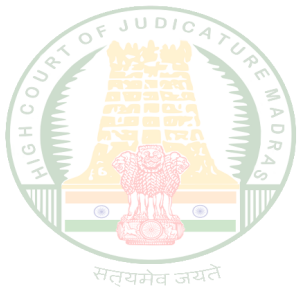


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(vi) Therefore, from the above, it is clear that the election petitioner has not come forward with a definite case. The case pleaded is that Nagaraj, who is a voter of Krishnagiri Constituency and a Supervisor in the Tamil Nadu Electricity Board, has misused his official position by using the car for campaigning and that apart, wearing a T-Shirt embossed with the AIADMK party symbol and with a towel also embossed with the AIADMK party symbol. However, none of these statements have been substantiated by proof and the oral evidence is also vague. Further, witnesses have contradicted each other. The pleadings in this regard are also very sketchy and **therefore, Issue No.4 is also answered against the petitioner**, as this petitioner has not been able to prove his contention that the first respondent has indulged in corrupt practices.

Issue Nos. 5 and 6:



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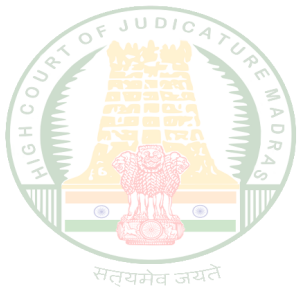
28.1 The 5th and 6th issue pertain to excess election expenditure incurred by the 1st respondent and plastering posters on Government buildings and properties which are as follows:

“5. Whether the 1st respondent has exceeded his permitted election expenditure and thus violated Rule 90 of the Code of Conduct Rules, 1961 r/w Section 77 of the Representation of Peoples Act, 1951, thus committing a corrupt practice under Section 123(6) rendering his election liable to be set aside under Section 100(1)(b) & (d) (ii), (iv) of the Representation of Peoples Act, 1951 ?

6. Whether the 1st respondent, and with his knowledge, consent and direction, his agents and other party workers have plastered the walls of Government buildings and public properties with posters thereby violating the Model Code of Conduct, thus rendering the election of the 1st respondent liable to be set aside under Section 100(1)(d)(iv) of the Representation of Peoples Act, 1951 ?

(a) Petitioner's case

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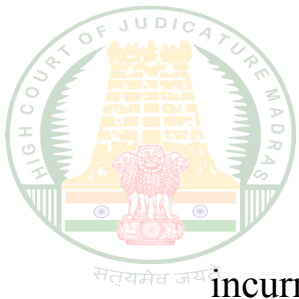


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i) Wall paintings:

It is the case of the petitioner that the election commission had fixed a maximum of Rs.30,80,000/- as total election expenditure under different categories for each candidate. The petitioner would submit that the 1st respondent had spent a sum of Rs.20,00,600/- for wall painting advertisements alone to propagate his name and his party symbol “two leaves”. This wall painting advertisements has been done with the knowledge, consent and authorization of the 1st respondent. The same has been physically verified by the petitioner, his agents and his party workers. On such verification, the petitioner has come to learn that nearly 22330 sq.ft area has been covered towards wall painting advertisements in all the 44 panchayats. The petitioner would further submit that the compact disc and photos have been filed along with the petition and that paragraph 12 of the election petition sets out in a tabulated statement the various villages in which the wall paintings has been done, the extent of these wall paintings and the expenses



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incurred. The petitioner would contend that on the sole ground of excess expenditure, the 1st respondent's election deserves to be set aside as it is in excess of the amount stipulated under Rule 90 of C.E Rules, 1961 and this has materially affected the election by swaying the voters. This is also a corrupt practice under Section 123(6) of R.P Act and the election is liable to be set aside under Section 100(1)(b) of R.P Act.

ii) **Wall Posters**

The petitioner would submit that the 1st respondent, his Chief Election Agent and his booth agents along with their party workers acting under the consent, knowledge, instructions and authorization and cost of the 1st respondent have plastered the walls of the Government buildings belonging to the Krishnagiri Municipality with AIADMK party symbols. He would further submit that on several flyovers, the 1st respondent has plastered posters. It is the contention of the

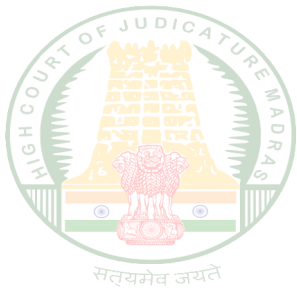


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petitioner that this plastering of walls on the public property was noticed by his election agents, V.Vengattappan, S.Krishnamoorthy, M. Chandrasekar, S.Prakash and M.Velumani. They had reported the same to the petitioner and his Chief Election Agent. This act is against the Model Code of Conduct. The petitioner on 04.04.2021 had given a representation to the respondents 16, 17 and 18 and the Election Observer of the Krishnagiri Assembly Constituency to take appropriate action against the 1st respondent and his party. However, no action was taken. The petitioner would submit that the 1st respondent would have spent a sum of Rs.10/- per poster and has willfully suppressed the same in the election expenditure account maintained by the 1st respondent under Section 77 of the RP Act. This has not been taken note of the Returning Officer, the 18th respondent.

(b) Response to the above:



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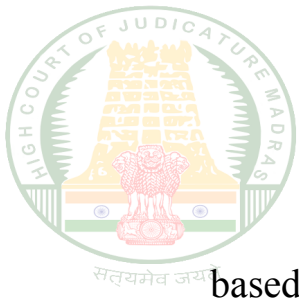
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The 1st respondent has countered this allegation by submitting that the document which has been submitted by the petitioner in support of this allegation is dated 03.03.2021. However, the 1st respondent has filed his nomination only on 12.03.2021 and therefore, it cannot be treated as an unlawful practice.

(c) Oral Evidence:

(i) The petitioner as P.W1 in his proof affidavit in lieu of chief examination reiterated the contentions regarding the above two issues as set out in the election petition and has marked photographs, the election expenditure statement of the 1st respondent and the representation given to the 18th respondent.

(ii) In his cross examination, the petitioner would submit that he had arrived at a sum of Rs.20,00,600/- as an estimate for the wall paints

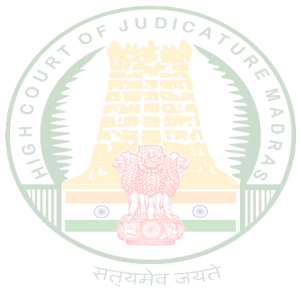


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based on the estimate given by Surya, the painter. The petitioner would admit that he had not received any written estimate from the said Surya and that he had made calculation on the basis of the details given by the said Surya. He would fairly concede that in his election petition, he has not mentioned any details regarding when he had met with the said Surya and obtained details from his as also the manner in which he has arrived at a total extent of 22,300 sq.ft as the area in which the wall painting has been done.

(iii) When a question has been asked as to whether a complaint has been lodged, the petitioner as P.W1 would submit that since the details of the expenses were to be given after the election, he had not submitted the complaint. In response to a question that it is mandatory that the Expenditure Observer maintains an expense book and the same has to be updated every morning and evening, he has denied the suggestion.



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(iv) The petitioner would submit that though he has not mentioned as to when his agents had informed him about the sticking of posters, he had however given a complaint to the Returning Officer. He would fairly admit in his cross examination that he has not produced any evidence regarding the sticking of the posters by the AIADMK workers, but would hasten to add that he has done so in the election petition. He would submit that the written objections can be given only after the elections are over.

(v) P.W2, the Chief Election Agent would submit that he had visited one of the Villages which is shown in the tabulated statement in paragraph 12 of the election petition. He would submit that he had witnessed the paintings being done in R.Poosaripatti Village of Bethathalapalli Panchayat. He would admit that no complaint in writing was given to the election officials regarding the painting of the AIADMK symbol on the walls. He would admit that he had not personally taken the measurements. However, to another question as to

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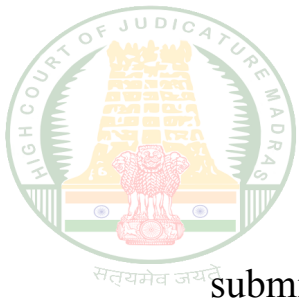
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who were present with P.W2 when measurements of the painting in R.Poosaripatti Village were taken, P.W2 had replied that his agents, Dharmakumar and Govindraj were present at that time, however, he does not remember the date on which these measurements were taken. He would fairly admits that he does not have any personal knowledge on the posters affixed on the flyovers and through his agents, he has come to know about this. Once again, there was no complaint lodged against the Election Commission.

(vi) P.W5-Prakash Sivaraj, the Constituency in-charge of the election petitioner would state that he had seen the wall paintings of the AIADMK party in the villages which has been supervised by him. He would submit that on 01.04.2021, while he was doing the rounds, he saw one Kanniappan, Ward Secretary of the AIADMK painting a wall near the lake. When questioned as to whether he had obtained permission for the same, the said Kanniappan responded that he was doing only as per the instructions of the 1st respondent. He would

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submit that he had informed the same to the petitioner. The petitioner had asked him to leave the place after photographing the wall painting. He would submit that the photographs were taken on his mobile phone and when asked whether he could produce his One Plus 7 phone, in which he had taken photographs, he would state that it is not with him. He would also admit that none of the photographs have the date and time mentioned. The witness would further submit that he had seen the wall paintings being done in Periyamuthur Panchayat and the same was completed by 11.00 a.m. However, he did not take the photographs while the painting was being done but had taken a photo after it was completed. He would further state that this fact was informed to the petitioner at 12.00 on the very same day, i.e. On 01.04.2021. He would also admit that no complaint had been given to the election Commission about these wall paintings. The witness would state that the timings and dates are in phone. To a question put by the Court, he would answer that he had not written down the date



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and time just as he had written down the name of the places. He would depose that the measurements were taken in fact, and the same was handed over their candidate Senguttuvan, the petitioner herein. To a question as to whether he would produce the notes of measurement, he would respond that he could not as he had handed over the same to the petitioner. However, this notes of measurement has not been produced before this Court.

(d) Documentary evidence:

Ex.P7 (marked subject to objections regarding its proof and relevancy) is a photocopy of the petitioner's representation dated 04.04.2021 addressed to the Chief Election Officer, the District Election Officer, District Collector, the Election Officer and the Election Observer regarding the wall posters with the party symbol being put up on Government buildings and flyovers by the AIADMK, calling upon them to take action against the 1st respondent. There is



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nothing to show that this letter has been served on the official concerned and the mode in which the letter has been despatched is also not clear from a perusal of the document. In the photographs which have been marked in Ex.P16 series, the names of the places have been inserted in the photographs. However, there is no time or date.

(e) Conclusion :

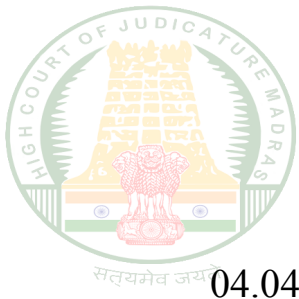
It is the petitioner's case that the wall painting and wall posters were violative of the Election Rules as it far exceeded the minimum amount fixed by the Election Commission. To prove that the petitioner has exceeded this amount, he has come forward with a tabulated statement showing the wall painting done in each panchayat and contending that over 22330 sq.ft. had been painted. The petitioner case is that an amount of Rs.20,00,600/- has been spent on these wall paintings. This is arrived at on the basis of the estimate given by the painter, Surya. However, the petitioner has not chosen to examine the



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said Surya. Further, the photographs marked as Ex.P16 series do not in any manner prove the case of the petitioner that this extent of 22330 sq.ft has been painted and that these paintings are in respect of the places as printed in the photographs. The photographs would only show that the wall paintings have been done. In fact, P.W6, to a question put by the Court, has fairly conceded that they had also painted their party symbols on private houses. As regards the wall posters fixed on the fly overs, there was no documentary proof except for the oral evidence. Though in the petition and evidence, the petitioner had contended that the wall posters were put up on the government buildings and fly overs, however during evidence, they would contend that it was put up on the flyovers. Interestingly, though P.W5 and P.W6 would submit that no compliant was lodged by them, Ext.P7, letter dated 04.04.2021 had been produced to state that a complaint was lodged. Further, P.W1 would submit that he had seen the wall painting on 01.04.2021. Similarly, P.W6 would state that he had seen the wall paintings on



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04.04.2021 and 06.04.2021. The polling date was on 06.04.2021.

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Ext.C10 is a shadow observation record which is the statement of expenses incurred each day by the first respondent. This record has been countersigned by the election officer and the presumption is that it has been cross-checked by the officials.

28.2 Section 77 of the R.P.Act deals with election expenses and the maximum thereof. Section 77(1) with its explanations and provisions reads as follows :

“ 77. Account of election expenses and maximum thereof :-

- 1. Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all 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.

Explanation 1.—For the removal of doubts, it is hereby declared that—

(a) the expenditure incurred by 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;

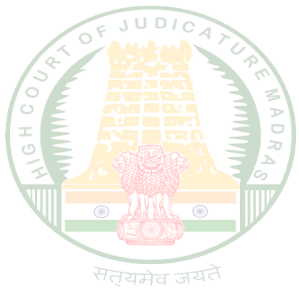
(b) any expenditure incurred in respect of any arrangements made, facilities provided or any other act or thing done by any person in the service of the Government and belonging to any of the classes mentioned in clause (7) of section 123 in the discharge or purported discharge of his official duty as mentioned in the proviso to that clause shall not be deemed to be expenditure in connection with the election incurred or authorised by a candidate or by his election agent for the purposes of this sub-section.



Explanation 2.—For the purpose of clause (a) of Explanation 1, the expression “leaders of a political party”, in respect of any election, means,—

- (i) where such political party is a recognised political party, such persons not exceeding forty in number, and*
- (ii) where such political party is other than a recognised political party, such persons not exceeding twenty in number, whose names have been communicated to the Election Commission and the Chief Electoral Officers of the States by the political party to be leaders for the purposes of such election, within a period of seven days from the date of the notification for such election published in the Gazette of India or Official Gazette of the State, as the case may be, under this Act:*

Provided that a political party may, in the case where any of the persons referred to in clause (i) or, as the case may be, in clause (iii) dies or ceases to be a member of such political party, by further communication to the Election Commission and the Chief Electoral Officers of the States, substitute new name, during the period ending immediately before



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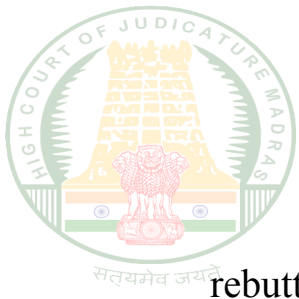


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forty-eight hours ending with the hour fixed for the conclusion of the last poll for such election, for the name of such person died or ceased to be a member, for the purposes of designating the new leader in his place.

Section 77(3) provides that the total expenditure should not exceed the amount prescribed.

28.3 In the judgment reported in **1996 (2) SCC 752 [Common Cause (A Regd. Society) Vs. Union of India & Others]**, the Hon'ble Supreme Court was considering a public interest litigation which sought to bring about transparency in election funding. The Bench was considering Section 77 of the R.P.Act alongside Sec.293A of the Companies Act and Section 13A of the Income Tax Act. The Bench *prima facie* observed that in terms of Explanation (1) to Section 77 of the R.P.Act, the expenditure incurred by a political party is presumed to be that of the candidate himself but the said presumption was

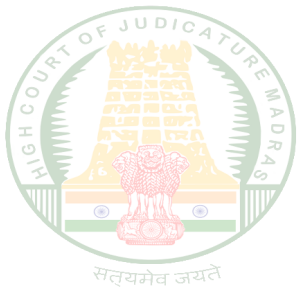


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rebuttable. Once rebutted, the expenditure shall be deemed to have been incurred by the political party.

28.4 This, therefore pre-supposes that the petitioner who seeks to set aside the election of the returned candidate has to show that the expenses have been incurred and thereafter, it is for the returned candidate to rebut the presumption. In the petition, the petitioner has given a tabulated statement of the alleged area in which the wall painting has been put up and tried to substantiate the same through Ext.P.16 photo series and the oral evidence of P.W.5 and P.W.6. The petitioner has not chosen to examine Surya, the painter who is supposed to have given them the per sq.ft. Rate and they have also not produced the working sheet for having taken the measurements. Therefore, the initial onus of proving that the first respondent had put wall paintings to an extent of 22,330 sq.ft., has not been proved by the petitioner,



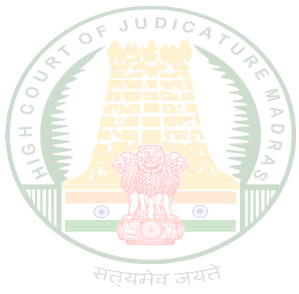
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28.5 Further, the petitioner has not been able to establish that this excess expenditure incurred has materially affected the result of the election. In the judgment of the Hon'ble Supreme Court reported in **1999 (1) SCC 666 [L.R.Shivaramagowda & Others Vs T.M.Chandrashekar (dead) by LRs & others]**, the three Judges Bench had observed that in order to declare a election to be void under Section 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate has been materially affected by reasons of non-compliance with the provisions of the Act and Rules. Therefore, since the petitioner has not been able to prove the allegation with reference to over expenditure and the paintings on the public buildings and fly overs, **Issue Nos. 5 and 6 are answered against the petitioner.**

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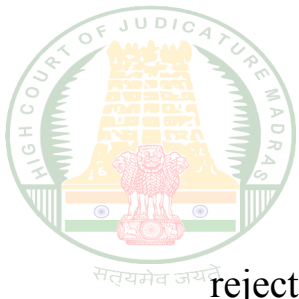
29. The issue No.7 relates to the rejection of postal ballots and the counting recorded in two EVMs :

Whether the Returning Officer of the No.53, Krishnagiri Constituency committed irregularities and illegalities by improperly rejecting the postal ballot votes and in counting the votes recorded in the EVMs, thereby materially affecting the election of the 1st respondent rendering the election liable to be set aside under Section 100(1)(d)(iii) of the Representation of the Peoples Act, 1951 ?

(a) Petitioner's case:

(i) Improper rejection of postal ballots and the counting of votes recorded in EVMs:

It is the case of the petitioner that the 18th respondent had commenced counting of the votes at 08.00 am in the presence of the petitioner's Chief Election Agent and other agents (the date of the counting has not been stated). It is the contention of the petitioner that his agents noticed that several postal covers were being discarded by the officials without assigning reasons for the covers having been



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rejected. The covers were summarily discarded without even informing the petitioner's Chief Agent, Tamilselvan. Thereafter, the Chief Agent requested the 18th respondent to show the results of the postal ballots to all the candidates and their agents and reject the same only if there were reasonable grounds for rejection. The 18th respondent refused to show the result and rejected 605 covers without assigning any reasons. The petitioner would submit that the counting of the postal ballots was completed by 1.00.pm. Thereafter, the counting of EVMs started and after the counting of EVMs at around 9.30pm, the Returning Officer had handed over the total tally of votes received through postal ballots. To the shock of the petitioner, 605 votes were rejected out of 3,318 votes polled. On 02.05.2021, the petitioner had made a representation stating that the rejection of 605 votes was illegal and without assigning the reasons. The petitioner would further submit that initially, the Returning Officer had kept these postal ballots separately promising to open them at a later point in time. However,

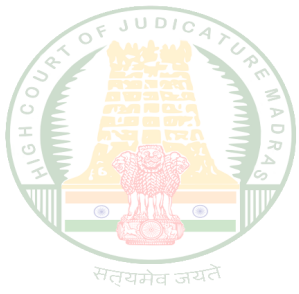


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without informing the petitioner or his agents, the postal ballots were taken up for counting and the 605 covers had been rejected. The reasons for rejection were given in the reply dated 02.05.2015 in a tabulated statement extracted herein below:

<i>Sl. No.</i>	<i>Reasons for Rejection of PB</i>	<i>Table 1</i>	<i>Table 2</i>	<i>Table 3</i>	<i>Table 4</i>	<i>Service Votes</i>	<i>Grand Total</i>
1.	13A Declaration Found Defect	22	7	-	1	141	30
2.	13A not found in 13C	13	34	14	14	2	75
3.	Multiple Votes Recorded	2	6	3	1	-	11
4.	PB serial number not matched	83	64	33	44	-	224
5.	No marking / Mark on blank area	2	2	-	1	2	5
6.	PB found outside of 13B	1	1	-	1	14	3
7.	Spurious PB/ Damaged PB	-	-	-	-	-	-
8.	Elector Identifiable	2	2	-	2	-	6
9.	Received lately	-	-	-	-	-	-
10.	13B not found PB No	11	-	-	-	-	11
11.	Others	-	-	55	-	25	55
	Total	136	116	105	64	184	605

The petitioner would contend that the Rules does not contemplate rejection under the head "others".

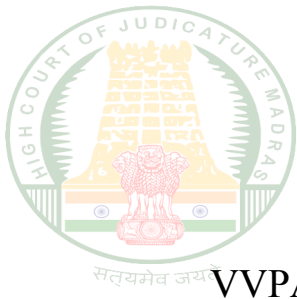


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(ii) The Deficiencies and irregularities in counting the EVM votes:

(a) It is the contention of the petitioner that with reference to EVM in Polling Station No.79 bearing Control Unit No.BCUAF08025, serious irregularities were committed by the Returning Officer. It is the case of the petitioner that on 06.04.2021, a mock poll was conducted in all the polling booth at 6.00.am. The petitioner's agents participated in the mock poll to check if the EVM control unit and VVPAT were functioning properly and were in order. After the mock poll, the Booth Level Officer (BLO) did not reset the EVM before commencing the actual poll and therefore, 50 votes cast in the said EVM were invalid votes. This fact was informed by the Returning Officer on the date of the counting i.e., on 02.05.2021. The Returning Officer informed that this EVM will be kept aside and would be counted later through its

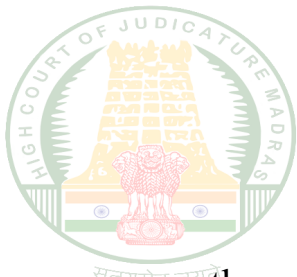


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VVPAT. However, the EVM with the VVPAT was taken up for counting without the presence of the petitioner and his agents.

(b) Yet another irregularity was at Polling Station No.95, bearing Control Unit No.BCUEF88410. This Unit was taken up for counting in Round 9 at Table 1, where EVM malfunctioned. The Officer in-charge was directed by the Returning Officer, to keep the control unit separately and count the same at the end. However, once again, the counting was undertaken without the presence of the petitioner and his agents. The petitioner had therefore submitted a representation on 02.05.2021 to the 18th respondent stating that the entire counting process was doubtful and requested for recounting of all EVMs and postal votes. The said request was refused by the 18th respondent under Rule 63(3) of C.E.Rules, 1961. The counting of votes through VVPAT in the absence of the petitioner and his agents and without following



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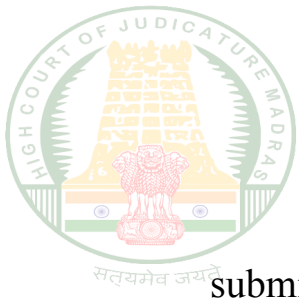
the procedures contemplated under Rule 56 of C.E.Rules, 1961 by the 18th respondent has materially affected the election of the petitioner.

(b) Response to the above:

The 1st respondent except for making an over all denial of the allegations, has not raised specific defence to counter the narrative.

(c) Oral evidence:

(i) In order to substantiate their allegations, the petitioner has examined P.W7, Raj Kumar, the Booth Agent of the petitioner for Polling Booth No.79. The said witness in his chief examination would submit that all the booth agents had polled around 10 mock votes each and he had polled 5 mock votes. He would further submit that after the mock votes were polled, he had requested the Retuning Officer to erase the votes. The Officials informed him that it would be done, but however without erasing the same, the poll had started. He would

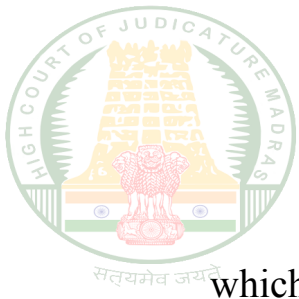


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submit that at 6.00pm, he came to realize that since the officials had a tally of 607 votes. However, his entries showed only 557 votes. None of the above statements find place either in the Election Petition or in the Chief examination of the petitioner. He would further submit that these booth agents were present during the mock poll. In his cross examination, he would retract and state that the officials had asked each agent to cast 5 or 10 votes. He had not seen how many votes the other booth agents had cast. To a question as to the basis on which he had come to the conclusion that 607 votes were cast, the witness would state that it was on the basis of the booth list. However, to a question as to whether he could produce the booth list with markings, he would answer that he had handed it over to the election petitioner.

(ii) The petitioner had issued subpoena to the Revenue District Officer (C.W.1). C.W1 had marked 14 documents as Ex.C1 to C14



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which were sought for and allowed in A.No.925 of 2023 and the same were marked. The same is extracted herein below:

Ex.C1 is the Roundwise Tabulation Sheet and the Final Tabulation Sheet.

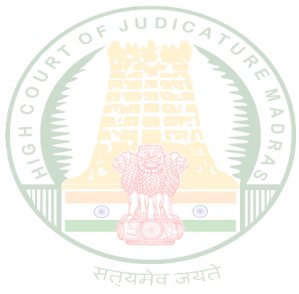
Ex.C2 are the records pertaining to counting of postal ballots, round wise tally of postal ballot votes and final tally of postal ballot votes.

Ex.C3 is the order dated 02.05.2021 passed by the Returning Officer in respect of the rejection of postal ballots.

The 605 rejected postal ballots with their respective accompanying documents has been produced and they are contained in the box. The box received is marked as Ex.C4 together with the key and it is locked and the box is handed over to safe custody.

The box containing 750 postal ballots polled in favour of the 1st respondent along with accompanying documents is marked as Ex.C.5.

Ex.C6. is the objection dated 02.05.2021 filed by the Election



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Petitioner on rejection of postal ballots.

Ex.C7. Series 2 numbers are the CCTV footage for booth numbers 79 and 95. (The documents are marked subject to the production of certificate under Sec.65 B of the Evidence Act)

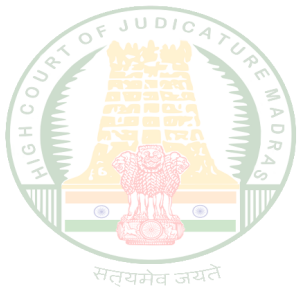
Ex.C8. is the CCTV footage of the counting center. (The documents are marked subject to the production of certificate under Sec.65 B of the Evidence Act)

Ex.C9. is the expenditure statement filed by the 1st respondent.

Ex.C10. is the shadow observation record of the expenses of the 1st respondent maintained in the SOR (Shadow Observation Register).

Ex.C11 is the Form 26 and Nomination Form of the 1st respondent.

Ex.C12 series (2 nos) is the representation given by the Election Petitioner and the order dated 02.05.2021 passed by the Returning Officer.



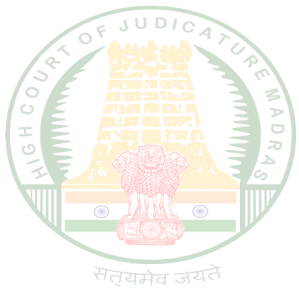
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Ex.C13. is the Control Unit bearing No. BCUAF08025 for Polling Booth No.79 AV Gangaleri, for the date of poll 06.04.2021. The control unit was sealed and opened in the presence of both the counsels. The serial number of the Control Unit was displayed and verified by the Court. In order to see the total number of votes, the CRC (close result clear) compartment was broken along with the blue and green seal and on pressing the close button in the presence of both the counsels it was seen that the Control Unit was closed without closing the votes polled. Only if the votes are closed, the result will be displayed. On pressing the close button, the total number of votes polled was displayed as 657.

Ex.C14. The Control Unit bearing No. BCUEF88410 for booth no.95 Balaguri Polling station for the date of polling 06.04.2021. The total number of candidates is displayed as 13. The serial no. of the Control Unit displayed was verified



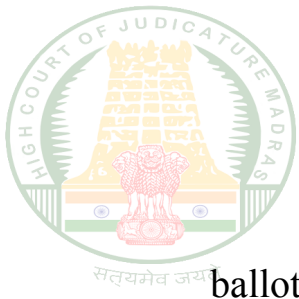
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by the Court. It displayed “Data Digit Error”. The machine was switched off and switched on and the seal was broken in the presence of both the counsels. The total number of votes displayed is 716.

(iii) C.W.2 is the Returning Officer of the Krishnagiri Assembly Constituency. In her cross examination, she would submit that she had not received any objections with reference to the nomination filed by the 1st respondent, the distribution of money to voters, misuse of official machinery and excess expenditure. She would further submit that Ex.P7-letter dated 04.04.2021 does not contain an acknowledgement of she having received it and she would add that normally, when an objection is received, it is acknowledged. With reference to the counting of the postal ballots, in her cross examination, she would submit that she was present at the table when the counting of postal ballots had commenced. She would further submit that each



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ballot papers were scrutinized separately in the presence of the agents of the candidates and that the reasons for rejection have been given to all agents. She would also submit that an ARO of Gazetted rank has explained the reasons of rejection and after the end of each round, the signatures from the agents were obtained. She categorically denied the statement that it was only after receiving the complaint from the DMK party candidate, the reasons for rejection were affixed on the postal ballot. After each round, signatures were obtained from the agents present for the postal ballots that were accepted and rejected. The ballot papers were displayed to all the agents. She would explain that the reason for classifying the certain postal ballots under the head “others” was that it was provided in the format and further the reasons for rejection in some cases did not fall within the reasons set out in this format. The witness would further clarify that the mock votes were not erased. However, the counting has been done on the basis of VVPAT slips with the consent of the Election Observer and thereafter,



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the excess votes were reduced. She would submit that the rejection was done as per the instructions given in the Handbook of Returning Officer and with the consent of the Election Observer. Even with reference to the Polling Station No.95, the counting was done through VVPAT slips. She would submit that the Election Observer was kept informed and he had given his consent and affixed his signature in the round wise tabulated sheet for both polling station Nos.79 and 95. She has deposed that as per Rule 15.18.3 of the Handbook of the Returning Officer issued by the Election Commission of India, in case where votes have been cast in the EVM without erasing the mock poll votes, the VVPAT slips are required to be counted at the end. While counting for Polling Station Nos.79 and 95 was undertaken, as also the execution of Ex.C17-series, neither the election petitioner nor his agents were present. They have also not signed the documents. The entire procedure has been videographed.



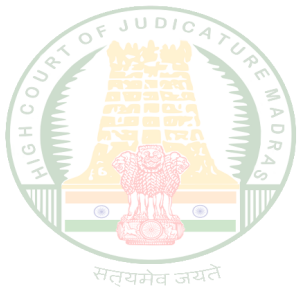
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(d) Conclusion :

Before advertng to the pleadings, response and evidence, it would be useful to extract the following provisions of the Hand Book for the Returning Officer :

Rule 15.14 of the Hand Book for Returning Officer deals with counting of postal ballot papers. Rule 15.14.1 reads as follows:

“15.14.1 Under Rule 54A of the Conduct of Elections Rules 1961, the counting of postal ballot papers shall be started first at the RO's table. Only such Postal Ballot Papers shall be taken up for counting which are received by the RO before the hour fixed for commencement of counting. The Returning Officer shall furnish the latest account of the total number of postal ballot papers (received from the facilitation centers and through post) to the Observer at the time of commencement of counting.”



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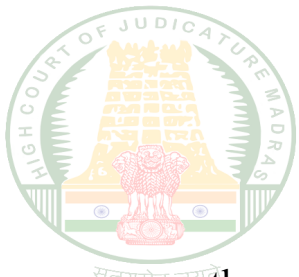
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15.14.12 sets out further reasons for rejection which are as follows:

15. Postal ballot paper will be rejected on the following grounds: -

- (a) If no vote is recorded thereon; or*
- (b) If votes are given on it in favour of more than one candidate, or*
- (c) If it is a spurious ballot paper, or*
- (d) If it has been so damaged or mutilated that its identity as genuine ballot paper cannot be established; or*
- (e) If it is not returned in the cover "B" sent along with it to the elector by the Returning Officer, or*
- (f) If the mark indicating the vote is made in such a way that it is doubtful to make out the candidate to whom the vote has been given; or*
- (g) If it bears any mark or writing by which the voter can be identified.*

(i) The grievance of the petitioner is that the rejection of the postal ballots has been done without following the Rules and

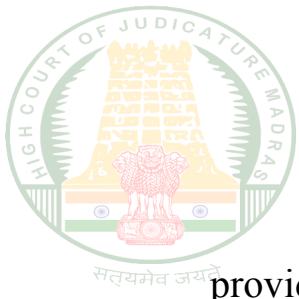


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thereafter, the counting of the same has been done in the absence of the petitioner's agent, chief election agent. Further, the rejection has been made on one ground which is not found in the Rules namely under the “others”. As already stated, in the light of the judgments of the Hon'ble Supreme Court mentioned supra, and also taking into account the fact that the margin of victory appears to be very slender and the total number of postal votes was 605, this Court had independently scrutinised the evidence that has been exploited before this Court with the help of the officials.

(ii) A scrutiny of the postal ballots which have been rejected under the head “others” indicates that those ballots were defective. For example, in some cases, the serial numbers on the postal ballots did not match, and in others, the declaration in Form 13A was defective. Therefore, in such circumstances, the same was included under the head 'others' as they would not come under the single category



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provided in the format, but the defect fell under two or more categories.

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Therefore, if the rejected votes were taken into consideration on the basis of reasons, it would lead to an anomalous situation where one vote could be treated as two or three. Therefore, categorizing them under the head 'others' is a definite way of arriving at the correct tally of votes. That apart, it is as per the ECI's format. Further, even under this head, the reasons for rejection fall within the grounds set out in Rule 54A of the Conduct of Election Rules, 1961, and the total number of rejected votes tallies to 605. Accordingly, the rejection of the postal ballots appears to be in order.

(iii) On a perusal of the video, it is seen that an Official is showing a demo ballot paper at table No.2 and the same has been explained to the Agents. The video would also show that the questions being asked by the Agents. In Table No.3, it appears that some of the votes are being re-checked. Table No.4 would show that each ballot



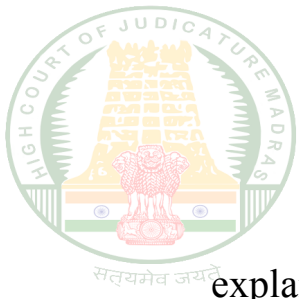
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paper is being shown to the agents before it is put in the respective boxes. Therefore, the rejection cannot be called into a question, particularly, when the Returning Officer has followed the procedure contemplated in the Hand Book.

(iv) In the EVM of Polling Station No.79, the mock polls have not been rejected. The Officials of the BHEL who had come along with the election officials for scrutinizing the postal ballots have explained to the Court that the symbols are recorded only in the VVPAT and mock polls did not get registered into the VVPAT. Therefore, the 50 mock votes can be easily ignored since the VVPAT had only registered the actual votes. Therefore, the final result has not been affected.

(v) Likewise, with reference to the Polling Station No.95 where there was a malfunction as there was no display, the petitioner would



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explain that the result of the same had not been closed after the polling.

Further, it would not affect the results since the results are recorded in the VVPAT and the total votes polled remains unchanged. The petitioner has not stated as to how the malfunction has affected the results.

(vi) A regards votes cast in booth Nos.79 and 95 have been cross examined with VVPAT and is found to be in order. The expansion of abbreviation VVPAT is '*Voter Verifiable Paper Audit Trail*'. VVPAT is an electronic device that includes a direct recording electronic voting system. DRE in short would assure voters that their votes have been recorded as intended and as a means to detect fraud and equipment malfunction. VVPAT is a means by which a manual vote count can be conducted, if a re-count is necessary. Rule 56(D)(4)(b) of the C.E.Rules provided that where there is a discrepancy between the votes displayed in on the control unit and



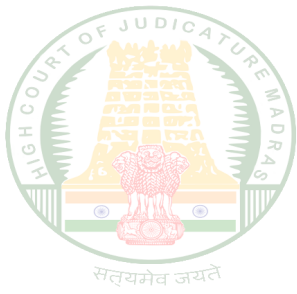
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counting of the paper slips (VVPAT), result sheet in Form 20 has to be amended as per the paper slips count.

(vii) Further after the mock poll, apart from resetting the EVMs, the VVPAT slips for mock are destroyed. This assumes significance since the petitioner has only alleged that the EVMs had not been reset, but does not whisper anything about the VVPAT.

(viii) After scrutinizing the postal ballots and the videograph, it is seen that the allegations made by the petitioner that the postal ballots had been rejected indiscriminately, that the agents were not kept informed, and that the counting had taken place in the absence of the agents, are all found incorrect. Therefore, the grounds raised by the petitioner in this regard cannot be countenanced and this **Issue No.7 is answered against the petitioner.** Further, the judgments relied upon by the petitioner in this regard does not come to his aid.



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ISSUE No.8 :

30. The Issue No.8 framed for consideration is :

“Whether the present election petition is barred by limitation and latches?”

Conclusion :

(i) The pleadings on either side would clearly show that the nominations were called on 12.03.2021, the last date for filing the nominations was 19.03.2021, date for scrutiny of nomination was 20.03.2021, the last date for withdrawal of candidature was 22.03.2021 and the date of poll was 06.04.2021. The election results had been declared on 02.05.2021 and the election petition has been filed on 30.06.2021, no doubt beyond the prescribed period of 45 days. However, in the light of the order passed by the Hon'ble Supreme



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Court in a miscellaneous petition No. 665 of 2021 in SMW(C) No.3 of 2020 dated 27.04.2021, the period of limitation can be extended. It has been held as follows:

“We, therefore, restore the order dated 23rd March, 2020 and in continuation of the order dted 8th March, 2021 direct that the period(s) of limitation, as prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings, whether condonable or not, shall stand extended till further orders”.

(ii) Reliance may be placed in this regard to Section 81 of the R.P.Act, which reads as follows :

“81. Presentation of petitions: —

(1)An election petition calling in question any election may be presented on one or more of the grounds



specified in sub-section (1) of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, “elector” means a person who was entitled to vote at the election to which the election petition relates, whether he has voted at such election or not.

(2)***

(3)Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.

(iii) The 1st respondent would submit the election petition ought to have presented within a period of forty-five days from, but not earlier than the date of election of the returned candidate or if there are

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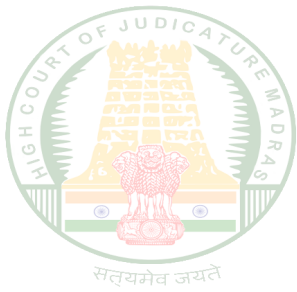
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more than one returned candidate and dates of their election are different, the later of those two dates. The 1st respondent would further state, the State assembly election was conducted on 06.04.2021 and the results were announced on 03.05.2021. Though the first respondent would contend that the petition was filed on 30.06.2021, i.e., nearly 63 days after the announcement of the election results, however, in the result of the the above referred judgment of the Hon'ble Supreme Court, the time stood automatically extended. Therefore, the petition is filed well within the time. **This Issue No.8 is answered in favour of the petitioner.**

ISSUE No.9 :

31. The Issue No.9 is :

Whether the present election petition is compliant of Section 81 of the Representation of People's Act 1951 ?



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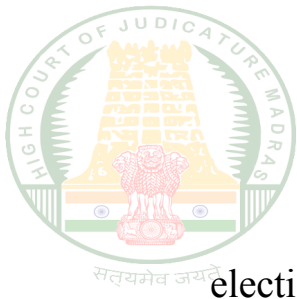
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Conclusion :

In the light of the answer given to issue No.8, it cannot be stated that the election petition is not compliant with Section 81 of the R.P. Act since by reason of the orders of the Hon'ble Supreme Court, the limitation period has been extended and the election petition has been filed within the prescribed time. Therefore, **Issue No.9 is answered in favour of the petitioner.**

ISSUE No.10:

32. As regards the 10th issue, namely, *Whether the present petition contains sufficient cause of action for this Hon'ble Court to take cognizance and try the same*, the petitioner has challenged the



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election of the 1st respondent on various grounds and has given reasons as to why the election being questioned. Therefore, this Court is of the opinion that the election petition contains sufficient cause of action for the Court to take cognizance of the petition and to try the same. This **Issue No.10 is answered in favour of the petitioner.** However, **Issue Nos. 11, 12 and 13 are answered against the petitioner.**

SUMMATION :

33. In the light of the above discussions, Issue Nos.1 to 7, 11, 12 & 13 are answered against the petitioner and Issue Nos.8, 9 & 10 are answered in favour of the petitioner. Accordingly, the Election Petition is dismissed. No costs.

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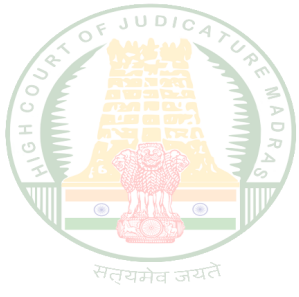
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