



No. 341] CHENNAI, TUESDAY, SEPTEMBER 19, 2023
Purattasi 2, Sobakiruthu, Thiruvalluvar Aandu-2054

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF MADRAS IN ELECTION
PETITION No. 03 OF 2016

No. SRO G-29/2023.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 28th August, 2023 [6 Bhadra 1945 (Saka)] is published:-

No.82/TN-LA/(EP 03 of 2016)/2023:- In pursuance of section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the Hon'ble High Court of Madras dated 05.06.2023 in Election Petition No. 03 of 2016.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 5TH DAY OF JUNE 2023

THE HON'BLE MR. JUSTICE M.S.RAMESH

Election Petition No.3 of 2016

2 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

S.M.Nasar,
No. 16, Thayagam Illam,
Budhhar Street,
Kamarajar Nagar,
Avadi,
Chennai - 600 071.

... *Petitioner*

-VS-

1. Pandia Rajan K.
61/-TAS Enclave,
Flat No.C3, 3rd Floor,
Golden Kings Court,
10th Main Road,
Annanagar,
Chennai - 600 040.
2. Charles S.
4/- Dr.Ambedkar Street,
Kengureddykuppam,
Thiruninravur - 602 024.
3. Loganathan J.
3-9/- Pillayar Koil Street,
Pidarithangal Village,
Paanavedu Garden,
Poonamallee,
Chennai - 600 056.
4. Anthridoss R.
3/- Govindarajulu Street,
Sri Devi Nagar,
Avadi, Chennai - 600 071.
5. Anandakrishnan N.
4/- Station Road,
Annanur,
Chennai - 600 077.
6. Nallathambi S.
37/- Mosque Street,
Pattabiram, Chennai - 600 072.
7. Ponnusamy R.
5/- Transformer Metu Street,
Thiruninravur, Chennai - 602 024.

8. Rowoth Pasari,
3/-3rd Street, Santhipuram,
Thirumullaivoyal,
Avadi, Chennai - 600 062.
9. Antharaiyan,
198-13/- Madhakoil Street,
Monnavedu, Melannur,
Tiruvallur,
Pincode - 627 027.
10. Karthikeyan V.P.
B3-35A Kendriya Vihar,
2nd PH Road,
Paruthipattu,
Avadi 600 071.
11. Kaliammal Rajendran,
3/- EVR Nagammai Nagar,
Vinayagarkoil Cross Street,
Avadi, Chennai - 600 109.
12. Sathya D.
3-Jothiramalinga Nagar,
2nd Cross Street,
Kavarapalayam,
Avadi, Chennai - 600 054.
13. Selvanayagam D.
30-2/- Thiruvalluvar Street,
Kamarajapuram, Pattabiram,
Chennai - 600 072.
14. Dharani K.
16-5/- Kadumpadi,
Nagammankoil Street,
Chattaram, Pattabiram,
Chennai - 600 072.
15. Dinesh kumar P.
3-10/- Thanneerkinaru Street,
Thandurai,
Pattabiram, Chennai - 600 072.
16. Durga Prasad G.
10-1/- Bajanaikoil Street,
Kavarapalayam,
Avadi, Chennai - 600 054.

4 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

17. Nasar S M A
26/- Pavalakara Street,
Mannadi, Chennai - 600 001.
18. Pandiarajan G.
2/-Ramalingapuram 1st Street,
Kamarajarnagar, Avadi,
Chennai - 600 071.
19. Ramachandran J.
4/3, Annai Abirami Nagar,
Sivan Koil Road, Avadi,
Chennai - 600 077.
20. Janova J.
44/42 Mettu Street,
Sekkadu,
Avadi, Chennai - 600 071.
21. ******
The Election Commission of India,
Represented by its Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi 110 001.
22. The Returning Officer,
Avadi Constituency,
Avadi Taluk Office,
Railway Station Road,
Avadi, Chennai - 600 054. ******

(**Respondents 21 & 22 struck off from the array of respondents in ELP 3 of 2016 as per order of this Hon'ble court dated 11/07/2017 made in OA.Nos.297 & 298 of 2017 in ELP No.3 of 2016**)

23. V.Muthusamy,
Returning Officer,
Avadi Constituency,
Avadi Taluk Office,
Railway Station Road,
Avadi, Chennai 600 054.
24. Muthu,
DRO Cum Election Nodal Officer for Avadi and
Poonamallee Constituency, Collectorate Office,
Tiruvallur.

...Respondents

This Election Petition praying that this Hon'ble Court be pleased to a) declare the election of the 1st Respondent to the No.006 Avadi Assembly Constituency in Tamil Nadu on 19.05.2016 as illegal and void b) declare the Petitioner as being elected to the No.006 Avadi Assembly Constituency in Tamil Nadu c) direct the 1st Respondent to pay the cost of the petition to the Petitioner.

The Election Petition having been heard on 03/03/2023 in the presence: of Mr.P.Wilson, Senior Counsel assisted by Mr.Richardson Wilson, Advocate for M/s.P.Wilson Associates, advocates for the Election Petitioner; and of Mr.H.Karthik Seshadri, Advocate for M/s.Iyer & Thomas, advocate for the 1st Respondent; and the respondents 2 to 20, 23, 24 not appearing in person or by advocate; and upon reading the Election Petition, Affidavit of S.M.Nasar and counter affidavit of Pandia Rajan K filed herein and the evidence adduced herein and the exhibits marked thereon; this court having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates and

The court made the following order:-

The petitioner challenges the declaration of the first respondent as the successful candidate in the Elections for the State Legislature held on 16.05.2016. The first respondent was declared as the successful candidate and the margin of difference was about 1395 votes. The petitioner seeks a declaration that the election of the first respondent to No.6.Avadi Assembly Constituency in the elections held on 19.05.2016 as illegal and void and consequentially declare the petitioner as the elected candidate.

2. The grounds on which the petitioner seeks the above declaration are that the first respondent has indulged in corrupt practices and other electoral offences viz., non-disclosure of actual expenses, bribery, promotion of hatred and enmity on the grounds of caste, transportation of voters, making false statements against the petitioner, use of official machinery for election purposes, etc. The petitioner also claims that the election officials have indulged in several irregularities, viz., failure to re-verify the postal ballots, discrepancies in Form 17-C and announcement about the Prime Minister, congratulating the Former Chief Minister J.Jayalithaa.

3. The substantive allegations in the petition are that the first respondent has indulged in corrupt practices by bribing voters and failing to disclose the actual expenses. There has been an improper rejection of votes. Appeals have been made to the voters on communal lines, voters have been transported to the booth on the polling day, there has been an excess expenditure of about Rs.28,00,000/-, and Government Servants have been engaged for campaigning. The first respondent has paid for advertisement / through digital media like bulk emails, SMS, whatsapp messages, voice calls etc., and those expenses have been suppressed in the returns filed before the Special Observer.

4. It is also claimed that the first respondent has brought thousands of men and women from his native place, viz. Virudhunagar and those persons were staying in rented accommodation during the period of campaign. It is alleged that they were completely taken care of by the first respondent and the expenditure incurred has been suppressed. It is also claimed that the first respondent had not shown

the expenses incurred by him in conduct of Rallies on 28.04.2016 and Go Green Marathon on 30.04.2016, expenses incurred in paid interviews, expenses incurred in advertisements in Newspapers, campaign expenditure incurred by engaging two-wheelers, three-wheelers, and four-wheelers were not reflected in the expenditure statement which would, according to the petitioner, amount to corrupt practice under the provisions of Section 123 of the Representation of People Act. It is also claimed that the first respondent's men had distributed 500 rupee notes to the voters and were caught red handed. On the above allegations, the petitioner seeks a declaration that the election is void.

5. The first respondent alone is contesting the petition. He has filed a counter denying all the allegations made in the petition, it is claimed that the entire petition is based on surmises and conjunctures. The claims / made regarding corrupt practices or failure on the part of the officers concerned are unsubstantiated statements lacking in material. The claim that circulation of booth slips door to door along with letter containing the photograph and the two-leaf symbol is denied. It is claimed that those letters were circulated only as the part of the campaign and the claim that four lakh copies of such letters were circulated among the voters in the constituency is false. The first respondent would also claim that he had submitted a true and proper account to the Election Officer and the same has been approved by the Election Officer. Therefore, unless the petitioner is able to establish suppression of actual expenses incurred, the first respondent cannot be held guilty of corrupt practices.

6. The claim that 100 pandals were erected in the constituency was also denied. While reiterating that the actual expenses incurred have been properly accounted for and the true and fair statement has been submitted to the officials, the first respondent would claim that he had not hired 500 vehicles for campaign between 28.04.2016 and 14.05.2016. Apart from denying each and every one of the allegations made in the Election Petition regarding the corrupt practices and non-disclosure, the first respondent has also pointed out that the Marathon that was held on 30.04.2016 was held by an apolitical organization and as a candidate, the first respondent had participated in the said Marathon. It is also claimed that the petitioner was also invited for the said Marathon. The claim that paid interviews and paid news was inserted in various Newspapers is also denied. The claim that one Krishnamurthy and Shankar were actively distributing money to voters at Kaaduvetti Area, on the instructions of the first respondent is also denied and it is pointed out that registration of FIRs by themselves would not amount to proof of commission of offence.

7. On the above pleadings, the following issues were framed by this Court:

i. Whether the election of the first respondent from No.6, Avadi Assembly Constituency, Tamil Nadu for the 15th Tamil Nadu Legislative Assembly, 2016 is liable to be declared illegal and void on the ground of corrupt practice within the meaning of the Representation of People Act, 1951?

ii. Whether the first respondent and his agents, under the consent and instructions of the first respondent, had committed

corrupt practices, including bribery of voters and offering illegal gratification, during the elections for No.6, Avadi Assembly Constituency, Tamil Nadu?

iii. Whether the first respondent has exceeded the permitted election expenditure in contravention of Rule 90 of the Conduct of Election Rules, 1961?

iv. Whether the first respondent has failed to submit true and correct accounts as per Section 77 of the Representation of People Act, 1951 with regard to the election expenditure incurred by him and his agents, inter alia, including the expenditure incurred for holding a Rallies; Go Green Mini Marathon; paid interviews and advertisements in print and electronic media and campaigning through various modes of transport?

v. Whether the first respondent is guilty of misuse of the Government machinery during the Campaign in violation of the law and if so, whether such misuse had vitiated the election process?

vi. Whether the first, respondent conspired with respondents 23 and 24 and brazenly manipulated the EVM Machines to favour the first respondent?

vii. Whether the petitioner is entitled to be declared as elected to No.6, Avadi Assembly Constituency, Tamil Nadu?

viii. Whether the Returning Officer has acted in accordance with law?

ix. To what other relief is the petitioner entitled to?

8. In support of the claim made in the petition, P.Ws.1 to 8 were examined on the side of the petitioner and the first respondent was examined as R.W.1. While exhibits P1 to P48 were marked on the side of the petitioner, Ex.R1 was marked during the cross-examination of P.W.1 and Ex.R2 was marked during the cross-examination of P.W.7.

9. I have heard Mr.P.Wilson, learned Senior Counsel assisted by Mr.Richardson Wilson for M/s.P.Wilson Associates, appearing for the petitioner and Mr.H.Karthik Sheshadri, learned counsel appearing for M/s.Iyer & Thomas for the first respondent. Respondents 21 and 22 were struck off in the array of parties by order dated 11.07.2017 and Respondents 2 to 20, 23 and 24 were absent.

10. Now that the period of office has expired, the second prayer in the petition, viz. to declare the petitioner as the elected candidate becomes redundant. Since allegations of corrupt practices have been made, which if found true, would have the effect of disqualifying the first respondent from contesting future elections for a certain period we will have to necessarily decide as to whether the petitioner has established that the respondent is guilty of corrupt practices.

Issue No.1:

11. In the above said factual backdrop, I will consider the issues independently. Issue No.1 being a general issue will have to be dealt with as a last issue.

Issue No.2:

12. The allegations of corrupt practices made in the petition are as follows:

12.1. The first of them being bribery for which reliance is placed on the fact that 500 rupee notes were found in two booklets that were abandoned by certain persons in Kaaduvetti Area. Sending of SMS for free recharge, supply of T-shirts in Marathon, inducement of voters by offering jobs. While Section 100(b) of the Representation of People Act 1951, empowers this Court to declare an election to be void, if the returned candidate is found guilty of corrupt practices, the term 'Corrupt Practice' itself has been defined under Section 123 of the Act. The wholesome reading of Section 123 of the Act, would show that it is not only distribution of money to the voters but several other violations or failures to comply with certain provisions of the Act, would also amount to corrupt practices.

12.2. As I have already pointed out the corrupt practices that are alleged are bribery that is distribution of cash to others, sending of SMS for free recharge, distribution of T-shirts for Marathon, inducement of voters for offering jobs, non-disclosure of expenses relating to

- (i) printing of family letters and booklets;
- (ii) erection of pandals;
- (iii) engagement of vehicles for campaigning;
- (iv) Motor- cycle rally;
- (v) Public Meetings;
- (vi) Flags;
- (vii) Cutouts, hoardings and banners;
- (viii) Street side dances;
- (ix) Paid advertisements;
- (x) Employing of persons from Virudhunagar for campaigning;
- (xi) Promoting hatred and enmity on the grounds of caste;
- (xii) Transportation of voters;
- (xiii) Absences of the names of the printers and publishers in the campaign material;
- (xiv) Paintings and writings on walls;
- (xv) Use of official machinery; and
- (xvi) Making false statement against the rival candidate viz., the petitioner.

12.3. In order to prove the above allegations, the petitioner had examined P.Ws. 1 to 8 and had produced almost 48 documents. The thrust of the claim of the petitioner regarding distribution of cash to voters is Ex.P4 FIR and Ex.P5 complaint and P.W.1 has also spoken about the same. Exs.P39, P41, P42, P43 and P44 are

the video recordings that have been produced. P.W.3 has been examined to speak about the distribution of cash in Kaaduvetti area and Ex.P8 is the supporting FIR. Mr.Wilson, learned Senior Counsel appearing for the petitioner would rely heavily upon the video recordings which depict the presence of two 500 rupee notes in one of the pamphlets that were left by a group of persons who had allegedly indulged in distributing cash to the voters would prove beyond doubt that the first respondent had distributed cash to voters. Ex.P4 is the First Information Report registered on the information given by the Election Officer Mr.Muthusami.

12.4. A reading of the FIR shows that upon information, the flying squad visited the area and found that the Motor Vehicle bearing Registration No.TN 12 L 4667 was parked there and in the said vehicle there were 65 booklets of All India Anna Dravida Munnetra Kazhagam party and there were two 500 rupee notes kept inside two such pamphlets. Ex.P5 is the complaint given by one Ravikumar, the said Ravikumar has not been examined and it is not known as to what action has been taken on the basis of the said complaint which is dated 07.05.2016. The evidence of both P.W.1 and P.W.2 regarding distribution of cash is only hearsay evidence, therefore the same cannot be taken as a conclusive proof. ;

12.5. As far as distribution of cash to voters is concerned, the burden of proving such distribution is on the petitioner. The Hon'ble Supreme Court in ***Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi***, reported in **1987 (Supp) SCC 93**, has held that the burden of proving corrupt practices is on the petitioner, who alleges such corrupt practices. The Hon'ble Supreme Court has also pointed out that since allegations of corrupt practices were in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet.

12.6. As regards distribution of cash to voters, the evidence that is available is Exs.P4 and P8 the FIRs, the evidence of Ex.P39 the Video Recording and the evidence of P.Ws.1 and 2. As regards the evidence of P.W.1, the entire evidence is only hearsay and he was not present at the scene of occurrence. No doubt a few booklets and two 500 rupee notes were seized on 11.05.2016 and there is no evidence to show that there was actual distribution of cash to the voters. As laid down by the Hon'ble Supreme Court, allegations relating to corrupt practices being criminal nature require proof beyond doubt. In the absence of such proof beyond doubt, it is not possible to conclude that the first respondent has actually engaged in distribution of cash to voters.

12.7. The evidence of P.Ws.2 and 3 with reference to distribution of cash is also not impressive. The available evidence both oral and documentary including the video recordings would at best establish that two 500 rupee notes were seized from an unclaimed vehicle belonging to one Ramachandrababu along with certain pamphlets or propaganda material used by the first respondent in the election campaign. That by itself, in my considered opinion, cannot be held to be sufficient enough to conclude that the first respondent has indulged in actual distribution of cash to the voters in the constituency. The first respondent in his evidence has categorically denied the suggestions to the effect that he had a direct hand in distribution of cash to the voters.

12.8. In the light of the above discussion, **Issue No.2** is answered against the petitioner.

Issue Nos.3 and 4:

13. This issue relates to incurring of expenses over and above the permitted limit. The petitioner would claim that the first respondent has incurred expenditure under various heads, which has not been disclosed and if there had been a proper disclosure of the entire expenditure, the total expenditure of the first respondent for the election would exceed the ceiling of Rs.28,00,000/-. It is contended by the petitioner that certain expenses which have not been disclosed or accounted for if disclosed would exceed a sum of Rs.28,00,000/- and therefore, there has been a deliberate non-disclosure of the expenses.

13.1. As regards non-disclosure of expenses or excess election expenditure, the learned Senior Counsel for the petitioner would contend that the cost of printing of the letters with booth slips which have been marked as Ex.P1 and the pamphlets which have been marked as Ex.P2 has not been accounted for. It is also claimed that the expenses incurred in the conduct of the Go Green Marathon held on 30.04.2016 and the expenses incurred in the conduct of the Motor Cycle rallies were not properly accounted for, which would, according to the petitioner, amount to suppression of actual expenses over and above the permitted limit, which again would be a corrupt practice under Section 123(6) of the Representation of People Act.

13.2. In support of the said contention, Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would rely upon the judgment of the Hon'ble Supreme Court in **Shri Kanwar Lal Gupta v. Amar Nath Chawla and Others**, reported in (1975) 3 SCC 646, wherein the Hon'ble Supreme Court had held that a reasonable interpretation would be, to include the expenditure incurred by the political party, who sponsors the candidate as well as the friends and well-wishers of the candidate, in the total expenditure and if any other interpretation is suggested, it would do violence to the provisions of the Act and render the very fixation of the limit of expenditure otiose.

13.3. Mr.H.Karthik Seshadri, learned counsel appearing for the first respondent would draw my attention to the accounts submitted by the first respondent which have been marked as Ex.P48, to contend that the expenses incurred in printing of Ex.P1 letters have been shown in the accounts as cost incurred in printing family letters. He would also contend that the Marathon was organized by NGO and it was not in the course of the campaign of the first respondent, the first respondent was only invited as a contesting candidate. The expenses incurred by the first respondent have been verified by the Election Officers and the same has been certified and nothing amiss has been found.

13.4. Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would also draw my attention to the judgment of the Hon'ble Supreme Court in **Common Cause (A Registered Society) v. Union of India and others**, reported in (1996) 2 SCC 752, to underscore his contention that the contestant must make a true and faithful declaration of the expenditure incurred by him and the party which has nominated him.

13.5. Contending Contra, Mr.H.Karthik Seshadri learned counsel appearing for the first respondent would submit that mere non-disclosure of the expenditure would not amount to corrupt practice. He would further submit that in ***Dhartipakar Madan Lal Agarwal v. Rajiv Gandhi***, reported in **1987 (Supp) SCC 93**, the Hon'ble Supreme Court had held that any voluntary expenses incurred by a political party, well-wishers, sympathizers or association of persons would not fall within the mischief of Section 123(6) of the Act. He would also submit that in order to bring a non-disclosure as a corrupt practice as contemplated under Sections 77 and 123(6), it is necessary for the petitioner to plead requisite facts showing authorisation or undertaking of reimbursement by the candidate or his election agent. Relying heavily upon the said judgment, the learned counsel would contend that a mere omission to declare certain expenses incurred by some other person would not amount to corrupt practice.

13.6. The learned counsel for the first respondent would also draw my attention to the judgment of the Hon'ble Supreme Court in ***Kamalnath v. Sudesh Verma***, reported in **(2002) 2 SCC 410**, wherein the Hon'ble Supreme Court had held that mere non-disclosure of the expenditure will not amount to corrupt practice, unless it is shown that the expenditure incurred is over and above the prescribed limit and the excess expenditure must be incurred by the candidate or by any person authorised by the candidate or his election agent. In other words, an expenditure incurred by a third person who is not authorised by a candidate or who is not an election agent of the candidate, will not be a corrupt practice within the ambit of Section 123(6) of the Act.

13.7. A reading of the above judgment of the Hon'ble Supreme Court would show that in order to make non-disclosure a corrupt practice, the petitioner who seeks to establish corrupt practice should be able to prove that the expenditure was incurred by a person authorised and the expenditure if included in the total expenditure of the candidate would exceed the limit prescribed. No doubt considerable effort has been made by the petitioner to establish the above two key factors, unfortunately for the petitioner, the link between the person who is said to have incurred expenditure and the first respondent has not been established. While the petitioner claims that Exs.P1 and P2 had been distributed throughout the constituency and puts the expenses incurred by the first respondent for having printed exhibits P1 and P2 at Rs. 16,90,76,610/-, there is no evidence to show that these expenses have been actually incurred. The figure that has been given is based on the assumption and surmises and they cannot form the basis of the conclusion to the effect that the first respondent has in fact incurred expenses over and above the prescribed limit and non-disclosure would amount to corrupt practice, in order to enable this Court to declare the election as invalid.

13.8. In the light of the above discussion, both Issue Nos. 3 and 4 are answered against the petitioner.

Issue No.5:

14. Though this issue has been framed, on the basis of the pleadings there is no evidence to support the contention of the petitioner, none of the witnesses have spoken about any misuse of official machinery. The counsel for the petitioner has also not urged this ground very seriously. Hence Issue No.5 is answered against the petitioner.

Issue No.6:

15. This issue relates to the alleged manipulation of EVM Machines. Here again there is no evidence in support of the same.

Issue No.7:

16. This issue does not survive in view of the lapse of time.

Issue No.8:

17. This issue relates to the conduct of the Returning Officer Mr.P.Wilson, learned Senior Counsel appearing for the petitioner would rely upon the directions contained in the hand book for Returning Officers, particularly Clause 15.15.5.1 which reads as follows:

“In case the victory margin is less than total number of postal ballots received then there should be a mandatory re-verification of all postal ballots. In the presence of Observer and the RO all the postal ballots rejected as invalid as well as the postal votes counted in favour of each and every candidate shall once again be verified and tallied. The observer and the RO shall record the findings of re-verification and satisfy themselves before finalizing the result. The entire proceeding should be videographed without compromising the secrecy of ballot and the video-cassette/CD should be sealed in a separate envelope for future reference.”

17.1. Admittedly, there was no such recounting. The question is whether non-compliance with certain directions or with certain best practices suggested in the manual for Returning Officers could be a ground for declaring the Election as void. The learned Senior Counsel would rely upon the judgment of the Hon'ble Supreme Court in **Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari and another**, reported in (2014) 5 SCC 312, to contend that the directions Contained in the hand book of the Election Officers do have a statutory force and any violation thereof would lead to the election being vitiated.

17.2. The learned counsel appearing for the first respondent, on the other hand would contend otherwise and draw my attention to the judgments of the Hon'ble Supreme Court in **Ramesh Rout v. Rabindra Nath Rout**, reported in (2012) 1 SCC 762; and **Jitu Patnaik v. Sanatan Mohakud and Others**, reported in (2012) 4 SCC 194. He would also draw my attention to the judgment of the Hon'ble Supreme Court in **N.Chinnasamy v. K.C.Palanisamy and Others**, reported in (2004) 6 SCC 341, to contend that the recounting cannot be ordered for the mere asking.

17.3. In **Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari and another**, the Hon'ble Supreme Court was concerned with the instructions contained in the hand book for Returning Officers particularly instruction No. 16 which dealt with rejection of ballots. In that context, the Hon'ble Supreme Court at para 32 of the said judgment observed that instructions contained in the hand book for Returning Officers are binding on the Returning Officers. The question as to whether violation of such instructions by the Returning Officers particularly with reference to recounting

of votes would vitiate the election was gone into by the Hon'ble Supreme Court. No doubt, the judgment in **Arikala Narasa Reddy**, is that of a Larger Bench, but I find that the judgment in **Jitu Patnaik v. Sanatan Mohakud and Others**, would be more apt and relevant on the facts of the present case.

17.4. While considering the question, as to whether, a non-compliance with a particular provision in the handbook would lead to vitiating the elections, the Hon'ble Supreme Court after referring to the judgment of **Ramesh Rout v. Rabindra Nath Rout**, held that mere non-compliance with a direction contained in the manual will not offer a cause of action for declaring the election of the returned candidate invalid under Section 100 (1)(d)(iv). The relevant portion of the said judgment reads as follows:

38. *In a recent decision of this Court in Ramesh Rout V. Rabindra Nath Rout, one of us (R.M. Lodha, J.) speaking for the Bench observed as follows:*

“14..... The handbook, as it states, has been designed to give to the Returning Officers the information and guidance which they may need in performance of their functions; to acquaint them with up-to-date rules and procedures prescribed for the conduct of elections and to ensure that there is no scope for complaint of partiality on the part of any official involved in the election management. We shall refer to the relevant provisions of the handbook a little later. The handbook does not have statutory character and is in the nature of guidance to the Returning Officers”.

39. *In view of the above legal position that the Handbook does not have statutory character and there being no non-compliance with the provisions of the Constitution or the 1951 Act or any rules framed or orders made under 1951 Act by the returning officer insofar as death of an independent candidate was concerned, the averments made in paragraph 7(A) of the election petition do not furnish any cause of action for declaring the election of the returned candidate to be void under Section 100(1)(d)(iv). The High Court seriously erred in holding otherwise and ordering trial of the election petition on the pleadings set out in paragraph 7(A).*

17.5. In **Ramesh Rout v. Rabindra Nath Rout**, the Hon'ble Supreme Court had held that the handbook issued to the Returning Officer does not have a statutory corrupt act and. therefore, a mere failure to adhere to the directions contained in the handbook without any further evidence as to the effect of such failure cannot have the effect of vitiating the elections. Therefore, the failure on the part of the Returning Officer to have a recount of the postal ballots cannot be a ground to vitiate the elections.

17.6. I am therefore, constrained to conclude that even though there is a failure on the part of the Returning Officers to have conducted a recount of the postal ballots, the same will not offer a ground to the petitioner to have the election declared as void. Hence Issue No.8 is answered against the petitioner.

18. In view of the answers to Issue Nos. 2 to 8, Issue No.1 will have to be necessarily answered against the petitioner. The Election Petition therefore will stand **dismissed**. However, in the circumstances there shall be no order as to costs.

WITNESS, THE HON'BLE MR. JUSTICE SANJAY VIJAYKUMAR GANGAPURWALA, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 5TH DAY OF JUNE 2023.

Sd./-
ASSISTANT REGISTRAR
Original Side - II

//Certified to be true copy//
Dated at Madras this the 20th day of June 2023.

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

PK

13/06/2023

Election Petition No.3 of 2016

ORDER DATED: 05/06/2023

THE HON'BLE MR. JUSTICE
R. SUBRAMANIAN

FOR APPROVAL: 19/06/2023

APPROVED ON: 19/06/2023

Copy to:-

1. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi.
2. The Returning Officer,
Avadi Constituency,
Avadi Taluk Office,
Railway Station Road,
Avadi, Chennai - 600 054.

List of the witnesses examined on the side of the Petitioner:

P.W.1	S.M.Nasar
P.W.2	Asim Raja
P.W.3	N.E.K.Murthi
P.W.4	K.P.Puratchidasan
P.W.5	Vinoth Kumar
P.W.6	S.Murthy
P.W.7	R.Vijaya Raghavan
P.W.8	V.Muthusamy

List of Exhibits marked on the side of the petitioner:

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
1.	Ex.P1	Original letter with booth slip	—
2.	Ex.P2	Original booklet	
3.	Ex.P3	Original Envelop	
4.	Ex.P4	FIR in Crime No.806 of 2016 at T- 6 -6 Avadi Police Station.	11.05.2016
5.	Ex.P5	Complaint given by Advocate Mr.Ravikumar to the Returning Officer, Avadi Constituency	07.05.2016
6	Ex.P6	Complaint given by Advocate Mr.Ravikumar to the Returning Officer, Avadi Constituency	11.05.2016
7	Ex.P7	Letter from Returning Officer to Inspector of Police, Avadi	07.05.2016
8	Ex.P8	FIR in Crime No.538 of 2016 at T-5 Thiruverkadu Police Station.	14.05.2016
9	Ex.P9	News Article of Income Tax raid in AIADMK Ward Secretary Munusamy's House	15.05.2016
10	Ex.P10	News Article regarding first respondent participating in and leading the mini Marathon	01.05.2016
11	Ex.P11	Advertisement published by the first respondent	30.04.2016
12	Ex.P12	Screen shot of whatsapp message sent by AIADMK workers	15.05.2016
13	Ex.P13	Complaint given by Advocate Mr. K.P. Puratchidasan to Returning Officer, Avadi Constituency	9.05.2016

<i>Sl. No.</i>	<i>Exhibits</i>	<i>Description of Documents</i>	<i>Date</i>
14	Ex.P14	News Article about the first respondent	11.05.2016
15	Ex.P15	Copy of quarter page size colour advertisement given by the first respondent	30.04.2016
16	Ex.P16	News Article of first respondent giving false promise to set up I.T. Hub	14.05.2016
17	Ex.P17	Copy of quarter page size colour advertisement given by the first respondent	15.05.2016
18	Ex.P18	Screen Shot of memes	26.04.2016
19	Ex.P19	Legislative Assembly Result 2016, Avadi Constituency	
20	Ex.P20	Notification of the Election Commission issued by the 21st respondent.	04.03.2016
21	Ex.P21	Complaint given by S.M.Nasar to District Election Officer, Avadi Constituency	19.05.2016
22	Ex.P22	Representation given by S.M.Nasar requesting re-counting/re-verification of Postal votes	24.05.2016
23	Ex.P23	List of counting Supervisors and counting Assistants in Avadi Constituency	
24	Ex.P24	Final Result Sheet in Form 20 of the Avadi Assembly Constituency	
25	Ex.P25	Names and Party affiliation of candidates in Avadi Constituency Form 7-A	
26	Ex.P26	Form 17-C - Part 185	16.05.2016
27	Ex.P27	Form 17-C - Part 187	16.05.2016
28	Ex.P28	Form 17-C - Part 183	16.05.2016
29	Ex.P29	Form 17-C-Part 184	16.05.2016
30	Ex.P30	Form 17-C - Part 186	16.05.2016
31	Ex.P31	Photo of the first respondent in a Poster	16.04.2016
32	Ex.P32	Certificate	
33	Ex.P33	Photo of wall painting done by the AIADMK	
34	Ex.P34	Certificate	
35	Ex.P35	Photo of the Dance Group hired by the first respondent	
36	Ex.P36	Certificate	
37	Ex.P37	Photo of 4000 Two Wheelers participating in a rally	
38	Ex.P38	Certificate	

TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY 17

Sl. No.	Exhibits	Description of Documents	Date
39	Ex.P39	Digital Video Disk	
40	Ex.P40	Certificate	
41	Ex.P41	Digital Video Disk	
42	Ex.P42	Certificate	
43	Ex.P43	Digital Video Disk	
44	Ex.P44	Certificate	
45	Ex.P43	Digital Video Disk	
46	Ex.P44	Certificate	
47	Ex.P47	Proceedings in Na.Ka.No. 1630/2016/E1 11.05.2016 from the Returning Officer, Thiruvallur, to the Inspector, Avadi Police Station	11.05.2016
48	Ex.P48	Register for maintenance of day today accounts of election expenditure by contesting candidates	

List of the witnesses examined on the side of the respondents:

R.W. 1 K. Pandia Rajan

List of Exhibits marked on the side of the respondents:

Exhibits	Description of Documents	Date
Ex.R1	FIR in Crime No.805 of 2016	11.05.2016
Ex.R2	FIR in Crime No.812 of 2016	15.05.2016

Sd./-
ASSISTANT REGISTRAR
Original Side - II

(By Order)

MALAY MALLICK,
Principal Secretary,
Election Commission of India.

Secretariat,
Chennai-600 009,
19th September, 2023.

SATYABRATA SAHOO,
Chief Electoral Officer and
Principal Secretary to Government,
Public (Elections) Department.