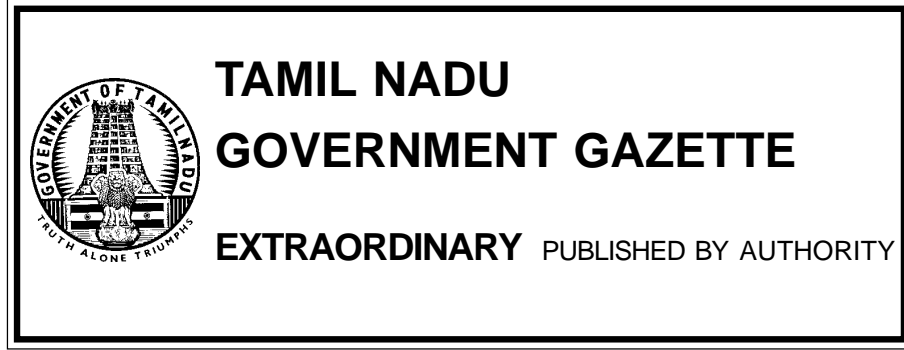


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No. 53] CHENNAI, TUESDAY, FEBRUARY 28, 2017
Maasi 16, Thunmugi, Thiruvalluvar Aandu – 2048

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF MADRAS
IN W.P.No.145059 OF 2016.

No. SRO G-3/2017.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 17th January, 2017, [28 Magha, 1938 (Saka)] is published:—

No. 82/TN-LA/1/2015/2017:—In pursuance of Section 106 (b) of the Representation of the people Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Madras, dated 22-08-2016 in Election Petition No.D.No. 32722 of 2015.

IN THE HIGH COURT OF JUDICATURE AT MADRAS**(Ordinary Original Civil Jurisdiction)****Monday, the 22nd Day of August 2016****The Hon'ble MRS. JUSTICE PUSHPA SATHYANARAYANA****Election Petition D.No. 32722 of 2015**

K.R. Ramaswamy *alias* Traffic Ramaswamy,
Social Activist/President,
Makkal Padukappu Kazhagam,
No. 123, Prakasam Salai,
Chennai-600 108—*Petitioner*.

Versus

1. The Chief Election Officer,
Nirvachan Sadan, Ashoka Road,
New Delhi-110 001.
2. The Chief Electoral Officer of Tamil Nadu,
Fort St. George, Chennai-600 009.
3. The Returning Officer,
Radhakrishnan Nagar Constituency,
Zone-IV, Chennai Corporation,
Tondiarpet, Chennai-600 021.
4. Ms.J.Jayalithaa, MLA,
Radhakrishnan Nagar Constituency,
36/81, Poes Garden, Chennai-600 086.—*Respondents*.

This Petition praying that this Hon'ble Court be pleased to

(a) Declare the by election held on 27.06.2015 in the RK Nagar Legislative Assembly Constituency No.011 in Chennai District in by election 2015 as improper and illegal;

(b) Declare the election result announced by the third respondent to the RK Nagar Legislative Assembly Constituency No.011 on 30.06.2015 as null and void and invalid.

(c) Direct the respondents Nos.1 to 3 to pay the cost of the Election Petition.

The above petition D.No. 32722 of 2015 coming on this day before this Court for maintainability, the petitioner not appearing in person or by advocate and upon reading the petition of Mr.K.R. Ramaswamy @ Traffic Ramaswamy filed herein, The Court made the following order:—

The Election Petition is filed challenging the order declaring the election result announced by the third respondent to the R.K. Nagar Legislative Assembly Constituency on 30.06.2015, as null and void and the election held on 27.06.2015 is improper and illegal.

2. The petitioner herein had contested the election as an individual candidate against the political party sponsored candidate the fourth respondent. The petition is filed based on the ground of corrupt practice by the fourth respondent. The petition itself was questioned by the Registry on the ground of maintainability, as the petition is not accompanied by an affidavit as per Form 25 of the Conduct of Election Rules. Though the petitioner had set out in the petition itself about the corrupt practice, the maintainability of the petition, in the absence of Form 25 is in question.

3. The Honourable Supreme Court had already elucidated the importance of Form 25 in extenso by various judgments. The Supreme Court has held that the enclosure of Form 25 is mandatory, because, when an election petition alleges corrupt practice, then the contesting respondent should be made aware of the allegation or allegations put against her.

4. In the light of the decision of the Honourable Supreme Court in V.NARAYANASWAMY VS. C.P.THIRUNAVUKKARASU [2000 (2) SCC 294] wherein it has been categorically held that the election petition filed on the ground of corrupt practice without an affidavit in terms of Form 25 is not maintainable. In this regard, para 23 of the said judgment is extracted hereunder:

“23. It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between “material facts” and “material particulars”. While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. “Material facts” mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. A petition levelling a charge of corrupt practice is required by law to be supported by

an affidavit and the election petitioner is obliged to disclose his source of information in respect of the commission of corrupt practice. He must state which of the allegations are true to his knowledge and which to his belief on information received and believed by him to be true. It is not the form of the affidavit but its substance that matters. To plead corrupt practice as contemplated by law it has to be specifically alleged that the corrupt practices were committed with the consent of the candidate and that a particular electoral right of a person was affected. It cannot be left to time, chance or conjecture for the court to draw inference by adopting an involved process of reasoning. Where the alleged corrupt practice is open to two equal possible inferences the pleadings of corrupt practice must fail. Where several paragraphs of the election petition alleging corrupt practices remain unaffirmed under the verification clause as well as the affidavit, the unsworn allegation could have no legal existence and the Court could not take cognizance thereof. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. It is the violation of the provisions of Section 81 of the Act which can attract the application of the doctrine of substantial compliance. The defect of the type provided in Section 83 of the Act on the other hand can be dealt with under the doctrine of curability, on the principles contained in the Code of Civil Procedure.”

5. Similarly, in *RAVINDER SINGH VS. JANMEJA SINGH* [AIR 2000 SC 3026] also non filing of Form 25 is an incurable defect and should be dismissed at the threshold. Para 10 of the said judgment is relevant in this regard, which reads as follows:

“Proviso to Section 83(1) of the Act lays down, in mandatory terms, that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123 (1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form - Form 25. of the conduct of Election Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) and the affidavit in this respect is a verbatim reproduction of the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial”.

6. It is clear from the above decision that non-compliance of mandatory requirements like Form 25 for presentation of an election petition amounts to an omission of vital nature rendering it not maintainable. These provisions are intended to protect and safeguard the sacrosanct electoral process.

7. Order VI Rule 15 of the Code of Civil Procedure speaks about the verification of the contents made in the election petition. In the present petition, the petitioner has neither filed Form 25 nor an affidavit as required under Order VI Rule 15 of the Code of Civil Procedure.

8. I have given my anxious consideration to all the averments made in the election petition, which is drafted more like a writ petition.

9. While dealing with the election petition, the Court is obliged to give importance, even to the technicalities also and the Court is heavily burdened before upsetting the verdict of the people, which is the beauty / grandeur of our Constitution. The petition is also silent about the cause of action for filing the election petition.

10. In the judgment in ***Azkar Hussain Vs Rajiv Gandhi [1986 Suppl Scc 315]*** it has been held that the material facts and particulars should be stated in full detail. However, the allegation has to be specifically averred and pleaded as to the nature of the corrupt practice, time, involvement, knowledge of the returned candidate, as well as the consent of the returned candidate, over the alleged corrupt practices.

11. In the case on hand, it is contended by the petitioner that there were more digital banners kept and the Election Commission did not take any action on the same. As stated earlier, even if the said allegation is a corrupt practice, there is nothing whispered in the petition, as to how the fourth respondent had any knowledge of it and how the same had materially affected the election. In fact, there is no mention in the petition about the fourth respondent having consented for any such alleged corrupt practice. Even presuming that a composite affidavit disclosing the corrupt practice and verification of the facts is suffice, the petitioner herein, has not filed any affidavit either under Form 25 or under Order VI Rule 15(4) of the Code of Civil Procedure. Hence, the petition cannot be numbered, as there are incurable defects and the same has to be rejected.

12. In fact, when the matter was posted for maintainability before this Court on 26.10.2015, it was represented on behalf of the petitioner that the petitioner / party-in-person, met with an accident and sustained fracture in his leg and he was unable to appear before this Court and sought adjournment. This Court, after considering the reason as stated above, adjourned the matter by three weeks. However, the petitioner had not come forward to rectify the defects subsequently. Having failed to file the petition in the manner known to law and having failed to rectify defects, despite the Registry notifying the same to the petitioner, the petitioner has not cared to correct the defects to bring it in conformity with the provisions of the Representation of the People Act, 1951.

13. Hence, this Court has got no hesitation to reject the petition as not maintainable and accordingly, the same stands rejected.

WITNESS THE HON'BLE THIRU SANJAY KISHAN KAUL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 22ND DAY OF AUGUST 2016.

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

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE 3RD DAY OF OCTOBER 2016

MANAGER

INSOLVENY OFFICE

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

(By Order)

MALLAY MALLICK,
Secretary,
Election Commission of India,
New Delhi.

Secretariat,
Chennai-600 009,
28th February, 2017.

RAJESH LAKHONI,
Chief Electoral Officer and
Principal Secretary to Government,
Public (Elections) Department.