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ELP.No.4/2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON 30.06.2022

DELIVERED ON 06.07.2023

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

ELP.No.4/2019

P.Milany

.. Petitioner

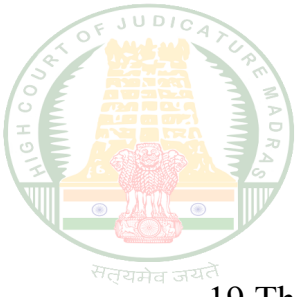
Versus

- 1.S.Arumugam
- 2.E.V.K.S.Elangovan
- 3.P.Raveendranath Kumar
- 4.P.Allikodi
- 5.J.Shahul Hammed
- 6.T.Chinna Sathiyamoorthy
- 7.S.Radhakrishnan
- 8.G.Kamaraj
- 9.S.Alex Pandian
- 10.M.Annakili
- 11.K.Ravichandran
- 12.Eswaran
- 13.M.Guna Singh
- 14.P.Kumaragurubaran
- 15.J.Kesavaraja
- 16.P.Silambarasan
- 17.A.Sivamuniyandi
- 18.J.Senthilkumar



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- 19.Thanga Tamilselvan
- 20.G.Parthipan
- 21.P.Prakash
- 22.C.Manimurugan
- 23.K.Ramachandran
- 24.S.Ramamurthi
- 25.V.Rajasekaran
- 26.S.Rajarishigurudev
- 27.P.Rajkumar
- 28.S.P.Velmurugan
- 29.A.Vaiyathurai
- 30.K.Jayamani
- 31.Mrs.Pallavi Baldev, IAS  
Returning Officer cum District Electoral  
Officer of Theni District, O/o.District Collectorate  
Theni District.

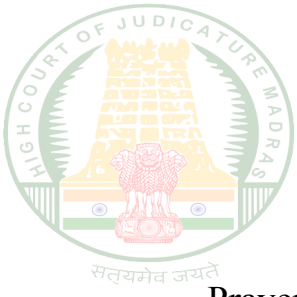
32.The Chief Electoral Officer  
State of Tamil Nadu, Secretariat  
Chennai 600 009.

33.Election Commission of India  
represented by the Chief Election Commissioner  
Nirvachan Sadan, Ashoka Road  
New Delhi 110 001.

.. Respondents

**\*\*RR31 to 33 are struck of from the array  
of respondents in ELP.No.4/2019 as per  
order of this Court dated 18.09.2019 in  
OA.Nos.838, 840 & 841/2019 in ELP.No.4/2019**

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Prayer:-Election Petition filed under sections 81, 100[1][a], 100[1][b], 100[1][d][i], 100[1][d][ii], 100[1][d][iii], 100[1][d][iv], 33, 36, 77, 123[1][A][b], 123[1][B][b] and Rules 88, 89 of Conduct of Election Rules, 1961 and Article 324 of the Constitution of India read with Rule 2 of the Madras High Court Election Petition, 1967, to declare the election of the 3<sup>rd</sup> respondent as returned candidate on 23.05.2019 from No.33, Theni Parliamentary Constituency as null and void and award the cost of this petition.

For Petitioner : Mr.V.Arun

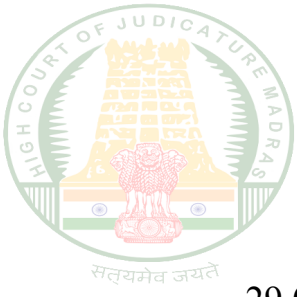
For R3 : Mr.A.K.Sriram, Senior Counsel  
assisted by  
Mr.G.Prakash Kumar

### ORDER

(1)This election petition is filed to declare the election of the 3<sup>rd</sup> respondent/Returned Candidate on 23.05.2019 from No.33, Theni Parliamentary Constituency as null and void and to pass such further or other orders as this Court deems fit and appropriate.

(2)The Election Commission of India declared Lok Sabha General election on 10.03.2019. As per the Schedule of Election, the first day for issuing nomination was on 19.03.2019 and the last date for receiving nomination was on 26.03.2019. The date for scrutiny of nominations was fixed on 27.03.2019 and the last date for withdrawal of nominations was on

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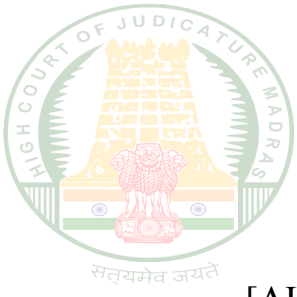
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29.03.2019 before 5.00 p.m. 18.04.2019 was the date of polling and 23.05.2019 was the date of counting and for declaration of election results.

(3) This Election Petition is filed on 08.07.2019 within time. The petitioner has filed this petition as an elector challenging the election of 3<sup>rd</sup> respondent as representative of Theni Parliamentary Constituency on grounds referring to Section 81, 100[1][a], 100[1][b], 100[1][d][i], 100[1][d][ii], 100[1][d][iii], 100[1][d][iv], 33, 36, 77, 123[1][A][b], 123[1][B][b] of the Representation of People Act, 1951 read with Rules 88, 89 of Conduct of Election Rules, 1961. The election petition is filed mainly on the ground of suppression of assets and liabilities in Form-26 of election affidavit filed under Rule 4A of Conduct of Election Rules, 1961, improper acceptance of nomination by the Returning Officer and corrupt practices by the associates of the 3<sup>rd</sup> respondent with the consent of third respondent.

(4) It is not in dispute that the then ruling party in the State fielded 3<sup>rd</sup> respondent as a candidate in All India Anna Dravida Munnetra Kazhagam

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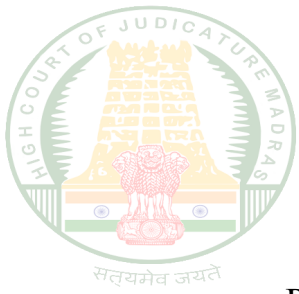
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[AIADMK] Party under 'two leaves' symbol. It is also admitted that the 3<sup>rd</sup> respondent is the son of the then Deputy Chief Minister of the State Mr.O.Panneerselvam. It is pertinent to mention that one Mr.E.V.K.S.Elangovan, who contested as a candidate of Indian National Congress in 'hands' symbol is the 2<sup>nd</sup> respondent herein and many other candidates who contested the election, did not participate in the Election Petition. Though the 19<sup>th</sup> respondent filed a counter supporting the petition and gave evidence as PW2, he did not participate in the proceedings by engaging an Advocate. The other respondents, except the 3<sup>rd</sup> respondent, have not contested the election petition.

(5)The case of the petitioner in the Election Petition can be briefly summarised as follows:-

(a)The petitioner verified his Parliamentary Constituency candidates' affidavits submitted by the candidates on the website of the Election Commission to know about the candidates. On verification, he came to know that the 3<sup>rd</sup> respondent/Returned Candidate has suppressed his assets in the form of shares and its financial values in M/s.Vani Fabrics

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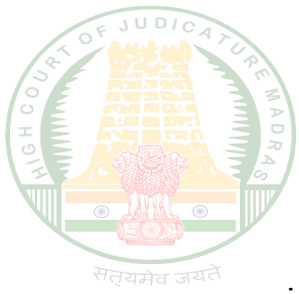
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Private Limited in which the 3<sup>rd</sup> respondent was a Director holding 16.67% of shares. The Balance Sheet approved in the Annual General Meeting of M/s.Vani Fabrics Private Limited to Ministry of Corporate Affairs, Government of India, revealed the holdings of shares by the 3<sup>rd</sup> respondent as Director and the 3<sup>rd</sup> respondent has deliberately suppressed his position as a shareholder and Director of M/s.Vani Fabrics Private Limited in the election affidavit.

(b)After acceptance of nomination, the 3<sup>rd</sup> respondent and his men as a team work, induced voters of entire Theni Parliamentary Constituency by freely distributing various articles like 'two leaves' printed sarees, dhotis printed with party's flag color, sweet boxes, liquor, cash on hand and promise on milk etc. The petitioner saw a flock of poor village women wearing identical green colour sarees imprinted with 'two leaves' symbol. The petitioner on enquiry, was informed that the 3<sup>rd</sup> respondent's brother was distributing sarees with Rs.1000/- to each of them to cast vote for them as advance gift at Baskar Kalyana Mandapam, Thendral Nagar. The petitioner went to the place and

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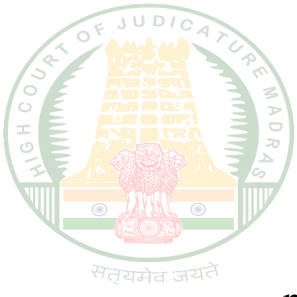


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identified the brother of 3<sup>rd</sup> respondent by name Mr.Pradeep Kumar, who was distributing a sum of Rs.1000/- to each of the women, on their promise to cast votes for 'two leaves' symbol. Even the petitioner could not contact the concerned to lodge a complaint. Later when the place was raided, about 500 sweet boxes alone were seized and raiding officials could only disperse the crowd by the rear side gate of the Kalyana Mandapam. The 3<sup>rd</sup> respondent, his agents, his father were freely and openly distributing money to the voters of Theni Parliamentary Constituency at various places simultaneously. The inducement of the voters cannot be stopped by respondents 31 to 33 or the special squad. Therefore, it appeared that the inducement was going on with the aid and support of the persons responsible for holding free and fair election.

(c)The petitioner saw a video of money distribution of 3<sup>rd</sup> respondent's close aid in social media. One Mrs.Saveetha Arunprasad, Ex-Chairman of Melachockanathapuram [of AIADMK Party], at Part 113 of Bodi Assembly Constituency, distributed Rs.1000/- to each voter as

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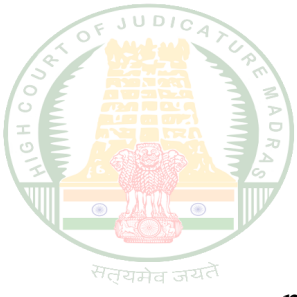
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per the electoral roll. The electors by name Lakshmi, Mariyamman, Santhosh and Raja of Part No.113 in Sl.Nos.551, 720, 673 and 718 were given Rs.4000/- by the said Saveetha. Again, she paid a sum of Rs.1000/- to one voter by name Subramaniam in Part No.113 Sl.No.258 of Bodi Assembly Segment at about 21.00 hours on 14.04.2019 and asked the said voter to vote for 'two leaves' symbol, the symbol in which the Returned Candidate contested the election. Mrs.Saveetha Arunprasad is a close confidante of the Returned Candidate and his father. She was accompanying with the 3<sup>rd</sup> respondent and his father during election campaign. With the consent of the 3<sup>rd</sup> respondent, she was distributing money to voters to vote for 'two leaves'. Hence, the 3<sup>rd</sup> respondent/Returned Candidate committed election offence under Sections 123[1][A] and [B] and also under sections 100[1][b], 100[1][d][i], 100[1][d][iii] and 100[1][d][iv] of the Representation of People Act, 1951.

(d)The petitioner tried to lodge a complaint in this regard, but he could not lodge a complaint because no Flying Squad, Police, Control Room

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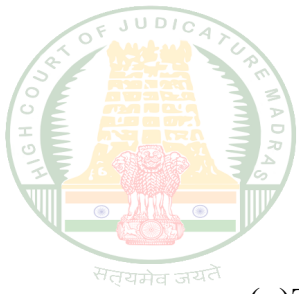
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phone numbers were working as respondents 31 to 33 were taking partisan attitude. The petitioner came to know that an FIR in Crime No.215/2019 against the said Saveetha was registered on 15.04.2019 ; but no arrest or further action was taken by the 33<sup>rd</sup> respondent.

(e) Though drastic steps were taken when similar incident was reported in Vellore Parliamentary Constituency and this Court upheld the 33<sup>rd</sup> respondent's order of countermand of Vellore Parliamentary Constituency, no effective steps were taken and no arrests were made in Theni Parliamentary Constituency.

(f) While election officials received several complaints of stocking of huge money at the election office of the 3<sup>rd</sup> respondent at Andipatti, the 31<sup>st</sup> respondent just informed a lower level Flying Squad Team headed by one Nataraja Rathinam, to conduct search in the said place and the raid was unsuccessful except seizure of a sum of Rs.1.48 Crores from the said place and reported the firing that was inevitable because of poor strength of officials who were deputed to the place of occurrence.

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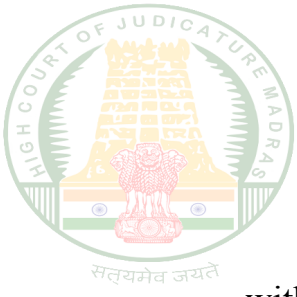
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(g)The election petitioner though made a few more allegations in the election petition, this Court is not inclined to elaborate further because the petitioner focused his attention only on limited grounds on the basis of the incidents above referred to any by stating that the official respondents miserably failed to conduct free and fair election.

(6)The 3<sup>rd</sup> respondent/Returned Candidate filed a counter affidavit generally denying all the allegations parawise. He also raised a preliminary objection as to the maintainability of the Election Petition by the petitioner raising a doubt as to his identity as an eligible elector. Referring to the fact that the petitioner is a functionary of a rival party, it is stated that the present petition is a frivolous one filed with ulterior motive. With regard to suppression of assets in the form of shares in the Company M/s.Vani Fabrics Private Limited, the 3<sup>rd</sup> respondent specifically denied the same. Though the 3<sup>rd</sup> respondent admitted that he had previously held shares in the said company, it is stated that the shares held by him had been transferred by him on 18.03.2019. He further stated in his counter that necessary documents in that regard are available

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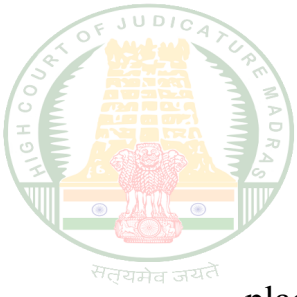
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with the company and the transfer of shares are supported by records. It is also contended that during scrutiny of nomination, same objection was raised by some other persons and it was duly replied by the 3<sup>rd</sup> respondent. It is stated further that the nomination of 3<sup>rd</sup> respondent was accepted after considering the objections. The 3<sup>rd</sup> respondent specifically denied the averments regarding corrupt practices. Stating that the petitioner's general allegations involving the 3<sup>rd</sup> respondent and his brother were not made with particulars and details, it is contended by the 3<sup>rd</sup> respondent that mere allegations without satisfying the requirements of statute, cannot be considered. The specific stand taken by the 3<sup>rd</sup> respondent is that he never consented or indulged in any corrupt practices alleged. It is stated in the counter that the petitioner is trying to build castles in air by making such farcical allegations with no material facts or particulars.

(7)As regards the distribution of money to voters, the 3<sup>rd</sup> respondent stated that the petitioner has not given the details as to how the money was distributed and when, where and by whom the alleged distribution took

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place. While denying the allegations involving Mrs. Saveetha Arunprasad, based on video on social media, it is responded in the counter affidavit filed by 3<sup>rd</sup> respondent that he has nothing to do with the incident. He questioned the authenticity of the Whatsapp video and put the petitioner to strict proof of the allegations that Mrs. Saveetha Arunprasad had committed such illegal acts with the consent of the 3<sup>rd</sup> respondent. He stated that mere allegation that Mrs. Saveetha Arunprasad had association with his father or the 3<sup>rd</sup> respondent does not mean that she indulged in such corrupt practices with their consent. He repeatedly stated that no corrupt practices were committed either by the 3<sup>rd</sup> respondent or by his supporters or party men. The 3<sup>rd</sup> respondent went to the extent of denying knowledge of the incident or the video clipping. Finally, the 3<sup>rd</sup> respondent stated that the police have commenced investigation pursuant to the registration of the FIR and that the petitioner has made bald allegations which do not satisfy the requirements of Sections 83 of the Representation of People Act, 1951 [hereinafter called as 'the RP Act'].

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(8)After the filing of counter affidavit by 3<sup>rd</sup> respondent, the election petitioner filed a reply reiterating the allegations already made in the election petition. With reference to suppression of assets, it is contended that the 3<sup>rd</sup> respondent has not only suppressed his shareholdings in M/s.Vani Fabrics Private Limited, but also the liability of Rs.10 Crores borrowed by M/s.Vijayanth Developers Private Limited in which the 3<sup>rd</sup> respondent is one of the Directors and holding 33.33% shares. The petitioner has come forward with an additional information about the suppression of the liability of a company in which the 3<sup>rd</sup> respondent is one of the Directors. In paragraph No.13 of the reply affidavit, the petitioner raised a doubt as to the bona fides of the alleged transfer of shares by the 3<sup>rd</sup> respondent pointing out the discrepancies in the dates. While the transfer of shares according to the 3<sup>rd</sup> respondent was on 18.03.2019, the petitioner pointed out that as per the company records, the transfer was on 17.03.2019. The petitioner still maintained that transfer of shares is done by manipulation of records to cover up the

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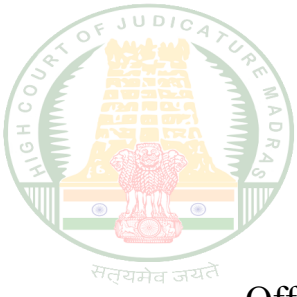


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suppression of assets. It is important to note that the petitioner in the alternative, further pointed out that the 3<sup>rd</sup> respondent has not disclosed the consideration he had received for transfer of 15000 shares. Referring to the fact that the Annual Report for 2017-18 of the Company shows that the value of shares held by the 3<sup>rd</sup> respondent was Rs.27,00,000/-, it is contended that the 3<sup>rd</sup> respondent has suppressed the consideration he had received for transfer of shares and therefore, it is contended that the suppression is admitted by the 3<sup>rd</sup> respondent himself. Further, it is stated that the 3<sup>rd</sup> respondent was receiving salary of Rs.6 lakhs per annum as the Director of M/s.Vani Fabrics Private Limited and that the income he derived from the said Company by way of salary was not disclosed in the affidavit in Form-26. In the reply affidavit, the petitioner from paras 6 to 15 raised several allegations regarding non-disclosure of assets and liabilities in Form 26 and about improper acceptance of nomination. Since the 3<sup>rd</sup> respondent in his counter, has stated that the objections raised by 3<sup>rd</sup> parties had been considered and rejected by Returning Officer, it is contended by the petitioner that the decision of Returning

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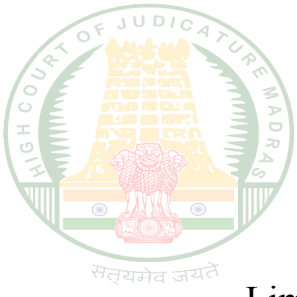
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Officer holding enquiry in a summary manner is not final and that the 3<sup>rd</sup> respondent should prove that he has not suppressed any asset or liability as it is the fundamental right of petitioner under Article 19[1][a] of the Constitution of India to know about the candidates contesting the elections. The petitioner has made a specific allegation that the 3<sup>rd</sup> respondent has suppressed his assets of other Company and its liability to the tune of Rs.10 Crores. Petitioner also put the 3<sup>rd</sup> respondent to strict proof that he has not suppressed any assets nor liabilities in his election affidavit. The petitioner reiterated that the 3<sup>rd</sup> respondent's nomination suffered from defects and hence, it is a case of improper acceptance of 3<sup>rd</sup> respondent's nomination by the Returning Officer.

(9)The 19<sup>th</sup> respondent has also filed a counter affidavit. Referring to the written objection, he had raised before the Returning Officer, the 19<sup>th</sup> respondent came up with few allegations regarding suppression of the salary, the 3<sup>rd</sup> respondent was receiving from M/s.Vani Fabrics Private Limited as a Director. Making similar allegation regarding suppression of the 3<sup>rd</sup> respondent's shareholdings [16.7%] at M/s.Vani Fabrics Private

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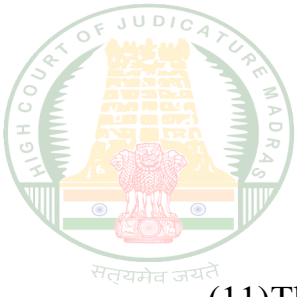
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Limited and the book value of the same, the 19<sup>th</sup> respondent also contended that the 3<sup>rd</sup> respondent has given a false declaration.

(10)The 19<sup>th</sup> respondent added further in his counter that the 3<sup>rd</sup> respondent availed a loan of Rs.10 Crores against his property for election purpose and it was also suppressed under the column 'Liabilities' in his election affidavit. Referring to a sum of Rs.32,52,450/- as his asset by referring to the said sum as the money which is due from the company namely, M/s.Vijayanth Developers Private Limited to the 3<sup>rd</sup> respondent, the 19<sup>th</sup> respondent contended that this is a false information. However, he failed to give any reason for describing the disclosure of a sum of Rs.32,52,450/- as a false declaration. Referring to the fact that the company, M/s.Vijayanth Developers Private Limited, is a loss making company which is indebted to several people, the 19<sup>th</sup> respondent also alleged that the declaration in Form-26 that the 3<sup>rd</sup> respondent owned shares to the value of Rs.33,340/- in M/s.Vijayanth Developers Private Limited, is a false information.

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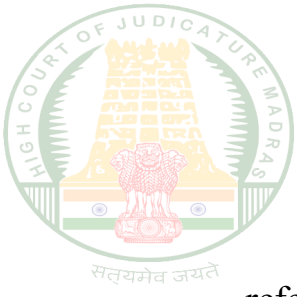


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(11)The 19<sup>th</sup> respondent in his counter affidavit, referred to the borrowal of a sum of Rs.10 Crores from City Union Bank, Mandaveli Branch, Chennai, as per the loan application dated 09.01.2019 and the sanction of loan. Referring to the charge over company on 18.02.2019, the 19<sup>th</sup> respondent alleged that the 3<sup>rd</sup> respondent has suppressed the liability by mortgaging the property of the 3<sup>rd</sup> respondent. The 19<sup>th</sup> respondent also alleged that the 3<sup>rd</sup> respondent has undervalued the immovable properties owned by him and mortgaged with the Bank. Referring to the fact that the value of his immovable properties is given as Rs.1,19,46,293/- [31.37 acres] in Column No.7B of immovable assets, the 19<sup>th</sup> respondent contended that the Returned Candidate/3<sup>rd</sup> respondent has mortgaged his property, by valuing the property mortgaged at Rs.5.69 Crores [for an extent of 29.99 acres] as on 21.09.2017. It is contended by the 19<sup>th</sup> respondent that the 3<sup>rd</sup> respondent's landed property which was valued for a sum of Rs.5.69 Crores as on 21.09.2017, has been suppressed and the property mortgaged with an additional extent has been shown in the election affidavit as a property worth Rs.1,19,46,923/-. Therefore,

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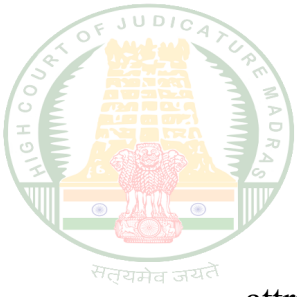
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referring to the under valuation of property and non-disclosure of the loan availed by mortgaging the property of the 3<sup>rd</sup> respondent, the 19<sup>th</sup> respondent made allegation of suppression against the 3<sup>rd</sup> respondent.

(12)The 19<sup>th</sup> respondent also made a few more allegations and we are not concerned about every other allegations in view of focus of parties on issues only with reference to certain allegations.

(13)The 3<sup>rd</sup> respondent filed a reply affidavit responding to the counter of 19<sup>th</sup> respondent. In the reply affidavit to the 19<sup>th</sup> respondent's counter, the 3<sup>rd</sup> respondent stated that the transaction between 3<sup>rd</sup> respondent and M/s.Vijayanth Developers Private Limited is entirely different and the loan obtained was not for the 3<sup>rd</sup> respondent, but for the development of the Company. The 3<sup>rd</sup> respondent also submitted that he has disclosed the mortgage of property with City Union Bank, Mandaveli Branch, vide Mortgage Deed dated 03.08.2018 and that the same had been disclosed in the affidavit in Form-26. Stating that the shares, loans, mortgages as on the date of filing of nomination had been sufficiently disclosed, the 3<sup>rd</sup> respondent made several allegations against the 19<sup>th</sup> respondent

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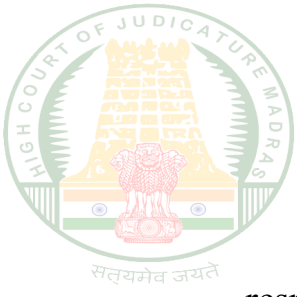
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attributing motive for supporting the cause of the election petitioner in this proceeding. Without prejudice to his contentions, the 3<sup>rd</sup> respondent submitted that he has nothing to do with the valuation done by the Bank for the purpose of lending money to the company.

(14) One of the independent candidate, who also contested in the election, namely, the 26<sup>th</sup> respondent, also filed a counter affidavit [filed as written statement]. He also came with a few allegations against the 3<sup>rd</sup> respondent by contending that the 3<sup>rd</sup> respondent has filed a false affidavit of declaration suppressing assets and liabilities with substantial variation. A reply affidavit was also filed by the 3<sup>rd</sup> respondent in response to the counter affidavit of the 26<sup>th</sup> respondent specifically denying every averments made in the counter affidavit of the 26<sup>th</sup> respondent.

(15) 26<sup>th</sup> respondent also made certain allegations with reference to the suppression of share holdings of 3<sup>rd</sup> respondent in M/s.Vani Fabrics Private Limited and about the mortgage of his property in connection with the loan advanced to M/s.Vijayanth Developers Private limited. Though the averments in the reply affidavit are in tune with what the 3<sup>rd</sup>

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respondent has stated in his reply to the counter affidavit filed by 19<sup>th</sup> respondent, the 3<sup>rd</sup> respondent in paragraph No.19 has stated that the shares in M/s.Vani Fabrics Private Limited were transferred to his own brother and there is no question of receiving any consideration as it was internally adjusted between himself and his brother. Surprisingly, the 3<sup>rd</sup> respondent admitted that he had also paid capital gains for the said transaction. Specific averments found in paragraph No.19 of the reply affidavit of 3<sup>rd</sup> respondent to the counter of 26<sup>th</sup> respondent reads as follows:-

*"19....With respect to share held in Vani Fabrics, it has already been made clear in the counter that the same had been transferred on 18.03.2019 and objections raised regarding the same were duly answered during nomination. The shares were transferred to my own brother and there is no question of me receiving any consideration as it was internally adjusted between my brother and I and in fact, I have also paid capital gains for the said transaction. Therefore, it is utterly false to state that I have conveniently suppressed all crucial facts to hide the*

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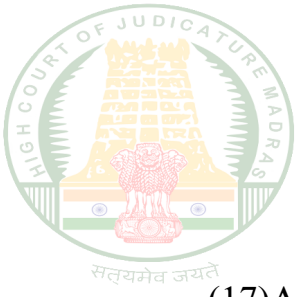
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*poor voters eyes and cheated them by false affidavit and affected the results of election, per contra, I have not made any suppression on my account as I have made complete disclosure on the state of my assets and liabilities as on the date of nomination vide affidavit in Form 26 dates 02.03.2019. My affidavit in Form 26 is complete in all respects therefore, the allegation that I have not signed the verification clause and signed formally is flippant and untenable."*

(16) This Court, originally, on 18.02.2020 framed the following issues:-

- 1. Whether the affidavit filed under Rule 4[A] of the Conduct of Election Rules, 1961, has been validly made?*
- 2. Whether the ingredients required to establish 'corrupt practices' under section 123 of the Representation of the People Act, 1951, has been established??*
- 3. Whether the election petitioner is entitled to the declaration of the Election of the 3<sup>rd</sup> respondent as returned candidate, as null and void? And*
- 4. To what other relief is the election petitioner is entitled to?*

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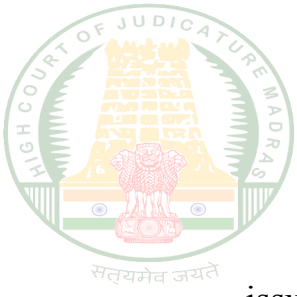
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(17) Again on 22.01.2021, following additional issues were framed:-

1. *Whether the returned candidate has suppressed any assets or liabilities or given false information in the affidavit filed under Rule 4A of the Conduct of Election Rules, 1961?*
2. *Whether the returned candidate or his associates committed any corrupt practice during the course of election?*
3. *Whether the Returning Officer conducted the election of Theni Parliamentary Constituency, in an impartial manner in accordance with the provisions of the Conduct of Election Rules, 1961 and during the scrutiny of nomination, under section 36 of the Representation of the People Act, 1951?*

(18) After framing all issues, the trial commenced on 04.04.2022 with the examination of election petitioner as PW1. The election petitioner examined himself as PW1. The 19<sup>th</sup> respondent was examined as 2<sup>nd</sup> witness. One Mr. Joseph Jackson K.G., Registrar of Companies, Tamil Nadu, Andaman and Nicobar Islands, Chennai, was examined as Court Witness [CW1] who was summoned to produce certain documents by

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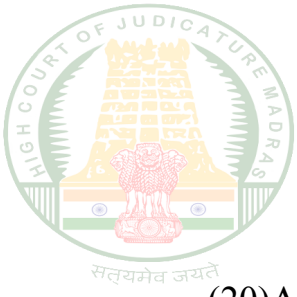
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issuing subpoena. CW2 is the Registrar of Companies, Coimbatore. The Returning Officer, namely, the then District Collector of Theni District, was examined as CW3. One Mr.P.Selvaraj, Sub Inspector of Police, who is now in Anti Land Grabbing Special Cell, Dindigul, was examined as CW4. Thereafter, on the petition filed by the election petitioner, the case was reopened and PW1 was recalled. Thereafter, the 3<sup>rd</sup> respondent/Returned Candidate was examined as RW1. Cross examination of RW1 by the learned counsel for the petitioner was done from 17.03.2023.

(19)The election petitioner marked 22 documents and three documents Exs.R1 to R3 were marked during cross examination of PW1/petitioner herein. Through Court Witnesses, CW1 to CW4, 25 documents were marked as Exs.C1 to C25. Except examining the 3<sup>rd</sup> respondent as RW1, and Exs.R1 to R3, no other document was marked on the side of the 3<sup>rd</sup> respondent/Returned Candidate. After cross examination of RW1 on 17.03.2023, both the learned counsels appearing for parties reported that they have no further evidence to record and requested time for arguments.

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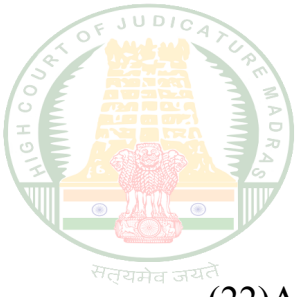
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(20) After hearing the arguments of the learned counsels on either side at length on 11.04.2023, 17.04.2023, 18.04.2023, 26.04.2023 and on 27.04.2023, this Court reserved the case "for orders" on 27.04.2023 with a permission to the counsels on both sides to file their written submissions on or before 03.06.2023. On seeing the written submissions, this Court listed the petition 'for clarification' on 05.06.2023. The matter was adjourned to 08.06.2023 at the request of learned Senior counsel for 3<sup>rd</sup> respondent. On 08.06.2023, the case was adjourned at the request of the learned counsel for the 3<sup>rd</sup> respondent to file a petition to reopen the case to mark some documents by recalling RW1.

(21) On 19.06.2023, the applications in OA.Nos.537 to 539/2023 were filed and this Court allowed all the applications with liberty to the election petitioner to raise his objections regarding the admissibility or relevance of the documents sought to be marked on 28.06.2023. RW1 was re-examined and further cross examined. Documents Exs.R4 to R16 were marked on the side of 3<sup>rd</sup> respondent. Again the petition was adjourned to 30.06.2023 for further arguments.

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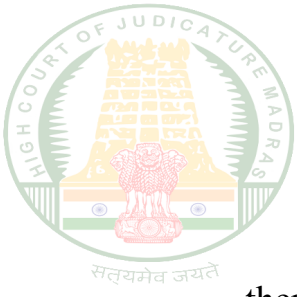
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(22)After hearing further arguments at length on 30.06.2023, referring to additional documents, this Court reserved orders.

**Preliminary objection :**

(23)Even though no issue was framed as to the locus standi of the election petitioner, a preliminary objection was raised by the learned Senior counsel appearing for the 3<sup>rd</sup> respondent that the petitioner has not proved his locus standi to maintain the election petition. The contention of the learned Senior counsel for the 3<sup>rd</sup> respondent is that under section 81 of the Representation of People Act, 1951, an election petition can be filed by any candidate at such election or any elector within 45 days from the date of election. Under Explanation to Section 81, an elector means a person who is entitled to vote at the election to which the election petition relates. It is the submission of the learned Senior counsel appearing for the 3<sup>rd</sup> respondent that the petitioner has filed the extract of Voters' Helpline as Ex.P1 and the Certificate under Section 65B of the Evidence Act as Ex.P2. Stating that Ex.P2 is not relating to Ex.P1 and PW1 admits that Ex.P1 is not the Voter ID, the learned Senior counsel submitted that

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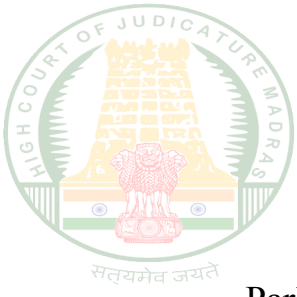
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there is no explanation as to why the petitioner has not produced his Voter ID or the electoral roll, and hence the petitioner is not competent to file the election petition.

(24)The petitioner has made specific averments about his locus standi as an elector of Theni Parliamentary Constituency during 2019 Lok Sabha elections. During cross-examination, PW1 specifically stated that he has filed the election petition as a voter of Theni Parliamentary Constituency. He has further stated that Ex.P1 is the extract of electoral roll of Theni Parliamentary Constituency where his name is also shown. Though an objection was raised as to the marking of Ex.P1, he has spoken to the fact that he downloaded Ex.P1 containing one page from the website of Election Commission of Government of India on 05.07.2019 from his desktop computer. Though he refers to the document as Voter ID, from Ex.P1, it is seen that it is downloaded from the website maintained by the Election Commission of India to facilitate voters and serve public by providing “Voter Helpline” and the petitioner's name is confirmed as a voter in the Assembly Constituency of Bodinaickanoor and Theni

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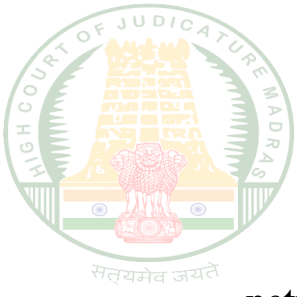


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Parliamentary Constituency. The identity of the petitioner as seen in Ex.P.1 is not in issue. Except suggesting that the petitioner has not filed any document to substantiate his statement that he is a voter, no other document or suggestion is put to him about the petitioner's status as a voter of Theni Parliamentary Constituency. PW1 has deposed to the effect that Ex.P1 was downloaded 20 days before the election, i.e., on 28.03.2019, which was when the voter helpline was updated and it is accepted as a valid document to prove that the petitioner is a valid elector. He further stated that if he brings the document Ex.P1 to the Polling Booth along with the Photo ID, he can cast vote. When the document is not disputed merely because the document-Ex.P2 wrongly describes the document-Ex.P1, this Court is unable to countenance the arguments of the learned Senior Counsel appearing for the 3<sup>rd</sup> respondent, especially when the evidence of PW1 is not controverted by any independent evidence either oral or documentary. **Therefore, this Court holds that the petitioner is an eligible elector of Theni Parliamentary Constituency and that he has locus standi to maintain the election**

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**ISSUE No.[1] & ADDITIONAL ISSUES [1] AND [3]:-**

(25) Learned counsel appearing for the petitioner submitted that the petitioner has pleaded suppression in the election affidavit in Form 26 by referring to the shareholding and Directorship of 3<sup>rd</sup> respondent in M/s.Vani Fabrics Private Limited and the consideration the 3<sup>rd</sup> respondent had received by transfer of shares even if transfer is proved. Learned counsel relied upon the evidence of 19<sup>th</sup> respondent and the counter affidavits filed by respondents 19 and 26. He submitted that the petitioner as well as the 3<sup>rd</sup> respondent has gone to trial with the full understanding of the case pleaded by petitioner and respondents 19 and 26 and hence, suppressions alleged by respondents 19 and 26 should also be gone into and that every documents and evidence that are available in the course of trial in favour of petitioner is relevant. In such circumstances, he submitted that the rejoinder of the petitioner is also part of the pleadings and therefore, Issue No.[1] and Additional Issues No.[1] and [3] are to be considered simultaneously by considering the entire

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evidence available on record in this proceeding not only confined to pleadings of petitioner but also in relation to the pleadings raised by respondents 19 and 26.

(26) Learned counsel for the petitioner also relied upon the judgment of the Hon'ble Supreme Court in the case of **Bhagwati Prasad Vs. Shri Chandramaul** reported in **AIR 1966 SC 735**, wherein the Hon'ble Supreme Court has held as follows:-

*"9. There can be no doubt that if a party asks for a relief on a clear and specific ground, and in the issues or at the trial, no other ground is covered either directly or by necessary implication, it would not be open to the said party to attempt to sustain the same claim on a ground which is entirely new. The same principle was laid down by this Court in Sheodhar Rai v. Suraj Prasad Singh [1950 SCC 788 : AIR (1954) SC 758] . In that case, it was held that where the defendant in his written statement sets up a title to the disputed lands as the nearest reversioner, the Court cannot, on his failure to prove the said case, permit him to make out a new case which is not only not made in the written statement, but which is wholly*

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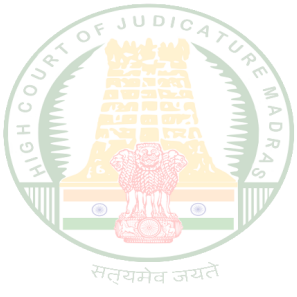


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*inconsistent with the title set up by the defendant in the written statement. The new plea on which the defendant sought to rely in that case was that he was holding the suit property under a shikmi settlement from the nearest reversioner. It would be noticed that this new plea was in fact not made in the written statement, had not been included in any issue and, therefore, no evidence was or could have been led about it. In such a case clearly a party cannot be permitted to justify its claim on a ground which is entirely new and which is inconsistent with the ground made by it in its pleadings.*

*10. But in considering the application of this doctrine to the facts of the present case, it is necessary to bear in mind the other principle that considerations of form cannot over-ride the legitimate considerations of substance. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief*

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*should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both parties to the suit are touched, though indirectly or even obscurely, in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the Court has to consider in dealing with such an objection is : did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the Court cannot do injustice to another.*

.....

*15. It is hardly necessary to emphasise that in a matter of this kind, it is undesirable and inexpedient to*

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lay down any general rule. The importance of the pleadings cannot, of course, be ignored, because it is the pleadings that lead to the framing of issues and a trial in every civil case has inevitably to be confined to the issues framed in the suit. The whole object of framing the issues would be defeated if parties are allowed to travel beyond them and claim or oppose reliefs on grounds not made in the pleadings and not covered by the issues. But cases may occur in which though a particular plea is not specifically included in the issues, parties might know that in substance, the said plea is being tried and might lead evidence about it. It is only in such a case where the Court is satisfied that the ground on which reliance is placed by one or the other of the parties, was in substance, at issue between them and that both of them have had opportunity to lead evidence about it at the trial that the formal requirement of pleadings can be relaxed. In the present case, having regard to all the facts, we are unable to hold that the High Court erred in confirming the decree for ejection passed by the trial court on the ground that the defendant was in possession of the suit premises as a licensee. In this case, the High Court was

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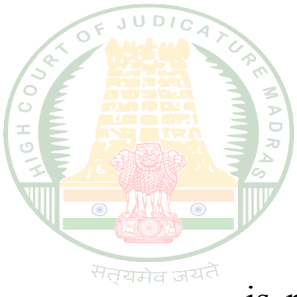


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*obviously impressed by the thought that once the defendant was shown to be in possession of the suit premises as a licensee, it would be futile to require the plaintiff to file another suit against the defendant for ejectment on that basis. We are not prepared to hold that in adopting this approach in the circumstances of this case, the High Court can be said to have gone wrong in law."*

(27) However, the learned Senior counsel appearing for the 3<sup>rd</sup> respondent contended that the allegations which are made by respondents 19 and 26 are not the basis for challenging the election of 3<sup>rd</sup> respondent and that the evidence adduced by the 19<sup>th</sup> respondent or anyone relating to the factual allegations/issues raised by respondents 19 and 26 are not admissible in evidence. Referring to the well settled principle of law that no amount of evidence can be looked into without pleading, the learned counsel submitted that the pleading or evidence relating to the allegations made by the petitioner either in the election petition or in the reply affidavit alone can be looked into and no amount of evidence is admissible even if it supports the case of the petitioner to prove suppression if the evidence

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is not relatable to the allegations of suppression pleaded by petitioner.

The Hon'ble Supreme Court and this Court have repeatedly reiterated the principle set by the Privy Council in 1930, that no amount of evidence can be looked into without a specific plea. The election petition can be maintained only by a candidate or an elector. The election petition is filed impleading several other contestants. The scope of enquiry cannot be extended beyond pleading in the election petition. Even the judgment cited by the learned counsel for the petitioner reiterates that a party cannot be permitted to justify his claim on a ground which is entirely new and which is inconsistent with the ground raised in his pleadings. Therefore, this Court need not consider any other allegations regarding suppression made in the counter affidavits filed by respondents 19 and 26.

(28) Before considering whether the suppression of an asset is relevant and fatal to the Returned Candidate in an election petition, this Court is bound to consider the legal principles settled by Hon'ble Supreme Court in several binding precedents in the following sequence.

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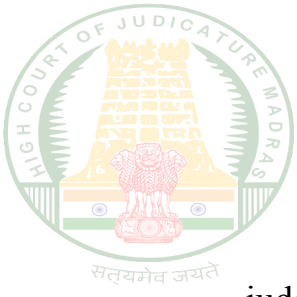
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(29) In the case of *Union of India Vs. Association for Democratic Reforms*

*and another* reported in *2002 [5] SCC 294*, the Hon'ble Supreme Court considered the issues [1] whether before casting votes, voters have a right to know relevant particulars of their candidates ? and [2] whether the High Court has jurisdiction to issue directions in a writ filed under Article 226 of the Constitution of India? The Hon'ble Supreme Court stressed the importance of disclosure of assets and liabilities of the candidate, his/her spouse and dependent children, overdues to any Public Financial Institutions and any Government dues and charges against properties.

While considering the issues, the Hon'ble Supreme Court took note of the position that democracy is a part of the basic structure of our Constitution and Rule of Law and free and fair elections are basic features of democracy. Several principles based on fundamental rights under our constitution were considered by the Hon'ble Supreme Court to hold that every citizen have a right to know about the candidate contesting the elections. The following directions were issued by the Hon'ble Supreme Court to the Election Commission of India in paragraph No.48 of the said

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judgment which reads thus:-

*48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:*

*(1) Whether the candidate is convicted/acquitted/discharged of any criminal offence in the past — if any, whether he is punished with imprisonment or fine.*

*(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.*

*(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.*

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(4) *Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.*

(5) *The educational qualifications of the candidate.*

(30) After the above judgment of the Hon'ble Supreme Court in the *Association of Democratic Reforms' case [cited supra]*, the Central Government promulgated the Representation of People [Amendment] Ordinance, 2002 and later the Ordinance was replaced by Representation of the People [3<sup>rd</sup> Amendment] Act, 2002 [Act 72 of 2002] inserting Sections 33-A and 33-B to the existing provisions. The amendment was brought in just to nullify the directions issued by the Hon'ble Supreme Court in the case of *Union of India Vs. Association for Democratic Reforms and another* reported in 2002 [5] SCC 294. Contrary to the directions, Section 33-A though require the candidate to furnish information about his involvement in any criminal offence and to file an affidavit, the particulars of assets, liabilities, and educational qualification, etc. are not made mandatory. Under Section 33-B, no candidate can be held liable to disclose or furnish any such information

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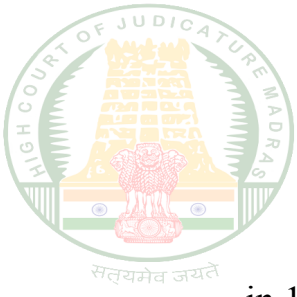
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which is not required to be disclosed under the Act or Rules irrespective of any judgment or order of any Court.

(31)A Three Member Bench of Hon'ble Supreme Court in the case of *People's Union for Civil Liberties [PUCL] and Another Vs. Union of India and Another* reported in *2003 [4] SCC 399*, had unanimously struck down Section 33-B of the amended Act on the ground that legislation cannot overturn or review the judgment. The Hon'ble Supreme Court, in the said case, held that the judgment rendered by the Hon'ble Supreme Court in the case of *Union of India Vs. Association for Democratic Reforms and another* reported in *2002 [5] SCC 294*, has attained finality and there is no question of interpreting constitutional provision which calls for reference to Constitution Bench under Article 145[3].

(32)The view expressed by majority of the Larger Bench of the Hon'ble Supreme Court in *People's Union for Civil Liberties's case [cited supra]* reported in *2003 [4] SCC 399*, in the form of conclusions, found

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in 123[1], [2], [4], [5], [6], [7] and [9] which are extracted below:-

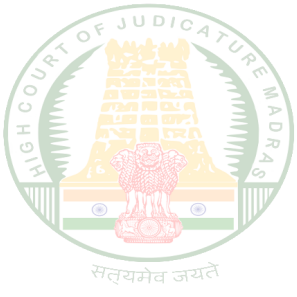
### **"V.Conclusions**

**123. Finally, the summary of my conclusions:**

(1) Securing information on the basic details concerning the candidates contesting for elections to Parliament or the State Legislature promotes freedom of expression and therefore the right to information forms an integral part of Article 19(1)(a). This right to information is, however, qualitatively different from the right to get information about public affairs or the right to receive information through the press and electronic media, though, to a certain extent, there may be overlapping.

(2) The right to vote at the elections to the House of the People or Legislative Assembly is a constitutional right but not merely a statutory right; freedom of voting as distinct from right to vote is a facet of the fundamental right enshrined in Article 19(1)(a). The casting of vote in favour of one or the other candidate marks the accomplishment of freedom of expression of the

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voter.

(3).....

(4) The Court has to take a holistic view and adopt a balanced approach in examining the legislation providing for right to information and laying down the parameters of that right.

(5) Section 33-B inserted by the Representation of the People (Third Amendment) Act, 2002 does not pass the test of constitutionality, firstly, for the reason that it imposes a blanket ban on dissemination of information other than that spelt out in the enactment irrespective of the need of the hour and the future exigencies and expedients and secondly, for the reason that the ban operates despite the fact that the disclosure of information now provided for is deficient and inadequate.

(6) The right to information provided for by Parliament under Section 33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard

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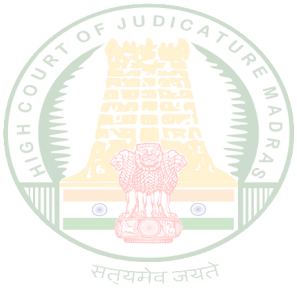


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the right to information vested in the voter/citizen. However, there is no good reason for excluding the pending cases in which cognizance has been taken by the Court from the ambit of disclosure.

(7) The provision made in Section 75-A regarding declaration of assets and liabilities of the elected candidates to the Speaker or the Chairman of the House has failed to effectuate the right to information and the freedom of expression of the voters/citizens. Having accepted the need to insist on disclosure of assets and liabilities of the elected candidate together with those of the spouse or dependent children, Parliament ought to have made a provision for furnishing this information at the time of filing the nomination. Failure to do so has resulted in the violation of guarantee under.

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Article 19(1)(a).

(8).....

(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para 14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

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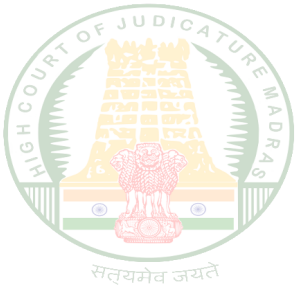
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(33)The extent of jurisdiction of a Returning Officer to determine the question as to whether a nomination papers filed by an applicant to enable him to contest the election in terms of provisions of RP Act, 1951, on the premise that the names of the proposers were forged, is considered by the Hon'ble Supreme Court in the case of *Uttamrao Shivdas Jankar Vs. Ranjitsinh Vijaysinh Mohite Patil* reported in *2009 [13] SCC 131*, and the Hon'ble Supreme Court has discussed the issue in the light of several precedents and highlighted the following aspects:-

*"40. While exercising his quasi-judicial power, in terms of the provisions of the Act, it was incumbent upon the Returning Officer to follow the instructions contained in the Handbook. It provides for:*

*(i) an opportunity to be given to the candidate to rebut the objections by placing sufficient materials on record, and*

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(ii) a presumption of validity of such nomination paper.

*Indisputably, the said instructions are binding being statutory in nature. (See Rakesh Kumar v. Sunil Kumar [(1999) 2 SCC 489] .) When there exists a presumption in favour of a party, it is for the other party to adduce evidence.*

.....

44. The presumption of correctness of the nomination paper being statutory in nature, as the intention of Parliament as also the Election Commission was that even if somebody had filed an improper nomination, but for which he can be given benefit of doubt being a possible subject-matter of an election petition where the question would be gone into in details, it was for the respondent herein to prove that the nomination paper prima facie did not contain the signatures of the proposers and, thus, were liable to be rejected.

45. We must, however, notice another aspect of the matter: a quasi-judicial authority while deciding an issue of fact may not insist upon a conclusive proof.

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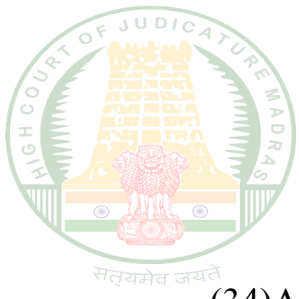
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While doing so, he has to form a prima facie view. Indisputably, however, in terms of sub-section (5) of Section 36 in the Handbook for Returning Officers, if any objection is raised then while holding the summary inquiry in the matter of taking a decision on the objection as to whether the same is valid or not, he is not only required to record his brief decision for the same but further in case of doubt the benefit must go to the candidate and the nomination paper should be held to be valid although his view may be prima facie a plausible view or otherwise bona fide.

.....

47. Evidence by way of an affidavit is one of the modes of proving a question of fact both under the Code of Civil Procedure as also under the Code of Criminal Procedure besides other special statutes recognising the same. The Returning Officer, thus, while exercising his quasi-judicial function could have appreciated the evidence brought on record by the parties by way of affidavits. A wrong question posed, leads to a wrong answer, which is a misdirection in law. (See Cholan Roadways Ltd. [(2005) 3 SCC 241 : 2005 SCC (L&S) 395] , SCC p. 253, para 34.)."

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(34) Again, a Larger Bench of Hon'ble Supreme Court, [a Three Member Bench] in the case in ***Resurgence India Vs. Election Commission of India and Another*** reported in **2014 [14] SCC 189**, issued further directions to the Central Government to effectuate the meaningful judgments of the Hon'ble Supreme Court in ***UOI Vs. Association for Democratic Reforms*** reported in **2002 [5] SCC 294** and in ***People's Union for Civil Liberties [PUCL] and Another Vs. Union of India and Another*** reported in **2003 [4] SCC 399**, in the following lines:-

***29. What emerges from the above discussion can be summarised in the form of the following directions:***

***29.1. The voter has the elementary right to know full particulars of a candidate who is to represent him in Parliament/Assemblies and such right to get information is universally recognised. Thus, it is held that right to know about the candidate is a natural right flowing from the concept of democracy and is an integral part of Article 19(1)(a) of the Constitution.***

***29.2. The ultimate purpose of filing of affidavit along with the nomination paper is to effectuate the fundamental right of the citizens under Article 19(1)(a)***

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*of the Constitution of India. The citizens are supposed to have the necessary information at the time of filing of nomination paper and for that purpose, the Returning Officer can very well compel a candidate to furnish the relevant information.*

*29.3. Filing of affidavit with blank particulars will render the affidavit nugatory.*

*29.4. It is the duty of the Returning Officer to check whether the information required is fully furnished at the time of filing of affidavit with the nomination paper since such information is very vital for giving effect to the “right to know” of the citizens. If a candidate fails to fill the blanks even after the reminder by the Returning Officer, the nomination paper is fit to be rejected. We do comprehend that the power of the Returning Officer to reject the nomination paper must be exercised very sparingly but the bar should not be laid so high that the justice itself is prejudiced.*

*29.5. We clarify to the extent that para 73 of People's Union for Civil Liberties case [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] will not come in the way of the Returning*

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*Officer to reject the nomination paper when the affidavit is filed with blank particulars.*

*29.6. The candidate must take the minimum effort to explicitly remark as “NIL” or “Not Applicable” or “Not known” in the columns and not to leave the particulars blank.*

*29.7. Filing of affidavit with blanks will be directly hit by Section 125-A(i) of the RP Act. However, as the nomination paper itself is rejected by the Returning Officer, we find no reason why the candidate must be again penalised for the same act by prosecuting him/her.”*

(35) Again, the Hon'ble Supreme Court, in the case of ***Kisan shankar Kathore Vs Arun Dattatray Sawant*** reported in 2014 [14] SC 162, has considered the scope of the rules relating to suppression and the relevant pleading or proof that are mandatory when suppression is alleged and proved. The Hon'ble Supreme Court, after considering several precedents, has held as follows:-

*“31. On Issue 7, finding of the High Court is that nomination was improperly accepted by the Returning*

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Officer by giving the following reasons:

*“130. That takes me to the next issue as to whether the petitioner proves that the respondent's nomination form is improperly accepted by the Returning Officer? Insofar as this issue is concerned, the respondent may be right to the extent that the Returning Officer cannot be faulted for having accepted the nomination form of the respondent. That was required to be accepted in spite of the objection, in view of the decision of the Apex Court in *People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399]* and the order issued by the Election Commission on the basis of the law declared in the said judgment. Inasmuch as, it was not open to the Returning Officer to enquire into contentious issues raised in this petition in the summary enquiry at the stage of scrutiny of nomination forms. Those matters necessarily have to be addressed only after it is disclosed in an enquiry upon taking evidence on the relevant facts at the trial of the election petition. That does not mean that the nomination of the respondent was proper and lawful. As the respondent's nomination paper suffered from the defects already referred to in the earlier part of this decision, it is plainly a case of improper acceptance of his nomination paper by the Returning Officer, covered by the rigours of Section 100(1)(d)(i) of the Act. Issue 7 will have to be answered accordingly.”*

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32. Issue 8 pertains to the question as to whether the election result was materially affected because of non-disclosure of the aforesaid information. The High Court took note of the provisions of Sections 100(1)(d)(i) and (iv) and discussed the same. Thereafter, some judgments cited by the appellant were distinguished and deciding this issue against the appellant, the High Court concluded as under:

“137. In my opinion, it is not necessary to elaborate on this matter beyond a point, except to observe that when it is a case of improper acceptance of nomination on account of invalid affidavit or no affidavit filed therewith, which affidavit is necessarily an integral part of the nomination form; and when that challenge concerns the returned candidate and if upheld, it is not necessary for the petitioner to further plead or prove that the result of the returned candidate has been materially affected by such improper acceptance.

138. The avowed purpose of filing the affidavit is to make truthful disclosure of all the relevant matters regarding assets (movable and immovable) and liabilities as well as criminal actions (registered, pending or in respect of which cognizance has been taken by the court of competent jurisdiction or in relation to conviction in respect of specified offences). Those are matters which are fundamental to the

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*accomplishment of free and fair election. It is the fundamental right of the voters to be informed about all matters in relation to such details for electing candidate of their choice. Filing of complete information and to make truthful disclosure in respect of such matters is the duty of the candidate who offers himself or who is nominated for election to represent the voters from that constituency. As the candidate has to disclose this information on affidavit, the solemnity of the affidavit cannot be allowed to be ridiculed by the candidates by offering incomplete information or suppressing material information, resulting in disinformation and misinformation to the voters. The sanctity of disclosure to be made by the candidate flows from the constitutional obligation.*

33. As pointed out above, there is no dispute on facts that information in respect of the aforesaid four aspects was not disclosed by the appellant in the affidavit filed by him along with the nomination form. The defence and/or justification given for non-disclosing these particulars is rightly rebuffed by the High Court. However, the submission of Mr B. Adinarayana Rao, learned Senior Counsel appearing for the appellant, was that having regard to the judgment of this Court in *G.M. Siddeshwar v. Prasanna Kumar* [*G.M. Siddeshwar v. Prasanna Kumar*, (2013) 4 SCC 776 : (2013) 2 SCC (Civ) 715] the Court was



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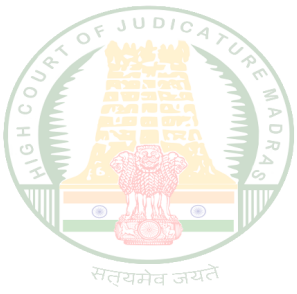
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*required to examine as to whether the information given in the affidavits was substantial compliance with those particulars regarding government dues, assets and liabilities, etc. He submitted that the information amounted to substantial compliance. For this purpose, his attempt was to demonstrate that insofar as electricity dues of MSEB are concerned, there was a genuine dispute about the non-payment; as far as ownership of Bungalow No. 866 in the name of his wife is concerned, it was added to the value of the properties belonged to the appellant; municipal taxes in respect of this bungalow were again the subject-matter of dispute; the value of the vehicle owned by his wife was also disclosed against his own name; and as far as properties owned by the partnership firm are concerned, the appellant was simply a partner from which he had resigned, even when this event occurred after the filing of the nomination form.*

.....

*37. We have already discussed in detail each item of non-disclosure as well as defence of the appellant pertaining thereto. For the reasons recorded in detail at that stage by the High Court and stated*

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above, with which we agree, we are of the opinion that its finding about non-disclosure of the information qua all the aspects is without blemish. There is a specific format in which the information is to be given, which was not adhered to.

38. With these remarks we proceed to deal with the first aspect. Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become “payable”, this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance.

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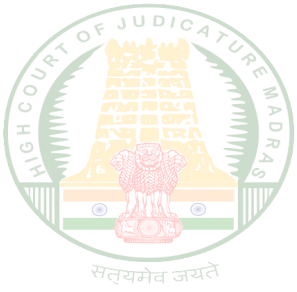


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*Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs 1783 as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. We are, thus, clarifying that our aforesaid observation in the facts of the present case should not be treated as having general application.*

*39. Even if it is so, in respect of the aforesaid aspects, on other non-disclosures, the case of the appellant has to fail. We find a clear case of non-disclosure of Bungalow No. 866 in the name of the appellant's wife, which is a substantial lapse. So is the*

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case about the non-disclosure of vehicle in the name of the appellant's wife. Likewise, non-disclosure of the appellant's interest/share in the partnership firm is a very serious and major lapse. On all these aspects, we find that the defence/explanation furnished by the appellant does not inspire any confidence. It is simply an afterthought attempt to wriggle out of the material lapse on the part of the appellant in not disclosing the required information, which was substantial. We, therefore, are of the view that in the affidavits given by the appellant along with the nomination form, material information about the assets was not disclosed and, therefore, it is not possible to accept the argument of the appellant that information contained in the affidavits be treated as sufficient/substantial compliance.

40. We have already reproduced above the relevant portions of judgments in Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] and People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] and the guidelines issued by the Election Commission pursuant

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thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children is not given, it would amount to suppression/non-disclosure.

41. It was argued that the acceptance of nomination is as per Section 33 of the Act, which contains requirement for a valid nomination. Further Section 36(2) deals with the rejection of nomination on grounds specified therein. It was the submission of the

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*learned Senior Counsel that at the time of scrutiny of the nomination under Section 36, nomination could be rejected only if any of the grounds stipulated in sub-section (2) are satisfied and there cannot be any “deemed” ground, which is not covered by Section 36(2) of the Act. Therefore, the Returning Officer had rightly accepted the nomination form as none of the grounds specified in sub-section (2) of Section 36 were attracted. He further submitted that Sections 8-A, 9, 9-A, 10 and 10-A provide disqualifications for the Members of Parliament and the State Legislature. As per the counsel, from the scheme of the Act it can be seen that at the time of scrutiny of nomination, all that the Returning Officer is required to examine is as to whether the candidate suffers from any of the disqualifications mentioned in Sections 8 to 10-A of the Act and as to whether the nomination is in the form prescribed by Section 33 and accompanied by the documents mentioned in sub-sections (2) to (7) of Section 33 and whether it is accompanied by an affidavit prescribed by Rule 4-A and the deposit required by Section 34 of the Act. Apart from the aforesaid, the Returning Officer is not empowered to*

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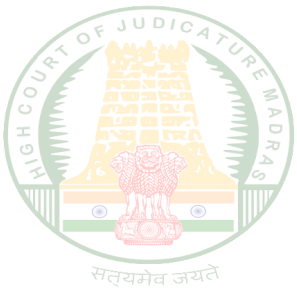
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*reject the nomination on any other ground. He argued that the right of the Returning Officer to conduct a summary inquiry into the correctness or otherwise of the contents of the affidavit filed along with the nomination was expressly taken away as can be seen from the judgment of this Court in People's Union for Civil Liberties [People's Union for Civil Liberties v. Union of India, (2003) 4 SCC 399] . Having noted that the Returning Officer has no power to reject a nomination where false information is furnished or material information is suppressed, the Election Commission of India and the Union of India have requested this Court to treat the same as equal to a blank affidavit, as noted in Resurgence India [Resurgence India v. Election Commission of India, (2014) 14 SCC 189] .*

....

*43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to*

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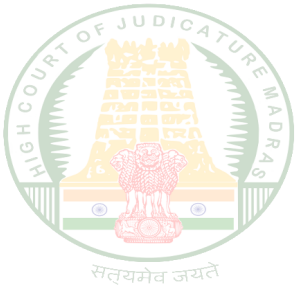
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*conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election*

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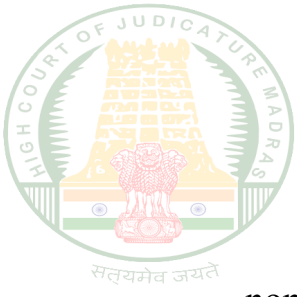


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petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced."

(36)The Hon'ble Supreme Court, in the case of **Sri Meirembam Prithviraj @ Prithviraj Singh Vs. Pukhrem Sharatchandra Singh** reported in **2017 [2] SCC 487**, reiterating the principles laid down in the above cited judgments, has elaborately considered the issue whether it is necessary to plead and prove that the result was materially affected when the

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nomination of the returned candidate was found to have been improperly accepted. The entire discussions in the judgment with reference to relevant provisions of Representation of People Act, 1951 and precedents as found in the judgment are extracted below :

*"9. Chapter I of Part V of the Act deals with the nomination of candidates. Section 33 of the Act provides for presentation of nomination paper and requirements of a valid nomination. A nomination paper complete in the prescribed form, signed by a candidate and by an elector of the constituency as proposer should be delivered to the Returning Officer within the prescribed period. Section 33-A which was inserted by Act 72 of 2002 with effect from 24-8-2002 contemplates that a candidate has to provide additional information, apart from the information provided by him under Section 33(1). The information mentioned in Section 33-A relates to the criminal antecedents of a candidate. Section 36 deals with scrutiny of nomination. Section 36(4) which is*

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*for adjudication of this case is as follows:*

**“36. Scrutiny of nomination.—(1)-(3)\*\*\***

*(4) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.”*

*10. Rule 4-A of the Conduct of Election Rules, 1961 which was inserted with effect from 3-9-2002 reads as under:*

**“4-A. Form of affidavit to be filed at the time of delivering nomination paper.—**The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33 of the Act, also deliver to him an affidavit sworn by the candidate before a Magistrate of the First Class or a Notary in Form 26.”

*11. A candidate has to file an affidavit along with his nomination paper as prescribed in Form 26 in which one of the columns pertains to the educational qualification. Grounds for declaring the election to be void are provided in Section 100 of the Act which is as*

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under:

**“100. Grounds for declaring election to be void.—**(1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

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

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

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

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

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

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

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

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

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(2) *If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—*

(a) *that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;*

(b)\*\*\*

(c) *that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and*

(d) *that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.”*

12. Section 125-A prescribes penalty for filing false affidavit which is reproduced as under:

**“125-A. Penalty for filing false affidavit, etc.—**  
*A candidate who himself or through his proposer, with intent to be elected in an election—*

(i) *fails to furnish information relating to sub-section (1) of Section 33-A; or*

(ii) *gives false information which he knows or has reason to believe to be false; or*

(iii) *conceals any information,*

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*in his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both.”*

*13. Sir Winston Churchill underlining the importance of a voter in a democratic form of government stated as follows:*

*“At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper — no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point.”*

*14. In Union of India v. Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] this Court held that the voter has a fundamental right to information about the contesting candidates. The voter has the choice to decide whether he should cast a vote in favour of a person involved in a criminal case. He also has a right*

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to decide whether holding of an educational qualification or holding of property is relevant for electing a person to be his representative. Pursuant to the judgment in *Union of India v. Assn. for Democratic Reforms* [*Union of India v. Assn. for Democratic Reforms*, (2002) 5 SCC 294] Section 33-A was inserted in the Representation of the People Act providing for right to additional information by an Ordinance. The challenge to the said Ordinance was dealt with by this Court in *People's Union for Civil Liberties v. Union of India* [*People's Union for Civil Liberties v. Union of India*, (2003) 4 SCC 399] in which it was held as follows: (SCC pp. 452-53, para 78)

“78. What emerges from the above discussion can be summarised thus:

(D) The contention that as there is no specific fundamental right conferred on a voter by any statutory provision to know the antecedents of a candidate, the directions given by this Court are against the statutory provisions is, on the face of it, without any substance. In an election petition challenging the validity of an election of a particular candidate, the statutory provisions would govern respective rights of the parties. However, voters' fundamental right to know the antecedents of a candidate is independent of statutory rights under the

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*election law. A voter is first citizen of this country and apart from statutory rights, he is having fundamental rights conferred by the Constitution. Members of a democratic society should be sufficiently informed so that they may cast their votes intelligently in favour of persons who are to govern them. Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate. There can be little doubt that exposure to public gaze and scrutiny is one of the surest means to cleanse our democratic governing system and to have competent legislatures.”*

*15. It is relevant to mention that the Election Commission of India issued a press note on 28-6-2002 in which there was a reference to the judgment of this Court in Union of India v. Assn. for Democratic Reforms [Union of India v. Assn. for Democratic Reforms, (2002) 5 SCC 294] in which it was held that information on five aspects has to be provided to the voter. One of the five aspects pertains to the educational qualification of the candidates. An Order was issued by the Election Commission of India on 28-6-2002 directing that full and complete information relating to the five aspects which were mentioned in the judgment has to be furnished. Providing incomplete information or suppression of material information on*

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any of the five aspects was to be treated as a defect of substantial character by the Returning Officers.

16. In *Resurgence India v. Election Commission of India* [*Resurgence India v. Election Commission of India*, (2014) 14 SCC 189] this Court held that (SCC p. 200, para 21) every candidate is obligated to file an affidavit with relevant information with regard to their criminal antecedents, assets and liabilities and educational qualification. The fundamental right under Article 19(1)(a) of the voter was reiterated in the said judgment and it was held that filing of affidavit with blank particulars would render the affidavit as nugatory. In *Kisan Shankar Kathore v. Arun Dattatray Sawant* [*Kisan Shankar Kathore v. Arun Dattatray Sawant*, (2014) 14 SCC 162] this Court considered the question as to whether it was incumbent upon the appellant to have disclosed the information sought for in the nomination form and whether the non-disclosure thereof renders the nomination invalid and void. It was held that non-furnishing of the required information would amount to suppression/non-disclosure.

17. It is clear from the law laid down by this

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*Court as stated above that every voter has a fundamental right to know about the educational qualification of a candidate. It is also clear from the provisions of the Act, the Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications. It is not in dispute that the appellant did not study MBA in the Mysore University. It is the case of the appellant that reference to MBA from Mysore University was a clerical error. It was contended by the appellant that he always thought of doing MBA by correspondence course from Mysore University. But, actually he did not do the course. The question which has to be decided is whether the declaration given by him in Form 26 would amount to a defect of substantial nature warranting rejection of his nomination.*

*18. Section 36(4) of the Act mandates that the Returning Officer shall not reject a nomination paper on the ground of any defect which is not of a substantial character. The declaration made by the appellant in Form 26, filed in 2012 is not a clerical error as contended by him. The appellant contested election to the same constituency in 2008 and in the*

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*affidavit filed by him in Form 26 he declared that he passed MBA from Mysore University in 2004. In the affidavit filed by him in this election petition by way of examination-in-chief, the appellant stated that his nomination paper and the enclosed affidavit were prepared and filed by his counsel Chakpam Bimolchandra Singh on the instructions of his agent Ph. Shamu Singh. He also stated that his counsel filled the prescribed affidavit in his own handwriting. The appellant also stated that he signed the affidavit without reading the contents and he came to know about the error only when the respondent raised his objection to the nomination. The appellant further stated that he was working in Projeon, Infosys Company and IBM till 2007 and because of his job many local friends and elders thought that he was an MBA degree-holder. His election agent also thought that he was holding an MBA degree due to which he instructed Advocate Chakpam Bimolchandra Singh to fill up Column 9 of the affidavit by stating that the appellant is an MBA degree-holder. In his cross-examination, the appellant gave evasive replies to the questions relating to his educational qualification. He*

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*stated that he does not remember whether he had undergone MBA from Mysore University and he does not remember whether he possesses MBA degree. Chakpam Bimolchandra Singh who was examined as DW 3 in his cross-examination denied having filled up the entries in Form 26. He stated that he entered the educational qualifications of the appellant on the basis of instructions given by the election agent Shamu Singh. He also stated that he was not present before the Oath Commissioner when the appellant signed the affidavit.*

.....

*23. It is clear from the above judgment in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found*

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*to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.*

*24. The judgment of this Court in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] was referred to in Jagjit Singh v. Dharam Pal Singh [Jagjit Singh v. Dharam Pal Singh, 1995 Supp (1) SCC 422] , in which it was*

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held as follows: (Jagjit Singh case [Jagjit Singh v. Dharam Pal Singh, 1995 Supp (1) SCC 422] SCC p. 429, para 21)

“21. The trial Judge has held that since there is no averment in the petition that the result of the election was materially affected by improper rejection or acceptance of votes, it is devoid of cause of action. We are unable to agree that the absence of such an averment in the facts of this case is fatal. As pointed out by this Court, there may be cases where the obvious conclusion to be drawn from the circumstances is that the result of the election has been materially affected and that Section 100(1)(d) of the Act is not intended to provide a convenient technical plea in a case where there can be no dispute at all about the result of the election being materially affected by the alleged infirmity. (See: Durai Muthuswami v. N. Nachiappan [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] .) In the present case, the appellant in the election petition has stated that he has lost by a margin of 80 votes only. From the various averments in the election petition it was evident that the number of valid votes of the appellant which are alleged to have been improperly rejected is much more than 80. From the averments contained in the election petition it is thus obvious if the appellant succeeds in establishing his case as set out in the election petition the result of this election, insofar as it

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*concerns the returned candidate, would be materially affected.”*

*25. It was held by this Court in **Vashist Narain Sharma v. Dev Chandra** [Vashist Narain Sharma v. Dev Chandra, (1955) 1 SCR 509 : AIR 1954 SC 513] as under: (AIR pp. 515-16, para 9)*

*“9. The learned counsel for the respondents concedes that the burden of proving that the improper acceptance of a nomination has materially affected the result of the election lies upon the petitioner but he argues that the question can arise in one of three ways:*

*(1) 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,*

*(2) where the person referred to above secured more votes, and*

*(3) where the person whose nomination has been improperly accepted is the returned candidate himself.*

*It is agreed that in the first case the result of the election is not materially affected because if all the wasted votes are added to the votes of the candidate securing the highest votes, it will make no difference to the result and the returned candidate will retain the seat. In the other two cases it is contended that the result is materially affected. So far as the third case is*

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*concerned it may be readily conceded that such would be the conclusion. But we are not prepared to hold that the mere fact that the wasted votes are greater than the margin of votes between the returned candidate and the candidate securing the next highest number of votes must lead to the necessary inference that the result of the election has been materially affected. That is a matter which has to be proved and the onus of proving it lies upon the petitioner. It will not do merely to say that all or a majority of the wasted votes might have gone to the next highest candidate. The casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many or which proportion of the votes will go to one or the other of the candidates. While it must be recognised that the petitioner in such a case is confronted with a difficult situation, it is not possible to relieve him of the duty imposed upon him by Section 100(1)(c) and hold without evidence that the duty has been discharged. Should the petitioner fail to adduce satisfactory evidence to enable the Court to find in his favour on this point, the inevitable*

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***result would be that the Tribunal would not interfere in his favour and would allow the election to stand.”***

***(emphasis supplied)***

*This Court in Kisan Shankar Kathore v. Arun Dattatray Sawant [Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162] dealt with a situation similar to that of this case. In that case, the election of the returned candidate was successfully challenged on the ground of non-disclosure of material information. The appeal filed by the returned candidate was dismissed by this Court by observing as follows: (SCC p. 188, para 43)*

*“43. ... Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void.”*

***26. Mere finding that there has been an improper***

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acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100(1)(d). There has to be further pleading and proof that the result of the election of the returned candidate was materially affected. But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. We do not find substance in the submission of Mr Giri that the judgment in *Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45]* is not applicable to the facts of this case. The submission that *Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45]* is a case of disqualification under Section 9-A of the Act and, so, it is not applicable to the facts of this case is also not correct. As stated supra, the election petition in that

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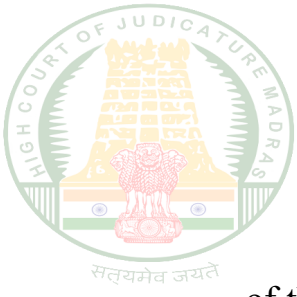


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*case was rejected on the ground of non-compliance with Section 100(1)(d). The said judgment squarely applies to this case on all fours. We also do not find force in the submission that the Act has to be strictly construed and that the election cannot be declared to be void under Section 100(1)(d) without pleading and proof that the result of the election was materially affected. There is no requirement to prove that the result of the election of the returned candidate is materially affected once his nomination is declared to have been improperly accepted."*

(37) Considering the legal position settled by the Hon'ble Supreme Court, in the decided cases above, this Court examined the case on hand with reference to the issues "suppression" and "improper acceptance of nomination of third respondent". Even though Additional Issue No.2 could have been framed with little more clarity, the parties and the counsels during trial and arguments have focused whether the third respondent has properly disclosed his assets and liabilities in the affidavit in Form 26 properly and whether the suppression of assets and liabilities by third respondent leads to a finding or declaration that the nomination

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of third respondent has been improperly accepted.

(38)After reopening of case, the 3<sup>rd</sup> respondent has marked Exs.R4 to R16 on 28.06.2023. The applications filed by the 3<sup>rd</sup> respondent in OA.Nos.537 to 539/2023 were allowed subject to the objections raised by the learned counsel for the petitioner as to the admissibility of the documents. Since the documents, namely, Exs.R4 to R16 were generated from computer, the main objection was that the document without due certificate under Section 65-B of the Evidence Act is not admissible and the 3<sup>rd</sup> respondent is not competent to certify the certificate under Section 65-B of Evidence Act or on other grounds. Therefore, before going into issues on merits, the objection raised by learned counsel for the election petitioner regarding admissibility of documents by referring to Section 65-B of Evidence Act is also to be considered.

(39)Section 65-B of Evidence Act reads as follows:-

**65B. Admissibility of electronic records.—**

*(1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied*

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*in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*

*(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely:—*

*(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;*

*(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course*

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of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether—

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive

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*operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this section as constituting a single computer; and references in this section to a computer shall be construed accordingly.*

*(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say,—*

*(a) identifying the electronic record containing the statement and describing the manner in which it was produced;*

*(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;*

*(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the*

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*relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.*

*(5) For the purposes of this section,—*

*(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;*

*(b) whether in the course of activities carried on by any official information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;*

*(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment. Explanation.—*

*For the purposes of this section any reference to*

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*information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.*

(40) In the case of **Anvar P.V. Vs. P.K.Basheer and Others** reported in **2014 [10] SCC 473**, a Three Member Bench of Hon'ble Supreme Court has considered the scope of Section 65-B of Evidence Act and held as follows:-

*"14. Any documentary evidence by way of an electronic record under the Evidence Act, in view of Sections 59 and 65-A, can be proved only in accordance with the procedure prescribed under Section 65-B. Section 65-B deals with the admissibility of the electronic record. The purpose of these provisions is to sanctify secondary evidence in electronic form, generated by a computer. It may be noted that the section starts with a non obstante clause. Thus, notwithstanding anything contained in the Evidence Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer shall be deemed to be a document only if the conditions mentioned under sub-*

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*section (2) are satisfied, without further proof or production of the original. The very admissibility of such a document i.e. electronic record which is called as computer output, depends on the satisfaction of the four conditions under Section 65-B(2). Following are the specified conditions under Section 65-B(2) of the Evidence Act:*

*(i) The electronic record containing the information should have been produced by the computer during the period over which the same was regularly used to store or process information for the purpose of any activity regularly carried on over that period by the person having lawful control over the use of that computer;*

*(ii) The information of the kind contained in electronic record or of the kind from which the information is derived was regularly fed into the computer in the ordinary course of the said activity;*

*(iii) During the material part of the said period, the computer was operating properly and that even if it was not operating properly for some time, the break or breaks had not affected either the record or the accuracy of its contents; and*

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(iv) *The information contained in the record should be a reproduction or derivation from the information fed into the computer in the ordinary course of the said activity.*

*15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:*

*(a) There must be a certificate which identifies the electronic record containing the statement;*

*(b) The certificate must describe the manner in which the electronic record was produced;*

*(c) The certificate must furnish the particulars of the device involved in the production of that record;*

*(d) The certificate must deal with the applicable conditions mentioned under Section 65-B(2) of the Evidence Act; and*

*(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.*

*16. It is further clarified that the person need*

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*only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc. without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.*

*17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A—opinion of Examiner of Electronic Evidence."*

(41) This Court is able to see that the documents produced by 3<sup>rd</sup> respondent by way of additional documents particularly Exs.R4 to R16 are vulnerable self serving documents. Even though documents were

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permitted to be marked subject to every objection raised by the learned counsel for the election petitioner at the time of marking the documents, this Court finds that the 3<sup>rd</sup> respondent has not produced any other document except the said documents to controvert the specific averments in the election affidavit. The 3<sup>rd</sup> respondent who is in control of the documents is expected to produce the original records like the accounts of various Firms and Organizations in which the 3<sup>rd</sup> respondent was holding some share or interest. Therefore, this Court will now consider the documents which satisfy the requirements of law to be acted upon as a document admissible in evidence.

**SUPPRESSION OF EQUITY SHARES OR ITS VALUE IN M/S.VANI**

**FABRICS PRIVATE LIMITED:-**

(42) On the issue of suppression, it is the specific case of the petitioner that the 3<sup>rd</sup> respondent had suppressed his holdings of 15,000 shares in M/s.Vani Fabrics Private Limited as on the date when the election affidavit was filed. However, it is contended by the 3<sup>rd</sup> respondent that the 3<sup>rd</sup> respondent had already transferred his shares. The petitioner relied

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upon the Balance Sheet for the Financial Year ended by 31.03.2018.

Since the period covered under Ex.P5 is prior to the date of filing of nomination, the document-Ex.P5 is not relevant. Exs.C4 to C7 are documents produced by the Registrar of Companies, Coimbatore who was examined as CW2. The documents-Exs.C4 and C5 show that they pertain to M/s.Vani Fabrics Private Limited for the Financial Year ended on 31.03.2018. Exs.C4 and C5 are the financial statement and Annual Returns of the company filed by company relating to the period from 01.04.2017 to 31.03.2018. Exs.C4 and C5 shows 3<sup>rd</sup> respondent and his brother as Directors, each holding 15,000 equity shares in M/s.Vani Fabrics Private Limited. These documents pertaining to the previous period are not relevant. The Registrar of Companies, Coimbatore, who is examined as CW2, produced Exs.C6 and C7 along with annexures. Ex.C6 is Form DIR-12 dated 21.08.2018 with annexures and Ex.C7 is Form No.MGT-7 dated 31.12.2019 with annexure relating to M/s.Vani Fabrics. From the annexures to Ex.C6, it is seen that the third respondent and his brother have given letters of resignation to the Board of Directors

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on 16.08.2018 informing that they are resigning from the post of Directorship. They requested the Board to inform the Registrar of Companies (ROC) and all the statutory authorities. Certified copy of the resolution passed at the meeting of Board of Directors on 16.08.2018, available in the annexures shows that the resignation of third respondent and his brother was accepted on 16.08.2018. From the annexure to Ex.C7, it is seen that transfer of 15,000 equity shares held by the third respondent in favour of his brother is shown in the Annual Returns submitted by the company on 28.06.2019. In the Return, it is stated that transfer of 15,000 equity shares had been registered on 17.03.2019. However, the transfer of shares was informed to the Registrar of Companies after election. List of shareholders furnished by the Director of Company as on 31.03.2019 shows that the third respondent is not holding any shares as on 31.03.2019. Though the list is signed by one of the Directors, no date is mentioned. Hence, as per Returns furnished by the Company to ROC after election, the third respondent is neither a Director nor a shareholder as on 17.03.2019. However, no other statutory

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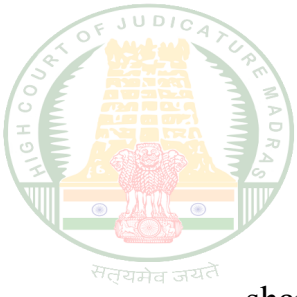


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record maintained by the Company is produced. Since it is stated that the third respondent resigned from Directorship and his resignation was accepted, the case of petitioner that the third respondent did not disclose his remuneration as Director of M/s.Vani Fabrics cannot be readily accepted unless there is positive evidence to the contrary. Hence, as per Returns furnished by the Company, after election the third respondent is not holding any shares in the company M/s.Vani Fabrics Private Limited as on 18.03.2019. However, the case of 3<sup>rd</sup> respondent that he has transferred his shares on 17.03.2019 is not corroborated by any other document, except Ex.C7. In the Annual Return, it is stated that share transfer was registered on 17.03.2019. No other Company record or evidence is produced by 3<sup>rd</sup> respondent to corroborate. CW2 categorically states that registration is not done by Registrar of Companies and it is done by the Company. The list of shareholders furnished by the Company to ROC shows that the 3<sup>rd</sup> respondent was not holding any share in M/s.Vani Fabrics as on 31.03.2019. This is just a piece of paper which can be prepared any time. From the list of

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shareholders as on 31.03.2019, annexed with Ex.C7, this Court finds that the share of brother of 3<sup>rd</sup> respondent is increased from 15000 to 30000 to show that the 3<sup>rd</sup> respondent has transferred his shares in favour of his brother Mr.Jayapradeep Panneerselvam. However, it is contended by the petitioner in the reply affidavit that the alleged share transfer is done by fabrication of records by 3<sup>rd</sup> respondent after filing the election petition. This was stoutly denied by 3<sup>rd</sup> respondent. CW2, Registrar of Companies, Coimbatore, admitted that as per the records of the company, the 3<sup>rd</sup> respondent ceased to be a Director of M/s.Vani Fabrics from 16.08.2018. Regarding suppression of assets and liabilities, the burden lies on the petitioner to prove it. From Ex.C7, the name of 3<sup>rd</sup> respondent does not find a place as a shareholder as per information furnished to the Registrar of Companies and hence, this Court may accept the case of 3<sup>rd</sup> respondent that he ceased to be a shareholder with effect from 17.03.2019 in the absence of any other evidence or an attempt by petitioner to call for records from the company to show that the company had manipulated its records. There is no cross examination of RW1 regarding the transfer of

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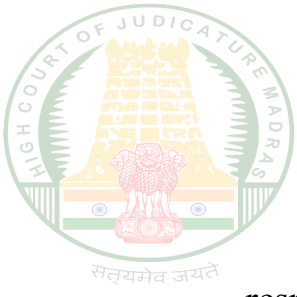
shares or about the suppression by holding shares in the company M/s.Vani Fabrics. Ex.R9 produced by 3<sup>rd</sup> respondent also shows that 15,000 shares held by 3<sup>rd</sup> respondent in M/s.Vani Fabric Private Limited was transferred to his brother. Therefore, this Court is of the view that the petitioner is neither a Director nor a shareholder and the case of the 3<sup>rd</sup> respondent that he had transferred the shares on 17.03.2019 in favour of his brother can be accepted.

**SUPPRESSION OF THE VALUE OF SHARES TRANSFERRED AND**

**OTHER ASSETS AND INCOME FROM DIFFERENT SOURCES:**

(43) However, the matter does not rest with that. The fact that the 3<sup>rd</sup> respondent has transferred his shares to his brother just prior to the filing of nomination can be accepted as seen from the documents. Transfer of shares has to be for a consideration. As pointed out by the learned counsel for the petitioner, the value of shares as per company records was Rs.27 lakhs. Even the book value of the shares, according to the Books of Accounts of company of M/s.Vani Fabrics, was Rs.100/- per share. The case of the petitioner in the reply to the counter affidavit that the 3<sup>rd</sup>

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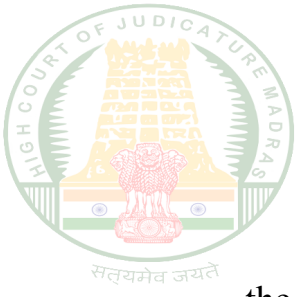
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respondent has suppressed his asset namely the value of shares transferred by him in favour of his brother just few days prior to the filing of nomination as an alternative plea cannot be ignored. What is more important is that the 3<sup>rd</sup> respondent in his reply affidavit in response to the counter affidavit of 26<sup>th</sup> respondent, has stated that the shares were transferred to his own brother and there is no question of 3<sup>rd</sup> respondent receiving any consideration. The transaction was referred to as an internal adjustment between 3<sup>rd</sup> respondent and his brother. Quite surprisingly, the 3<sup>rd</sup> respondent has stated that he has paid capital gains for the said transaction. This of course with some degree of uncertainty would suggest that the shares were transferred for a valuable consideration with profit and there is suppression of assets namely the consideration for the transferred shares and it is a relevant and material fact if it has to be accepted that the disclosure of assets and liabilities is mandatory.

(44) This Court has noted that the 3<sup>rd</sup> respondent has no explanation either in

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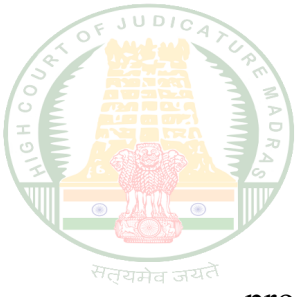


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the counter affidavit or in his reply about the consideration he had received by way of transfer of 15,000 equity shares in M/s.Vani Fabrics Private Limited. It is surprising to note that during examination, the 3<sup>rd</sup> did not mention about the transfer of shares. However, the 3<sup>rd</sup> respondent by way of additional documents produced Ex.R7-Ledger Account of the 3<sup>rd</sup> respondent pertaining to the loan transaction between the 3<sup>rd</sup> respondent and his brother Mr.Jayapradeep. This document is filed along with the certificate issued by the 3<sup>rd</sup> respondent's Auditor under Section 65-B of Evidence Act. The Auditor is not the person who is competent to certify the accounts maintained by the 3<sup>rd</sup> respondent. Learned counsel for the election petitioner pointed out that this document reveals more about the suppression. This document indicates that the 3<sup>rd</sup> respondent has paid certain amounts by way of repaying Housing Loan. The 3<sup>rd</sup> respondent then produced Ex.R12-Ledger Account of 3<sup>rd</sup> respondent's brother. The same Auditor has issued Certificate under Section 65-B of Evidence Act. Ex.R12 would show a receipt of Rs.24 lakhs by 3<sup>rd</sup> respondent's brother from the 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent also

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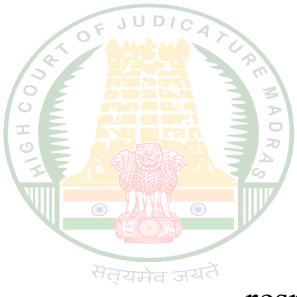
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produced Ex.R14-Income Tax Returns submitted by the 3<sup>rd</sup> respondent and Ex.R14-Income Tax Returns submitted by the 3<sup>rd</sup> respondent and Ex.R15-Income Tax Returns submitted by 3<sup>rd</sup> respondent's brother. Learned counsel for the petitioner referring to these two documents, submitted that if these two documents were to be accepted, then it would reveal that the 3<sup>rd</sup> respondent has suppressed several income in his affidavit in Form-26. It is pointed out from the documents that the 3<sup>rd</sup> respondent has disclosed a sum of Rs.33,03,136/- as liability of 3<sup>rd</sup> respondent to his brother. The 3<sup>rd</sup> respondent's brother in Ex.R15 has shown a sum of Rs.66,42,781/- as the amount payable by his brother, 3<sup>rd</sup> respondent herein. PW1 deposed that the 3<sup>rd</sup> respondent has not disclosed his assets and liabilities and his sources of income, particularly, his salary which he is receiving as a Director of a Company. Even though there is no specific pleading about salary, the allegation of suppression is on the basis of balance sheet of the Company M/s.Vani Fabrics Private Limited. Referring to the fact that the 3<sup>rd</sup> respondent is a shareholder and Director in M/s.Vani Fabrics Private Limited, it is suggested that the 3<sup>rd</sup>

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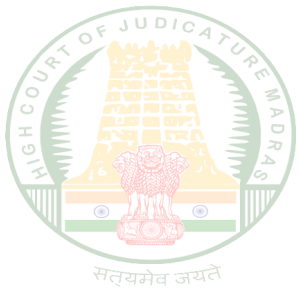


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respondent is receiving salary from M/s.Vani Fabrics Private Limited as the Director of the Company. The Ledger produced by the 3<sup>rd</sup> respondent would reveal that the 3<sup>rd</sup> respondent was receiving a sum of Rs.3,00,000/- per month as remuneration from M/s.Vijayanth Developers Private Limited. RW1 admitted that he has shown income from salaries as Rs.45,60,000/- in his Income Tax Returns marked as Ex.R14 and that he has totally received a sum of Rs.35,60,000/- as salary from M/s.Vijayanth Developers Private Limited as per Ex.R14. From the Income Tax Returns submitted by the 3<sup>rd</sup> respondent, the fact that the 3<sup>rd</sup> respondent has invested in different partnership concerns is shown. Suppression of a sum of Rs.36,00,000/- the 3<sup>rd</sup> respondent has received from the Company, M/s.Vijayanth Developers Private Limited as Director of the Company, is reflected from Ex.R9-Ledger produced by the 3<sup>rd</sup> respondent himself. Similarly, Ex.R14 surprisingly reveal not only the salary income of the 3<sup>rd</sup> respondent as Director of M/s.Vijayanth Developers Private Limited but also the income from various other sources. A sum of Rs.24,00,000/- shown as the remuneration the 3<sup>rd</sup> respondent had received from a

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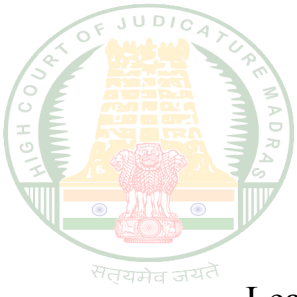


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partnership firm by name Jayam Vijayam Enterprises. RW1 during further cross examination admitted that he had received a remuneration of Rs.24 lakhs from the Firm Jayam Vijayam Enterprises. He admitted that in the Income Tax Returns, he has shown a sum of Rs.1,38,27,565/- as profit towards his 50% share. He has also admitted his capital in the said Firm as Rs.51,000/-. Similarly, the 3<sup>rd</sup> respondent has shown receipt of a sum of Rs.15,00,000/- by way of interest. During cross examination of 3<sup>rd</sup> respondent, he admitted that he collected interest from one Manivannan. He also admitted that he had given a sum of Rs.30,00,000/- to one Manivannan during 2014-15 and he has shown the sum of Rs.15,00,000/- as interest for the said amount lent to him. Under the guise of explaining the consideration he had received by transferring 15,000 shares to his own brother, the 3<sup>rd</sup> respondent has recalled himself and marked several documents to show that he has suppressed several income in his Form 26. The adjustment of a sum of Rs.24,00,000/- which is by way of consideration for transfer of shares cannot be accepted.

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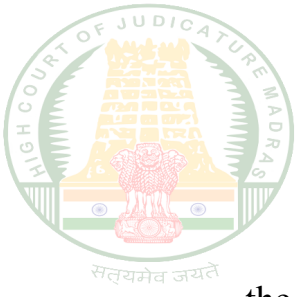


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Learned Senior counsel for the 3<sup>rd</sup> respondent submitted that this Court should accept that the 3<sup>rd</sup> respondent established the fact that the consideration for transfer of 15,000 shares in M/s.Vani Fabrics Private Limited is accounted by Book transfer and hence, the petitioner's contention regarding non disclosure of consideration received by 3<sup>rd</sup> respondent has to be rejected. Since this Court has already seen that the amount disclosed by 3<sup>rd</sup> respondent as payable to his brother as per the affidavit in Form-26 does not tally with the amount payable 3<sup>rd</sup> respondent to his brother as per the Income Tax Returns of the 3<sup>rd</sup> respondent, the 3<sup>rd</sup> respondent's case based on additional documents cannot be accepted or believed. While examining the entries in the Ledger along with the Income Tax Returns submitted by 3<sup>rd</sup> respondent as well as his brother, this Court has to conclude that the 3<sup>rd</sup> respondent had suppressed not only the asset to the extent of consideration the 3<sup>rd</sup> respondent had received by transferring his 15,000 shares in M/s.Vani Fabrics Private Limited but also the income he had received by way of salary from M/s.Vijayanth Developers Private Limited, the salary from

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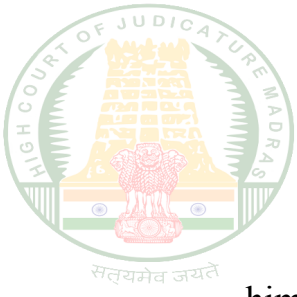
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the partnership firm by name Jayam Vijayam Enterprises and the interest he has earned by lending money. Even the amount that was lent to a private individual to collect a huge amount of Rs.15,00,000/- towards interest is not disclosed. This is an asset. The profit he has earned in the partnership ought to have been shown as his income.

(45) Apart from the averments regarding suppression of assets in the form of shares or by transfer of 15,000 equity shares in M/s.Vani Fabrics, learned counsel for the petitioner tried to substantiate his case of suppression by referring to the objections raised by 19<sup>th</sup> respondent and an NGO before the Returning Officer. The document-Ex.C17, is the objection raised by an NGO under the name Arappor Iyakkam on the date of scrutiny i.e., on 27.03.2019. It was pointed out from the affidavit in Form 26 that there is a discrepancy between the value of movable assets shown by 3<sup>rd</sup> respondent and the total amount of movable assets disclosed in Form 26. It is rightly pointed out in the objection that the total assets disclosed by third respondent in Form 26 is only to the tune of Rs.1,35,30,394/-. Since the candidate has disclosed his total value of movable assets owned by

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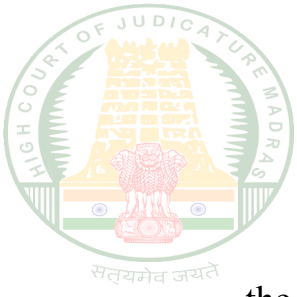
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him as Rs.4,16,27,224/-, the disclosure as per affidavit is false.

(46) Another objection petition is filed by 19<sup>th</sup> respondent on the date of scrutiny which is also marked as Ex.R3 and Ex.C12. One of the objections raised is regarding suppression of a liability of third respondent to the company to the tune of Rs.65,000/- and the suppression of assets of company M/s.Vijayanth Developers to the tune of Rs.34,93,355/- and a sum of Rs.3,15,00,000/-. After scrutiny, 3<sup>rd</sup> respondent sent an affidavit to the Returning Officer seeking an amendment to the Election Affidavit to change the figure towards the amount payable to him by M/s.Vijayanth Developers Private Limited as Rs.3,17,49,280/-. Surprisingly, the Returning Officer has forwarded Exs.C12 and C17 dated 27.03.2019 to the 3<sup>rd</sup> respondent on 01.04.2019, three days after scrutiny. The 3<sup>rd</sup> respondent appears to have sent a reply dated 05.04.2019 to the objection raised by 19<sup>th</sup> respondent, regarding the non-disclosure of a sum of Rs.65,000/- which was due from the 3<sup>rd</sup> respondent to the company, namely, M/s.Vijayanth Developers. The 3<sup>rd</sup> respondent in his reply to the objection, marked as Ex.C14, stated that the total loan amount due from

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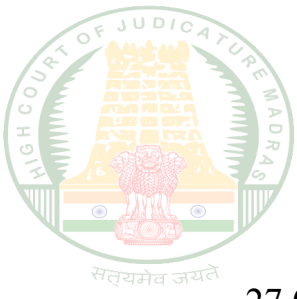
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the company to the 3<sup>rd</sup> respondent is Rs.3,17,49,280/-. Along with reply, a letter obtained from his brother as Director of M/s.Vijayanth Developers (P) Ltd., marked as Ex.C19 is also sent to Returning Officer to show that the Company has acknowledged that a sum of Rs.3,17,49,380/- is due to third respondent from the company. This figure of Rs.3,17,49,280/- is supposed to be mentioned in the election affidavit in Form 26. As pointed out earlier, an affidavit of the 3<sup>rd</sup> respondent dated 29.03.2019 is submitted to the Returning Officer to amend the election affidavit with reference to Column No.5 in page No.7 of the affidavit in Form 26 filed by 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent has admitted in the affidavit, that by mistake the loan given by 3<sup>rd</sup> respondent to M/s.Vijayanth Developers, was mentioned as Rs.36,52,450/- instead of Rs.3,17,49,280/-. **Therefore, non disclosure or false disclosure of assets in Election Affidavit in Form 26 is admitted by the 3<sup>rd</sup> respondent.**

(47)However, the Returning Officer who has completed scrutiny on

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27.03.2019 and accepted the nomination of 3<sup>rd</sup> respondent on 27.03.2019 sought for proof from 3<sup>rd</sup> respondent on 01.04.2019 and received reply and documents from 3<sup>rd</sup> respondent after the scrutiny is over. This is a serious irregularity. The 3<sup>rd</sup> respondent has disclosed his shareholding in M/s.Vijayanth Developers and the fact that a sum of Rs.36,52,450/- is due to him from the said company as per the affidavit filed by him. An affidavit to amend the affidavit in Form 26 is submitted by the 3<sup>rd</sup> respondent after scrutiny and acceptance of nomination by the Returning Officer on 27.03.2019 to the effect that the amount payable to him from M/s.Vijayanth Developers is not Rs.36,58,450/- as mentioned in Form-26 but Rs.3,17,49,280/-.

(48)Section 36 of the Representation of People Act, 1951 reads as follows:-

**36.Scrutiny of nominations.—**

*(1) On the date fixed for the scrutiny of nominations under section 30, the candidates, their election agents, one proposer 4\*\*\* of each candidate, and one other person duly authorised in writing by each candidate, but no other person, may attend at such time and place as the*

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*returning officer may appoint; and the returning officer shall give them all reasonable facilities for examining the nomination papers of all candidates which have been delivered within the time and in the manner laid down in section 33.*

*(2) The returning officer shall then examine the nomination papers and shall decide all objections which may be made to any nomination and may, either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, 5 [reject] any nomination on any of the following grounds:— 6 [(a) 7 [that on the date fixed for the scrutiny of nominations the candidate] either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:— Articles 84, 102, 173 and 191, 8\*\*\*. 9 [Part II of this Act and sections 4 and 14 of the Government of Union Territories Act, 1963 (20 of 1963)] 10\*\*\*; or (b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or (c) that the signature of the candidate or the proposer on*

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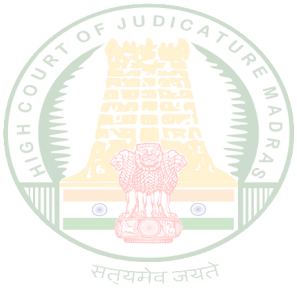
*the nomination paper is not genuine.]*

*(3) Nothing contained in 11[clause (b) or clause (c)] of sub-section (2) shall be deemed to authorise the 12[rejection] of the nomination of any candidate on the ground of any irregularity in respect of a nomination paper, if the candidate has “been duly nominated by means of another nomination paper in respect of which no irregularity has been committed.*

*(4) The returning officer shall not reject any nomination paper on the ground of any 1\*\*\* defect which is not of a substantial character.*

*(5) The returning officer shall hold the scrutiny on the date appointed in this behalf under clause (b) of section 30 and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control: Provided that in case 2 [an objection is raised by the returning officer or is made by any other person] the candidate concerned may be allowed time to rebut it not later than the next day but one following the date*

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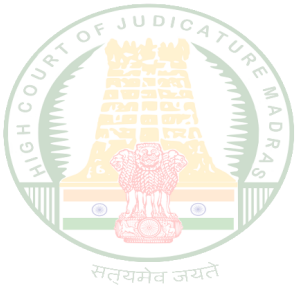
*fixed for scrutiny, and the returning officer shall record his decision on the date to which the proceedings have been adjourned.*

*(6) The returning officer shall endorse on each nomination paper his decision accepting or rejecting the same and, if the nomination paper is rejected, shall record in writing a brief statement of his reasons for such rejection.*

*[(7) For the purposes of this section, a certified copy of an entry in the electoral roll for the time being in force of a constituency shall be conclusive evidence of the fact that the person referred to in that entry is an elector for that constituency, unless it is proved that he is subject to a disqualification mentioned in section 16 of the Representation of the People Act, 1950 (43 of 1950).*

*(8) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the returning officer shall prepare a list of validly nominated candidates, that is to say, candidates whose nominations have been*

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*found valid, and affix it to his notice board.]”*

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(49) Following the judgment of Hon'ble Supreme Court, the Election Commission has issued revised instructions and the Returning Officer is required to follow the instructions contained in the Handbook containing instructions. Clauses 6.6, 6.7, 6.10.1, 6.11.1 of Handbook for Returning Officer issued in February, 2019, relates to scrutiny, are relevant and hence, they are extracted :

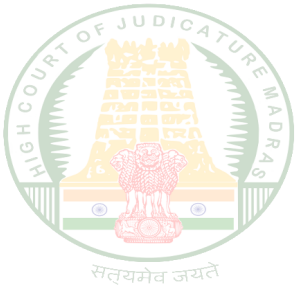
***“6.6 OBJECTIONS AND SUMMARY INQUIRY–  
REASONS TO BE RECORDED IN EVERY CASE OF  
OBJECTION OR REJECTION***

*6.6.1 Even if no objection has been raised with regard to a nomination paper, Returning Officer has to satisfy himself/herself that it is valid in law. If any objection is raised, Returning Officer shall have to hold a summary inquiry to decide the same and to treat the nomination paper to be either valid or invalid. Returning Officer should record his/her decision in each case giving briefly the reasons where an objection has been raised or why he/she rejects the nomination paper. Returning Officer’s decision could be challenged later in an election petition and hence the importance of recording a brief statement of reasons at this time. If Returning Officer*

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*accepts the nomination paper of a candidate overruling the objections raised by an objector, he may be supplied with a certified copy of his/her decision upon his request.*

**6.6.2** ECI Instruction no. 509/MISC/ECI/CIRCULAR/FUNC/ JUD/ RCC/2017, dated 13.02. 2017 may be referred to in case of objections against nomination under section 9A on the ground of subsisting contract with Govt.

### **6.7 PRESUMPTION OF VALIDITY**

**6.7.1** *There is a presumption that every nomination paper is valid unless the contrary is prima facie obvious or has been made out. In case of a doubt as to the validity of a nomination paper, the benefit of such doubt must go to the candidate concerned and the nomination paper should be held to be valid. Remember that whenever a candidate's nomination paper is rejected without proper reason that can be a reason to set aside the election in an election petition. Returning Officer should adopt a comparatively liberal approach in dealing with minor technical or clerical errors. Sub-section (4) of Section 36 mandates that nomination paper shall not be rejected on a ground or defect which is not substantial.*

...

**6.10.1** *Returning Officer must reject a nomination paper,*

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if

i) the candidate is clearly not qualified in law to be a member of the Legislature concerned, or

ii) the candidate is clearly disqualified in law to be such member, or [N.B. As regards the persons who have been disqualified under Sections 8A and 11A(b) (for corrupt practices) and 10-A (for failure to lodge account of election expenses) of the said Act, 1951, there would be a list of such disqualified persons. Returning Officer should obtain the list from CEO]. Complaints regarding other disqualifications, Returning Officer has to decide based on summary inquiry.

iii) Requirements of Section 33 of R.P. Act, 1951 are not fulfilled.

iv) The prescribed affidavit has not been filed at all by the candidate, or [N.B. If the prescribed affidavit has been filed but are alleged or found to be defective or containing false information, the nomination should NOT be rejected on this ground.]

v) The nomination paper has not been signed by the candidate and/or by the required number of his proposer(s), or

vi) The proper deposit has not been made in accordance with Section 34, or

vii) The oath or affirmation is not made by the candidate

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as required under the Constitution of India, Government of Union Territories Act, 1963 or the Government of National Capital Territory of Delhi Act, 1991, as the case may be, or

viii) The candidate does not belong to the Scheduled Caste or the Scheduled Tribe and he has filed nomination paper to contest a seat reserved for the Scheduled Castes or, as the case may be, the Scheduled Tribes, or

ix) Where the candidate is not an elector of the constituency for which he has filed nomination paper and he has neither filed a copy of the electoral roll of the constituency in which he is registered as an elector or of the relevant part thereof or a certified copy of the relevant entries relating to his name in such electoral roll along with the nomination paper nor produced the same at the time of scrutiny as required under Section 33(5) of the said Act.

x) Columns were left blank in the affidavit and fresh affidavit not filed in spite of notice.

**Note on item (viii):** In order to prevent non-SC/ST persons contesting election from reserved constituencies, the Returning Officers at the time of scrutiny of nominations should satisfy themselves that the candidates contesting from reserved constituencies belong to SC or ST, as the case may be. Wherever in doubt, the Returning Officer must insist on production of SC/ST certificate issued by competent authorities. Where, however, the certificate produced by the candidate is also challenged, the Returning Officer need not go

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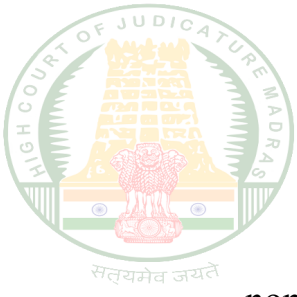
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*into that question, except where it is alleged that the certificate produced is forged or is not issued by competent authority. In the case of any allegation/suspicion about the genuineness of the certificate, the Returning Officer should get the position crosschecked with the authority which purportedly issued the SC/ST certificate in question, before deciding the validity of the nomination paper of the candidate concerned. If on such cross-checking/verification, the Returning Officer is satisfied that the certificate in question is not genuine, he should not only reject the nomination of the candidate concerned but should also initiate criminal proceeding against the candidate for adducing forged documentary evidence before him. (Instruction No 4/3/2008/JS-II (vol. III) dated 2.7.2008).*

*6.11.1 If a candidate to whose nomination paper an objection has been taken applies for time to rebut such objection, Returning Officer should adjourn the scrutiny of that candidate. The adjourned cannot go beyond 11.00 a.m. on the second day after the date fixed for scrutiny. The scrutiny of all other nomination papers must, of course, be completed on the day of scrutiny, notwithstanding such adjournment in respect of one or more nomination papers.”*

(50)The enquiry before the Returning Officer is summary in nature. This Court is unable to find any clue from the reading of Section 36 of the Act, 1951, to show that the Returning Officer is permitted to collect affidavits or documents from contestants or third parties even after scrutiny of

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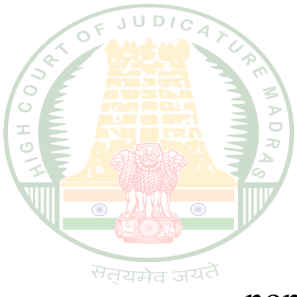
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nomination. Admittedly, in this case, as spoken by the Returning Officer, the nomination of 3<sup>rd</sup> respondent was accepted by the Returning Officer on the date of scrutiny. On the date of scrutiny, the objection raised by a third party "Arappor Iyakkam" is a valid objection and the non-disclosure/false disclosure is admitted by the 3<sup>rd</sup> respondent himself by submitting an affidavit after scrutiny contrary to statutory provisions and the guidelines given in Hand Book for Returning Officer. This only shows that the Returning Officer who was supposed to consider the objection on the date of scrutiny of nomination, failed to do that and has accepted the nomination without an explanation or correction. However, in the course of argument, it was pointed out that the objection by the stranger "Arappor Iyakkam" was only sent on 27.03.2019 and it was not submitted at the time of scrutiny. Even if no objection is received, the Returning Officer has to satisfy himself that the nomination is valid. If an objection is received as per clause 6.6.1, the Returning Officer has to hold a summary enquiry to decide the same. Returning Officer should record his/her decision. As per instructions, the Returning Officer can reject the

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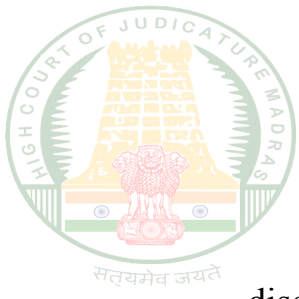


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nomination paper when columns are left blank in the affidavit and fresh affidavit is not filed in spite of notice. When no plausible explanation is given by anyone present before the Returning Officer on the date of scrutiny of nomination and the non disclosure or mistake in the statutory affidavit in Form 26 is admitted by the Returned Candidate and the non disclosure is evident, the Returning Officer has simply ignored the objection and accepted nomination by recording acceptance on 27.03.2019. This is a serious irregularity. The 3<sup>rd</sup> respondent has given a supporting affidavit on 29.03.2019. The Returning Officer becomes *functus officio* officer after the scrutiny. Therefore, the document submitted after scrutiny cannot be considered. Even before this Court, the 3<sup>rd</sup> respondent has not produced any independent or acceptable document to show that a sum of Rs.3,17,49,280/- is due from the company to him. No details or particulars as to how this amount became due, is given anywhere in the pleading or during his evidence as RW1. Therefore, this Court is of the view that the 3<sup>rd</sup> respondent has consciously ignored vital informations required to explain the

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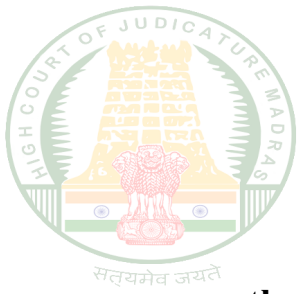


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discrepancies even before this Court. Unfortunately, the petitioner has not raised a ground in the petition pointing out the discrepancy or the non disclosure even while filing the statutory affidavit in Form 26. When this was pointed out by Court, the 3<sup>rd</sup> respondent requested this Court to give an opportunity to explain the discrepancy. In that process, the 3<sup>rd</sup> respondent has now admitted suppressions to the effect that he has not disclosed several assets and sources of his income as required in the format prescribed in Form-26. Since a specific issue has been framed whether the Returning Officer has conducted the election of Theni Parliamentary Constituency in an impartial manner and in accordance with the provisions of the Conduct of Election Rules, 1961 and during the scrutiny of nominations under Section 36 of the RP Act, 1951, this Court, from the facts as seen from the documents and evidence, finds that the Returning Officer has not conducted the scrutiny of nominations strictly in terms of Section 36 of the RP Act, 1951 and instructions given under the Hand Book. She has shown her partisan attitude in favour of 3<sup>rd</sup> respondent at the time of scrutiny. **As a consequence, this Court holds**

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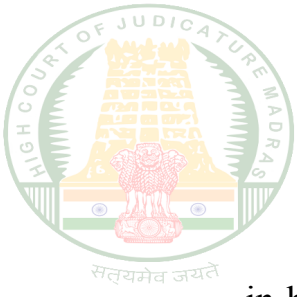
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**that the nomination of 3<sup>rd</sup> respondent has been improperly accepted by the Returning Officer.**

(51) During argument, learned Senior counsel submitted that mentioning of a sum of Rs.36,52,450/- in stead of Rs.3,17,49,280/- is merely a clerical mistake inadvertently by the steno. In any other case, this Court would have accepted this explanation. In the process of explaining how a sum of Rs.3,17,49,280/- is due from a Company, the Returned Candidate admitted his income and assets from various sources which are not disclosed in the statutory affidavit in Form-26. In the Election Affidavit format, specific instructions are given to specify every investments separately. The Returned Candidate has mentioned only agriculture and business as source of income. He has not disclosed his income by lending money and the money lent for earning a sum of Rs.15,00,000/- by way of interest. He has not disclosed his income by way of salary drawn by him as Director of a Company. His capital in a Partnership Firm is not disclosed. His partnership business and the profit he has earned in the real estate business is not disclosed even though he admits

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in his evidence when confronted with his documents. The right to know about the candidate standing for election has been brought within the sweep of Article 19(1)(a) by Hon'ble Supreme Court in *Union of India v. Association for Democratic Reforms and others* reported in (2002) 5 SCC 294. The amendment in Representation of the People Act, 1951, introducing Section 33-B to nullify the judgment of Hon'ble Supreme Court in *Association for Democratic Reforms's* case was struck down by Hon'ble Supreme Court in *People's Union for Civil Liberties v. Union of India and another* reported in (2003) 4 SCC 399, on the ground that the legislature has no power to review the decision of Supreme Court. The disclosure of information is to facilitate and augment the freedom of expression as observed by Hon'ble Supreme Court in the later judgment. The right to know about the contestant who is going to represent the people will not be effective unless the information about the assets and liabilities from all sources is known to the electors. Considering the purpose behind disclosure, the candidate is required to disclose even the assets and liabilities of his spouse and dependants. The majority in the

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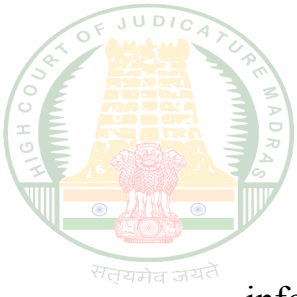
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latter judgment even made educational qualification to be mandatorily disclosed.

(52) In *Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra*

*Reddy and others* reported in (2018) 14 SCC 1, the Hon'ble Supreme Court had occasion to deal with an Appeal against the order of High Court allowing the Application filed in the Election Petition to strike out Para Nos.2 to 9 & 11 of the Election Petition on the ground that they are not supported by material facts and to dismiss the Election Petition under Order VII Rule 11 of CPC for want of cause of action. The Hon'ble Supreme Court, while setting aside the order of High Court, observed that the reliefs claimed by the appellant (petitioner in Election Petition) are founded on grounds *inter alia* related to Section 100(1)(d)(i) of Representation of the People Act, 1951 and the question whether a particular fact is material or not depends upon the special facts and circumstances of the case. As extracted earlier, in *Resurgence India's* case reported in (2014) 14 SCC 189, the Hon'ble Supreme Court has held that it is the duty of the Returning Officer to check whether the

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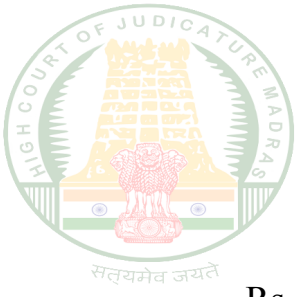
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information required is fully furnished at the time of filing of affidavit with the nomination paper and the nomination paper is liable to be rejected if a candidate fails to fill the blanks even after reminder by Returning Officer.

(53) In this case, there is specific pleading regarding suppression of assets and liabilities and improper acceptance of nomination by Returning Officer. In the reply to the counter filed by third respondent, the petitioner has specifically pleaded the partisan attitude of Returning Officer accepting the nomination of third respondent. The issues framed by this Court and the witnesses examined would amply show that the parties have conducted the trial with the full understanding of the case. The Returning Officer was examined as Court witness (C.W.3) and he marked Exs.C8 to C18 relating to the scrutiny of nomination filed by the third respondent. This Court has already found that the statutory affidavit filed by 3<sup>rd</sup> respondent is defective. The affidavit filed by 3<sup>rd</sup> respondent after the scrutiny cannot be read along with the election affidavit in Form 26. The Returned Candidate has shown the value of his movable assets at

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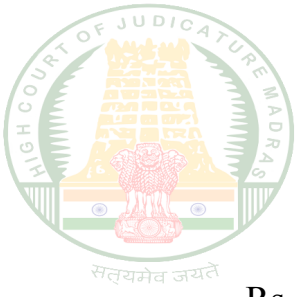


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Rs.4,16,27,224/-. But, he has disclosed the movable assets to the value of Rs.1,35,30,394/-. This false disclosure is explained by an affidavit which cannot be accepted as it was not there when the 3<sup>rd</sup> respondent's nomination was accepted. An explanation that such huge discrepancy was a typographical mistake cannot be readily accepted especially disclosure by over-valuing assets may be with a purpose. The Returning Officer may accept the nomination even if it is defective. However, such improper acceptance can be challenged in this election petition. In the circumstances, the 3<sup>rd</sup> respondent at least owe a moral responsibility to this Court explaining his non-disclosure. The document produced before the Returning Officer is a letter by brother of 3<sup>rd</sup> respondent acknowledging the huge liability of the Company M/s.Vijayanth Developers. The Balance Sheet / Financial Statement of the Company as on 31.03.2018 shows only a short term borrowal of money to the tune of Rs.65,000/- from the Company. This Court is unable to find how the 3<sup>rd</sup> respondent could pump in such a huge money of more than Rs.3.17 Crores to the Company which has admittedly borrowed a huge sum of

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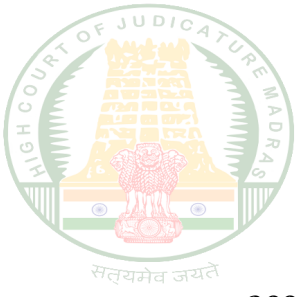
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Rs.10 Crores on the collateral security given by 3<sup>rd</sup> respondent to the value of around Rs.6 Crores. If the non-disclosure without an explanation or supporting document is condoned, that will certainly go against the spirit in which the Hon'ble Supreme Court has laid principles to save the democracy as part of basic structure of our Constitution.

**(54) For all the reasons stated above, this Court holds that the affidavit filed under Rule 4[A] of the Conduct of Election Rules, 1961, has not been validly made, Further this Court holds that the Returned Candidate has suppressed his assets equivalent to the value of 15,000 equity shares in M/s.Vani Fabrics Private Limited allegedly transferred by the Returned Candidate in favour of his brother and other assets and sources of income as admitted by him. Further, the 3<sup>rd</sup> respondent has given a false information in the Election Affidavit filed under Rule 4[A] of the Conduct of Election Rules, 1961. As regards Additional Issue No.3, this Court conclude that the Returning Officer has not conducted the summary enquiry during scrutiny of nomination in the manner as expected by Returning Officer in**

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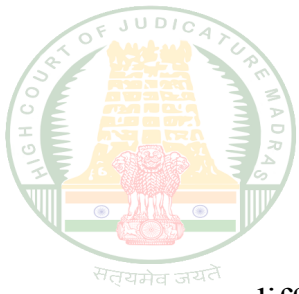
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**accordance with law as explained.**

(55) Though the petitioner has, in his reply affidavit, has also referred to a mortgage of the property of 3<sup>rd</sup> respondent in relation to a loan obtained by the Company M/s.Vijayanth Developers Private Limited, the liability of a Company is not a liability of the individual. The statutory affidavit filed by the Returned Candidate refers to the loan borrowed to by the Returned Candidate himself from the City Union Bank, Mandaveli Branch. The objection of the petitioner is that the 3<sup>rd</sup> respondent has suppressed the mortgage of his property for the loan advanced to the Company to the tune of Rs.10 Crores. It is also alleged that the property offered by the 3<sup>rd</sup> respondent as collateral, has been undervalued. This Court is unable to accept the case of the petitioner that there is suppression of an asset or liability of the 3<sup>rd</sup> respondent by showing that the Company in which the 3<sup>rd</sup> respondent is a shareholder, has borrowed money by mortgaging his personal property. It is not shown that the 3<sup>rd</sup> respondent has given personal guarantee so that the Bank may proceed against the 3<sup>rd</sup> respondent for the liability of the Company. A Company is

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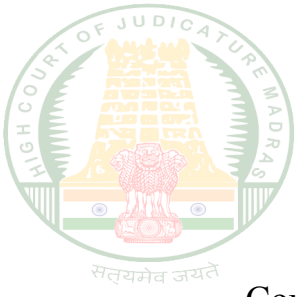
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different from a shareholder or a Director of a Company. The mortgage created by the 3<sup>rd</sup> respondent may be an encumbrance over the property owned by the returned candidate. This Court is unable to accept the liability of M/s.Vijayanth Developers as the liability of 3<sup>rd</sup> respondent. The 3<sup>rd</sup> respondent has disclosed the mortgage in favour of the Bank in respect of the property owned by him. Therefore, this Court is unable to accept the case of the petitioner in relation of the mortgage and liability of the Company M/s.Vijayanth Developers Private Limited.

**ISSUE NO.[2] AND ADDITIONAL ISSUE NO.[2]:- CORRUPT PRACTICES:-**

(56) Though several allegations relating to corrupt practices were made in the election petition, the petitioner in the course of trial has confined to the corrupt practices alleged by him with reference to the video clipping that was spread through Whatsapp and YouTube. The petitioner has not produced any independent witness to prove corrupt practices as seen through the video. However, a Compact Disc with the video clipping that got spread in the social platform, is produced before this Court. This

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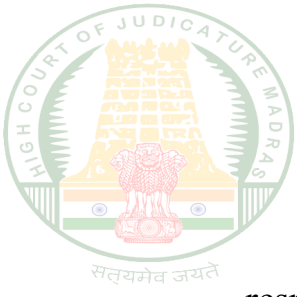
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Court has seen the video with audio. On seeing the video, the case of the petitioner as seen in the election petition involving a lady by name Mrs.Saveetha Arunprasad, is true. As against the specific allegations that the 3<sup>rd</sup> respondent through his associates started bribing the electors and about the registration of an FIR against the said Saveetha Arunprasad for distribution of money to voters, the 3<sup>rd</sup> respondent in his counter, has stated that mere association of Mrs.Saveetha Arunprasad with his father or himself, will not lead to an inference that corrupt practices were indulged with the consent of the 3<sup>rd</sup> respondent.

(57)The learned counsel for the petitioner submitted that the association, as stated by the petitioner in the election petition, would only mean that persons have joined together with a common object. In other words, the learned counsel, in his written argument, referring to the dictionary meaning of the word "association", has submitted that the phrase used by the petitioner plays a significant role as the 3<sup>rd</sup> respondent has categorically admitted that Mrs.Saveetha Arunprasad as his associate. Since the word "association" was used by the petitioner, that the 3<sup>rd</sup>

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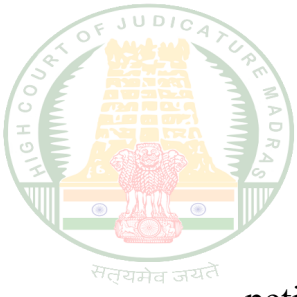
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respondent had acted in association with Mrs.Saveetha Arunprasad and others, the argument is that it should be understood that a specific allegation is made to the effect that the 3<sup>rd</sup> respondent bribed electors through his associates with his consent and therefore, the admission of association of Mrs.Saveetha Arunprasad by 3<sup>rd</sup> respondent should be understood that the associates of 3<sup>rd</sup> respondent were acting with the consent of 3<sup>rd</sup> respondent without any ambiguity to bribe electors for the purpose of 3<sup>rd</sup> respondent's win. This argument which is based on assumption with confused jargon, cannot be appreciated in an election petition.

(58)The learned counsel for the petitioner pointed out that the 3<sup>rd</sup> respondent has not let in any evidence to show that Mrs.Saveetha Arunprasad is not an agent appointed by him or by his Chief Agent. The petitioner, during his examination, has specifically stated that the 3<sup>rd</sup> respondent's associates distributed money to voters. The petitioner has also filed a copy of the FIR in crime No.215/2019 in relation to the incident as seen from the Video Compact Disc containing the video of the episode pleaded by the

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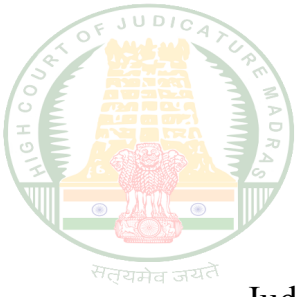
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petitioner. On seeing the VCD marked as Ex.P9, this Court is of the view that the voters were given money to vote for 'two leaves' symbol. The fact that contents of VCD has spread through social media, is not disputed by the 3<sup>rd</sup> respondent. The involvement of Mrs.Saveetha Arunprasad in the distribution of money among voters in the Theni Parliamentary Constituency may also be true.

(59)The 3<sup>rd</sup> respondent has admitted during his cross examination that Mrs.Saveetha Arunprasad is seen with 3<sup>rd</sup> respondent in a few photographs. The 3<sup>rd</sup> respondent admitted that Mrs.Saveetha Arunprasad is an active member of AIADMK party and holding currently the post of Chairperson of Melachokkanathapuram. CW4, who registered the FIR in crime No.215/2019 in Ex.P7 in connection with the incident, has given evidence regarding the FIR. The original of the FIR has been filed before the Judicial Magistrate, Bodinaickenoor. He acknowledged the receipt of written complaint in respect of FIR and spoken about the receipt of VCD along with the written complaint. He has admitted that the video which was given along with complaint, was produced as evidence before the

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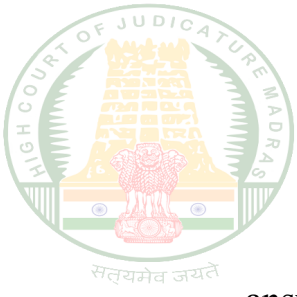
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Judicial Magistrate, Bodi. He also admitted the fact that he arrested Mrs.Saveetha Arunprasad who is the first accused in Crime No.215/2019. He also admitted about the Final Report filed by him. However, during cross examination by the 3<sup>rd</sup> respondent, CW4 admitted that he did not know about the person who shot the video and that he was informed by the Village Administrative Officer that he got the video through Whatsapp. This Court is unable to find much discrepancy in the evidence of CW4 during cross examination and his evidence of course, reveals only the fact that there was a complaint about corrupt practices and the video circulated through social media is produced before the Court and the criminal case is pending trial.

(60)The 3<sup>rd</sup> respondent admitted that the father of Mrs.Saveetha Arunprasad is holding the position in the party and Mrs.Saveetha Arunprasad was the Chairperson of Melachokkanathapuram Town Panchayat between 2011-2016. When a specific question was put to 3<sup>rd</sup> respondent, whether Mrs.Saveetha Arunprasad is a polling agent for Bodinaickenoor segment, the 3<sup>rd</sup> respondent has stated "*I do not know*". The relevant questions and

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answers are extracted below for convenience:-

***Q:Are you aware that each candidate can appoint two polling agents for each polling station of the Constituency?***

*A:Yes.*

***Q:Is it correct to state that Bodi segment had 298 polling stations in Theni Parliamentary Constituency?***

*A:I do not know the exact number.*

***Q:I put it to you that your chief election agent appointed Savitha as your polling agent for Bodi segment.***

*A:I do not know.*

***Q:Are you aware that a candidate can appoint 14 EVM counting agents and 2 postal ballot counting agents at the counting centre on the day of counting?***

*A:I do not remember what was the procedure during the 2019 elections.*

***Q:Who had appointed the aforesaid counting agents on the counting day for you?***

*A:I have to ask my chief election agent.*

(61)It is true that the 3<sup>rd</sup> respondent was evasive. However, the petitioner

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has nowhere in the petition or evidence stated that Mrs.Saveetha Arunprasad was an agent of 3<sup>rd</sup> respondent either appointed by the 3<sup>rd</sup> respondent or by his chief agent. However, it is stated in the petition that Mrs.Saveetha Arunprasad was bribing electors with the consent of 3<sup>rd</sup> respondent and his election agents.

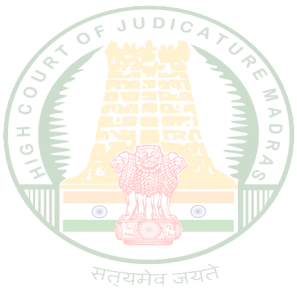
(62)Section 123 of the Representation of People Act, 1951, reads as follows:-

**123. Corrupt practices.**—*The following shall be deemed to be corrupt practices for the purposes of this Act:—*

*(1) “Bribery” that is to say— (A) any gift, offer, or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing— (a) a person to stand or not to stand as, or [to withdraw or not to withdraw] from being a candidate at an election, or (b) an elector to vote or refrain from voting at an election, or as a reward to— (i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature;*

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or **(ii)** an elector for having voted or refrained from voting;

**(B)** the receipt of, or agreement to receive, any gratification, whether as a motive or a reward— **(a)** by a person for standing or not standing as, or for 6 [withdrawing or not withdrawing] from being, a candidate; or **(b)** by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate 3 [to withdraw or not to withdraw] his candidature.

**Explanation.**—For the purposes of this clause the term “gratification” is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.]

**(2) Undue influence**, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election

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agent], with the free exercise of any electoral right:

**Provided that**— (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who— (i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause; (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause. 1 [(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or

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*appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate: 2 [Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.] (3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.] 3 [(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate. Explanation.—For the purposes of this clause, “sati” and “glorification” in*

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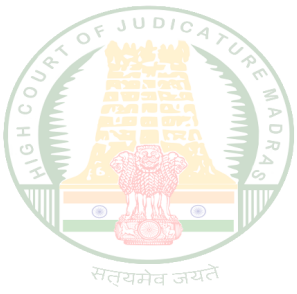
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*relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988)].*

*(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.*

*(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person 4 [with the consent of a candidate or his election agent] 6 [or the use of such vehicle or vessel for the free conveyance] of any elector (other than the candidate himself the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll: **Provided that** the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the*

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*purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power: **Provided further** that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.*

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

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

*(7) The obtaining or procuring or a betting or attempting to obtain or procure by a candidate or his agent or, by any other person 1 [with the consent of a candidate or his election agent], any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, 2 [from any*

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*person whether or not in the service of the Government] and belonging to any of the following classes, namely:— (a) gazetted officers; (b) stipendiary judges and magistrates; (c) members of the armed forces of the Union; (d) members of the police forces; (e) excise officers; 3 [(f) revenue officers other than village revenue officers known as lambardars malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and (g) such other class of persons in the service of the Government as may be prescribed: 4 [Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements facilities or act or thing*

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shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;] 5 [(h) class of persons in the service of a 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.] 6 [(8) Booth capturing by a candidate or his agent or other person.] Explanation.—(1) In this section the expression “agent” includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. (2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent 7\*\*\* of that candidate. 8 [(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be

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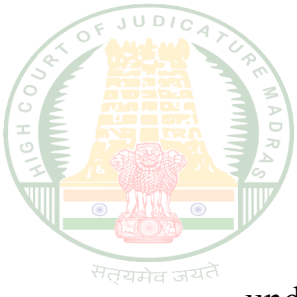
*conclusive proof— (i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and (ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in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

(63) To attract section 123 of the Act, one should establish bribery by any gift, offer or promise, by a candidate or his agent or by any person with the consent of the candidate or his election agent of any gratification to any person whomsoever, with the object, directly or indirectly of inducing a person to stand or not to stand as from being a candidate at an election, or an elector to vote or refrain from voting at an election, or as a reward to a person for having so stood or not stood, his candidature; or an elector for having voted or refrained from voting.

(64) The petitioner is not serious in pressing his vague allegation regarding

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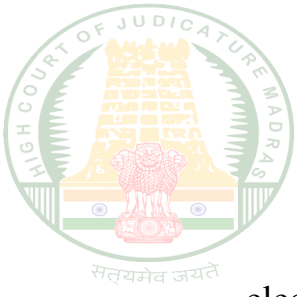
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undue influence. The petitioner who has alleged bribery by distributing money or gift to electors, has to establish that the gift or offer or promise is by the candidate or his agent or by any person with the consent of the candidate or his election agent. In this case, there is no direct proof that Mrs.Saveetha Arunprasad is the agent of 3<sup>rd</sup> respondent or she was doing with the consent of 3<sup>rd</sup> respondent or his election agent. The petitioner himself in his evidence has stated that he did not know whether Mrs.Saveetha Arunprasad is an agent of 3<sup>rd</sup> respondent. In such circumstances, though the petitioner's case that there was bribery by a lady, it was not established with positive evidence that a lady by name Mrs.Saveetha Arunprasad has indulged in bribing the electors/voters either as an agent appointed by 3<sup>rd</sup> respondent or his chief agent or acted with the consent of 3<sup>rd</sup> respondent. Therefore, this Court is unable to hold that the petitioner has established corrupt practices as defined under section 123 of the RP Act, 1951.

**ISSUE NO.[3]:-**

(65)The petitioner has raised a specific plea that Court should declare the

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election of 3<sup>rd</sup> respondent as void on the ground of improper acceptance of nomination of 3<sup>rd</sup> respondent.

(66)Section 100 of the RP Act, 1951, reads as follows:-

**100. Grounds for declaring election to be void.—**

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

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

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

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

*(d)that the result of the election, in so far as it concerns a returned candidate, has been materially affected—*

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

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

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

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

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

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(b)[Omitted]

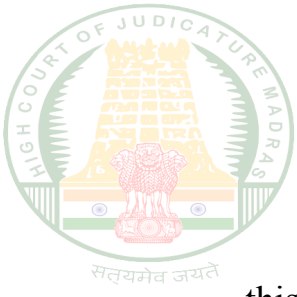
(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,

then the High Court may decide that the election of the returned candidate is not void.

(67)The learned Senior counsel appearing for the 3<sup>rd</sup> respondent argued that the suppression has not materially affected the result of the election. Pointing out that the 3<sup>rd</sup> respondent has won the election with huge margin of 76,000 votes, he submitted that the election of 3<sup>rd</sup> respondent in this case, cannot be declared as void on the ground of suppression. The Hon'ble Supreme Court, in the case of **Sri Meirembam Prithviraj @ Prithviraj Singh Vs. Pukhrem Sharatchandra Singh** reported in 2017 [2] SCC 487, has rejected the contention of the returned candidate that under Section 100[1][d] of the RP Act, 1951, that there must be proof proof that the result of the election was materially affected by improper acceptance of nomination. Suppression is proved. As a consequence,

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this Court holds that nomination of the returned candidate had been improperly accepted. In view of the conclusions reached above on all issues, this Court has to allow the election petition and declare the election of the 3<sup>rd</sup> respondent / returned candidate as void.

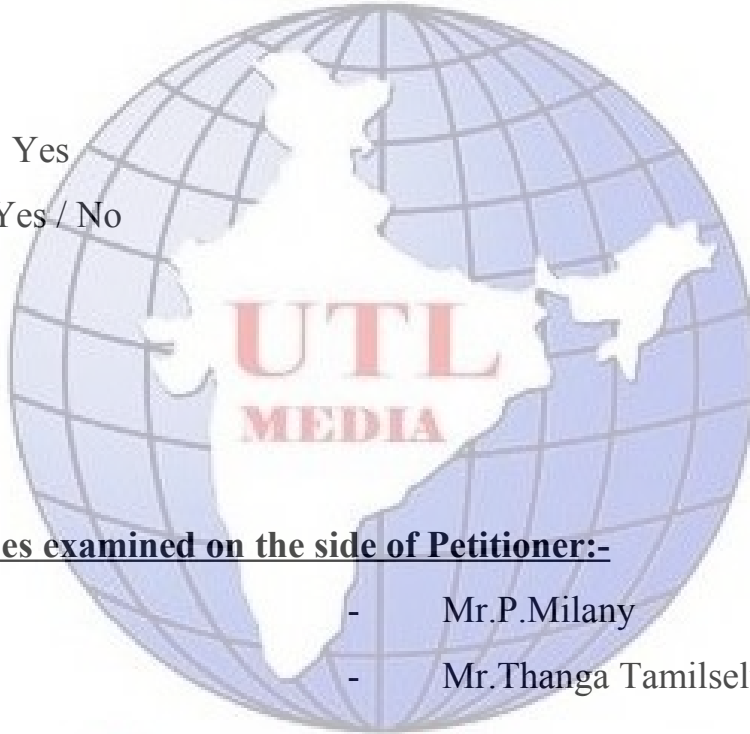
(68)In the result, the **Election Petition in ELP.No.4/2019 is allowed and the election of 3<sup>rd</sup> respondent / Returned Candidate on 23.05.2019 from No.33, Theni Parliamentary Constituency is declared as null and void.** No costs.

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Internet: Yes

Index : Yes / No



**Witnesses examined on the side of Petitioner:-**

PW1

- Mr.P.Milany

PW2

- Mr.Thanga Tamilselvan

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**List of Exhibits marked on the side of the Petitioner:-**

1. Ex.P1 - Extract of the Electoral Roll of Theni Parliamentary Constituency
2. Ex.P2 - Certificate u/s.65-B pertaining to Ex.P1
3. Ex.P3 - Election Affidavit under Form-26
4. Ex.P4 - Certificate u/s.65-B pertaining to Ex.P3
5. Ex.P5 - Board's Report along with Audited Balance Sheet
6. Ex.P6 - Certificate u/s.65-B pertaining to Ex.P5
7. Ex.P7 - Photocopy of FIR in Cr.No.215/2019
8. Ex.P8 - Certificate u/s.65-B pertaining to Ex.P7
9. Ex.P9 - Video Compact Disc
- 10.Ex.P10 - Certificate u/s.65-B pertaining to Ex.P9
- 11.Ex.P11 - Photocopy of the Voters' List of Part 113 of Bodi Assembly Segment
- 12.Ex.P12 - Certificate u/s.65-B pertaining to Ex.P11
- 13.Ex.P13 - Photos [4 Nos]
- 14.Ex.P14 - Certificate u/s.65-B pertaining to Ex.P14
- 15.Ex.P15 - Computer generated copy of the Sanction Letter dated 11.02.2019
- 16.Ex.P16 - Certificate u/s.65-B pertaining to Ex.P15
- 17.Ex.P17 - Computer generated copy of the Company Master Data of Vijayanth Developers Pvt. Ltd
- 18.Ex.P18 - Certificate u/s.65-B pertaining to

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19.Ex.P19

Ex.P17  
- Computer generated copy of Certificate of Registration of Charge dated 20.03.2019

20.Ex.P20

- Certificate u/s.65-B pertaining to Ex.P19

21.Ex.P21

- Computer generated copy of the Memorandum of Extension of Equitable Mortgage by way of deposit of title deeds.

22.Ex.P22

- Certificate u/s.65-B pertaining to Ex.P21

**Witnesses examined on the side of Petitioner:-**

RW1

- Mr.P.Ravindhranath

**List of Exhibits marked on the side of the Respondents:-**

1. Ex.R1

- Print out of the Facebook Post dated 12.09.2019

2. Ex.R2

- Press Report

3. Ex.R3

- Return Objection of RW1

4. Ex.R4

- Downloaded copy of E-mail along with attachments

5. Ex.R5

- 65-B Certificate

6. Ex.R6

- 65-B Certificate issued by RW1's Advocate

7. Ex.R7

- Downloaded copy of Ledger Account of M/s.Vijayanth Developers Pvt.Ltd for the period from 01.04.2017 to 21.03.2019

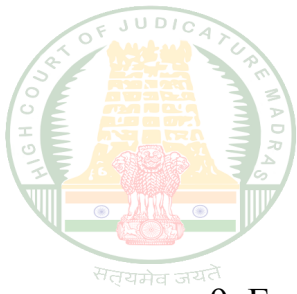
8. Ex.R8

- 65-B Certificate issued by RW1's Chartered Accountant

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- |           |   |   |
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| 9. Ex.R9  | - | Photocopy of the Share Transfer Form  |
| 10.Ex.R10 | - | Downloaded copy of the Ledge Account  |
| 11.Ex.R11 | - | 65-B Certificate issued by RW1's Chartered Accountant                               |
| 12.Ex.R12 | - | Downloaded copy of the Ledger Account   |
| 13.Ex.R13 | - | 65-B Certificate issued by RW1's Auditor  |
| 14.Ex.R14 | - | Photocopy of RW1's Income Tax Returns for the AY 2019-20                            |
| 15.Ex.R15 | - | Photocopy of RW1's brother's Income Tax Returns for the AY 2019-20                  |
| 16.Ex.R16 | - | Photocopy of RW1's Bank Statement for the period between 01.01.2016 and 31.03.2016. |

**Witnesses examined on the side of Court:-**

- |     |   |                           |
|-----|---|---------------------------|
| CW1 | - | Mr.Joseph Jackson K.G.    |
| CW2 | - | Mr.C.S.Govindarajan       |
| CW3 | - | Mrs.Mariam Pallavi Baldev |
| CW4 | - | Mr.P.Selvaraj             |

**List of Exhibits marked on the side of the Court Witnesses:-**

- |          |   |  |
|----------|---|--|
| 1. Ex.C1 | - | E-Form CHG1 regarding Registration of Charge filed by Vijayanth Developers Pvt. Ltd. |
| 2. Ex.C2 | - | Certificate generated at the time of   |

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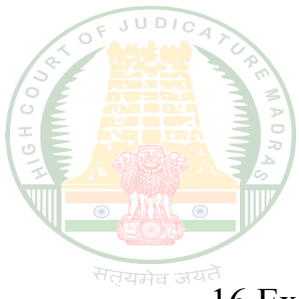


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3. Ex.C3 - Registration of Charge dated 20.03.2019
  4. Ex.C4 - Master Data of Vijayanth Developers Private Limited
  5. Ex.C5 - E-Form No.AOC-4 Form for filing Financial Statements & other documents with ROC for the FY 2017-2018
  6. Ex.C6 - E-Form No.MGT-7 Annual Return for the FY 2017-2018 in respect of M/s.Vani Fabrics Pvt Ltd.
  7. Ex.C7 - Form No.DIR-12 of Vani Fabrics Private Limited
  8. Ex.C8 - Form No.MGT-7 of Vani Fabrics Private Limited
  9. Ex.C9 - Nomination Form under Form-26 along with documents and the proceedings relating to scrutiny
  - 10.Ex.C10 - Original Election Nomination in Form-2A of Returned Candidate with the endorsement of the Returning Officer
  - 11.Ex.C11 - Original Form-26 of the Returned Candidate
  - 12.Ex.C12 - Original Receipt of Notice to appear for allocation of election symbols with the acknowledgment of the Returned Candidate
  - 13.Ex.C13 - Original Objection Petition filed by PW2 along with documents
  - 14.Ex.C14 - Entire scrutiny proceedings
  - 15.Ex.C15 - Reply of RW1 on 05.04.2019
- Supplementary Affidavit dated 29.03.2019

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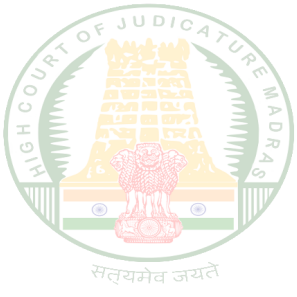
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- |           |   |   |
|-----------|---|---|
| 16.Ex.C16 | - | Endorsement of CW3  |
| 17.Ex.C17 | - | Objections of Arappor Iyyakkam dated 27.03.2019                               |
| 18.Ex.C18 | - | Notice dated 01.04.2019 issued by CW3   |
| 19.Ex.C19 | - | Certification regarding Confirmation of Balance issued by Mr.V.P.Jaya Pradeep |
| 20.Ex.C20 | - | FIR dated 15.04.2019  |
| 21.Ex.C21 | - | Photocopy of the complaint  |
| 22.Ex.C22 | - | Photocopy of CSR Receipt  |
| 23.Ex.C23 | - | Copy of Final Report dated 20.04.2019   |
| 24.Ex.C24 | - | Certified copy of Final Report filed on 31.03.2022                            |
| 25.Ex.C25 | - | Certified copy of 161 statements of the witnesses [series 5 Nos.]             |



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