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Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGMENT OF THE HIGH COURT OF MADRAS IN
ELECTION PETITION No. 12 OF 2011

No. SRO G 22/2013.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, Dated 4th October, [12 Asvina, 1935 (Saka)] is published:-

No. 82/TN-LA/12/2011:- In pursuance of section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment of the High Court of Madras, dated 5-4-2013 in Election petition No. 12 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

Friday, the 5th day of April 2013

THE HON'BLE MR. JUSTICE K. VENKATARAMAN

ELECTION PETITION No. 12 OF 2011

ELP. No. 12 OF 2011

M. Jayanthi,
W/o. R. Moorthy, Old No. 16, New No. 35,
School Main Street, First Floor,
Virugambakkam,
Chennai-92.—*Petitioner*

Versus

1. The Election Commission of India
Rep. by its Chief Election Commissioner,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
2. The Chief Electoral Officer /
Secretary to Government,
Public (Election III) Department,
Secretariat, Chennai-600 009.
3. The District Election Officer / District Collector,
Villupuram District, Villupuram.
4. The Returning Officer / District Backward Classes and
Minorities Welfare Officer,
78, Rishivanthiyam Assembly Constituency,
Villupuram.
5. Vijayakant,
Aged about 58 years,
S/o. Alagarsamy,
No. 10/12-A, Kannammal Street,
Saligramam, Chennai.
6. S. Sivaraj,
Aged about 56 years
S/o. M. Subramaniam,
No. 171, Perumal Naicken Street,
Tirukoilur-605 757.

7. M. Vijayakanth,
Aged about 27 years,
S/o. K. Munusamy,
No. 61/1, Pudhu Street,
Adhichanur Village, Tirukoilur Taluk,
Villupuram District.
8. P. Natarajan,
Aged about 47 years,
S/o. Palanimuthu, No. 557-2, Ward-5, Thiruvadi Street,
Vengikkal, Thiruvannamalai-606 604.
9. M. Ramajayam,
Aged about 54 years,
S/o. Muthu, No. 2/163, Mariyamman Kovil Street,
Periyapagandhi Village, Sankarapuram Taluk,
Villupuram District.
10. J. Selvaraj,
Aged about 28 years,
S/o. Jayakannan,
No. 1/122, Soraiyapattu Village,
Kazhumaran Post, Tirukoilur Taluk,
Villupuram District.
11. B. Rajasundaram,
Aged about 36 years,
S/o. Balakrishnan,
Kaduvanur Village,
Via Ariyalur, Sankarapuram Taluk,
Villupuram District.
12. K. Senthil,
Aged about 29 years,
S/o. Kumarasamy,
Manalurpettai Post,
Tirukoilur Taluk, Villupuram District.
13. V. Murugan,
Aged about 42 years,
S/o. Velayudham,
Lucky Nayakkan Pettai Village,
Sankarapuram Taluk, Villupuram District. — *Respondents*

* R1 – The Election Commission of India, rep. by its Chief Election Commissioner has been struck off from the array of respondent as per the order of this Hon'ble Court dated 4-10-2012 in O.A.No. 666 of 2012 in ELP No. 12 of 2011.

* R2- The Chief Electoral Officer / Secretary to Government, has been struck off from the array of respondents as per the order of this Hon'ble Court dated 4-10-2012 in O.A.No. 667 of 2012 in ELP No. 12 of 2011.

* R4- The Returning Officer / District Backward Classes and Minorities Welfare Officer has been struck off from the array of respondents as per the order of this Hon'ble Court dated 3-12-2012 in O.A.No. 918 of 2012 in ELP No. 12/2011.

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

(a) declare the Fourth Respondent order dated 28-3-2011 rejecting the petitioner's nomination papers filed for contest in 78, Rishivanthiyam Assembly Constituency as improper, invalid and illegal and also set aside the election of the 5th Respondent from 78, Rishivanthiyam Assembly constituency of the Tamil Nadu Legislative Assembly.

(b) Consequently declare the election of returned candidate namely the 5th respondent herein from No. 78, Rishivanthiyam Assembly Constituency, State of Tamil Nadu in the Election held on 13-4-2011 and the declaration of result on 13-5-2011 as illegal and null and void.

(c) Direct the respondents to pay the cost of this Election petition.

The Election Petition having been heard on 7-3-2013 in the presence of **M. Jayanthi**, the Election petitioner appeared in person and of **Mr. M.R. Raghavan**, standing counsel for the 3rd respondent and of **Mr. T.V. Ramanujam**, Learned Senior Counsel for **M/s. S. Manimaran, V.T. Balaji**, advocate for the 5th respondent herein and the respondents 1,2 & 4 are struck off from the array of respondents and upon reading the petition of M. Jayanthi and the counter affidavit of the 5th respondent filed herein and upon perusing the evidence adduced herein and also the exhibits marked thereon and 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 advocate to the parties hereto,

The Court made the following order:-

The only question that arises for consideration in this election petition is, whether the rejection of nomination of the election petitioner is valid or not and justifiable or not.

2. For the sake of convenience, the petitioner in the election petition is called as 'election petitioner', the fifth respondent in the election petition is referred as the 'returned candidate' and the other respondents are referred as per their nomenclature in the election petition.

3. The election petitioner contested the election at Rishivanthiyam Assembly Constituency. Her nomination was rejected by the returning officer by an order dated 28-3-2011.

4. In the election petition, the following facts have been set out by the election petitioner:-

(a) The election petitioner decided to contest for the election for the Tamil Nadu Legislative Assembly in 78, Rishivanthiyam Assembly constituency and went to Villupuram for filling her nomination on 25-3-2011. On that day she prepared the nomination papers along with 10 proposers who are having votes in

the Rishivanthiyam Constituency, but at 12.30 P.M. on the said date, when she and her husband were getting ready for filing nomination on the next day, the sixth respondent's hooligans came and snatched the nomination papers from her and stabbed her husband on the stomach. Immediately, the petitioner through her husband lodged police complaint before the Villupuram Taluk Police Station. However, the petitioner prepared another set of nomination papers for filing nomination on 26-3-2011.

(b) On 26-3-2011, the election petitioner filed nomination papers as independent candidate along with all documents including the 10 proposers signatures and the voters list of the said 10 proposers. On 28-3-2011, when the fourth respondent scrutinized the nomination papers, he told the election petitioner that he is going to reject her nomination on the ground that the proposers signatures and names were not clearly mentioned; their serial numbers found in the voters list has not been clearly mentioned and also the left hand thumb impressions have not been obtained from the said proposers. Immediately, the election petitioner gave all the particulars regarding the proposers. She also made a request to give two days time for filing objection for the alleged defects and also made a request through written representation dated 28-3-2011 pleading the fourth respondent not to reject her nomination. She has also pointed out the rules as given by the Election Commission in its guidelines in the handbook for candidates 2009. However, the fourth respondent, on the same day, without giving any opportunity to her, rejected her nomination papers and passed orders without mentioning any proceeding number.

(c) Immediately, on the next day, she approached the second respondent and made objection for rejection of her nomination papers and made a request to set aside the order passed by the fourth respondent dated 28-3-2011. However no orders were passed.

(d) The Fourth respondent committed a number of mistakes and irregularities and he has taken sides with the fifth respondent to ensure his success. The rejection of her nomination papers without giving any opportunity to her is against the provisions of the Representation of the People Act, 1951 and the judgments of the Hon'ble Apex Court. Had the election petitioner's nomination papers been accepted, she would have come out successful in the election. This putting forth the above grounds, the election petition was filed.

5. Counter Affidavit was filed on behalf of the returned Candidate putting forth the following contentions:-

(a) The election petitioner herself has admitted that the Returning Officer told her that he is going to reject the election petition on the ground that the proposers signature and name were not clearly mentioned; their serial numbers found in the voters list were not clearly mentioned and the left hand thumb impressions had not been obtained from the said proposers. Thus, she admits that the nomination paper has not been signed / subscribed by 10 proposers as contemplated by first proviso to section 33(1) of Representation of the People Act, 1951.

(b) The pleading contained in the election petition will clearly establish that the nomination papers submitted by the election petitioner is non-est in the eye of law and it is not valid nomination as per first proviso to section 33(1) of Representation of the People Act, 1951.

(c) The averment of the election petitioner that she filed the nomination paper along with all documents including the 10 proposers signature and the voters' list of the said proposers is not true. In document No. 1 filed along with the election petition there is a nomination form in form No. 2-B which the election petitioner has verified as true copy when she filed an application in O.A.Nos. 908 of 2011 and 924 of 2011. But she has changed her case stating that the nomination form filed by her is model form.

(d) The election petitioner did not even file the certified copy of the nomination paper along with election petition. After the expire of 45 days, she filed a document calling it as certified copy of the nomination paper alleged to have been obtained by her under the Right to Information Act. Any document filed beyond the period of 45 days from the date of declaration of results, cannot be received as evidence.

(e) Admittedly, the so-called nomination paper produced as additional document contains the left hand thumb impression of atleast 3 proposers. The left hand thumb impression of the 3 proposers were not attested. If 10 proposers have not signed at the time of presenting the nomination paper, it is not a nomination at all in the eye of law. This cannot be even cured at the time of scrutiny of nomination paper. Hence, there is no question of affording opportunity and Section 36(5) of the Representation of the people Act, 1951 is not at all attracted. If the nomination does not comply with Section 33(1) of the Act, there is no nomination in the eye of law and it cannot be cured even at the time of scrutiny.

(f) The document Nos. 2, 3 and 4 filed along with the election petition are all Xerox copies and the election petitioner has put a rubber stamp verification stating that it is a true copy of the original. However, no original documents have been produced by the election petitioner. The allegation made in document Nos. 2 and 3 do not tally with the allegation in para 1 of the election petition on material particulars. The election petitioner has no cause of action for filing the election petition and the document nos. 2, 3 and 4 are not admissible in evidence.

(g) Along with the election petition, the election petitioner has filed document no. 5 said to be the representation dated 28-3-2011 in which she has stated that when she filed the nomination, she could not mention the "part number" or some of the proposers. She has further stated that she has rectified it and has enclosed the voter ID number of the 10 proposers. Thus, according to the representation given by the election petitioner on 28-3-2011, which has been filed as document No.5, the defect alleged by her was that she has not given the part number of some of the proposers. But, according to the election petitioner she has rectified the defect in the nomination paper on 28-3-2011 by giving representation filed as document no. 5 Thus, she has admitted that on 28-3-2011, her nomination was defective but according to her the only defect was that she has not given the part number of some of the proposers and she has rectified the same by giving annexures along with the said representation dated 28-3-2011 which has been filed as document No. 5.

(h) While so, the election petitioner alleges that on 28-3-2011, a representation has been sent by her, seeking two days time to file her objection which has been filed as document No.6. The alleged representation of the election petitioner dated 28-3-2011 filed as document No.6 along with election petition do not tally with the representation dated 28-3-2011 filed by the election petitioner as certified

copy of the document obtained allegedly through Right to Information Act. The document No.6 filed along with the election petition is a typed copy of the representation signed by the election petitioner, but the document filed as certified copy of the very same representation, after the expiry of 45 day is a hand written representation and that the contents of both the documents are also different materially.

(i) The election petition has not been properly verified and there are blanks in the verification paragraph. Thus, the counter affidavit seeks for the dismissal of the election petition.

6. The following issues were framed in the election petition:-

(i) Whether the nomination paper of Mrs. M. Jayanthi / election petitioner has been wrongly and improperly rejected by the Returning Officer?

(ii) Whether the nomination of the election petitioner is in consonance with the provisions of the Representation of the People Act, 1951, more so, the first proviso to Section 33(1) of the Act?

(iii) Whether the election of the 5th respondent is liable to be declared void under Section 100 (1) (c) of Representation of the People Act, 1951?

7. I have heard the elected petitioner / Party in person and the learned Senior Counsel appearing for the returned candidate. The other respondents have not chosen to file any counter affidavit and to contest the matter.

8. The Election petitioner has filed the election petition for the following reliefs:-

“(a) To declare the fourth respondent order dated 28-3-2011 rejecting the petitioner’s nomination papers filed for contest in 78, Rishivanthiyam Assembly Constituency as improper, invalid and illegal and also set aside the election of the 5th respondent from 78, Rishivanthiyam Assembly Constituency of the Tamil Nadu Legislative Assembly.

(b) Consequently, to declare the election of returned candidate namely the 5th respondent herein from No.78, Rishivanthiyam Assembly Constituency, State of Tamil Nadu in the Election held on 13-4-2011 and the declaration of result on 13-5-2011 as illegal and null and void, and

(c) to direct the respondents to pay the cost of this Election Petition.”

Thus, it is the case of the election petitioner that here nomination was unjustly rejected.

9. **The issues framed in this election petition which are extracted above are commonly considered herein:-**Before embarking on the said issues, it would be useful to refer about clauses (1) and (4) of Section 33 or the Representation of the People Act, 1951 (herein after called as the Act), which deals with presentation of nomination paper and requirements for a valid nomination and it reads as follows:-

"33. Presentation of nomination paper and requirements for a valid nomination:(1) on or before the date appointed under clause (a) of Section 30 each candidate shall, either in person or by his proposer, between the hours of

eleven O'Clock in the forenoon the three O'Clock in the afternoon deliver to the returning officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer:

Provided that a candidate not set up by a recognized political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency:

(2) ...

(3) ...

(4) *On the presentation of a nomination paper, the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposer as entered in the nomination paper are the same as those entered in the electoral rolls:*

Provided that no misnomer or inaccurate description or clerical, technical or printing error in regard to the name of the candidate or his proposer or any other person, or in regard to any place, mentioned in the electoral roll or the nomination paper and no clerical, technical or printing error in regard to the electoral roll numbers of any such person in the electoral roll or the nomination paper, shall affect the full operation of the electoral roll or the nomination paper with respect to such person or place in any case where the description in regard to the name of the person or place is such as to be commonly understood; and the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected and where necessary, direct that any such misnomer, inaccurate description, clerical, technical, or printing error in the electoral roll or in the nomination paper shall be overlooked."

10. (I) The above referred provisions make it very clear that on or before the appointed date prescribed under Section 30, the candidate either in person or by his proposer, deliver to the returning officer a nomination paper completed in a prescribed format and signed by a candidate and by an elector of the constituency as proposer.

(II) If the candidate is not set up by a recognized political party, the nomination paper shall be subscribed by ten proposers being electors of the constituency.

(III) Clause (4) of Section 33 of the Act contemplates that the returning officer shall satisfy himself that the names and electoral roll numbers of the candidate and his proposers as entered in the nomination paper are the same as those entered in the electoral roll. Proviso to the said clause contemplates that the returning officer shall permit any such misnomer or inaccurate description or clerical, technical or printing error to be corrected wherever it is necessary.

11. In the case on hand, it has to be seen as to whether the nomination paper that has been filed by the election petitioner was in order or not.

12. Before answering the said question, it would be useful to see the pleadings. In the election petition, in para 2, the election petitioner has averred that on 26-3-2011, she has filed the nomination paper as independent candidate along with all document including ten proposers' signatures along with the voters' list of the said proposers. Thus, it is the case of the election petitioner that on 26-3-2011, she has filed her nomination paper along with all documents including ten porposers' signatures along with their voters' list. But, in the same para, the election petitioner has stated that on 28-3-2011, the returning officer, the fourth respondent herein, at the time of scrutiny of the nomination paper, told her that he was going to reject her nomination on the ground that the proposer's signatures and names and their serial numbers found in the voters' list were not clearly mentioned and the left hand thumb impression was not obtained from the proposers. Immediately, she has given all particulars regarding the proposers. This will clearly show that the election petitioner though at the first instance in para 2 of the election petition has stated that she has presented the nomination paper along with all documents including the ten proposers's signatures along with their voters' list in the very same para, she has stated that when the returning officer on 28-3-2011 pointed out certain defects, the same were complied with. At the same time, in the same para, in the next line she has stated that she has requested the returning officer two days time for filing objections about the alleged defects and also made a request through a written representation dated 28-3-2011 stating that her nomination papers shall not be rejected. It is also stated that citing the Election Commission guidelines, she has requested the returning officer two days time for filing objections about the alleged defects and also made a request through a written representation dated 28-3-2011 stating that her nomination papers shall not be rejected. It is also stated that citing the Election Commission guidelines, she has requested the returning officer to grant two days time to rectify the defects, but, however, the same has been turned down by him. The pleadings made in para 2 of the election petition is thus, usefully extracted hereunder:-

"2. The petitioner further submit that on 26-3-2011, the petitioner filed the nomination papers as independent candidate along with all documents including the 10 proposers signatures along with the voters list of the said 10 proposers. On 28-3-2011 the 4th respondent scrutiny the nomination papers at the time the 4th respondent told the petitioner that he going to reject her nomination on that ground that the proposers signatures and names were not cleared mentioned and also their serial numbers found the voters list has not been clearly mentioned also the left hand thumb impression not obtained from the said proposers, immediately the petitioner given all particulars inregarding with the proposers particulars (Document No.4) and represented before the 4th respondent and made request to give two days time for filing objection the above said alleged defects and also made request through written representation dated 28-3-2011 and the same was presented in person (Document No.5) that the petitioner's nomination papers should not reject and also the petitioner explained and cited the Rule as given in the Election Commission guidelines in the hand book for candidates 2009, as per Chapter IV clause 12 Page No.40 and as per hand book for returning officers Chapter VI Clause 11 page No.70 it has been given to returning officers that if the candidate askingtime for complying the said minor defects the time may be given to the such candidate, but the 4th respondent

herein immediately on the same day without giving any opportunity to the petitioner and rejected the petitioner's nomination and passed orders without mentioning any proceedings numbers (Document No.6).

13. The above extracted portion thus, amply makes it clear that the election petitioner has not presented her nomination papers on 26-3-2011 as per the requirement under clause (1) of Section 33 of the Act.

14. In her evidence as P.W.I. in the cross examination, the election petitioner has categorically admitted that only on 28-3-2011, she gave the required particulars to the returning officer and Ex.A.5 is the same. This clear admission along with the pleadings made in para 2 of the election petition would amply prove that it is the definite case of the election petitioner that she rectified the defects pointed out by the returning officer on 28-3-2011, on which date the scrutiny was made by him.

15. The next question that arises for consideration is, whether the defects pointed out by the returning officer are of substantial character or not?

16. Ex. C.1 is the nomination paper presented by the election petitioner, which was marked through C.W.1, the returning officer. C.W.1 has stated that in Ex.C.2, reasons have been given for rejection of her nomination paper. The reason, according to him, is that the names of the proposers and their signatures are improper and hence, her nomination was rejected. He has further added that the nomination paper filed by the election petitioner was not order, that is to say, the name of the proposers and their other particulars were not given properly. In the cross examination, C.W.1 has stated that the proposers need not come, but their names, part numbers, serial numbers of the electoral roll of that Constituency and their signatures should be there in the nomination paper. It is the further case of the returning officer that though ten proposers' names have been given, their serial numbers and part numbers were not given. If we peruse the original nomination paper- Ex.C.1 filed by the election petitioner, we could see the serial numbers and ten proposers' names. As far as their signatures are concerned, only five of them have subscribed their signatures and three affixed their left thumb impression. The serial number and proposers' part number in the voters list of the constituency have not been given properly. Thus, there seems to be defects pertaining to serial number and proposers' part number in the voters list of the constituency. The failure to give such particulars may not be construed as a substantial defect. Proviso to clause (4) of Section 33 contemplates that such error shall be overlooked and the returning officer shall permit any such misnomer or inaccurate description or electrical and technical error to be corrected by the person, who files nomination.

17. It is the case of the election petitioner that she has rectified the defects on 28-3-2011, but, according to the returning officer, when the defects have been pointed out to her, she orally requested him to grant some time to rectify the same. After rejection of her nomination on 28-3-2011, she has made a request for grant of two days time to rectify the defects in the nomination papers. When it is the case of the election petitioner that she has rectified the defects immediately after it was pointed out, it is the case of the returning officer that she asked some time to rectify the defects. In one portion of the cross examination made on behalf of the returned candidate, the election petitioner has accepted that she sought for two days time to give serial numbers and part numbers

of the proposes, but however, the same was rejected by the returning officer. The evidence in this regard is usefully extracted hereunder:-

“.....it is true that my representation seeking two days time for giving particulars regarding serial time for giving particulars regarding serial number and part number of the proposers was rejected by the returning officer.”

18. Ex.C.2 is the order of rejection made by the returning officer. The translated version of the same is extracted hereunder:-

“The decision taken by returning officer for acceptance of rejection of nomination paper.

As per section 36 of the Representation of the people Act, 1951, I have scrutinised this nomination and decide as follows:

The nomination bearing “VA” No.19 dated 26-03-2011 filed by Mrs.M. Jayanthi, w/o. R. Moorthy, as a contesting candidate from No.78, Rishivandiyam. Assembly Constituency is being rejected for the following reasons.

In the nomination (Form 2B) submitted by the candidate, names of the proposes and their signatures are improper. Further, the details under which Part Number and Serial Number their names figure in the electoral list pertaining to their constituency, have not been filled up properly.

As per the rules of the Election Commission, a person filing his/her nomination papers as an independent candidate, has to furnish the details of 10 persons found in the voter’s list of that constituency with their signatures of Left Thumb Impressions. Proposing his/her name. But you have not submitted the nomination accordingly, hence, it is rejected.

Date: 28-03-2011

Sd./.....
Returning Officer

No.78, Rishivandiyam Assembly
Constituency and District Backward
Classes and Minority Welfare
Officer, Villupuram.”

Thus, it amply makes it clear that the election petitioner has not presented her nomination papers in order viz., regarding ten proposers, their part numbers and serial numbers.

19. Ex.P.5 is the letter addressed by the election petitioner to the returning officer and as well as the District Election Officer, wherein she has requested the returning officer to accept to her, regarding ten proposers’ names, serial numbers, part numbers, etc., The said letter, in translated version, is re-produced hereunder:-

“ I filed my nomination papers on 26-3-2011 to the aforesaid Returning Officer to contest in No. 78, Rishivandiyam Assembly Constituency. An unfortunate situation arose, wherein I was not in a position to furnish part

numbers of some of the members among the 10 proposers in the nomination and I have thus submitted my nomination papers.

The reason for not furnishing part numbers referred to above is that on 26-03-2011 at about 12.30 p.m. when my husband and I tried to get into the entrance of Villupuram District Collector's office, S. Sivaraj's henchmen belonging to Rishivandiyam Assembly Constituency came and tried to take away or steal my nomination papers after murdering me, my husband and my son. But, they stabbed my husband, cut open the carry bag containing nomination papers brought by us and stole/grabbed the voters list pertaining to the aforesaid 10 proposers. Hence I was in the unfortunate situation of not furnishing part numbers of some of persons among the 10 proposers in the nomination papers submitted on 26-3-2011. therefore, I request that my humble explanation may be accepted and the same is furnished along with the copy of voters list of the proposers. I humbly request that this as well as my nomination may be accepted and I may be allowed to contest in the election from No. 78, Rishivandiyam Assembly Constituency as an independent candidate. I hereby enclose the copies of the criminal complaint and F.I.R. for your perusal."

LIST FOR TEN PROPOSERS.

Sl.No.	Part No.	Name of the voter.	Date	Voter's I.D. No.
820	78/186	Dhandapani	27-11-2000	KPH0959338
873	78/192	Pavadai	30-8-1997	TN/11/071/0291621
844	78/192	Ganesan	30-8-1997	TN/11/071/0291468
522	78/192	Thangavel	10-4-2010	TVC028712
716	78/186	Palani	27-11-2000	KPH0959460
870	78/192	Kaveri	31-1-2000	TN/11/071/0292237
585	78/192	Rathna	11-8-2007	KPH2698249
545	78/186	Kumar	8-9-1997	TN/11/071/0216189
380	78/186	Seenuvasan	27-11-2000	KPH2946895
410	78/176	Loganathan	27-11-2000	KPH2088789

20. C.W.1, the returning officer, has deposed that the proposers' names and other particulars which were given in the annexure to Ex.C.6 are different from the proposers' names and their particulars given in the original nomination paper. He has further added that the names of the proposers found in the nomination papers and annexure to Ex.C.6 are one and the same, but serial numbers and the part numbers are different. The

serial number, part number, names of the proposers as shown in Ex.C.1, the original nomination paper, are extracted hereunder:-

<i>Serial No.</i>	<i>Proposer's Part No. in the voters list of the constituency</i>	<i>Voters list No. Serial No. of the concerned part in the voters list</i>	<i>Full Name</i>	<i>Signature</i>	<i>Date</i>
(1)	(2)	(3)	(4)	(5)	(6)
1.	522		Thangavel	Thangavel	27-6-2010
2.					
3.					
4.	717	78/186	Palani	Palani	
5.	870		Kavery	Kavery	27-11-2000
6.					
7.	585	78/192	Rathna	Rathna	11-6-2007
8.	545		Kumar	Kumar	8-9-1997
9.	820		Dhandapani	Thumb impression	27-11-2000
10.	844		Ganesan	Thumb impression	30-8-1997
	873		Pavadai	Thumb impression	30-8-1997
			Loganathan		
			Seenuvasan		
			R. Loganathan		
			R. Seenuvasan		

21. Thus, comparing the original nomination paper along with Ex.P.5, it would reveal that as spoken to by C.W.1, the names of the proposers round in the nomination papers and annexure to Ex.C.6 are one and the same, but the serial numbers and part numbers are different. This will clearly show that the defects as on 28-3-2011, *i.e.*, on the date of Scrutiny still persists. with regard to the part numbers and serial numbers at the time of scrutiny, the returning officer could have pointed out, the defects and permitted the election petitioner to rectify the same. The part numbers and serial numbers could be found out from the electoral roll submitted by the election petitioner and with the help of the same, it could be rectified, but the returning officer, in my considered view, has not done his duty properly in helping the election petitioner, who has filed the nomination as an independent candidate. In fact, the election petitioner has sent a letter to the Chief Election Commissioner dated 29-3-2011, which is marked as

Ex.p.8. Even in the said letter, she has given reasons as to why she could not give the particulars of the proposers which is extracted hereunder:-

“... According to the Election Rules, the one wants to file nomination as an independent candidate, has to get signatures or left thumb impressions of 10 persons with their respective details, whose names are found in the voters list of the constituency. As I have not submitted my nomination in that manner, the officer who conducts the election, has rejected the nomination. But I have filed my nomination papers along with the signatures of the said 10 proposers. Further, before I could enter the office of the District Collector, Villupuram along with my husband to submit my nomination papers, in the public place viz., in the middle of the road, the henchmen of one S. Sivaraj, M.L.A. stabbed my husband and snatched away my nomination form, voters list and other important documents, So, on 26-03-2011, unfortunately, I could not file some of the part numbers of the aforesaid 10 proposers. In this regard, a criminal complaint was registered before the villupuram Taluk police station and an F.I.R. is issued. The Crime Number is 169 of 2011. This incident was reported widely in the news papers and the media.”

22. However, the question that remains to be considered is, whether the proposers subscribed their signatures or their mark (thumb impression) in the nomination paper as required under the Act and Rules.

23. The expression “sign” is defined in Section 2(1) (i) of the Act, and the same reads as follows:-

“2. Interpretation:- (1) in this Act, unless the context otherwise requires-

(a) to (h) ...

(i) “sign” in relation to a person who is unable to write his name means authenticate in such manner as may be prescribed.”

24. The said provision makes it clear that if a person is unable to write his name, he shall authenticate in such manner as has been prescribed. Rule 2(2) of the Conduct of Election Rules, 1961 (herein after called as the Rules), which deals which deals with the same, is extracted hereunder:-

“2. Interpretation:- (1) ...

(2) For the purposes of the Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if—

(a) he has placed a mark on such instrument or other paper in the presence of the returning officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission, and

(b) Such officer on being satisfied as to his identity has attested the mark as being the mark of that person.”

25. Thus, the said rule provides that a person, who is unable to write his name, may place his mark on the instrument or other paper and the requirements of law are complied with provided he places the mark in the presence of the returning officer or the presiding officer or such other officer as may be specified in this behalf by the Election Commission. The said officer on being satisfied as to his identity attests the mark as being the mark of the person.

26. Proviso to Clause (1) of section 33 of the Act, which was extracted above envisages that a candidate not set up by a recognized political party, shall not be deemed to be duly nominated for election from a constituency unless the nomination paper is subscribed by ten proposers being electors of the constituency. A combined reading of proviso to clause (1) of Section 33 and clause (i) of Section 2 and as well as Rule 2(2) of the Rules will clearly prove that the nomination paper of the independent candidate shall be subscribed by ten proposers with their names and signatures, if not, their thumb impression shall be available in the nomination paper. In the case on hand, though the thumb impression was made by three proposers, there was no attestation regarding their mark (thumb impression) and hence, it has to be taken that there was no valid nomination. In this regard, the election petitioner has not made any request. Even according to her, she has not sought some time to rectify the said defect. There is neither pleading to this effect, nor evidence on this line. Even the documents produced by the election petitioner do not reflect the same. Her evidence in this regard, at the risk of repetition, is extracted hereunder:-

“...It is true that my representation seeking two days time for giving particulars regarding serial number and part number of the proposers was rejected by the returning officer.

27. The letter given by her to the returning officer and the District Election officer dated 28-3-2011, which was extracted above, would also clearly reflect the same. At the risk of repetition, the relevant passage in the said letter is extracted hereunder:-

“...But, they stabbed my husband, cut open the carry bag containing nomination papers brought by us and stole/grabbed the voters list pertaining to the aforesaid 10 proposers. Hence I was in the unfortunate situation of not furnishing part number of some of persons among the 10 proposers in the nomination papers submitted on 26-03-2011. therefore, I request that my humble explanation may be accepted and the same is furnished along with the copy of voters list of the proposers. I humbly request that his as well as my nomination may be accepted and I may be allowed to contest in the election form No. 18, Rishivandiyam Assembly Constituency as an independent candidate”

This will amply establish that there was an attempt made on behalf of the election petitioner to get attestation of the thumb impression made by the three proposers in the nomination papers.

28. The next question that arises for consideration is, whether the said defect is substantial in character or not. If it is not substantial in character, the nomination paper presented by the election petitioner shall not be rejected by the returning officer.

29. Clause (4) of Section 36 of the Act is extracted hereunder:-

“36. Scrutiny of nominations:-

(1) to (3)....

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

30. It is contended on behalf of the election petitioner that the said defect is not substantial in character, whereas it is contended by the learned Senior Counsel appearing for the returned candidate that it is substantial in character. The law laid down by the Hon'ble Apex Court requires to be seen on this aspect.

31. (A) The learned Senior Counsel appearing for the Returned Candidate relied on the decision reported in AIR **1954 Supreme Court 510, Rattan Anmol Singh and another Vs. Ch. Atma Ram and Others**. The main question the was called upon to decide in the said matter is whether the Returning Officer was right in rejecting the nomination paper of the first respondent therein ? The facts in nut shell in the said matter are:-

(a) There was a contest for two seats in the Punjab Legislative Assembly. The Constituency is a double a member constituency, one seat being general and other seat reserved for a Scheduled Caste. The first respondent Atma Ram was a candidate for the reserved seat but his nomination was rejected by the Returning Officer at the scrutiny stage and so, he was unable to contest the election. The successful candidates were Rattan Anmol Singh, the appellant in one appeal for the general seat and Ram prakash, the appellant in the other appeal for the reserved seat.

(b) The election tribunal decided in favour of the first respondent by a majority of two to one and declared the whole election void.

(c) The reason for rejection of nomination paper of Atma Ram was that the proposer and seconder were illiterate and so placed a thumb mark instead of a signature. However, the thumb marks were not attested. The Returning Officer therefore held that without attestation, they are invalid and rejected the nomination. In that context, the Hon'ble Apex Court has held that the thumb mark made by the proposer and the seconder should have been attested and without attestation, they are invalid. Paragraph 13 of the said judgement is thus usefully extracted here under:-

“13. The four nomination papers we are Concerned with were not “Signed” by the proposers and seconders in the usual way by writing their names, and as their marks are not attested it is evident that they have not been “signed” in the special way which the Act requires in such cases. If they are not “signed” either in one way or the other, then it is clear they have not been “Subscribed” because “subscribing” imports a “Signature” and as the Act sets out the only Kinds of “Signatures” which is will recognise as “Signing” for the purposes of the Act, we are left with the position that there are no valid signatures of either a proposer or a seconder in any one of the four nomination papers. The Returning Officer was, therefore, bound to reject them

under Section 36 (2) (d) of the Act because there was a failures to comply with Section 33, unless he could and should have had resort to Section 36 (4).

(d) A subsidiary question that arose before the Hon'ble Apex Court was whether assuming attestation to be necessary under the Rules, an omission to obtain the required attestation amount to technical defect of an unsubstantial character which the Returning Officer was bound to disregard under Section 36(4) of the Representation of the people Act, 1951. The answer has been given in paragraph 14 of the said judgment which is usefully extracted here under:

"14. That sub-section is as follows:

"The Returning Officer shall not reject any nomination Paper on the ground of any technical defect which is not of substantial character."

The question, therefore, is whether attestation is a mere technical or unsubstantial requirement. We are not able to regard it in that light. When the law enjoins the observance of a particular formality it cannot be disregarded and the substance of the thing must be there. The substance of the matter here is the satisfaction of the Returning Officer at a particular moment of time about the identity of the person making a mark in place of writing a signature. If the Returning Officer had omitted the satisfaction because of some slip on his part and it could be proved that he was satisfied at the proper time, the matter might be different because the element of his satisfaction at the proper time, which is of the substance, would be there, and the omission formally to record the satisfaction could probably 'in a case like that' be regarded as a unsubstantial technicality. But we find it impossible to say that when the law requires the satisfaction of a particular Officer at a particular time his satisfaction can be dispensed with altogether. In our opinion, this provision is as necessary and as substantial as attestation in the cases of a will or a mortgage and is on the same footing as the "subscribing" required in the case to the candidate himself. If there is no signature and no mark the form would have to be rejected and there absence could not be dismissed as technical and unsubstantial. The "satisfaction" of the Returning Officer which the Rules require is not, in our opinion, any the less important and imperative."

Thus, the Hon'ble Apex Court held such defect as substantial in character and it is not technical or un-substantial.

(e) yet another question that came for consideration before the Hon'ble Apex Court was whether the attestation can be compelled by the persons concerned at the scrutiny stage. It has been held that if substantial defect is found, it cannot be cured at the stage of scrutiny of the nomination. Paragraph 15 of the said judgment is thus usefully extracted here under:

"15. The next question is whether the attestation can be compelled by the persons concerned at the scrutiny stage. It must be accepted that no attempt was made at the presentation stage to satisfy the Returning Officer about the identity of these persons but evidence was led to show that this

was attempted at the scrutiny stage. The Returning Officer denies this, but even if the identities could have been proved to his satisfaction at that stage it would have been too late because the attention and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of a candidate to sign at all could have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been "any failure to comply with 'any' of the provisions of Section 33....."

The only jurisdiction the Returning Officer has at the security stage is to see whether the nominations are in order and to hear and decide objections. He cannot at that stage remedy essential defects or permit them to be remedied. It is true he is not to reject any nomination paper on the ground of any technical defect which is not of a substantial character but he cannot remedy the defect. He must leave it as it is. If it is technical and unsubstantial it will not matter. If it is not, it cannot be set right;"

(B) Yet another decision relied on by the learned Senior Counsel appearing for the Returned candidate is reported in **AIR 1970 Supreme Court 110, Ram Dayal Vs. Brijraj Singh and others**. The Hon'ble Apex Court in the said decision has held that the requirement under Section 33(1) of the Act that the nomination shall be signed by the candidate any by the proposer is mandatory. Signing, whenever signature is necessary, must be in strict accordance with the requirements of the Act and where the signature cannot be written it must be authorised in the manner prescribed by the Rules. Further, it has been held that the attestation and the satisfaction must exist at the stage of presentation and it cannot be validated at the stage of scrutiny. Paragraphs 3 and 4 of the judgement of the Hon'ble Apex Court is thus usefully extracted here under:-

"3. The plea that the rejecting of the nomination paper of Dhani Ram by the Returning Officer was illegal has no substance. On January 19, 1967 Dhani Ram delivered to the Returning Officer two nomination Papers signed by him. Each nomination papers bore a thumb impression of one Gokla as the proposer. But the thumb impressions were not authenticated or attested in the presence of the Returning Officer or any other Officer Specified in the Rules. The Returning Officer rejected the nomination Papers.

4. Section 33(1) of the Representation of the people Act, 1951, requires that each candidate shall deliver to the returning Officer a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer. The expression "sign" is defined in Section 2(i) of the Act as amended by Act 27 of 1956 as meaning "in relation to a person who is unable to write his name authenticate in such manner as may be prescribed". Rule 2(2) of the Conduct of Election Rules, 1961 provides:

"For the purpose of Act or these rules, a person who is unable to write his name shall, unless otherwise expressly provided in these rules, be deemed to have signed an instrument or other paper if

(a) he has placed a mark on such instrument or other paper in the presence of the Returning Officer or the presiding Officer or such other Officer as may be specified in this behalf by the Election Commission.

(b) such Officer on being satisfied as to his identity has attested the mark as being the mark of that person.”

where a person is unable to write his, name, he may place his mark on the instrument or other paper and the requirements of law are complied with, provided he puts the mark in the presence of the Returning Officer or the presiding Officer or such other Officer as may be specified in that behalf by the Election Commission and such Officer on being satisfied as to his identity attests the mark as being the mark of that person. Gokla was illiterate. He impressed his thumb mark on the nomination paper; but it was not placed in the presence of any of the designated Officer, nor was there any authentication or attestation of the thumb-mark. The requirement under Section 33(1) of Act that the nomination shall be signed by the candidate and by the proper is mandatory.

Signing, whenever signature is necessary, must be in strict accordance with the requirements of the Act and where the signature cannot be written it must be authorised in the manner prescribed by the Rules. Attestation is not a mere technical or unsubstantial requirement within the meaning of Section 36(4) of the Act and cannot be dispensed with. The attestation and the satisfaction must exist at the stage of presentation and omission of such an essential feature may not be subsequently validated at the stage of scrutiny any more than the omission of a candidate to sign at all could have been.”

(c) yet another decision relied on by the learned Senior Counsel appearing for the Returned Candidate is reported in **AIR 1975 supreme Court 1274, Dharam Singh Rathi Vs. Hari Singh, M.L.A., and Others**, wherein the Hon'ble Apex Court has held that the thumb mark has to be placed by the proposer on the nomination paper in the presence of the Returning Officer and it has to be attested. The relevant passage is thus usefully extracted here under:

“The prescribed manner of authentication is to be found in Rule 2(2) of the Rules. A thumb mark has to be placed by the proposer on the nomination paper in the presence of the Returning Officer and such Officer on being satisfied as to his identity has to attest the mark as being the mark of that person. There was, therefore, a clear violation of this rule also. We see no reason to differ from the view of the High Court that the nomination paper of Prabha Ram was not improperly rejected by the Returning Officer.”

32. Clause (i) of Section 2 of the Act, clause (2) of Rule 2 of the Rules coupled with the above referred to decisions will amply make it clear that the thumb mark has to be placed by the proposer on the nomination paper in the presence of the returning officer and such officer being satisfied as to his identity, has to attest the mark as being the mark of that person.

33. In the case on hand, though three proposers have put their thumb impression in the nomination paper filed by the election petitioner, the same has not been attested by the returning officer as to their identity. It is not even the case of the election petitioner that the three proposers, who have affixed their thumb impression, have

appeared before the returning officer. Thus, the defects found in the nomination paper are substantial in character and hence, the rejection of the nomination paper by the returning officer cannot be faulted.

34. The election petitioner/party in person relied on the following decisions:-

(A) (2004) 7 Supreme Court Cases 492, Manda Jagannatha Vs. K.S. Rathanam and Others.

(i) That is a case where on rejection of the nomination, a *writ* petition under Article 226 of the Constitution of India was filed before the High Court of Judicature, Andhra Pradesh, Hyderabad for mandamus declaring the action of the Returning Officer treating the first respondent as an independent candidate and not as a candidate set up by the Telangana Rashtra Samithi as illegal and further prayed for a direction to the said Returning Officer to treat the first respondent before the Hon'ble Apex Court as a candidate set up by the said political party and allot the symbol of "Car" to him. The High Court of Andhra Pradesh came to the conclusion that the irregularity, if any, found in Form B was so technical and trivial that the same did not justify the action of the Returning Officer to treat the first respondent as an independent candidate and not as a candidate set up by the Political party referred to above and hence, issued the impugned directions setting aside the decision of the Returning Officer. It also opined that the issue relating to allotment of symbol by the Returning officer at the time of scrutiny of nomination papers is not one of the grounds on which an election petition could be filed under the provisions of the Representation of the people Act, 1951 (the RP Act, 1951). Aggrieved over the interim order of the High Court of Andhra Pradesh, an appeal was filed before the Hon'ble Apex Court. The Hon'ble Apex Court has set aside the order of the High Court of Andhra Pradesh, however holding that the rejection of the nomination could be canvassed in the election petition. Paragraphs 23 and 24 of the judgement is usefully extracted here under:

"23. The next argument of learned counsel for the respondent is that as per the provisions of Section 36 of the Representation of the People Act, Rule 4 of the Conduct of Election Rules, 1961 and clause 13 of the Election Symbols (Reservation and Allotment) Order, 1968, the omissions found by the Returning Officer in Form B filed by the Respondent herein are all curable irregularities and are not defects of substantial nature, calling for rejection of the nomination paper. We think these arguments based on the provisions of the statutes, rules and orders are all arguments which can be addressed in a properly constituted election petition, if need be, and cannot be a ground for setting aside the order of the Returning Officer which is prima facie just and proper, in our opinion.

24. we are not recording any conclusive opinion in regard to the applicability of the above statute, rules and orders because, as stated above, it is a matter to be decided in an election petition. Suffice it to say that the High Court on facts of this case, could not have interfered with the decision of the Returning Officer to reject Form B filed by the first respondent."

(ii) The above judgment will clearly prove that the Hon'ble Apex Court has not expressed any opinion whether the rejection of the nomination is bad or good and

left the matter to be decided in the election petition, if the party intends to move it. Hence, the said judgment may not come to the rescue of the petitioner in any manner.

(B) (1962) 2 SCR 401, Rangilal Choudhury Vs. Dahu Sao and others.

(i) That is the case where the nomination paper was rejected by the Returning Officer only on the ground that the proposer had nominated the Candidate for election from Bihar and not Dhanbed Assembly constituency. The Nomination was made on a Hindi form printed for the purpose by the Government which unfortunately did not exactly conform to the Hindi printed form in the Rules framed under the Representation of the people Act. The heading in the specimen printed form requires the name of the State in which the election is held, to be filled in the blank space; but in the printed form supplied to the respondent the name of the State was already printed in the heading and therefore the blank space had to be filled in with the name of the constituency. The candidate therefore filled in the name of the constituency in the blank space in the heading. There after the proposer filled in the next part of the form which has five columns, after the main part which says that the proposer nominates so and so for such and such constituency. In this main part, the name of the candidate and the name of the constituency have to be filled in by the proposer. In the particular form with which the said case is connected was that the name of the candidate was rightly filled in but the proposer instead of putting down the name of the constituency, namely, Dhanbad, put down the name Bihar therein. The only objection that was taken in the said matter was that the proposer had not mentioned the constituency for which he was proposing the candidate for election and therefore the nomination form was defective and should be rejected this found favour with the Returning Officer who rejected the nomination paper.

(ii) When it was challenged before the High Court, Bihar, it has been held that the Returning Officer improperly rejected the nomination paper. The said view taken by the High Court of Bihar was upheld by the Hon'ble Apex Court. In the said decision, the Hon'ble Apex Court has held that no nomination paper shall be rejected on the ground of any defect which is not a substantial Character. The said view was taken by the Hon'ble Apex Court, since the defect in the form is that the proposer has put in the word Bihar instead of Dhanbad which was not a defect of substantial character. Thus, the said judgment also may not come to the rescue of the petitioner party-in-person.

(c) (2005) 12 Supreme Court Cases 121, Ram Bhual Vs. Ambika Singh.

(i) That is the case of one Sita Ram who filed his nomination paper for the Uttar Pradesh Legislative Assembly held on 21-2-2002. In the nomination paper, the ninth proposer viz., Sant Lal was referred as voter in Serial No. 392, but in fact his name been shown as Serial No. 352 in the voter list. However, the Returning Officer rejected the nomination. On Challenging before the High Court of Uttar Pradesh, the stand taken by the Returning Officer was set at naught and the election petition was allowed. The matter came up before the Hon'ble Apex Court and the Hon'ble Apex Court confirmed the view taken by the High Court of Uttar Pradesh.

(ii) The said judgement may not come to the rescue of the petitioner since the defect that has prevailed in the said case is a minor one. The ninth proposer by the

Sant Lal was shown as Serial No. 392 instead of Serial No. 352 in the voters list. Apparently finding that it is only a minor error and can be cured as per Clause 4 of Section 36 of the Representation of the people Act, 1951, the decision taken by the Returning Officer was set aside and the High Court has allowed the election petition and so as the Hon'ble Apex Court, Hence, this judgment also may not come to the rescue of the petitioner party-in-person.

(D) 1993 Supp. (2) Supreme Court Cases 229, J. Chandrasekhara Rao Vs. V. Jagapathi Rao and others and (1999) 3 Supreme Court Cases 357, Uma Ballav Rath (Smt) Vs. Maheswar Mohanty (Smt) and Others.

In the said decision, it has been held that an election cannot be set aside on presumptions, surmises and conjectures. A clear and cogent proof in support of the allegations is essential. The said decision nowhere answers the issues raised by the petitioner party-in-person.

(E) (2012) 5 Supreme Court cases 127, Chaugule vs. Bhagwat.

The said decision also does not touch the ratio raised in this election petition. It has no relevance to the facts of the case and hence, the same may not come to the rescue of the petitioner party-in-person.

(f) (2012) 11 Supreme Court Cases 390, Shambhu Prasad Sharma Vs. Charandas Mahant and other.

The case of the appellant therein was that in the election petition, the nomination paper filed by the respondents 2 to 18 were incomplete for want of a proper affidavit required to be filed in terms of the orders passed by this Court in Union of India vs. Assn. for Democratic Reforms and the instructions issued by the Election Commission requiring the candidates to file such affidavits along with their nomination papers. An application was taken out by the returned candidate under Order / Rule 11 CPC r/w Section 86 (l) of the Representation of the people Act, 1951 wherein it has been alleged that the petition did not disclose any cause of action. The High Court of Bilaspur at Chhattisgarh allowed the application and dismissed the election petition. The same was canvassed before the Hon'ble Apex Court which also confirmed the order passed by the High Court of Bilaspur at Chhattisgarh. While dismissing the appeal, the Hon'ble Apex Court has held that the question of acceptance or rejection of the paper shall have to be viewed in the light of sub-section (4) of Section 36 of the Act. It was also held that what is to be seen is whether there is a substantial compliance with the requirement as to form and the every departure from the prescribed format cannot be a ground for rejection of the nomination paper. Thus, the Hon'ble Apex Court has held that minor defect can be cured and not a substantial error.

(g) 1957 SCR 179, Surendra Nath Khosla and Another vs. S. Dalip Singh and others.

(i) That is the case where one of the issue that was raised was whether the thumb impression of the proposer and the seconded of one of the candidate had not been

properly verified and the same was not in accordance with the election rules. On facts it has been found that the thumb impression had been attested by the Magistrate who had in fact been authorized in that behalf.

(ii) Thus, the Hon'ble Apex Court has held that the Tribunal having found as a fact that the persons whose thumb impressions the nomination papers purported to bear had really proposed and seconded the candidate and that those thumb impressions had been attested by a Magistrate who had in fact been authorized in that behalf, there is no room for the contention that the Returning Officer was justified in rejecting the nomination paper in question.

(iii) The said judgment also may not come to the rescue of the petitioner party-in-person.

(h) (2009) 13 Supreme Court Cases 131, Uttamrao Shivdas Jankar vs. Ranjitsinh Vijaysinh Mohite Patil.

(i) The question that arose for consideration before the Hon'ble Apex Court was the extent of jurisdiction of a Returning Officer to determine a question as to whether a nomination paper filed by an applicant to enable him to contest an election in terms of the provisions of the Representation of the people Act, 1951 on the premise that the name of the proposers were forged. The appellant therein filed his nomination paper before the returning officer. The respondents therein raised objections stating that the proposers/and 8 had not signed the nomination papers, but it is a forged one. The returning Officer thereafter compared the signatures of the said proposers and they were also present before him. After scrutinizing the papers, the nomination of the appellant was rejected. The High Court also found that the rejection is valid. Thereupon the matter came before the Hon'ble Apex Court. The Hon'ble Apex Court set aside the order of the High court and remitted the matter before the High Court. While doing so, held that in an election petition, the High Court acts as a Court of original jurisdiction and its jurisdiction stricto sensu cannot be said to be appellate in nature. It has been further held that the High Court was duty bound to treat the matter on merits by framing issues and thereafter calling for production of evidence by parties and thus, it is held that the High Court erred in treating its power only as an appellate authority and proceeded to try and determine as to whether or not decision making process was legal or not. It has also been held by the Hon'ble Apex Court that affidavits were filled not only by the disputed proposers who claimed that their signatures on nomination papers were forged, but also by appellant and five other proposers, one of whom was brother of proposer 8 vouching genuineness of those signatures. Evidence by way of affidavits is one of the modes of proving fact and the Returning office while exercising his discretion could have appreciated the evidence brought on record by way of affidavits and decided the issue.

(ii) The said judgment also will have no relevance to the facts of the case on hand.

(l) (2011) 7 Supreme Court Cases 721 - Nandiesha Reddy vs. Kavitha Mahesh.

(i) That is the case where the respondent before the Hon'ble Apex Court has filed the election petition challenging the election of the appellant therein on the ground that the returning officer has rejected her nomination illegally. The respondent therein filed a petition under Order VII Rule 11 C.P.C. to reject the election petition and another petition under Order VI Rule 16 C.P.C. to delete certain portion of the election petition. The said applications were dismissed by the High Court of Karnataka and the same was challenged before the Hon'ble Apex Court and the Hon'ble Apex Court confirmed the judgment of the Karnataka High Court. Para 26 of the said judgment is usefully extracted hereunder:-

"26. As regards the failure to subscribe the nomination papers by ten electors as required under the first proviso to Section 33(1) of the Act, the plea of the election petitioner is that it was so subscribed. Whether in fact was done or not is a matter of trial and at this stage we have to proceed on an assumption that the averments made in the election petition are true. There is clear averment in the election petition that the nomination paper was subscribed by ten electors. In the face of aforesaid there is no escape from the conclusion that the election petitioner shall be deemed to be a candidate and entitled to challenge the election of the returned candidate."

(ii) The said judgment may not be applicable to the facts of the present case since that was the case where judgment was rendered before the full-fledged trial. Since there was a pleading on behalf of the election petitioner that the nomination paper was subscribed by ten electors and the said fact, according to the Karnataka High Court, has to be considered only at the time of trial.

(J) 2012 (4) CTC 43 K. Kalaimani vs. Mathirasan.

The said decision also will not be applicable to the present case since on facts, it has been found by this Court that the defects found in the nomination papers were not substantial in character and they were minor discrepancies pertaining to serial numbers and the same could have been, according to this Court, clarified at the stage of presentation itself. Therefore, in my considered view, the said judgment may not be applicable to the case on hand.

(K) (2012) 1 Supreme Court Cases 762 – Ramesh Rout vs. Rabindra Nath Rout.

(i) In the said election petition, the election of the applicant therein was challenged on the ground of improper rejection of the nomination papers of the proposed candidate. It was averred therein that the proposed candidate had filed Form A and Form B signed in ink by the authorized person along with the first set of nomination papers showing that he had been duly sponsored by BJD to contest as a party nominee from 89 Athagarh Assembly constituency and with other three sets of nomination, he had filed Xerox copies of original Forms A and B duly authenticated by a notary public. The election petitioners raised diverse grounds in challenging the order of the Returning Officer dated 6.4.2009 whereby the nomination papers of the proposed candidate were rejected. The question came up for consideration in that matter was whether it is mandatory for a candidate set up by a recognized political party to file original ink-signed Forms A and B

appended to para 13 of the 1968 Order. The finding of the Hon'ble Apex Court in paras 49, 62, 65, 66, 76, 77 and 78 are as follows:-

“49. The proposed candidate admittedly filed his nomination paper proposed by a single elector having been set up by BJD, a recognised political party in the State of Orisa, and therefore, it was incumbent upon him that the requirements of Para 13 of the 1968 Order were fully complied with. In other words, it was necessary for the proposed candidate that Forms A and B referable to clauses (b), (c) and (d) of Para 13, 1968 Order were submitted to the Returning Officer duly signed in ink by the authorised person of BJD not later than 3.00 p.m. on 4-4-2009.

62. In the present case, the checklist (Ext. 11), Form 3-A, (Ext. 42/F) and the list of the nominated candidates checklist (Ext. 44) give rise to presumption in favour of the proposed candidate that he had filed Form A and Form B duly signed in ink by the authorised person of BJD with the first set of his nomination person paper. The question is whether this presumption has been rebutted by the returned candidate? We do not think so. The oral evidence of the returned candidate (RW 1) and his witness (RW 2) is not of much help insofar as this aspect is concerned. The Returning Officer has not stated firmly and with certainty in his evidence that the proposed candidate had not filed Form A and Form B signed in ink by the authorised person of BJD. Rather he stated that had it come to his notice that the original Form A and Form B duly signed in ink were not filed along with the nomination paper by the proposed candidate, he would have made an endorsement to that effect in the checklist.

65. A careful consideration of the evidence of the Returning Officer leaves no manner of doubt that he has not distorted the facts nor withheld anything from the court with regard to presentation of nomination papers by the candidates including the proposed candidate. The evidence on record i.e. the evidence of the Returning Officer, the documentary evidence, namely, the checklist, Form 3-A displayed on the notice board, the consolidated list of nominated candidates and the evidence of PW 2 clearly establish that original Form A and Form B signed in ink by an authorised officer of the party (BJD) were presented by the proposed candidate along with the first set of nomination papers on 4-4-2009. The finding returned by the High Court in this regard cannot be said to be wrong or unjustified.

66. It is a fact that the original Forms A and B were not available on record before the Returning Officer on 6-4-2009 at the time of scrutiny. However, we are not persuaded by the submission made on behalf of the returned candidate that in the absence of original Forms A and B on record, the Returning Officer had to proceed on the basis of records available before him on that day and he had no option but to reject the nomination. The least expected of the Returning Officer, when he found that original Forms A and B were not available on record, was to make brief enquiry about non-availability of Forms A and B. It was all the more necessary as the nomination papers along with accompanying documents were sent for Xeroxing.

76. The High Court finally concluded that the proposed candidate had filed the original Form A and Form B duly signed in ink by the authorised person of BJD with the first set of his nomination papers and, accordingly, decided issue 6 in favour of the election petitioners. The consideration of the matter by the High Court in para 14 of the judgment may be reproduced as it is :

“14. No doubt at the time of filing of nomination, the Returning Officer is not required to scrutinise the nomination and the accompanying documents in minor details, but he is duty-bound to examine the same on technical standpoint. Now the pertinent question is whether he was expected to examine whether the original ink-signed Form A and Form B were filed, while examining the nomination paper along with the accompanying documents, on technical standpoint. In my considered opinion, he had to do so, particularly when he deposed that had it come to his notice that Shri Ranendra Pratap Swain filed the Xerox copies of the original ink-signed Form A and Form B, he would have endorsed it at the bottom of the checklist and directed him to file the original ones. At this stage Mr. Palit, learned counsel for the respondent submitted that unless, an election petitioner fully established his case, it would not be proper to set aside the election. In support of his submission, he relied on the decision in Ram Phal Kundu v. Kamal Sharma, wherein the Apex Court held as follows:

‘Therefore, unless the election petitioner fully established his case, it will not be legally correct to set aside the election of the appellant.’

As found from the evidence of PWs 1 and 2 the latter filed the original in-signed Form A and Form B in his first set of nomination. This part of their evidence could not be shaken. Even no suggestion was given to PW 1 that PW 2 did not file original ink-signed Form A and Form B in his first set of nomination. So, the above decision is not applicable to the present case.

The Returning Officer has admitted in his evidence that the nominations along with all the accompanying documents of all the eight candidates were Xeroxed outside in Anand Xerox of Athagarh. He has also admitted that on 4-4-2009 all the four sets of nomination papers of Shri Ranendra Pratap Swain were xeroxed to display the same in his notice board. The possibility that, in the process the original ink-signed Form A and Form B were inadvertently exchanged for the Xerox copies thereof, cannot be ruled out. Under such premises, in my considered opinion, Shri Ranendra Pratap Swain had filed the original Form A and Form B duly signed in ink by the authorised person with the first set of his nomination. Accordingly, Issue 6 is answered in the affirmative.”

77. In what we have already discussed above, we do not find any error in the consideration of the matter by the High Court.

78. The election petitioner, as noticed above, in Ground 5(E) set up the case that the objection of non-filing of original Forms A and B signed in ink by the authorised officer of the party was not raised by any of the contesting candidates or any person on their behalf present at the time and

place of scrutiny. It was the Returning Officer who raised the issue of non-filing of original Forms A and B but he refused minimum opportunity to the election petitioner to rebut the same. In our view, the Returning Officer ought to have acted in terms of the proviso to Section 36(5) of the 1951 Act and afforded an opportunity to the election petitioner until next day to rebut the objection and show to the Returning Officer that the proposed candidate had filed Forms A and B duly signed in ink by the authorised person of BJD. PW 3, the authorised representative of the election petitioner did state in his evidence that he requested to the Returning Officer, when he raised the objection that original Forms A and B were not filed, to enquire into the matter about the missing Forms A and B. It was not necessary to state in the election petition the evidence of PW 3 in support of Ground 5(E)."

(ii) That is a case on evidence. It was found that Form A and Form B signed in ink by the authorized officer of the party were filed along with the papers of the candidate. When the returning officer raised the issue that it has not been filed during scrutiny, it was held that minimum opportunity to rebut the same should have been given to the election petitioner. However, in the case on hand, the attestation of at least three proposers was not made at the time of filing of the nomination papers or at the time of scrutiny of the same. Hence, the said judgment may not be applicable to the facts of the present case.

(L) 2012-11 SCC 390 – Shambhu Prasad Sharma vs. Shri Charandas Mahant & Amp. ors.

That is the case where the appellant therein has pleaded in his election petition that the nomination papers filed by respondents 2 to 8 therein were incomplete for want of a proper affidavit required to be filed in terms of the orders passed by the Hon'ble Apex Court in *Union of India vs. Association for Democratic Reforms and Anr. (2002) 5 SCC 294* and the instructions issued by the Election Commission requiring the candidates to file such affidavits along with their nomination papers. On the facts of the above case, the Hon'ble Apex Court found that the nomination paper is not considered sacrosanct and what is to be seen is whether there is a substantial compliance of the requirement as to form. Every departure from the prescribed format cannot, therefore, be made a ground for rejection of the nomination papers. In the case at hand, before the Hon'ble Apex Court, the appellant therein alleged that the affidavit did not in the prescribed format to state whether the candidates had any outstanding liabilities qua financial institutions or the Government. Thus, the above case did not deal with the rejection of nomination papers by the returning officer on the ground pointed out in the case on hand. Further, the Hon'ble Apex Court held that nomination papers shall not be rejected unless the defects are substantial in character. But, in the case on hand, I have already pointed out that the defects in the nomination paper filed by the election petitioner are substantial in character. Hence, the said judgment may not be applicable to the facts of the present case.

35. It is contended by the learned Senior Counsel appearing for the returned candidate that in an election petition, the returned candidate need not confine the grounds available before the returning officer to reject the nomination, but also could raise other grounds. In support of his contention, he has relied on the decision of the Hon'ble Apex Court reported in ***AIR 1959 Supreme Court 422***,

N.T. Veluswami Thevar vs. G. Raja Nainar, wherein the Hon'ble Apex Court has observed as follows:-

“The argument is that if the jurisdiction of the tribunal is coextensive with that of the returning officer, then the enquiry before it must be confined to the grounds which were urged before the returning officer. Now, the observations quoted above were made statedly with reference to Rule 47, and assuming that they apply to an enquiry under Section 100 (1) (c), the question still remains, what is the jurisdiction of the returning officer in hearing objections to nomination papers? His jurisdiction is defined in Section 36(2), and the tribunal must therefore have jurisdiction to decide all the questions which can be raised under that section. The fact that a particular ground which could have been raised was not, in fact, raised before the returning officer does not put an end to his jurisdiction to decide it, and what he could have decided if it had been raised, could be decided by the tribunal, when raised.

.

*The question now under consideration came up directly for decision before the High Court of Rajasthan in **Tej Singh vs. Election Tribunal, Jaipur** and it was held that the respondent to an election petition was entitled to raise a plea that the nomination of the petitioner rejected on one ground by the returning officer was defective on one or more of the other grounds mentioned in Section 36(2) of the Act, and that such a plea, if taken, must be enquired into by the Election Tribunal.”*

Even if the returning officer has not referred in his order in so many terms that thumb impressions of the proposers were not attested, the said argument could be advanced by the returning candidate as per the dictum laid down by Hon'ble Apex Court in the said judgment.

36. In yet another decision which was relied on by the learned Senior Counsel appearing for the returned candidate is reported in **(1999) 8 Supreme Court Cases 198, Narender Singh vs. Mala Ram and another**, wherein the Hon'ble Apex Court has held that while appreciating the evidence of the election petitioner and the returned candidate, if it is equally balanced and on the basis of the same inference can be drawn either in favour of the returned candidate or in favour of the election petitioner, one in favour of the returned candidate should be preferred.

37. Considering the totality of the circumstances referred to above and also considering all relevant materials and the judgments cited above, I am of the considered view that—

(i) The nomination paper filed by the election petitioner to contest in 78, Rishivanthiyam Assembly Constituency, State of Tamil Nadu is non-est in the eye of law and not a valid one as per Section 33 of the Representation of the People Act, 1951.

(ii) The election petitioner is not definite that she has filed her nomination paper in accordance with Section 33 of the Representation of the People Act, 1951 and that she has rectified the entire defects pointed out by the returning officer. On one

hand, it is stated that the election petitioner has filed the nomination paper in accordance with the provisions of the Representation of the People Act, 1951 and on the other hand, it is stated that the defects have been cured. Further, it is also the case of the election petitioner that she sought time to rectify the defects, but, however, time was not granted. Therefore, the stand taken by the election petitioner is too different/ inconsistent.

(iii) Atleast three proposers have affixed their thumb impressions in the nomination paper of the election petitioner. But, the same were not attested in the manner known to law.

(iv) The above referred defect is substantial one, which cannot be cured.

(v) Even as per clause (4) of Section 36 of the Representation of the People Act, 1951, the returning officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character. This could only mean definite that she has filed her nomination paper in accordance with Section 33 of the Representation of the People Act, 1951 and that she has rectified the entire defects pointed out by the returning officer. On one hand, it is stated that the election petitioner has filed the nomination paper in accordance with the provisions of the Representation of the People Act, 1951 and on the other hand, it is stated that the defects have been cured. Further, it is also the case of the election petitioner that she sought time to rectify the defects, but, however, time was not granted. Therefore, the stand taken by the election petitioner is too different/inconsistent.

(iii) Atleast three proposers have affixed their thumb impressions in the nomination paper of the election petitioner. But, the same were not attested in the manner known to law.

(iv) The above referred defect is substantial one, which cannot be cured.

(v) Even as per clause (4) of Section 36 of the Representation of the People Act, 1951, the returning officer shall not reject any nomination paper on the ground of any defect, which is not of a substantial character. This could only mean that if the defect is of substantial character, the same can be rejected.

(vi) As pointed out earlier, the thumb impressions of three proposers were not attested, which is of a substantial character as per the dictum laid down by the Hon'ble Apex Court referred earlier. Therefore, in my considered view, the returning officer has rightly rejected the nomination paper filed by the election petitioner, which does not call for any interference by this Court.

(vii) Therefore, the grounds taken by the election petitioner to set at naught the order of the returning officer, rejecting her nomination and to set at naught the election of the returned candidate are liable to be rejected and accordingly, rejected.

37. In fine, the election petition stands dismissed. However, there is no order as to costs.

WITNESS THE HON'BLE THIRU RAJESH KUMAR AGRAWAL, ACTING

30 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 5TH DAY OF
APRIL 2013.

sd/.....
ASSISTANT REGISTRAR
Original Side – II

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE 25TH DAY OF APRIL 2013.

COURT OFFICER (OS)

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

HIGH COURT, MADRAS
ELP. No.12 OF 2011 – LIST OF EXHIBITS

List of Documents marked as Exhibits

- 1 Ex.P1 Photocopy of the nomination along with documents submitted at the time of nomination by the Election Petitioner.
- 2 Ex.P2 Photocopy of the Police Complaint, dated 26-03-2011, lodged by the Election Petitioner's husband in Villupuram Taluk Police Station.
- 3 Ex.P3 Photocopy of the F.I.R. bearing FIR No.169 of 2011 dated 26-03-2011 on the file of the Villupuram Taluk Police Station.
- 4 Ex.P4 (Series / Nos.) Photocopies of the newspaper report published in various Tamil Daily newspapers.
- 5 Ex.P5 Representation dated 28-03-2011 given by the Election Petitioner to the District Election Officer and District Collector, Villupuram district along with the details of proposers.
- 6 Ex.P6 Representation dated 28-03-2011 given by the petitioner to the Returning Officer, Rishivanthiyam Assembly Constituency, Villupuram.
- 7 Ex.P7 Photocopy of the order dated 28-03-2011 passed by the fourth respondent
- 8 Ex.P8 Photocopy of the Representation dated 29-03-2011 given by the petitioner to the Chief Electoral Officer, Tamil Nadu.
- 9 Ex.P9 Photocopy of the report published in Tamil Daily "Dinamalar" on 29-03-2011.
- 10 Ex.P10 Photocopy of Form 2B obtained from the fourth respondent.
- 11 Ex.P11 Photocopy of the petitioner's representation dated 28-03-2011 to the Returning Officer, Rishivanthiyam Assembly Constituency, Villupuram.
- 12 Ex.P12 Copy of Compact Disc.
- 13 Ex.P13 Copy of Compact Disc.
- 14 Ex.P14 (Series) Copy of the Election Petition along with documents filed therein for service of the 7th respondent.
- 15 Ex.P15 (Series) Copy of the election petition along with documents filed therein for service of the 10th respondent.
- 16 Ex.P16 Letter dated 24-06-2011 issued by the 4th respondent to the Election Petitioner.

DOCUMENTS MARKED THROUGH COURT WITNESS

1. Ex.C1 Nomination paper filed by the Election Petitioner.
2. Ex.C2 Rejection of the nomination by the Returning Officer.
3. Ex.C3 Rejection Order dt. 28-03-2011 both English and Tamil by the
Ex.C4 Returning Officer.
4. Ex.C5 Copy of Nomination paper signed sent by the Election Petitioner
along with Documents.
5. Ex.C6 Copy of letter dated 28-03-2011 sent by the Election Petition to
the Returning Officer.

DOCUMENTS MARKED ON THE SIDE OF FIRST RESPONDENT.

- 1 Ex.R1 Copy of Election Petition along with Documents therein served
(Series) on 5th respondent.

MK – 26/04/2013

ELP.NO.12 OF 2011

ORDER

DATED: 05/04/2013

THE HON'BLE MR. JUSTICE

K. VENKATARAMAN

FOR APPROVAL: 29/04/2013

APPROVED ON: 29/04/2013

Copy to:

1. Mr. M.R. Raghavan
Standing Counsel for Election.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 5TH DAY OF APRIL 2013

THE HON'BLE MR. JUSTICE K. VENKATARAMAN

Election Petition No. 12 of 2011

Elp. No.12 of 2011

M. Jayanthi,
W/o R. Moorthy,
Old No. 16, New No. 35,
School Main Street,
First Floor, Virugambakkam,
Chennai-92.—*Petitioner.*

Versus.

1. The Election Commission of India
Rep. by its Chief Election Commissioner
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
2. The Chief Electoral Officer /
Secretary to Government
Public (Elections-III) Department
Secretariat, Chennai-600 009.
3. The District Election Officer / District Collector
Villupuram District, Villupuram.
4. The Returning Officer/District Backward Classes and
Minorities Welfare Officer,
78, Rishivanthiyam Assembly Constituency Villupuram.
5. Vijayakant,
Aged about 58 years,
S/o. Alagarsamy
No. 10/12-A, Kannammal Street, Saligramam, Chennai.
6. S. Sivaraj,
Aged about 56 years
S/o. M. Subramaniam,
No. 171, Perumal Naicken Street,
Tirukoilur-605 757.

7. M. Vijayakanth,
Aged about 27 years,
S/o. K. Munusamy,
No.61/1, Pudhu Street, Adhichanur Village, Tirukoilur Taluk,
Villupuram District.
8. P. Natarajan, aged about 47 years,
S/o. Palanimuthu,
No. 557-2, Ward-5, Thiruvadi Street,
Vengikkal, Thiruvannamalai-606 604.
9. M. Ramajayam,
Aged about 54 years
S/o. Muthu,
No.2/163, Mariyamman Koil Street,
Periyapagandhi Village, Sankarapuram Taluk,
Villupuram district.
10. J. Selvaraj,
Aged about 28 years
S/o. Jayakannan,
No. 1122, Soraiyapattu Village,
Kazhumaran Post, Tirukoilur Taluk,
Villupuram District.
11. B. Rajasundaram,
Aged about 36 years
S/o. Balakrishnan,
Kaduvanur Village,
Via Ariyalur, Sankarapuram Taluk,
Villupuram District.
12. K. Senthil,
Aged about 29 years,
S/o. Kumarasamy, Manalurpettai Post,
Tirukoilur Taluk, Villupuram District.
13. V. Murugan,
Aged about 42 years
S/o. Velayudham,
Lucky Nayakkan Pettai Village,
Sankarapuram Taluk, Villupuram District.—*Respondents*.

*R1- The Election Commission of India, rep. by its Chief Election Commissioner has been struck off from the array of respondent as per the order of this Hon'ble Court dated 4-10-2012 in O.A. No. 666 of 2012 in ELP No. 12 2011.

*R2-The Chief Electoral Officer / Secretary to Government, has been struck off from the array of respondents as per the order of this Hon'ble Court dated 4-10-2012 in No. O.A. No. 667 of 2012 in ELP No. 12 of 2011.

*R4-The Returning Officer / District Backward Classes and Minorities Welfare Officer has been struck off from the array of respondents as per the order of this Hon'ble Court dated 3-12-2012 in O.A. No. 918 of 2012 in ELP No. 12/2011.

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

(a) declare the Fourth Respondent order dated 28-03-2011 rejecting the petitioner's nomination papers filed for contest in 78, Rishivanthiyam Assembly Constituency as improper, invalid and illegal and also set aside the election of the 5th Respondent from 78, Rishivanthiyam Assembly Constituency of the Tamil Nadu Legislative Assembly.

(b) Consequently declare the election of returned candidate namely the 5th respondent herein from No. 78, Rishivanthiyam Assembly Constituency, State of Tamil Nadu in the Election held on 13-4-2011 and the declaration of result on 13-5-2011 as illegal and null and void.

(c) Direct the respondents to pay the cost of this Election Petition.

The Election Petition having been heard on 7-3-2013 in the presence of M. Jayanthi, the Election petitioner appeared in person and of Mr. M.R. Raghavan, standing counsel for the 3rd respondent and of Mr. T.V. Ramanujam, Learned senior Counsel for M/s. S. Manimaran, V.T. Balaji, advocate for the 5th respondent herein and the respondents 1, 2 and 4 are struck off from the array of respondents and upon reading the petition of M. Jayanthi and the counter affidavit of the 5th respondent filed herein and upon perusing the evidence adduced herein and also the exhibits marked thereon and this Court is of the view that the nomination paper filed by the election petitioner is non-est in the eye of law and not a valid one and the election petitioner has filed the nomination paper in accordance with the provisions of the Representation of the People Act, 1951 and on the other hand, it is stated that the defects have been cured. Further it also the case of the election petitioner that she sought time to rectify the defects, but, however, time was not granted. Therefore, the stand taken by the election petitioner is to different / inconsistent, and at least three proposers have affixed their thumb impressions in the nomination paper of the election petitioner. But, the same were not attested, which is of a substantial character as per the dictum laid down by the Hon'ble Apex Court. The referred defect is substantial one, which cannot be cured and the returning officer has rightly rejected the nomination paper filed by the election petitioner, which does not call for any interference by this Court and, **It is ordered as follow:-**

1. That the Election Petition No. 12 of 2011 be and is hereby dismissed.
2. That there shall be no order as to costs.

WITNESS THE HON'BLE THIRU RAJESH KUMAR AGRAWAL, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 5TH DAY OF APRIL 2013.

Sd/—
ASSISTANT REGISTRAR,
Original Side-II,

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE 6TH DAY OF MAY 2013.

COURT OFFICER (OS)

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

ELP.NO.12 OF 2011

DECREETAL ORDER
DATED 05-04-2013

THE HON'BLE MR. JUSTICE
K. VENKATARAMAN

FOR APPROVAL 29-4-2013
APPROVED ON 29-04-2013

Copy to:

1. Mr. M.R. Raghavan,
Standing Counsel for Election.

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

(By Order)

TAPAS KUMAR,
Principal Secretary,
Election Commission of India.

PRAVEEN KUMAR,
Chief Electoral Officer and
Secretary to Government,
Public (Elections) Department.

Secretariat,
Chennai-600 009,
12th November 2013.