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GOVERNMENT OF TAMIL NADU
2009

[Regd. No. TN/CCN/467/2009-11.
[Price : Rs. 12.00 Paise.



No. 37]

CHENNAI, TUESDAY, FEBRUARY 10, 2009

Thai 28, Thiruvalluvar Aandu-2040

Part V—Section 4

Notifications by the Election Commission of India.

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA.

JUDGEMENT OF THE HIGH COURT OF JUDICATURE AT MADRAS
IN ELECTION PETITION No. 2 OF 2006.

No. SRO G-3/2009.

The following notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 22nd January 2009 [2nd Magha, 1930 (Saka)] is published:—

No. 82/TN-LA/(2/2006)/2009.—In pursuance of Section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Madras, dated 2nd December 2008 in Election Petition No. 2 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Tuesday, the 2nd day of December 2008.

THE HON'BLE MR. JUSTICE M. JEYAPPAUL

ELECTION PETITION No. 2 OF 2006

ELECTION PETITION No. 2 OF 2006 :

P.H. Paul Manoj Pandian,
120, Govindaperi, Karisalpatti,
Thiruviruthanpulli Post,
Cheranmahadevi, Tirunelveli District—*Petitioner*

Versus

1. Mr. P. Veldurai,
S/o. M. Papanasa Perumal,
5/45-B, Kanganakulam,
Thiruviruthampulli,
Cheranmahadevi (Via),
Tirunelveli District.
2. The Returning Officer, (**)
220. Cheranmahadevi Assembly Constituency,
R.D.O. Cheranmahadevi,
Tirunelveli District.

(**) R2 has been struck off from the
array of respondents as per the order
of this Hon'ble Court, dated 29-9-2006
in O.A.No. 771 of 2006—*Respondents*.

Election Petition praying that this Hon'ble Court be pleased to:—

(a) To declare the Election of the returned candidate namely the 1st Respondent from 220-Cheranmahadevi Assembly Constituency in the Election held on 8-5-2006 in which results were declared on 11-5-2006 to the Tamil Nadu Legislative Assembly as *null and void*.

(b) Direct the Respondents to pay the costs of the petition.

The above Election Petition coming on for hearing before this Court on various dates and finally on 29-10-2008 and upon hearing the arguments of Mr. T.V. Ramanujam, Senior Advocate for M/s. P.N. Prakash and others and of

Mr. B.S. Gnanadesikan, Senior Counsel, Counsel for 1st Respondent and the 2nd Respondent has been struck off from the array of respondents and upon reading the Election Petition filed by the Election Petitioner and Counter Affidavit filed by the 1st Respondent and other exhibits therein referred to and upon perusing the evidence adduced therein, and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said Advocates for the parties hereto, THE COURT MADE THE FOLLOWING ORDER:—

The petitioner, who lost the General Election to Cheranmahadevi Assembly Constituency filed this petition as against the returned candidate, the respondent herein and the Returning Officer, Cheranmahadevi, seeking for a declaration that the election of the returned candidate, the respondent herein from Cheranmahadevi Assembly Constituency in the election held on 8-5-2006 to the Tamil Nadu Legislative Assembly as *null and void*.

2. Subsequently, the Returning Officer, Cheranmahadevi Assembly Constituency, who was figuring as second respondent, has been struck off from the array of respondents, *vide* Order, dated 29-9-2006 in O.A.No. 771 of 2006.

3. The Returning Officer, Cheranmahadevi, in pursuance of the notification issued by the Government of Tamil Nadu on 3-3-2006, called for nominations for Cheranmahadevi Assembly Constituency. The date of filing of nominations commenced on 13-4-2006 and the last date for filing nomination was fixed on 20-4-2006. The date of scrutiny was fixed on 21-4-2006 for the election that was to be held on 8-5-2006. The petitioner and the respondent filed nominations on 17-4-2006 and the same was accepted by the Returning Officer, Cheranmahadevi. The respondent was declared elected on 11-5-2006.

4. The sum and substance of the averment found in the petition is as follows:—

The respondent, who is the returned candidate, was disqualified to be chosen to fill any seat in the Legislative Assembly of the State of Tamil Nadu under Section 9A read with section 100(1) (a) of the Representation of the People Act, 1951 as the respondent had a subsisting contract with the Government of Tamil Nadu on the date of election and also subsequently. The contractors shall be permitted to terminate their subsisting contract only when persons acceptable to the Chief Engineer are available and are willing to enter into a contract to execute the works under the existing terms and conditions without any loss to the Government as per G.O.Ms. No. 4682, Public Works Department, dated 16-11-1951. There should be a final and complete settlement of rights and liabilities between the Government and the existing contractor. The respondent is having subsisting contracts as a registered contractor with the Tamil Nadu State Highways Department regarding the works with the Divisional Engineer (H), NABARD and Rural Roads, Nagercoil. There are also subsisting contracts the respondent has with the Divisional Engineer, Tirunelveli. Those contracts have not been terminated till date as there is no contractor entrusted to do the balance work which is pending execution by the respondent. The petitioner submitted

objections before the Returning Officer seeking to reject the nomination of the respondent. But, the Returning Officer rejected the petitioner's objections and improperly accepted the nomination of the respondent by misconstruing the objections. The subsisting contracts the respondent had were not terminated in accordance with G.O.Ms. No. 1682, Public Works Department, dated 16-11-1951. The respondent was under the obligation to perform the contracts since no acceptable person as on the date of the nomination, scrutiny and election is available to perform the balance works without any loss to the Government. The respondent was removed from the list of State Level Contracts maintained by the Superintending Engineer, Highways, Project Circle, Madurai. But, the latter has stated that pending works must be terminated in terms of the aforesaid Government Order and termination of contracts must be obtained from different Highways Division. Removal of the name of the respondent from the list of contractors cannot be construed as termination of contracts as long as the contracts are not specifically terminated in terms of the aforesaid Government Order. The Chief Engineer has clarified that no substitute, has been accepted as required under the aforesaid Government Order even as on 20-6-2006 only when the substitute contractor is accepted, would the contract come to an end by mutual consent. There is no full and final settlement between the respondent and the Government as on date. Therefore, the petitioner seeks for the aforesaid declaration.

5. The respondent has averred to in the counter affidavit filed by him as follows:—

The respondent was not having any subsisting contract as on the date of his nomination as well as on the date of scrutiny of the nomination paper. It is denied that the procedures contemplated under the said Government Order have to be strictly followed before termination of the contract for contesting the election. Even assuming without conceding that the conditions enumerated in the said Government Order is not followed, that will not nullify the termination of the contract, if any, made. The Divisional Engineer (Highways), NABARD and Rural Roads, Nagercoil terminated the contract on 17-4-2006 and freed and forfeited the deposits available with the Divisional Engineer (Highways), NABARD and Rural Roads, Nagercoil for crediting into Government account. No agreement was executed by the respondent with the Divisional Engineer (Highways), NABARD and Rural Roads, Tirunelveli and the work order was cancelled. Therefore, there is no question of any subsisting contract as far as the works relating to Tirunelveli Division is concerned. Only a procedure meant to be followed by the subordinate officials is contemplated in G.O.Ms.No. 4682, Public Works Department, dated 16-11-1951. Even assuming without conceding that the said Government order was not followed, that will not nullify the termination order issued by the Divisional Engineer (Highways), NABARD and Rural Roads, Nagercoil on 7-4-2006. Even otherwise, the said procedure has been followed while terminating the contract. The respondent is no longer a registered contractor with the Tamil Nadu State Highways Department. Nor does he have any subsisting contract in respect of the works referred to in the Election Petition. The balance work not executed by the respondent was completed by the substitute contractor S.Rajagopalan on the

same terms and conditions in which the respondent agreed to execute the work initially without any loss to the Government. It is denied that there was no alternative contractor nominated by the respondent. Even though the disqualification has to be reckoned only on the date of scrutiny, even on the date of nomination, there was no disqualification as far as the respondent is concerned. The appointment of the substitute contractor on the same terms and conditions is the job of the department. Infact, no payment was made to the respondent by the Government either by cash or by cheque after 17-4-2006. Therefore, the respondent would pray that the Election Petition may be dismissed.

6. The following issues were framed for determination:—

“1. Whether there was subsistence of contract in favour of the returned candidate and whether the election petitioner has proved the same.

2. Whether there are any other grounds to set aside the election.

3. Even if there is a termination as claimed by the returned candidate, whether it was in accordance with G.O. Ms. No. 4682, PWD, dated 16-11-1951.”

7. On the side of the petitioner, P.W-1 to P.W-4 were examined and Exhibits P1 to P21 were marked. On the side of the respondent, R.W.1 and R.W.2 were examined and Exhibits R-1 to R-21 were marked. Exs.C1 to C32 were marked at the instance of the court.

8. Issues 1 to 3:— Submission by Senior Counsel for the Election Petitioner:—

The contract of the respondent with the Government was subsisting on the date of filing nomination as the same was not terminated in accordance with G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951. The aforesaid Government Order issued by the Governor of the State, in exercise of his executive powers under Articles 154 and 166 of the constitution of India, is a law within the meaning of Article 13 (3) (a) of the Constitution of India. The respondent cannot put forth the case beyond the scope of the pleadings that he has terminated the contract by abandonment or by breach in order to contest the elections. The respondent and the Divisional Engineer, who was examined as RW-2 cannot say that the contract was terminated between themselves as per Ex.P-17 and that therefore, there was no subsisting contract. The contract dated 29-4-2005 (Ex.C-11) was entered into by the respondent with the Superintending Engineer, Tirunelveli who was examined as PW-4. As no contract was entered into by the respondent with the Divisional Engineer, who is admittedly an Officer subordinate to the Superintending Engineer, the Superintending Engineer has no authority to cancel the same. RW-2, who passed the order of termination, Ex.P17, has categorically admitted that the power to cancel a contract entered into by the State with the contractor who proposed to contest the election vests with the Chief Engineer. PW3, the Superintending Engineer Projects Circle, Madurai has also specifically stated that the competent authority for approving the substitute contractor for the purpose of cancellation of the contract as per G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951 is only the Chief Engineer, NABARD and

Rural Roads. A substitute contractor acceptable to the Chief Engineer should be fixed before the contract is mutually terminated as per the aforesaid Government Order. The Chief Engineer has accepted the substitute contractor P. Rajagopal as per the recommendation of the superintending Engineer only on 26-6-2006, well after the result of the election was declared on 11-5-2006. The fresh agreement with P. Rajagopal was entered into only on 4-7-2006 as evidenced by Ex.C-16. The rights and liabilities of the respondent with the Government were not settled even upto the date of election that was held on 8-5-2006. A sum of Rs. 2,02,341/- was kept in class 4 deposit as per Ex.C-29 in order to make good any loss that may be occasioned to the Government on account of the breach that may be committed by the alternative contractor Rajagopal. The respondent had the obligation to the Government for proper discharge of the work by the alternative contractor. Subsequent ratification under Ex.P-19 on 26-4-2006 by PW-4 does not cure the defect in filing the nomination by the respondent on 17-4-2006. The subsistence or otherwise of the contract should be tested from the point of law and not from the point of view of the respondent or the Divisional Engineer. RW1 and the Divisional Engineer, RW-2 had colluded to create an order in the nature of Ex.P-17. When there was no emergency, the respondent has put pressure on RW-2 to execute Ex.P-17. RW-2 should have atleast mentioned in Ex.P.-17 that the order passed by him was subject to the ratification of the superintending Engineer. The Divisional Engineer, Nagercoil, in his letter dated 17-4-2006 (Ex.P5), has admitted that the three works in question were subsisting as on 17-4-2006. Application of Rajagopal for renewing his name in the list of registered contractors was made only on 18-4-2006 and the renewal was made on 1-6-2006. The petitioner has made out a case for declaration of the election of the returned candidate as null and void.

9. Submission of Senior Counsel for the respondent:—

The respondent had no subsisting contract with the Government not only on the date of scrutiny but also on the date of nomination itself. Therefore, the respondent did not suffer disqualification under section 9A read with 100 (1) (a) of the Representation of the People Act. The respondent requested the Divisional Engineer on 10-4-2006 to terminate the contract. The contract was terminated absolutely and the security deposit was forfeited on 17-4-2006. The Superintending Engineer Project Circle, Madurai also removed his name from the list of registered contractors by his proceedings dated 12-4-2006. G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951 need not be adhered to as it is only an instruction to the Department officials. When the contract has been terminated by the Divisional Engineer, the administrative Government Order cannot nullify the said termination. The substitute contractor who was willing to do the balance work on the same terms and conditions without any loss to the Government gave consenting letter on 17-4-2006 itself and was made available as per the aforesaid Government Order. Even if there was any obligation on the part of the respondent to be discharged by making available a willing substitute contractor, the same stands discharged. The authority of the Divisional Engineer to terminate the contract was not under challenge in the Election Petition. Therefore, the petitioner cannot traverse beyond the scope of the Election Petition and project a case without

pleadings that the Divisional Engineer lacks jurisdiction to terminate the contract. No amount of evidence or submissions on the side of the petitioner can be entertained when such a material fact was not pleaded by the petitioner. As per the Government Order, the acceptance of the alternative contractor and not the termination of the contractor by the Chief Engineer is required. The Divisional Engineer has categorically denied the suggestion made to him that he has no power to terminate the contract. The further statement of the Divisional Engineer in a confused state that it is only the Chief Engineer, NABARD, Highways and Rural Roads, who has got power to cancel a contract, cannot be given much weight. Though the petitioner has raked up the contract work the respondent had in Tirunelveli Division, the same was dropped during the course of argument and he chose to confine himself to the contract work of the respondent in Nagercoil Division. The subsequent events would make it clear that the substitute contractor had successfully completed the work without any loss to the Government and certificate of completion was also issued to him. The order of termination of contract passed by the Divisional Engineer, Nagercoil was subsequently ratified by the Superintending Engineer, Tirunelveli and therefore, the ratification takes effect from the date of termination of the contract. Even otherwise, there is a termination by breach as the respondent has walked out of the contract between himself and the State. The respondent has produced documents to show that full and final settlement of the dues was already made. There is nothing on record to show that subsequent to the date of nomination, the respondent received any amount from the Government with respect to the performance of the contract. Therefore, the Election Petition deserves dismissal.

Ground not pursued:

10. In the Election Petition, the petitioner has contended that there was subsisting contract between the respondent and the Divisional Engineer, Tirunelveli with respect to .the contract work relating to Sivanarkulam-Iyanarkulam Road, Therkupatti Road and Valuthur-Senkulam Road. Specific plea was taken by the petitioner that those three contracts were not terminated and the balance work was yet to be executed. On the basis of the letter dated 10-4-2006 marked as Ex.R1, the Superintending Engineer, Tirunelveli has passed an order on 11-4-2006 marked as Ex.R3. Though the tender submitted by the respondent with respect to the work relating to Tirunelveli Division was accepted by him, the respondent had not come forward to execute any contract. Therefore, as requested by the respondent, the acceptance of the tender submitted by him relating to the work in Tirunelveli Division stood annulled. On the basis of the letter dated 12-4-2006 marked as Ex.R2, the Superintending Engineer, Projects Circle, Madurai had removed the name of the respondent from the approved contractors list. Therefore, it is found that as far as the work relating to Tirunelveli Division is concerned, the respondent had not entered into any contract with the Government and the acceptance of the tender by the Superintending Engineer, Tirunelveli was also annulled and his name was also removed by the Superintending Engineer, Projects Circle, Madurai from the list of registered contractors. In view of the above facts and circumstances, the petitioner has given up his challenge made in the

suit with respect to the contract work of the respondent relating to Tirunelveli Division.

Facts not pleaded:

11. An Election Petition shall contain a concise statement of the materials on which the petitioner bases his claim. The proceedings in Election Petitions are statutory in nature. Not substantial compliance, but, strict compliance of section 86(1) of the Act is warranted. Violations of such strict compliance would entitle dismissal of the Election Petition itself.

12. The Election Petitioner has contended in the Petition that the contract the respondent had with the Government was not terminated as per G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951 because the alternative contractor to perform the balance work introduced by the respondent was not available for acceptance to the Chief Engineer. On 17-4-2006, the date on which nomination was submitted by the respondent, there was no full and final settlement between the respondent and the Government. Therefore, the respondent incurs the wrath of disqualification as per the mandates of section 9A of the Representation of the People Act, 1951, it has been contended.

13. It is pertinent to note that the petitioner never set up a plea that there was no authority for the Divisional Engineer, Nagercoil to terminate the contract nor was any plea taken that there was collusion between the respondent and the Divisional Engineer who was examined as RW2. He has not contended in the Election Petition that the respondent mounted pressure on the Divisional Engineer, Nagercoil who yielded such pressure.

14. The respondent made a request under Ex.C18 dated 10-4-2006 to the Divisional Engineer, RW2 seeking for mutual termination of the contract. He had not expressed his intention to abandon the contract or breach the contract unilaterally both before the Returning Officer and also before this court. In the counter filed by him, the respondent has pleaded that there was termination of contract by mutual consent.

15. The Supreme Court, in MAKHAN LAL BANGAL v. MANAS BHUNIA [(2001) 2 SCC 652], has held as follows:—

“The petition may be disposed of at the first hearing if it appears that the parties are not at issue on any material question of law or of fact and the court may at once pronounce the judgment. If the parties are at issue on some questions of law or of fact, the suit or petition shall be fixed for trial calling upon the parties to adduce evidence on issues of fact. The evidence shall be confined to issues and the pleadings. No evidence on controversies not covered by issues and the pleadings, shall normally be admitted, for each party leads evidence in support of issues the burden of proving which lies on him. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The judgment, then proceeding issue-wise would be able to tell precisely how the dispute was decided.”

16. In this case, no issue was framed as to whether there was any authority for the Divisional Engineer to terminate the contract or whether there was any collusion between the respondent and the Divisional Engineer, Nagercoil or whether the order of termination of the contract passed by the Divisional Engineer, Nagercoil is the outcome of the pressure mounted by the Divisional Engineer, Nagercoil.

17. The Supreme Court in *SANTOSH YADAV v. NARENDER SINGH* [(ZOOZ) 1 SCC 160] has held as follows:—

“A civil trial more so when it relates to an election dispute, where the fate not only of the parties arrayed before the court but also of the entire constituency is at a stake, the game has to be played with open cards and not like a game of chess or hide and seek. An election petition must set out all material facts where from inferences vital to the success of the election petitioner and enabling the court to grant the relief prayed for by the petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings setting out all relevant material facts, and then cogent affirmative evidence being adduced in support of such averments, are indispensable to the success of an election Petition. An election petition, if allowed, results in avoiding an election and nullifying the success of a returned candidate. It is a serious remedy.”

18. A representative of a Constituency, who is returned successfully by the people of the constituency, is under serious challenge in an Election Petition. Therefore, the rival parties in an Election Petition are supposed to come out plainly and frankly with their grounds and defence without keeping any secret to their chest in order to spring a surprise during the course of trial.

19. This court has rightly not framed any such issues as no counter pleadings are found. Likewise, there was also no issue as to whether there was any breach of contract committed by the respondent. The evidence let in touching upon those points by the rival parties without any pleading and without any issues framed, cannot be looked into by this court. The issues framed based on the facts pleaded alone will weigh in the mind of the court to pass a judgment based on the evidence oral and documentary produced before the court.

Marshaling of evidence oral and documentary on record:—

20. PW1 is the Election Petitioner. He, of course, has deposed supporting the grounds he has set up in the petition. Mr.P.M.Palanivel, PW2 was the Chief Engineer (Highways) at the time of disputed transaction. He deposes that Rajagopal the substitute contractor introduced by the respondent was already a registered contractor and his registration was in fact renewed on 1-6-2006. Ex.C9 is the proceedings pertaining to the renewal of registration of the said contractor. Objection was raised as to the marking of the said document. The court finds that such an objection does not survive as the proceeding was issued renewing his registration in the course of his transaction. Referring to Ex.C7, dated 26-6-2006,

he would state that the substitution of Rajagopal as contractor in the place of the respondent was approved by him on the same terms and conditions in his capacity as Chief Engineer (Highways). Such substitution had been effected by his proceedings, dated 26-6-2006 based on the strength of recommendations of Mr.P.Velusamy, Superintending Engineer (Highways), Rural Roads, Tirunelveli, who was examined as PW4.

21. Mr. G. Shanmuganathan, who was examined as PW3, was the Superintending Engineer, Highways, Project Circle, Madurai. It is found that on the basis of the request made by the respondent, he issued the proceedings, Ex.P12, dated 12-4-2006 removing the respondent from the approved contractors list. Of course, he has cautioned under the subsequent proceedings, Ex. P13, dated 17-4-2006 that the individual contract he had entered into should be terminated separately. Mere removal of his name from the approved contractors list was not sufficient. The subject contract was entered into by the Superintending Engineer, NABARD, Rural Roads, Tirunelveli (PW4) with the respondent. He has made it clear that the act of removal of the name of the contractor from the approved contractors list has nothing to do with the termination of the individual contract. It is his deposition that the Chief Engineer, NABARD and Rural Roads is the Competent Authority for approving the substitute contractor.

22. Mr.P.Velusamy, Superintending Engineer, NABARD, Rural Roads, Tirunelveli was examined as PW4. Nagercoil Division had come under his control when he was working as Superintending Engineer, Tirunelveli during the period from September 2005 to August 2006. The original agreement in respect of three works awarded to the respondent in respect of Nagercoil Division was marked as Ex.C11. It is his evidence that based on the proceedings, Ex.P17, the Divisional Engineer, NABARD, Rural Roads, Nagercoil, who was examined as PW2 sought for necessary rectification. Ex.C13, dated 18-4-2006 is the communication sent by PW2 to PW4 informing PW4 about the order of termination passed by PW2 while seeking ratification of the order of termination passed by him under the proceedings, Ex.P19, dated 26-4-2006. PW4 ratified the orders of the Divisional Engineer. He was very firm that the substitute contractor Rajagopal's name was in the list of approved contractors as on 17-4-2006. Based on his application, dated 18-4-2006, registration of Rajagopal was renewed as per his proceedings, Ex.C14, dated 1-6-2006. He would Categorically state that renewal will not presuppose discontinuance of registration. He clarifies that periodically once in a year, there is a renewal of registration of the approved contractors. However, the contractor shall renew his registration from 1st April within a period of three months therefrom. Under the proceedings, Ex.C6, dated 2-5-2006, PW4 has requested the Chief Engineer to ratify the action of the Divisional Engineer in substituting Rajagopal to do the balance work. Ex.C15 is the proceedings, dated 19-6-2006 issued by PW4, to the Chief Engineer renewing the substitution of Rajagopal in the place of the respondent. Under Ex.C7, dated 26-6-2006, the Chief Engineer accepted the contractor as a substitute in the place of the respondent. He specifically denies the suggestion made by the petitioner that as on 17-4-2006, Rajagopal was not the registered contractor.

23. The respondent was examined as RW-1. He, ofcourse, has supported his plea in the counter affidavit. RW-2 Mr. Y. Christdas was the Divisional Engineer, Nagercoil. He deposes that the respondent was working as a contractor in his Division. He submitted a letter under Ex.C-18, dated 10-4-2006 requesting for cancellation of the three contracts he had taken in Nagercoil Division. Under the proceedings, Ex. P-12, dated 17-4-2006, he terminated absolutely the aforesaid three contracts as per G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951 and also under clause 109-05 and 109-07 of PS-2 SSRB. He also informed the respondent that the balance work would be executed at his risk and cost. He also froze and forfeited the deposits available in connection with his three contracts to the credit of the Government account. He clarifies the position that Ex.P-17, dated 17-4-2006 was the internal office note. In fact, the letter, Ex.C13 was forwarded by him to the Superintending Engineer, PW-4 with his endorsement seeking ratification of the order of termination passed by him under Ex.P-12, dated 17-4-2006. PW-4 ratified the termination of all the three contracts awarded to the respondent as per his proceedings Ex.C-19, dated 26-4-2006. During the course of cross-examination, he deposes that the power to cancel the contract clinched by a contractor who proposed to contest the election vests only with the Chief Engineer. He would further state that since he had no power to cancel the contract, he forwarded the papers to the superior officers. On account of urgency, he passed the order of termination under Ex.P-17. He would depose that while issuing Ex.P-17, he had not mentioned that the order of termination passed by him was subject to ratification by the Superintending Engineer. He denied the suggestion that he issued the order of termination under Ex. P-17 in order to oblige the respondent when he had no authority to do so.

The provision of Law and relevant order governing the issues:—

24. Section 9A of the Representation of the people Act, 1951 reads as follows:-

“Disqualification for Government contracts, etc.—A person shall be disqualified if, and for so long as, there subsists a contract entered into by him in the course of his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.”

25. The language employed under the aforesaid provision of law is plain and simple. The subsistence of a contract entered into by a candidate with the appropriate Government will disqualify him. The seminal issue which arises for consideration is whether there was any contract subsisting between the respondent and the Government. It is also relevant to refer to the copy of G.O. Ms. No. 4682,

Public Works Department, dated 16-11-1951 marked as Ex.P-11 which reads as follows:—

“Government of Madras

Abstract

Contracts—Highways Department—Ensuing General Elections to Legislature—Request of Contractors for withdrawal from Subsisting Contracts and removal of the name from list of approved contractors—Instructions Issues.

Public Works Department

G.O. Ms. No. 4682, dated 16th November, 1951

Read the following:

From the Chief Engineering (Highways) Lr. No. 56703/D2/51-1, dated 8th November 1951.

From the Chief Engineer (Highways), Lr. No. 55865/D2/51-2, dated 13th November, 1951.

Order:

In his letter first cited the Chief Engineer (Highways) has reported that several contractors in the State who have got subsisting contracts under Government and District Boards have applied for closing their accounts and for removal of their names from the list of approved contractors in order to enable them to stand for election as a candidate. As the existing provisions in the preliminary specification to Madras Detailed Standard Specifications do not permit the contractors to withdraw from their existing contracts for the reasons now given by them, the Chief Engineer has requested instructions on the general policy to be adopted in such cases.

2. After careful examination His Excellency the Governor hereby directs that the contractors who desires to stand for election as candidates for the Legislatures be permitted to terminate their subsisting contracts and also get their names deleted from the list of approved contractors provided other persons acceptable to the Chief Engineer are available and are willing to enter into a contract to execute the works under the existing terms and conditions without any loss to Government.

3. The Chief Engineer is informed in this connection that the following points should be considered in the termination of contracts referred to in para 2 above.

4. There should be a final and complete settlement of rights and liabilities between the Government and the existing contractor. No sum of money should remain payable to him and nothing should remain liable to be supplied or done by him;

5. Substitution of a fresh contract in regard to the unfinished part of the work should not involve the Government in loss or extra expenditure with a view to enabling any particular person to stand for election as a candidate; and

6. The contractor who is allowed to back out of his contract should do so at his own risk and should be made liable to make good any loss to the Government arising out of the necessity to enter into a fresh contract.

7. The instructions now issued will apply also to the termination of contract under similar circumstances in the Public Works and Electricity Departments.

M. GOPAL MENON,
Deputy Secretary to Government.

To
The Chief Engineer (Highways)

/True Copy/

Copy of Endt. No. 55868/D2/51, HR, dated 16th November 1951 from the Chief Engineer (Highways and Rural Works), Madras-5 to the Superintending Engineers and Divisional Engineers (H).

Copy communicated to the Superintending Engineers (H) and Divisional Engineers (H) for information and guidance.

K.K. NAMBIAR,
Chief Engineer (Highways).

/True Copy/

26. The aforesaid Government order was issued by the Deputy Secretary to Government based on the request seeking instructions on the general policy to be adopted by the Chief Engineer (Highways) for termination of contracts with the Government and the District Boards. The problem confronted by the Chief Engineer then was that the contractor who wanted to contest the election simply applied for closure of the accounts and for removal of his name from the list of approved contractors for the purpose of contesting the election even while his contract with the Government was subsisting. The Government order would say that if a person

acceptable to the Chief Engineer is available and is also willing to enter into a contract to perform the remaining work as per the existing terms and conditions without causing loss to the Government, the contract can be terminated and his name also can be deleted from the approved contractors. A general instruction also has been given to the Chief Engineer to see that a final and complete settlement of rights and liabilities between the Government and the existing contractor is made before ever the termination of the contract is done.

27. In *COMPETENT AUTHORITY V. BARANGORE JUTE FACTORY* [(2005) 13 SCC 477], it has been held by the Supreme Court as follows:—

“It is settled law that where a statute requires a particular act to be done in a particular manner, the act has to be done in a particular manner the act as to be done in that manner alone. Every word of the statute has to be given its due meaning.”

28. The Order issued by the Government of Tamil Nadu is only an administrative instruction and it is not a statute enacted by the legislature. Therefore, the above ratio has no bearing on the facts and circumstances of this case.

29. As rightly pointed out by the learned Senior Counsel appearing for the respondent, the aforesaid Government order contains only administrative instruction. While communicating the Government order to the Superintending Engineer and the Divisional Engineers, it has been specifically stated that the said administrative instruction is for information and guidance. Though it is an order by the Government, it can, at best, be construed as an administrative order for the guidance of the Engineers (Highways) and Rural Roads in various hierarchies.

30. It is found that the said Government order does not say that the Chief Engineer is the authority to terminate the contract of a person with the Government. An instruction has been issued to the Chief Engineer to see that somebody is available as a substitute to perform the remaining part of the contract without any loss to the Government. It also does not say that an order of termination could be issued only when the Chief Engineer accepts a person who is available and is willing to enter into a contract on the same terms and conditions. If a person acceptable to the Chief Engineer is available, the authority concerned can go in for termination of the contract. Therefore, it is held that G.O. Ms. No. 4682, Public Works Department, dated 16th November 1951 is only an administrative instruction circulated to the Engineers (Highways) NABARD and Rural Roads for information and guidance. A contractor, who wants to terminate his contract, has nothing to do with the administrative instructions issued under the aforesaid Government order. Ofcourse, he is bound to offer a person as a substitute contractor who shall be acceptable to the Chief Engineer.

Sanctity of the order of termination passed by the Divisional Engineering (RW-2):—

31. It is well settled position of law that a contract can be terminated by any one of the four modes viz., (1) by performance; (2) by express agreement;

(3) under the doctrine of frustration; and (4) by breach. The respondent defended the Election Petition by saying that by mutual agreement, the contract between himself and the Government was terminated by the Divisional Engineer, Nagercoil.

32. The respondent wrote a letter Ex. C-18, dated 10th April 2006 to the Divisional Engineer, NABARD and Rural Roads, Nagercoil requesting him specifically to cancel the agreement he had entered into with the Government and issue him a certificate of cancellation of the agreement. He had also undertaken that he would compensate the Government for any loss that might be caused to the Government. Acting upon the aforesaid communication received from the respondent, the Divisional Engineer (RW-2) issued proceedings under Ex.P-17, dated 17th April 2006 terminating absolutely the contracts the respondent had entered into with the Government as per G.O. Ms. No. 4682, Public Works Department, dated 16th November 1951 and also under clause 109-05 and 109-07 of PS-2 SSRB. The respondent was also reminded therein by the Divisional Engineer RW-2 that the remaining works be executed at his risk and cost. It has been informed that separate orders would be passed as against the entrustment of works. RW-2 also freed and forfeited to the credit of the Government the deposits made available by the respondent.

33. It is submitted before this court without any concrete pleadings that the Divisional Engineer NABARD and Rural Roads, Nagercoil had no authority to cancel the contract. On a careful perusal of Ex. C-11, it is found that the subject agreements were entered into between the Governor of Tamil Nadu on the one hand and the respondent on the other hand. On behalf of the Governor of Tamil Nadu, the Superintending Engineer, NABARD and Rural Roads, Tirunelveli has signed in the agreement. A clause, which reads as follows, is found in the agreement entered into between the parties:—

“In the event of the work being transferred to any other Circle/Division/Sub-Division/Superintending Engineer/Divisional Engineer/Assistant Divisional Engineer who is in charge of Circle/Division/Sub-Division having the jurisdiction over the works should be competent to exercise all the powers and privilege reserved in favour of the Government.”

34. Only in a case where the work assigned under the contract is transferred to another Circle/Division/Sub-Division, the Engineer in charge of that Circle/Division/Sub-Division who has jurisdiction over the work shall exercise the powers and privileges reserved in favour of the Government. In the instant case, no material is produced to show that the work assigned to the respondent was transferred to some other Circle/Division/Sub-Division. The Divisional Engineer, RW-2 had worked only in Nagercoil Division which fell under the Circle over which the Superintending Engineer, NABARD, Rural Roads, Tirunelveli had Jurisdiction. When the Sub-Division had come under the direct domain of the Superintending Engineer, Tirunelveli, the aforesaid clause does not apply and the Divisional Engineer cannot claim that he has authority under the above clause to terminate the contract under the agreement.

35. The fact remains that he is the direct head of Nagercoil Division were the respondent has been awarded with certain contracts. The records produced before the court would show that he had terminated the contract only under the blessings of the Superintending Engineer, NABARD and Rural Roads, Tirunveli. The order of termination was subsequently ratified by the Superintending Engineer, NABARD and Rural Roads, Tirunelveli by his proceedings Ex.P-19, dated 26th April 2006.

36. The learned Senior Counsel appearing for the petitioner cited the authority in *SEWARAM V. SOBARAN SINGH* (AIR 1993 SC 212). That was a case where a candidate who had a contract with the Government, even after writing his letter to save the contract, continued with the contract work through the proxy of his brother. The facts in that case would disclose that the Executive Engineer and the Superintending Engineer concerned continued to deal with him treating him as a contractor. In such peculiar facts and circumstances of that case, the Supreme Court held that the contractor candidate never intended to put an end to the contract and therefore, the contract was never terminated and as a consequence, he incurred disqualification as per section 9A of the Representation of the People Act, 1951.

37. In the instant case, the respondent properly communicated his decision to terminate the contract mutually to the Divisional Engineer under whose direct jurisdiction, he performed his contract. The Divisional Engineer also, under Ex.P-17, terminated absolutely the contracts the respondent had with the Government. The order of termination passed by the Divisional Engineer with the blessing of the Superintending Engineer, Tirunelveli, was ratified under Ex.C-19. Therefore, the above authority does not apply to the facts and circumstances of this case.

38. The Judgment in *RAJESHEKAR BASAVARAJ PATIL V. SUBAS KALLUR AND OTHERS* [(2002) 8 SCC 467] was cited by the learned Senior Counsel appearing for the petitioner. In the aforesaid case, it is found that the contractor sent a letter and an affidavit bearing dates prior to the date of election seeking termination of the contract but, on facts, it was found that those documents were received by the Department subsequent to the date of election. The court observed that the contractor failed to dispel the doubt created in the mind of the court as regards the date of submission of the letter and the affidavit as the unassailable materials would go to show that the office received those documents only subsequent to the crucial date and not on the dates shown in those documents. Under such circumstances, the court held that the respondent, returned candidate suffered disqualification under section 9A of the Representation of the People Act, 1951.

39. In the instant case the fact situation is totally different. About a week prior to the date of nomination, a letter seeking cancellation of the contract, Ex.C-18 was sent by the respondent to the Divisional Engineer, Nagercoil. Just prior to filing of the nomination on 17th April 2006, the contracts the respondent had with the Government were terminated by the Divisional Engineer, RW-2 under Ex.17, dated 17th April 2006. Therefore, the above ratio laid down in the facts and circumstances of that case does not apply to the instant case.

40. On the side of the petitioner, yet another decision in HASHAM ABBAS SAYYAD V. USMAN ABBAS SAYYAD [(2007 (2) SCC 355)] was cited wherein it has been held as follows:—

“The core question is as to whether an order passed by a person lacking inherent jurisdiction would be a nullity. It will be so. The principles of estoppel, waiver and acquiescence or even res judicata which are procedural in nature would have no application in a case where an order has been passed by the tribunal/court which has no authority in that behalf. Any order passed by a court without jurisdiction would be coram non judge, being a nullity, the same ordinarily should not be given effect to.”

41. That was a case where a court which lacked inherent jurisdiction passed an order. When the question of acceptability of such an order came for consideration, it was held that the order passed without jurisdiction would be coram non judge and therefore, it would be a nullity in the light of law.

42. But, in this case the respondent started executing the contract work under the direct control of the Divisional Engineer, RW-2, who terminated the contract. The records would show that with the knowledge of the Superintending Engineer, Tirunelveli, the contract was terminated duly by the Divisional Engineer. Such an order also was ratified later by the Superintending Engineer. No plea was set up as already pointed out by this court that the Divisional Engineer lacked jurisdiction to pass an order of termination. Further, the question of ratification by the competent court of the order passed by the court below which lacks inherent jurisdiction is alien to legal jurisprudence. But, the act of the Divisional Engineer can be ratified by his higher authority. In view of the above, the aforesaid ratio does not have any bearing on the instant case.

43. The learned Senior Counsel appearing for the respondent cited the decision of the Apex Court in ASLHING V. L.S. JOHN (AIR 1984 SC 988) and submitted that even if the Department had not agreed for the termination of the contract as sought for by the respondent, the moment unilateral decision to rescind the contract originated from the contractor, termination of contract by breach took effect.

44. In the aforesaid case, the contractor unilaterally put an end to the contract and informed the Department concerned about his decision to walk out of the contract unilaterally. He had also resigned from the registration of the approved contractors list. In such circumstances, the Supreme Court held that no acceptance of such unilateral determination of the contract is required from the Department Concerned. As the unilateral decision was communicated and the contractor had walked out of the contractual obligation, there was termination by breach of contract.

45. Yet another decision in S. MUNISHAMAPPA V. B. VENKATARAYAPPA (AIR 1981 SC 1177) was cited by the learned Senior Counsel appearing for the respondent. That was case where the contractor executed all the works under the

contract except three items therein. Though the contractor was prepared to complete the remaining items of work within a time frame, he was asked by the Department not to proceed with the remaining work till after the monsoon, but, the contractor refused to do so. The contractor agreed for the State Government to entrust the remaining work to some other contractor. In such circumstances, the contractor filed his nomination paper. The question arises in that case whether the said contractor incurred a disqualification under Section 9A of the Representation of the People Act, 1951. Considering the above facts and circumstances, the Supreme Court held that it was a cancellation of the contract by breach.

46. In the instance case, the respondent has all along set up a defence that the contract was terminated by mutual consent. No issue was framed rightly as to whether there was any breach of contract on the unilateral decision of the respondent. This court has already held that the respondent cannot project such a plea at this distance of time completely taking a departure from the original plea that the contract was mutually terminated. Even as an alternative plea, he is not supposed to take in an Election Petition. Further, in the fact situation of the case, it is found that the respondent pleaded with the Department only for termination of the contract by mutual agreement probably for saving his face from the wrath of the Department which would result in blacklisting the respondent for his unilateral determination of the contract. But, on facts, it is found that the contract was bilaterally determined with the consent of both the parties. Therefore, those two authorities do not have much bearing on the peculiar facts of this case.

47. The facts and circumstances of this case would go to show that there was proper termination of the contract by the Divisional Engineer with the ratification of the Superintending Engineer.

Consequence of ratification by the Superintending Engineer:—

48. The Superintending Engineer, NABARD and Rural Roads, Tirunelveli Mr. P.Velusamy (PW-4) has deposed that Ex.C-12 is the proceedings of the Divisional Engineer, NABARD and Rural Roads, Nagercoil under which he sought his ratification and Ex. C-13 is the letter addressed by the Divisional Engineer, Nagercoil informing him about the order of termination passed by him in respect of the contract of the respondent. RW-2 has categorically stated that Ex. C-12 is the internal office note. Only the letter, Ex C-13 was forwarded by RW-2 to PW-4. On a perusal of Ex. C-12, it is found that it was only an office note prepared for the orders on RW-2 for the purpose of preparing a letter of communication to PW-4. Ex. P-17 would go to establish that the contract of the respondent was already terminated by RW-2. The office note, Ex.C-12 has been wrongly prepared as though the order of termination was yet to be passed. Ex.C-13 is the communication emanated from RW-2 to PW-4 based on the internal office note, Ex. C-12. Ex. C-13 clearly indicates that considering the urgency in the matter, the Divisional Engineer has already terminated the contract and therefore, he sought for ratification of the orders of termination already passed by him. The Superintending Engineer, PW-4 has ratified the orders of termination passed by RW-2 under Ex. P-19, dated 26-4-2006.

49. The court will have to see what is the consequence of the ratification given by the Superintending Engineer. The term 'ratification' was defined under the Black's Law Dictionary as confirmation and acceptance of a previous act thereby making the act valid from the moment it was done.

50. This court in *G. Vasantha Pai V. Special Commissioner and Commissioner (Land Reforms)* [1998 (II) CTC 272] has observed as follows:—

“That Sections 196 to 199 of the Contract Act deals with ratification as to the acts done by one person on behalf of another, but without his knowledge or authority, he may elect to ratify or to disown such acts. If he ratifies them, the same effects will follow as if they had been performed by his authority. Ratification can be express or implied from conduct and it will be held adopted throughout. Ratification, if effective at all, relates back to the date of the act ratified. An express ratification is complete when it is communicated and accepted. Ratification of one of the series of acts constitutes one transaction and operates as a ratification of the entire transaction. In the instant case, by the correspondences between the parties, the confirmation of the whole transaction and the acceptance of the same are established.”

51. The Learned Senior Counsel appearing for the respondent cited an important decision in *Maharashtra State Mining Corporation V. Sunil* (AIR 2006 SC 1923). That was a case where the Managing Director, who was not competent to pass the order of dismissal, chose to dismiss an employee, but, subsequently, the order of dismissal passed by the Managing Director was ratified by the competent authority having power to pass an order of dismissal. The Supreme Court held in such circumstances that the ratification passed by the competent authority relates back to the date of the original order and validates the same. Applying the maxim “*Ratihabitio priori mandato aequiparatur*” *Viz.*, ratification validates an invalid act retrospectively, upheld the order of dismissal passed by the incompetent authority subsequently ratified by the competent authority.

52. Firstly, it is found that the order of ratification passed by PW4 under Ex.P19, dated 26-4-2006 validates the order of termination passed by RW2 under Ex. P17 from the date of the order passed by RW2 on 17-4-2006. No different yardstick as submitted by the Learned Senior Counsel appearing for the petitioner can be applied to the Election Case in the matter of applying the maxim “*Ratihabitio priori mandato aequiparatur*.” If at all, the order passed by the Divisional Engineer was not ratified, then the candidate incurs disqualification under Section 9A of the Representation of the People Act, 1951.

53. The ratification of the order of termination takes effect from 17-4-2006. In view of the above, the court holds that there is valid termination of contracts of the respondent as on the date of filing the nomination.

Availability of Substitute Contractor:—

54. PW4 was emphatic that the substitute contractor Rajagopal's name was on the list as on 17-4-2006. He has also spoken about the procedure of renewal

of the names in the approved list of contractors. It is found that a contractor is supposed to renew his name from 1st April of every year within a period of three months therefrom. PW4 has spoken to the effect that the substitute contractor Rajagopal made an application on 18-4-2006 for renewal of his name in the list of contractors. Under the proceedings, Ex. C14, dated 1-6-2006, his name was renewed in the list of contractors. Therefore, there is no difficulty to come to a decision that the substitute contractor Rajagopal was a registered contractor as on 17-4-2006.

55. Ex. C21, dated 17-4-2006 is the letter given by the substitute contractor Rajagopal to the Divisional Engineer, RW2 expressing his consent to execute all the remaining works left behind by the respondent on the same terms and conditions. RW2 sent a letter, Ex. C20 to the Superintending Engineer, PW4 annexing a copy of the consent letter given by the substitute contractor Rajagopal for necessary action. Under Ex. C22, dated 23-6-2006, PW4 sent a letter to the Chief Engineer, PW2 about the pending work to be done by the respondent and the letter of consent given by the substitute contractor to execute the remaining work on the same terms and conditions. Under Ex. C7, dated 26-6-2006, the substitute contractor S. Rajagopal was approved for executing the remaining work left behind by the respondent on termination of his contract. The above materials on record would clinchingly establish that at the time when the contract of the respondent was terminated by RW2, a substitute contractor, who was willing to perform the remaining work left behind by the respondent, was made available. The acceptance of such a contractor is the discretion of PW2. The respondent has nothing to do with the exercise of discretion of PW2 at a later point of time. Having made available a substitute contractor to step into his shoes to perform the remaining part of the contract, he has got the contract validly terminated and submitted his nomination before the returning officer.

Compliance of G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951:—

56. Ex. P11 is G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951. A reading of the said Government Order would go to show that the Chief Engineer, PW2 was not vested with the power to terminate the contract. In fact, the Chief Engineer had complained of the difficulties in closing the accounts of the contractor removing their names from the list of approved contractors to enable them to contest the election. The said Government Order was clarificatory in nature giving instruction to the Chief Engineer to follow. At the time of termination of the contract, a person acceptable to the Chief Engineer to perform the remaining work left behind by the contractor should be made available and such a substitute contractor should be willing to enter into a contract to execute the remaining work on the same terms and conditions without any loss to the Government.

57. The Government Order also does not say that only after the Chief Engineer accepts such a substitute contractor, an order of termination should be passed. If such a reading is given to the Government Order, no eligible contractor can come out of the contract smoothly without committing breach of contract and contest the election as the process of acceptance of the substitute contractor by the Chief Engineer would take its own time. Further, the Chief Engineer was not a party to the contract, Ex. C11. Therefore, the submission made by the learned

Senior Counsel appearing for the petitioner that the Chief Engineer is the appropriate authority to terminate the contract does not have a leg to stand upon. RW2 has validly terminated the contract and PW 4 has rightly ratified the order of termination passed by RW2. During the course of cross-examination, RW2 has stated, when he was confronted with G.O.Ms. No. 4682, Public Works Department, dated 16-11-1951, that it was only the Chief Engineer, who has the authority to terminate the contract. But, in the same breath, he would deny the suggestion that he had no authority to terminate the contract.

58. There is no breach of conditions found in G.O. Ms. No. 4682, Public Works Department, dated 16-11-1951.

The Supreme Court in PRAKASH KHANDRE V. VIJAYA KUMAR KHANDRE (A.I.R. 2002 SC 2345) observes as follows:--

“In our view, the election petitioner could not challenge the acceptance or termination of contract and grant of contract to Mallikarjun by the department by resorting to certain departmental procedure prescribed for grant of contract to other contractor. In any case, not following the procedure prescribed under the Rules would hardly be a ground for holding that the contract was subsisting.”

59. In the said case, the returned candidate requested the Government to terminate the subsisting contract. He has also cancelled his registration as contractor. The Government, having accepted his request, issued no due certificate also and cancelled his registration as contractor. Then the contract was brought to an end mutually by the parties. The returned candidate also took responsibility of completing the work in case his brother, who stepped into his shoes to complete the remaining part of the contract, failed to execute the assignment. A serious objection was raised therein that the departmental procedure prescribed for grant of contract by other contractor was not followed. The Supreme Court has observed in the above facts and circumstances that failure to follow the procedure prescribed under the rules framed by the Department cannot be a ground to hold that the contract was subsisting. Similarly, in the case on hand, G.O. Ms.No. 4682, Public Works Department, dated 16-11-1951 is found to be an administrative instruction to the Chief Engineer to be followed while terminating the contract. Even assuming for the sake of argument that there was a breach of prescription found in the Government Order, failure to follow the procedure will not nullify the order of termination already passed by RW2 and ratified rightly by PW4.

60. The Supreme Court in RATAN KUMAR TANDON V. STATE of U.P. (A.I.R. 1996 SC 2710) has held as follows:—

“Shri. Satish Chandra also referred to us instructions issued by the Government of U.P., dated January 31, 1986. He placed reliance on paragraph 6 of the instructions. It is seen that the Government has given instructions to the respective authorities under Section 35 of the Ceiling Act that where the authorities were not able to dispose of the matter under the Ceiling Act and land is required for public purpose, it would

be necessary to drop the proceedings under the Ceiling Act and to proceed under the Land Acquisition Act. These are only administrative instructions. They do not have any statutory effect on the operation of law. In case of yawning gaps, they may guide the officers.”

61. The Supreme Court has very emphatically held in the aforesaid decision that the instruction flowed from the Government to the respective authorities is only administrative in nature and the same does not acquire statutory status.

62. In the light of the above decision, it is held that G.O.Ms.No. 4682, Public Works Department, dated 16-11-1951, which is instructive in nature to the Department's Head concerned does not acquire statutory status to nullify the order of termination validly passed by the authority concerned. Even otherwise, on facts, it is found that there was no breach of instructions found in G.O.Ms.No. 4682, Public Works Department, dated 16-11-1951.

Contract not subsisting:—

63. The rights and liabilities of the respondent was determined under Ex.P17, dated 17-4-2006 before ever the nomination was filed by the respondent. It is true that his deposits were forfeited and the amount due to him were already freezed. He had also shouldered full responsibility for any loss that may be occasioned to the Government on the failure of the substitute contractor. Such forfeiture and freezing of the deposits of the contractor and the amount payable to him would not give life to the contract which was lawfully terminated by RW2. It is far fetched to argue that the amount of the contractor lying with the Government would keep alive the contract. If such an argument is accepted, no contractor can come out of the clutches of the contract entered into with the Government for the purpose of contesting the election. Here is a case where the name of the respondent was removed from the approved contractors list when his rights and liabilities were determined under the termination of contract. The contract entered into by him no longer subsists.

64. The learned Senior Counsel appearing for the respondent would bring to the notice of this court the subsequent events. The subsequent events will not have any bearing on the issue arisen on the date of nomination of the papers by the respondent.

65. The Election Petitioner failed to establish that there was subsistence of contract in favour of the returned candidate as on the date of filing nomination. There is lawful termination of contract of the respondent by the Divisional Engineer, NABARD and Rural Roads, Nagercoil. There was proper ratification of the said order of termination by the Superintending Engineer, NABARD and Rural Roads, Tirunelveli. The termination of contract also was in accordance with G.O.Ms.No. 4682, Public Works Department, dated 6-11-1951. The Election Petitioner also failed to establish any other ground to set aside the election of the returned candidate. The issues are answered accordingly.

66. In the result, the Election Petition stands dismissed with costs of Rs. 2,000/-.

WITNESS THE HONOURABLE THIRU ASOK KUMAR GANGULY, CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 2ND DAY OF DECEMBER 2008.

Sd/-....
Assistant Registrar
(Original Side-II)

Certified to be true copy

Dated at Madras this is the 10th day of December 2008.

Court Officer (O.S.)

From 25th day of September 2008 the Registry is issuing the copies of the orders/Judgments/Decrees in this format.

HIGH COURT, MADRAS

ELECTION No. 2/2006

EXHIBIT LIST

- | | | | |
|----|--------|---|-----------|
| 1. | Ex.P-1 | Copy of the objections of the Election Petitioner | True copy |
| 2. | Ex.P-2 | Copy of the objections filed by the respondents in response to the objections of the Election Petitioner. | True copy |
| 3. | Ex.P-3 | Proceedings of the Divisional Engineer (H) Nabard and Rural Roads, Proc. No. W.F. 19/2005-06-01, dated 17-4-2006. | True copy |
| 4. | Ex.P-4 | Additional Sworn Affidavit (Objections) filed by the Election Petitioner before the Returning Officer, dated 21-4-2006. | True copy |
| 5. | Ex.P-5 | Letter from Divisional Engineer (H) Nabard and Rural Road, Nagercoil Pr. No./2006/JDO to Mr. S. Madasamy, Advocate, dated 17-04-2006. | True copy |
| 6. | Ex.P-6 | The Additional Counter filed by the Respondent to the Additional objection filed by the Election Petitioner. | True copy |
| 7. | Ex.P-7 | Proceedings of the Returning officer in Pr.No. A1/3159/06, dated 21-4-2006. | Original |

24 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

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|-----|----------|---|---|
| 8. | Ex. P-8 | Letter of the Election Petitioner to the Chief Engineer, Highways, Chepauk, Chennai-600 005, dated 19-06-2006. | True copy |
| 9. | Ex. P-9 | Reply of Chief Engineer, Highways Department, Chepauk, Chennai-600 005 to the Election Petitioner dated 19-6-2006. | Original |
| 10. | Ex. P-10 | Letter Dated 20-6-2006 (another request) from Election Petitioner to the Chief Engineer, Highways, Chennai along with the reply of Chief Engineer, Highways, Chennai. | Original |
| 11. | Ex. P-11 | The copy of G.O. Ms. 4682, dated 16-11-1951. | True copy |
| 12. | Ex. P-12 | The document with regard to removal of respondent from the contractors list furnished by the respondent during objection | True copy |
| 13. | Ex. P-13 | The letter of the Superintendent Engineer, Madurai dated 17-4-2006 stating that the contract should be terminated and mere removal from the contractors list is not sufficient. | True copy |
| 14. | Ex. P-14 | The Letter from the Chief Engineer, High ways Department stating about the procedure for termination of the contract. | Obtained under Right to information Act |
| 15. | Ex. P-15 | The copy of class 4 Deposit lying in the name of the respondent from April 2006 to October 2006. | Copy |
| 16. | Ex. P-16 | The copy of the proceedings of the Supdt. Engineer which refers to the contract of the respondent works at Tirunelveli. | Copy |
| 17. | Ex. P-17 | Proceedings of the Divisional Engineer (H) Nabard and Rural Roads, Nagerkoil in Proc. No. W.F. 19/2005-06/A1. | True Copy |
| 18. | Ex. P-18 | Letter from Divisional Engineer (H) Nabard and Rural Roads, Nagerkoil in No. 1006/JDO to Mr. S. Madasamy, Advocate. | True Copy |
| 19. | Ex. P-19 | Proceedings No. DRP 10/2004-05/VI of the Superintending Engineer, Nabard and Rural Road, Tirunelveli ratifying the orders of the Divisional Engineer, Nabard and Rural Road, Nagercoil under SSRB No.10204. | True Copy |

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|----|----------|--|----------|
| 20 | Ex. P-20 | The Signature of the Respondent (returned candidates) on the Revenue Stamp in the bill contained in Letter No. | Original |
| 21 | Ex. P-21 | SSRB Rules (marked subject to objection). | Copy |

HIGH COURT, MADRAS**ELECTION No. 2/2006****EXHIBIT LIST**

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|----|---------|--|-----------|
| 1 | Ex. R-1 | The Copy of the R-1 Letter dated 10-04-2006 addressed to the Divisional Engineer, Tirunelveli. | Copy |
| 2. | Ex. R-2 | Original Letter of R-2, dated 12-04-2006, addressed to Superintending Engineer Madurai requesting him to remove his name from the Register of contractors. | Original |
| 3. | Ex. R-3 | The copy of the order 11-4-2006 issued by Superintending Engineer, Tirunelveli with reference to the contract at Tirunelveli Division. | Copy |
| 4. | Ex. R-4 | Letter of R-1 to Divisional Engineer, Nagercoil, dated 12-04-2006, for no objection to the Government forfeiting any amount under the contract payable to him. | Copy |
| 5. | Ex. R-5 | Letter of R-1 to Divisional Engineer, Nagercoil, dated 17-04-2006 stating his contract may be given to Rajagopal. | Copy |
| 6. | Ex. R-6 | Original Letter dated 21-01-2007 addressed to Divisional Engineer, Nagercoil seeking information under Right to information Act about any loss incurred by the Government pursuant to termination of his contract (marked subject to objection by the counsel for the election Petitioner with regard to delay in production of the document). | Original |
| 7 | Ex. R-7 | Letter dated 23-01-2007 from Divisional Engineer, Nagercoil addressed to him stating that the work given to Rajagopal has been completed and no loss has been incurred by the Government (marked subject to objection by the counsel for the election petitioner with regard to delay in production of the document). | True Copy |

26 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

8	Ex. R-8	RW-2's (Divisional Engineer, Highways NABARD and Rural Roads, Nagercoil) endorsement in the Letter dated 17-04-2006.	Original
9	Ex. R-9	RW-2's Letter dated 19-04-2006	Original
10	Ex. R-10	Copy of the complaint by the Election Petitioners to the Chief Engineer.	Copy
11	Ex. R-11	The covering Letter dated 28-06-2006.	Copy
12	Ex. R-12	Letter forwarded to RW-2 by the Chief Engineer.	Copy
13	Ex. R-13	Copy of the letter of the Election Petitioner dated 11-07-2006.	Copy
14	Ex. R-14	RW-2's reply to the above Letter.	Copy
15	Ex. R-15	Letter dated 28-02-2006 send by the Election Petitioner.	Original
16	Ex. R-16	RW-2's reply dated 23-08-2006.	Copy
17	Ex. R-17	Election Petitioners further Letter dated 16-09-2006.	Original
18	Ex. R-18	RW-2's reply dated 21-09-2006 to that Letter.	Original
19	Ex. R-19	Election Petitioners Letter dated 28-09-2006.	Original
20	Ex. R-20	RW-2's reply dated 29-09-2006.	Copy
21	Ex. R-21	The portion of memorandum of payment.	Original

HIGH COURT, MADRAS

ELECTION No. 2/2006

EXHIBIT LIST

1	Ex. C-1	Election Petitioners sworn affidavit.	Original
2	Ex. C-2	Additional Affidavit.	Original
3	Ex. C-3	Original Counter Affidavit filed by the Respondent.	Original
4	Ex. C-4	Original Counter Affidavit filed by the additional Counter Affidavit.	Original

5	Ex.C-5	The copy of Memorandum with reagrd to press Note No.56 dated 30-07-1954 (marked subject to objection to the effect that there is no pleading)	Original
6	Ex.C-6	The Original Letter received by PW-2 from Superintending Engineer, Tirunelveli dated 2-05-2006 along with annexurs (marked subject to objection to the effect that there is no pleading)	Original
7	Ex.C-7	The Proceedings dated 26-06-2006 by which the conditions laid down by PW-2 for the acceptance of contractor Rajagopal (marked subject to objection to the effect that there is no pleading)	Copy
8	Ex.C-8	Letter of the Superintending Engineer, PW-2 dated 26-06-2006 (marked subject to objection to the effect that there is no pleading)	Original
9	Ex.C-9	The Proceedings for the renewal of registration of the contractor Rajagopal (marked subject to object)	Original
10	Ex.C-10	PW-2's reply at the bottom of the letter dated 20-06-2006.	Original
11	Ex.C-11	The Original Agreement in respect of 3 works awarded to Veludurai (R-1) in respect of Nagercoil Division.	Original
12	Ex.C-12	The Proceedings of Divisional Engineer, NABARD & Rural Roads, Nagercoil, wherein he has sought PW-4's orders.	Original
13	Ex.C-13	A letter dated 18-04-2006 addressed by the Divisional Engineer to PW-4 informing about the order of termination passed by him.	Original
14	Ex.C-14	Renewal of Rajagopal was made on 1-06-2006.	Copy
15	Ex.C-15	The proceedings dated 19-06-2006 issued by PW-4 to the Chief Engineer, recommending the name of Rajagopal.	Original
16	Ex.C-16	The Original Agreement dated 4-07-2006 entered into with Rajagopal in respect of 3 balance works in Nagercoil Division.	Original
17	Ex.C-17	PW-4's Predecessor's Proceedings is dated 27-02-1997, whereby Rajagopal was first inducted into the list of Contractors.	Copy

28 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

18	Ex.C-18	A letter dated 10-04-2006 from Veludurai (R-1) requesting for Cancellation of contract awarded to him.	Original
19	Ex.C-19	The letter dated 19-04-2006 of the Divisional Engineer, NABARD and Rural Roads, Nagercoil	Original
20	Ex.C-20	Another letter of the same Divisional Engineer, NABARD and Rural Roads at Nagarcoil informing to PW-4 about the consent letter given by Rajagopal.	Original
21	Ex.C-21	Original Consent letter of Rajagopal dated 17-04-2006	Original
22	Ex.C-22	PW-4's letter dated 23-06-2006 to the Chief Engineer.	Original
23	Ex.C-23	PW-4's letter to the Rajagopal, dated 30-06-2006	Original
24	Ex.C-24	PW-4's Proceedings, dated 04-07-2006	Original
25	Ex.C-25	Letter dated 14-07-2006 addressed by the Chief Engineer PW-2.	Original
26	Ex.C-26	Election Petitioners Letter, dated 11-07-2006 to the Chief Engineer.	Copy
27	Ex.C-27	Letter of Divisional Engineer, Nagercoil to the Election Petitioner, dated 25-07-2006	Original
28	Ex.C-28	Acknowledgement of the Election Petitioners for the receipt of Exhibit C-27.	Original
29	Ex.C-29	A letter dated 21-06-2006 of the Divisional Engineer, Nagercoil addressed to the PW-4.	Copy
30	Ex.C-30	A memo dated 18-10-2006 made clear that the work allotted to Rajagopal was completed.	Copy
31	Ex.C-31	The work order allotted to Mr. Veludurai in respect of the work at Palayamkottai Division was cancelled, dated 11-4-2006.	Copy
32	Ex.C-32	RW-2 endorsement upon Ex.C-18.	Original

List of Witnesses—(for Petitioner's side):

- PW-1 Paul Manoj Pandian (Petitioner)
- PW-2 P.M. Palanivel (Retd. Chief Engineer, Highways)
- PW-3 G. Shanmuganandh (Retd. Supt. Engineer, Highways, Madurai)
- PW-4 P. Velusamy, S. Engineer, NABARD & Rural Roads, Tirunelveli.

List of Witnesses—(for Respondent's side):

- RW-1 P. Veldurai, Returned Candidate.
- RW-2 Y. Christdhas.

ELECTION PETITION No. 2 OF 2006

Order

Dated: 02-12-2008

THE HONOURABLE MR. JUSTICE
M. JEYAPPAUL

FOR APPROVAL: 03-12-2008

APPROVED ON : 03-12-2008

Copy to:—

1. The Election Commission of India,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
2. The Chief Electoral Officer
and Secretary to Government,
Public (Elections-IV) Department,
Secretariat, Fort St. George,
Chennai-600 009.

Sd/.....
Assistant Registrar (O.S.II)

(By Order)

TAPAS KUMAR,
Principal Secretary,
Election Commission of India.

Secretariat,
Chennai-600 009,
10th February, 2009.

NARESH GUPTA,
Chief Electoral Officer and
Additional Chief Secretary to Government,
Public (Elections) Department.