

(2006) 03 MAD CK 0010

In the Madras High Court

Case No : Election Petition No. 7 of 2004

G.S. Iqbal

APPELLANT

Vs

E. Karunanidhi and Others

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Constitution of India, 1950 — Article 102, 173, 191, 84
Election Symbols (Reservation and Allotment) Order, 1968 — Section 13
Government of Union Territories Act, 1963 — Section 14, 4
Representation of the People Act, 1951 — Section 100(1), 29A, 29A(1), 29A(2), 32

Citation : (2006) 03 MAD CK 0010

Hon'ble Judges : M. Chockalingam, J

Bench : Single Bench

Advocate : C. Uma Shankar, for the Appellant; M. Sundar and T. Kokilavane, for the Respondent

Final Decision : Dismissed

Judgement

M. Chockalingam, J.—This election petition has been brought forth by the petitioner seeking a declaration that the election of the returned

candidate namely the second respondent herein, from No. 7 Vellore Parliamentary Constituency (Tamil Nadu) in the election held on 10.5.2004

and declared on 13.5.2004, is void and invalid.

2.The averments in the petition are as follows:

(a) The petitioner is the General Secretary of Dravida Muslim Munnetra Kazhagam, an unrecognized political party. This party has supported

AIADMK in the 14th Parliamentary election. He had also engaged in the canvassing for the candidate set up by the AIADMK. The projection of

the 2nd respondent as DMK political party member had created much confusion in the minds of the electorate. The majority of the electorate have

been refrained from voting thereby causing substantial waste votes, and also several electorates have been refrained from polling. The same had

been the reason which had affected the results of the election materially and by falsely alleging that the 2nd respondent is the DMK party

candidate, he had won the election. The petitioner was present at the time of nomination and also at the time of scrutiny of the nomination of the

AIADMK candidate, the 3rd respondent herein.

(b) He is an electorate of No. 7 Vellore Constituency, having electoral No. 555 in the electoral list. He had voted in the said election. The second

respondent contested the 14th Lok Sabha Elections, Vellore Constituency, as a DMK candidate. The second respondent had been declared as

elected in the aforesaid Parliamentary election on 13.5.20 04. The 2nd respondent does not belong to the DMK party, and he is not a candidate

deemed to be set up by the said DMK party. He has falsely alleged at the time of filing the nomination that he belongs to DMK party. The second

respondent has filed the nomination with false allegation as to the political party to which he belongs. He belongs to the Indian Union Muslim

League party, a registered one. It is also a recognized party in the State of Kerala with a reserved symbol of ""Ladder"".

(c) The nomination of the 2nd respondent was filed on 19.4.2004, and at that time, there was a flagrant violation of Section 13 of The Election

Symbols (Reservation & Allotment) Order 1968, wherein it is stipulated as to when a candidate shall be deemed to be set up by a political party.

It is specifically provided that the candidate shall be deemed to be set up by the political party if and only if a candidate had made the prescribed

declaration to the effect in the nomination paper that the candidate is a member of that political party and his name is borne on the rolls of the

members of the party. The declaration given by the 2nd respondent that he is the candidate of DMK party is absolutely a falsehood. Thus, by

giving a false declaration that he is a member of DMK party, the 2nd respondent had filed the nomination which ought to have been rejected at the

inception.

(d) The nomination of the 2nd respondent had been filed in flagrant violation of Section 13(c) of the Election Symbols (Reservation & Allotment)

Order 1968. The said notice in Form "B" shall be signed by the President, the

Secretary or any other Office Bearer of the party, and they have been authorized to send such notice. Further, the name and specimen signature of such authorized person are to be communicated by the party in Form A to the Returning Officer, to the Constituency and to the Chief Electoral Officer of the State or Union Territory concerned not later than 3 P.M. on the last date for making nominations. The said Forms "A" and "B" are signed in ink only by the said Office Bearer or person authorized by the party. The 2nd respondent had failed to comply with these mandatory provisions.

(e) It is learnt from the publications in various Tamil Dailies and especially in Malai Murasu dated 24.4.2004, that on the scrutiny of the nomination of the 2nd respondent which was done on 24.4.2004, objections were raised by the ADMK Advocate Mr. Jothi. Only on the said objection, it was asserted that whether the 2nd respondent is the member of the DMK party or not.

(f) Subsequent to the results of the election, the 2nd respondent had given a declaration in Tamil Daily ""Mani Chudar"" in which he is the Editor, that Indian Union Muslim League had won from the Vellore Parliamentary Constituency. In the said declaration, he had categorically affirmed that he is the President of Indian Union Muslim League party. This would clearly establish the fact that he had given false declaration that he belongs to the DMK party at the time of filing the nomination paper and has further falsely declared that he is a member of the said DMK at the time of scrutiny of the nomination.

(g) The presentation of the nomination paper is not in accordance with law and is a clear violation of the provisions of the Representation of People Act. There was improper acceptance of the nomination of the 2nd respondent, who has falsely declared that he belongs to the DMK party, and various provisions of the Election Symbols (Reservation and Allotment) Order 1968 had been flagrantly violated.

(h) On account of the false declaration that he belongs to DMK party, his nomination was accepted and he has contested the election in DMK symbol ""the rising sun"". Because of this false declaration, the second respondent had hoodwinked the electorate and had got elected from the Vellore Constituency. On account of such false declaration, the 2nd respondent

had won the election, and as such the results of the election have been materially affected.

(i) If the 2nd respondent had stood in the symbol of the Indian Union Muslim League party namely ""Ladder"", and if he had contested the Parliamentary election in the Vellore Constituency, he would have been clearly defeated in the hands of the other rival candidates who had contested in the election. On account of the false declaration and improper acceptance of the nomination of the 2nd respondent, the 2nd respondent had deceived the petitioner like electorate and had won the election with considerable margin from the Vellore Constituency. The said scenario have been completely reverted in the event of the 2 nd respondent contesting in the said election under the symbol of Indian Union Muslim League party.

(j) There had been a ploy by the political party which backed the 2 nd respondent in falsely declaring him as their party member at the last instance, and the same is defied and falsified by the subsequent statements and declaration given by the 2nd respondent in various dailies. The Indian Union Muslim League party was a member of the Democratic Progressive Alliance headed in the State of Tamil Nadu by the President of the DMK Party. The said Indian Union Muslim League party was allotted one seat within the alliance and it was declared that the Vellore Constituency was allotted for the said Indian Muslim League party. But, to the shock and surprise, DMK party had contested the said election, and thus, the entire electorates of the Vellore Constituency were misled and deceived by the 2nd respondent.

(k) Earlier, the second respondent contested the Trichy I Constituency projecting himself as the member of the Indian Muslim League party under the symbol of ""ladder"" and had lost the same to a DMK candidate. This clearly establishes the fact that the membership of the 2nd respondent is a ploy to deceive the electorate, and he had become a returned candidate by false declaration which is against law. He has got an impressive record of losing all elections, which he had contested in the past. This clearly establishes the fact that the present adoption of deceptive tactic and camouflage of the 2nd respondent that he belonged to DMK party is the only reason and basis which had materially affected the result of the

election in the Vellore Constituency.

(l) The number of votes in the Vellore Constituency is 12,20,453, and the number of voter who had polled in the 14th Parliamentary election, is

7,46,914. The second respondent obtained 4,36,642 votes. The next candidate of the AIADMK had obtained 2,58,032 votes. The 2nd

respondent was able to obtain substantial votes only by misleading the electorates who had polled, and had caused confusion in their minds, which

has affected the aforesaid election. The improper acceptance of the nomination is the sole cause of the 2nd respondent winning the election and the

rival AIADMK losing it.

(m) It is learnt that the 2nd respondent still veils the powers of the President of the Indian Union Muslim League, Tamil Nadu State Party, by

operating the bank accounts of the said party and performing other exclusive functions of the President of the said party even after falsely declaring

himself as the member of the DMK party and contesting Vellore Constituency. He had participated in several meetings of the Democratic

Progressive Alliance representing the Indian Union Muslim League party as its President; but to the contrary, he is still projecting himself as a

Member of Parliament belonging to the DMK party, and the same is published in various dailies as news. He is arrayed as the Member of

Parliament belonging to the DMK party by allocation of seating along with the said DMK members of the Parliament, and he is simultaneously

holding the post of the President of the Indian Union Muslim League Tamil Nadu, which is totally against the declaration made by the 2nd

respondent at the time of filing the nomination. Hence, this petition.

3. The second respondent filed a counter statement with the following allegations:

(a) The election petition is not maintainable and lacks cause of action. It is barred by law and is, therefore, liable to be dismissed in-limine. It does

not at all allege violation of any specific provisions of the Representation of People Act. The principal complaint made in the election petition that

the returned candidate could not have won the election if he had not contested in the ""Rising Sun"" symbol of the Dravida Munnetra Kazhagam

Party and that he ought not to have contested in the ""Rising Sun"" symbol of the DMK Party is entirely in the realm of political conjectures/political

predictions, and it has been held by the Hon''ble Supreme Court of India that

such political conjectures/political predictions are incapable of judicial determination. The averments made in the election petition pertaining to voting/abstaining from voting, pattern of voting etc., depend upon a complex variety of factors/determinants, and voters do not adopt an inflexible allegiance to political parties and candidates. The Hon''ble Supreme Court of India has well recognized the proposition that how voters in an election will vote in a given situation cannot at all be determined with any degree of certainty. The issue in the election petition pertains to the possible voting pattern, which has been held to be incapable of determination.

In other words, the issue is not a triable issue capable of a certain finding.

(b) The petitioner has admitted that the nomination filed by the second respondent on 19.4.2005, was objected to and the Returning Officer has

over-ruled the objection and held that the nomination is in order. He has also admitted that after such objections were raised, the Membership

Card of the returned candidate in the DMK Party was produced before the Returning Officer, and thereafter, the Returning Officer came to a

conclusion and passed the order. Having accepted this position, the petitioner cannot now be heard to contend that the Returned Candidate had

not filed the requisite Forms "A" and "B" within the stipulated time, and therefore, ought not to have contested in the ""Rising Sun"" symbol of the

DMK Party. The petitioner having accepted the factual position that Forms "A" and "B" were filed at the time of the nomination itself, cannot now

be heard to contend contra and make that a ground for the Election Petition. When the only complaint in the election petition does not exist,

nothing survives in the election petition. Even according to the petitioner, Forms "A" and "B" were filed at the time of nomination itself, and

therefore, it becomes an admitted position that there can be no violation of Section 100(1)(d)(i) of the R.P. Act.

(c) The crux and gravamen of the complaint is that the returned candidate who is a Member and the President of a political party viz., Tamilnadu

State Indian Union Muslim League, ought not to have contested in ""Rising Sun"" symbol of the DMK Party, as Forms "A" and "B" were not filed at

the time of nomination. Admittedly, there was an alliance between TNIUML and DMK Party, and it was a ""pre-poll alliance"". These are purely

matters in the realm of political conjectures, and the Hon''ble Supreme Court has

held that these are incapable of judicial determination.

(d) It is a matter of record that Tamil Nadu State Indian Union Muslim League (TNIUML), DMK and other five parties had formed a pre-poll

alliance and had declared to the people that they are fighting the general elections together before the elections and in fact, even before the

nominations were filed on 19.4.2004. In such circumstances, there cannot be any deception practiced on the electorate. The petitioner himself has

admitted that the Indian Union Muslim League party was a member of the Democratic Progressive Alliance headed in the State of Tamil Nadu by

the President of the DMK Party. If there is no deception, the election petition cannot sustain itself legally.

(e) The petitioner claims to be the General Secretary of an unrecognized political outfit viz., Dravida Muslim Munnetra Kazhagam. The residential

address of the petitioner has simply been given as the Office address of the unrecognized political outfit. The petitioner has not given any details

about this political outfit. The allegation that the unrecognized political outfit supported AIADMK party in the last 14th Parliamentary Elections and

that the petitioner engaged himself for canvassing for the candidate set up by AIADMK party, are claims to which the petitioner is put to very strict

proof of. The AIADMK has not declared at any point of time that it has any pre-poll alliance with the unrecognized political outfit in the name of

Dravida Makkal Munnetra Kazhagam. The candidate set up by the AIADMK namely the third respondent, has not even chosen to come before

this Court, and he has been set ex-parte. There are no averments whatsoever to the effect that the alleged abstention of some of the voters had

materially affected the outcome of the election with regard to the returned candidate. In the history of democratic process in independent India,

considering the mean average polling in General Elections, if the polling is more than 60% in any constituency, it is considered to be a very good

turn out. Thus, the allegation that a majority of the electorate had refrained from voting causing substantial waste votes, is absolutely untenable.

(f) It is false on the part of the petitioner to state that the returned candidate cannot be deemed to be set up by the DMK Party and that the

returned candidate had falsely alleged at the time of nomination that he has been set up by the DMK Party. All the requirements under ""Symbol

Order"" have been duly complied with by the returned candidate. The petitioner has admitted that the returned candidate has filed Forms "A" and

"B" at the time of nomination itself. On the teeth of such admission, the petitioner cannot at all be heard to make such allegation. The returned

candidate has not violated any of the provisions of the ""Symbols Order"".

(g) The petitioner has admitted that he was present at the time of scrutiny of nomination of AIADMK candidate, which also took place on the

same day viz., 24.4.2004. Thus, it is only logical that the petitioner would have been present at the time of scrutiny of the nomination of the

returned candidate also as a critical objection was raised assailing the acceptance of the nomination of returned candidate. The fact that the

petitioner has stated that he learnt about this from Tamil newspapers would clearly show that the election petition is utterly devoid of bonafides. In

the election petition, the authenticity of the membership card of the returned candidate has not been called into question in any manner whatsoever.

(h) It is an admitted position that TNIUML is a registered party, but not a recognized party in Tamilnadu. Only recognized parties are allowed

Symbols under ""Symbols Order"". Therefore, there is absolutely nothing improper or illegal in the returned candidate contesting in the ""Raising Sun

symbol of the DMK party. It is false on the part of the petitioner to allege that the electorate like the petitioner, was deceived on account of the

returned candidate being set up by the DMK Party. The allegations of ploy, deception, impressive of records of loosing all elections which he had

contested in the past, etc., are clearly intended to lower the esteem of the returned candidate in the eyes of the right minded people. The election

petition is bereft of material facts as to why and how the outcome of the election has been affected. The petitioner has filed the election petition in a

casual manner without being certain and sure about the entire factual matrix or legal requirements. The Hon"ble Supreme Court of India has time

and again deprecated the practice of such not so serious contenders and challenging the election of elected Members of Parliament. The

declaration of results on 13.5.2004 is a matter of record. Hence, the election of the returned candidate from 7.Vellore Constituency is not liable to

be declared as null and void and invalid. The election petition is abuse of the due process of law. It is bereft of material facts. It is equally bereft of

merits. It has been filed with some intention of harassing the returned candidate apparently at the behest of political opponents. Therefore, the election petition may be dismissed with exemplary costs.

4.The respondents 1, 3 to 7, 9 to 12, 15 and 17 to 19 remained absent, and they have been set ex-parte.

5.The following issues were framed:

(1) Whether the nomination filed by the 2nd respondent is valid in law and as prescribed under the Rules?

(2) Whether the acceptance of the nominations of the second respondent is proper and valid in the light of prescribed rules and regulations of the Provisions of Representation of People Act, 1951?

(3) Whether the presentation and acceptance of nominations of the 2nd respondent has materially affected the result of the elections?

6. The Returning Officer has been examined as C.W.1, through whom Exs.C1 to C9 have been marked. The petitioner has examined the General

Secretary of Muslim League Party as P.W.1., while the Organization Secretary of the DMK party has been examined as P.W.2. The petitioner

examined himself as P.W.3. Exs.P1 to P19 were marked on his side. The returned candidate namely the second respondent herein, has been

examined as R.W.1., and Exs.R1 to R3 were marked on his side.

7. As seen above, the petitioner has brought forth this election petition challenging the election of the returned candidate, the second respondent

herein, in the election held on 10.5.2004 and declared on 13.5.2004, for No. 7 Vellore Parliamentary Constituency, as void and invalid.

8. Advancing his arguments on behalf of the petitioner, the learned Counsel would submit that the nomination filed by the second respondent, the

returned candidate, was not only improper, but also contains false information declared by him; that the second respondent did not belong to the

DMK political party either at the time of the nomination or at the time of its scrutiny or thereafter; that on the other hand, he was a Member and

President of the Tamil Nadu State Indian Union Muslim League (TNIUML); that he has specifically pleaded so, which would be clear from the

averments in paragraphs 7, 8, 12 and 13 of the election petition; that the returned candidate as a witness even in the course of the chief-

examination and also in the cross-examination, has very well stated the above

said fact; that the returned candidate has claimed that on the relevant date namely 1.4.2004, he joined DMK party and contested in the symbol of rising sun, when he was admittedly, holding the membership and presidency of TNIUML that time; that on 19.4.2004, the returned candidate filed nomination on behalf of the DMK political party claiming that he belonged to the said party; that he also gave a declaration to that effect; that the President and Secretary of that party proposed him also; that on 24.4.2004, the candidate of the opposite party namely AIADMK, raised objections before the Returning Officer; that when he conducted an enquiry, a mis-representation was made through a fax message; that the original membership card of the returned candidate wherein it is shown that he belonged to the DMK political party, was not even verified; but, the nomination was accepted; that the fact that the second respondent, who was a member of the TNIUML, which is admittedly, a registered political party in the State of Tamil Nadu, on 1.4.2004, the date on which he claimed to have become a member of the DMK political party is not disputed; but, on the other hand, it is admitted; that nowhere in the course of his counter, the second respondent has made any mention about his membership in DMK party on 1.4.2004, and thus, the membership of the DMK party by the returned candidate cannot be legally acceptable; that the returned candidate as a witness, has made a feeble attempt to explain that TNIUML is not a political party, but only a social organisation; but, it is not mentioned in the counter; that on the contrary, the petitioner, by sufficient evidence, has proved that TNIUML is a registered political party, and the second respondent was a member of that party on the relevant dates namely 1.4.2004 and 19.4.2004; that the returned candidate in his counter has categorically admitted that the TNIUML was a registered party, though not a recognized party in Tamil Nadu, and thus, the stand taken by the second respondent that TNIUML is not a registered political party has got to be rejected, since the petitioner has proved by sufficient evidence that the returned candidate was not at all a member of the DMK party either on 1.4.2004 or on the date of nomination or any other subsequent date; that it is proved that the second respondent was having membership in two political parties on the date of filing of nomination that was on 19.4.2004, and thus, it would be quite clear that without

resigning from the primary membership of the TNIUML, the returned candidate could not join in another political party.

9. Added further the learned Counsel that it is well admitted by the returned candidate in his evidence by stating that he did not resign from the

TNIUML prior to becoming a member of the DMK party on 1.4.20 04; that the petitioner summoned the bye-laws of the DMK political party;

that he has also examined the Organisation Secretary of that party; that from the bye-laws, in particular Bye-law 5(2), it would be quite clear that a

person who is a member of another political party, cannot become a member of the DMK party; that even in the bye-laws of the TNIUML, there

is a prohibition for a member to become a member of another political party, and under the circumstances, the claim of the returned candidate that

he can be a member of both the parties simultaneously cannot be accepted.

10. The learned Counsel would further submit that the nomination filed on behalf of the returned candidate claiming the membership in DMK party,

and the acceptance of the same without verifying the same would prove that it is an improper acceptance and amounts to illegality; that since the

membership of the DMK political party cannot be legally sustainable and his declaration in the nomination form that he was set up by the DMK

political party for the 14th Lok Sabha Election was false and as such the nomination was improper, the returned candidate did not qualify himself

to contest in the 14th Lok Sabha Election for the Vellore Parliamentary Constituency as a member of the DMK political party, and thus, the

second respondent was suffering from a constitutional disability to contest in the election on behalf of the DMK political party without resigning the

primary membership in TNIUML; that from the evidence, it would be clear that TNIUML is not only a registered political party, but also a part

and parcel of the Indian Union Muslim League (IUML); that the returned candidate has confused not only the authorities, but also the voting

population; that the returned candidate has filed a plaint in O.S. No. 12832 of 1996, a copy of which is marked as Ex.P16, wherein it has been

categorically stated that TNIUML was formed under the IUML; that it is pertinent to point out that there is no pleading to the effect that TNIUML

and IUML were different entities, and as such, the invented averment that there is a distinction between the TNIUML and IUML and they are two

different political parties is nothing but imaginary and frivolous; that it is a matter of surprise to note that despite the objections made before the

Returning Officer, he did not even care to verify whether the returned candidate was a member of TNIUML; that even assuming without admitting

that the version of the Returning Officer, C.W.1., was correct, the second respondent did not divulge the fact that he held two political party

memberships, and the disclosure and declaration made by him before C.W.1 at the time of the filing of the nomination and its scrutiny, were

definitely fatal to the election of the second respondent.

11. It is the further submission of the learned Counsel for the petitioner that the improper acceptance of the nomination was clear from the evidence

of the Returning Officer, examined as C.W.1; that as per the provision of the Representation of People Act, 1951, the dual membership is

prohibited; that the political parties were directed not to entertain the same; and that especially Section 29(A) deals with the registration of the

political parties with the Election Commission of India.

12. Pointing to the provisions u/s 29(A)(1) and (2)(a) of the Act, the learned Counsel would submit that Section 29(A)(2)(a) is applicable to the

DMK political party; that the proforma of application for registration as a political party would clearly envisage that as per Clause III (iv), an

affidavit duly signed by the President of the Registering Party, shall be filed to the effect that no member of the organization is a member of any

other political party registered with the Commission; that in the present case, the second respondent claimed that he became a member of the

DMK political party on 1.4.2004, before which he should have resigned from the primary membership of the TNIUML, which is a registered

political party; but, he has not done so, and thus, there was a clear legal bar for the returned candidate to become member of the DMK political

party, which is admittedly, a registered political party with the Election Commission of India; that the second respondent did not adhere to the bye-

laws of either of the parties, and thus, his subsequent membership to the DMK party is illegal, and the nomination filed by him on 19.4.2004,

claiming that he was a member of the DMK political party, was ex-facie false and improper; that in the result, the acceptance of such an improper

nomination was against the well laid principles of law and also the Constitution of

India; that by sufficient evidence, the petitioner has proved the improper acceptance of the nomination; but, on the other hand, the second respondent has miserably failed to discharge the burden cast upon him, and hence, the election of the second respondent has got to be declared void on the above grounds.

13. In support of his contentions, the learned Counsel for the petitioner relied on the following decisions:

(1) Durga Shankar Mehta Vs. Thakur Raghuraj Singh and Others, ;

(2) Manni Lal Vs. Parmai Lal and Others, ; and

(3) Durai Muthuswami Vs. N. Nachiappan and Others, .

14. Countering the above contentions put forth by the petitioner's side, the learned Counsel for the second respondent, the returned candidate,

would submit that as far as the 14th Lok Sabha election in Tamil Nadu is concerned, various political parties and movements aligned themselves

into two major pre-poll political formations namely DPA headed by DMK, and NDA headed by AIADMK; that TNIUML is not a registered

political party within the meaning of the Representation of People Act; that in order to support his contention, the list of registered political parties

published by the Tamil Nadu State Election Commission on 6.5.2004, is marked as Ex.R2, and the list of registered, but unrecognized political

parties in India published by the Election Commission of India and downloaded from the official website of Election Commission on 27.9.2005, is

marked as Ex.R3, on the side of the returned candidate; that a perusal of these two lists would show that TNIUML does not figure in these lists,

and thus, it is clear that TNIUML was not a registered political party at all as far as the 14th Lok Sabha General Elections are concerned; that the

Government Gazette dated 30.10.1995, marked as Ex.P18 and relied on by the petitioner, pertains only to panchayat elections and is pursuant to

Tamil Nadu Panchayats Elections Symbols (Reservation and Allotment) Order 1995; that it has no application to Assembly and Parliamentary

elections, and under the circumstances, the fundamental premise on which the election petition has been filed that the returned candidate is a

member in two registered political parties, is floored; that in the counter statement it has been inadvertently stated that TNIUML is a registered

political party; that this is solely owing to the fact that the returned candidate

not being a legally qualified person, could not appreciate the fine legal distinction between registered party and a movement/ entity which is merely affiliated to a registered political party; that TNIUML is an entity, which is affiliated to IUML, which is a registered political party; that even if TNIUML is a registered political party, there is absolutely no violation of any provisions of the Representation of People Act; that it is true that the election petitioner is an elector; that he has deposed that he has spent Rs. 50,000/- for the election petition so far; that he is not even an income tax assessee; and that this would clearly discredit the election petitioner.

15. Added further the learned Counsel that from the provisions of Sections 32 and 33 of the Representation of People Act read with paragraph 13

of ""Symbols Order"" and Articles 102 and 191 of the Constitution of India, it is clear that all the requisite documents and other requirements for a

valid nomination have been complied with by the returned candidate; that when an objection was raised by the AIADMK candidate that the

returned candidate was not a member of the DMK party, the membership card of the returned candidate in DMK party was faxed and produced

before the Returning Officer; that it is nobody's case that the returned candidate is not a member of the DMK party; that the oral evidence

adduced through C.W.1, the Returning Officer, and the documentary evidence namely Exs.C1 to C9, would clearly indicate that the nomination

papers were complete in all respects; that there is no doubt or dispute about the fact that the nomination papers were complete on the date of

scrutiny; that in view of the evidence, there is no false declaration before the Returning Officer as alleged by the petitioner; that equally, the returned

candidate has not violated any provisions of the Symbols Order, and thus, there is absolutely no illegality, infirmity or impropriety in the acceptance

of the nomination papers of the returned candidate.

16. The learned Counsel for the second respondent would further submit that Bye-law 5.2 of the bye-laws of the DMK party states that a person

who is a member of any other political party or a person who is a member of any other castiest or religious out fit is not qualified to become a

member of DMK party; that in the instant case, TNIUML is neither a political party, as for as the 14th Lok Sabha General Elections are

concerned, nor a cast based or religious out fit, which is evident from Ex.P2, the

bye-laws of the TNIUML; that all would go to show that the returned candidate does not suffer from any disqualification; that Bye-law 9(aa) of Bye-laws of TNIUML says that a member of TNIUML shall not be a member of any political party or any other political movement; that Bye-law 53 of the Bye-laws of TNIUML clearly says that the decision taken by the Executive/Working Committee of TNIUML, shall be final and binding on any issue; that in the instant case, there is a unanimous resolution of the Executive Committee that the returned candidate would contest in the Rising Sun symbol of the DMK party in the 14th Lok Sabha General Elections from 7.Vellore Parliamentary Constituency; that a conjoint reading of the above provisions would clearly show that there is absolutely no illegality or impediment either in the bye-laws of TNIUML or in the bye-laws of DMK Party in the returned candidate becoming a member of the DMK party; that so long as all the requirements under Sections 32 and 33 of the Act are furnished and as long as the contestant does not suffer from any of the disqualifications in Articles 84, 102, 173 and 191 of the Constitution of India, the nomination would be perfectly legal and valid, and the acceptance of the same would also be equally legal and valid; that both the alliances namely DPA headed by DMK, and NDA headed by AIADMK, were clearly pre-poll alliances formed more than three to four months before the said election; that there was absolutely no doubt in the minds of the electorate that TNIUML which was a movement, and DMK party have aligned themselves with certain other political parties and movements and were facing the elections; that there was no confusion in the minds of the people about the parties which constituted NDA; that under the circumstances, the electorates have voted for the returned candidate consciously as an alliance candidate of DPA; that it is true that the returned candidate has secured 58% of the votes polled; that he won over his rival candidate by a margin of 1,76,610 votes; that all these would clearly go to show that there is absolutely no confusion in the minds of the people, and the people have not abstained from voting; that in the instant case, the petitioner has made bare and bald averments; that he has not at all proved or demonstrated that the results of the elections have been affected much less materially affected, and hence, the petitioner is not entitled for the relief asked for, and the election petition

has got to be dismissed.

17. In support of his contentions, the learned Counsel for the second respondent relied on the following decisions:

(1) N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, ; (2) Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi, ; (3) 1994 SUPP. (3) SCC 170; (4) Jyoti Basu and Others Vs. Debi Ghosal and Others, ; (5) Kripa Shankar Chatterji Vs. Gurudas Chatterjee and others, ; (6) 1995-SUPP. (1) SCC 42 2; (7) L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc., ; (8) Santosh Yadav Vs. Narender Singh, ; (9) Jaipal Singh Vs. Smt. Sumitra Mahajan and Another, ; (10) (1986) SUPP. SCC 315; (11) (1993) 3 SCC 151 S.A. Khan v. CH. Bhajan Lal and Anr. ; (12) Borgaram Deuri Vs. Premodhar Bora and Another, ; (13) Balwan Singh Vs. Lakshmi Narain and Others, ; (14) Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, ; (15) Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, ; (16) Shri Udhav Singh Vs. Madhav Rao Scindia, ; (17) F.A. Sapa Etc., Etc., Vs. Singora and others, ; (18) (2000) SCC 261; (19) Jaipal Singh Vs. Smt. Sumitra Mahajan and Another, ; (20) Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu and Others, ; (21) Charan Lal Sahu Vs. Neelam Sanjeeva Reddy, ; (22) (1987) SUPP. SCC 663; (23) Shiv Charan Singh Vs. Chandra Bhan Singh and Ors, ; and (24) Hindustan Steelworks Construction Ltd. Vs. C. Rajasekhar Rao, .

18. Admittedly, the 14th Lok Sabha election for No. 7 Vellore Parliamentary Constituency was held on 10.5.2004. The second respondent filed

his nomination papers as a candidate of the DMK political party declaring himself as a member of that party, on 19.4.2004, and the same was

scrutinized on 24.4.2004. The candidate of one of the opposite parties namely AIADMK, raised his objections before the Returning Officer,

C.W.1., who conducted an enquiry. At the time of scrutiny, the objections raised by the opposite party candidate, were rejected. The election was

held on 10.5.2004. Out of the total electorates of 12,20,453, 7,46,914 were polled. In the said election, the second respondent by securing

4,36,642 votes i.e., 58% of the votes polled, was declared elected, which is the subject matter of challenge before this Court.

19. The petitioner, an electorate, residing within the said parliamentary

constituency, has challenged the election of the second respondent on the grounds that the returned candidate was a Member and President of the Tamil Nadu State Indian Union Muslim League (TNIUML); but, he falsely claimed that he was a member of the DMK and contested in the symbol of the DMK political party namely rising sun, and thus, he has created confusion in the mind of the electorates which resulted large number of voters did not vote; that the returned candidate was a member of the registered political party namely TNIUML; that even without resigning his membership from that political party, he could not join the DMK party; that he gave a declaration that he was a member of DMK political party, which was false; that at the time of the nomination, even as per his admission, he was having dual membership in two registered political parties, which was against law and illegal; that despite the said objections were raised, the Returning Officer even without verification, has accepted his nomination, and thus, there was improper acceptance of nomination by the Returning Officer and by that, large sections of the electorates abstained from polling due to the confusion created, and it has, to great extent, adversely affected the result of the election, and hence, the election of the second respondent has got to be set aside.

20. Since the petitioner seeks the declaration of the election of the second respondent, returned candidate, as void on the grounds within the meaning of Section 100(1)(d)(i) of the Representation of the People Act, this Court is of the considered opinion that before adverting to the factual position in the case, it has to look into the legal position as to qualification and disqualification of a candidate and also the acceptance of the nomination.

21. Section 100(1)(d)(i) and (iv) of the Representation of the People Act reads as follows:

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

(a)

(b)

(c)

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

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

(ii)

(iii)

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

declare the election of the returned candidate to be void.

22. Under the Representation of the People Act, the only provision which speaks about the grounds for setting aside the election, is as stated

above. The Honourable Apex Court in Hari Shankar Jain Vs. Sonia Gandhi, has held that the grounds for declaring the election void must strictly

conform to the grounds mentioned in Section 100, and the allegations of disqualification found in the election petition have to be interpreted very

strictly. In the instant case, the petitioner, an electorate, has brought forth this election petition seeking a declaration that the election of the second

respondent, returned candidate, only on the ground of improper acceptance of the nomination and by that the result of the election of the second

respondent has been materially affected. Hence, the Court has to appraise whether the petitioner has made necessary averments and has strictly

proved the grounds on which he seeks to avoid the election of the second respondent; in other words, whether the petitioner has made requisite

averments in the pleading as to the improper acceptance of nomination and that the result of the election, insofar as it concerned the second

respondent, has been materially affected, and adduced necessary proof therefor.

23. What are all pleaded in the election petition as stated above, is that the returned candidate was a Member and President of the TNIUML both

on the date of the filing of nomination and scrutiny namely 19.4.2004 and 24.4.2004 respectively; that as per the bye-laws of the DMK political

party, which is marked as Ex.P4, he could not have been admitted as a member of the DMK party, and thus, he was not a member of the DMK

party, as stated by him in the declaration; that it was a false declaration, and hence, there was an improper acceptance of the nomination. In order

to prove the said allegation, the petitioner relied on the evidence adduced, both oral and documentary. It is not in controversy that after the

nomination papers were filed on 19.4.2004, the objections were raised by the opposite candidate from AIADMK that the returned candidate

was not a member of the DMK party. It would be quite evident from the testimony of the returned candidate, R. W.1, and also the Returning Officer, C.W.1., that the membership card of the returned candidate was faxed and produced before the Returning Officer. Thus, it would be quite clear that at the time of the scrutiny, the returned candidate has proved that he was a member of the DMK party. The Organization Secretary of the DMK party examined as P.W.2, has spoken to the fact that the returned candidate has joined that party on 1.4.2004, and he filed nomination as a candidate of the DMK party in that 14th Lok Sabha election for No. 7 Vellore Parliamentary Constituency. Under the circumstances, the contention put forth by the petitioner's side that the returned candidate was not a member of the DMK political party on the date of the filing of the nomination has got to be rejected as one groundless.

24. The next contention put forth by the petitioner's side that even as per Bye-law 5(2) of the bye-laws of the DMK party marked as Ex.P4, a member who belonged to another political party, cannot be a member of the DMK party, and in the instant case, even without resigning the membership from the TNIUML, the second respondent could not have become a member of the DMK political party, and even by the bye-laws of the TNIUML, marked as Ex.P2, there was a prohibition for a member to become a member of another political party cannot be countenanced for more reasons than one. Bye-law 5(2) of the bye-laws of the DMK political party reads that a person who is a member of any other political party or a person who is a member of any other caste or religious outfit cannot become a member of the DMK political party. In the instant case, the second respondent, according to his evidence, has not resigned from the membership of TNIUML, but has joined the DMK political party on 1.4.2004. Whether a person who was a member of another political party, can be admitted as a member of DMK political party is exclusively a matter concerning a political party, which alone could decide that issue, and apart from that, it is an internal affair of a particular political party. In the instant case, the fact remains that the returned candidate was admitted as a member of the DMK political party. It is pertinent to point out that when the political parties went to polls in the 14th Lok Sabha General Elections, they aligned themselves into two major poll

formations i.e., DPA headed by DMK, and NDA headed by AIADMK, and thus, when the pre-poll alliance were formed for the said election, the fact that the returned candidate, the second respondent, was a member of the TNIUML, and he was also the President therein that time could not have been a secret, but should have been well within the knowledge of the Office Bearers of the DMK party. Even assuming that the admission of the returned candidate, the second respondent, as a member of the DMK party on 1.4.2004 was made by deviating the bye-laws of the DMK party, it is an internal affair of that political party, which cannot be questioned by the petitioner. From the evidence of P.W.3, the Organizing Secretary of the DMK political party, and also the membership card marked as Ex.P3, it is quite evident that the returned candidate was a member of the DMK political party as on 1.4.2004. That apart, the evidence of P.W.3 and the documentary evidence pertaining to the nomination paper, would clearly reveal that he was set up as a candidate of the DMK party in that election.

25. Equally so, the other contention of the petitioner's side that there was a prohibition for a member of the TNIUML to become a member of another political party cannot be accepted in view of the evidence of P.W.1, the General Secretary of the TNIUML, according to whom, a resolution was passed by the Executive Working Committee on 18.2.2004 that the second respondent can contest the 14th Parliamentary Election with the symbol of DMK party, and that resolution was passed unanimously. It is pertinent to point out that P.W.1 is examined on the side of the petitioner questioning the membership of the second respondent from the DMK party; but, nowhere he has whispered that the returned candidate was not permitted to become a member of the DMK party, nor was any action taken against him subsequent to his candidature as a member of the DMK party in the Vellore Constituency. Thus, it would be quite clear that TNIUML also has allowed the returned candidate to contest as a member of the DMK party. It has to be again stated that it is also a matter pertaining to the internal affairs of the TNIUML.

26. The next contention that the returned candidate when he gave a declaration, has made false representation as if he was a member of the DMK party is without foundation in view of the available evidence that on the date of nomination and on the date of scrutiny, he was a member of the

DMK political party.

27. Coming to the question whether there was any improper acceptance of nomination by the Returning Officer, on scrutiny of the evidence

available, the Court has to necessarily answer in the negative. Section 36 of the Representation of the People Act deals with the scrutiny of the

nomination by the Returning Officer. A direction is issued u/s 36(2) of the Act to the Returning Officer to examine the nomination papers and

decide all the objections that may be made to any nomination and may, either on such objection or on his own motion after such summary inquiry,

which he thinks necessary, reject the nomination papers on any of the grounds mentioned in Section 36(2)(a)(b)(c), which read thus:

(a) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under

any of the following provisions that may be applicable, namely:- Articles 84, 102, 173 and 191, Part II of this Act, and sections 4 and 14 of the

Government of Union Territories Act, 1963 (20 of 1963); or

(b) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine.

28. In the instant case, it is not the case of the petitioner that the nomination papers were incomplete because of the non-filing of the necessary

affidavits. A duty is cast upon the Returning Officer to decide whether the candidate suffers any disqualification or not. Article 84 of the

Constitution of India speaks of the qualification for Membership of Parliament, which reads as follows:

84. Qualification for membership of Parliament ? A person shall not be qualified to be chosen to fill a seat in Parliament unless he-

(a) is a citizen of India, and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation

according to the form set out for the purpose in the Third Schedule;

(b) is, in the case of a seat in the Council of States, not less than thirty years of age and, in the case of a seat in the House of the People, not less

than twenty-five years of age; and

(c) possesses such other qualifications as may be prescribed in that behalf by or

under any law made by the Parliament.

29. Article 102 of the Constitution speaks of the disqualification for membership in either House of the Parliament, which reads thus:

102. Disqualifications for membership - (1) A person shall be disqualified for being chosen as, and for being, a member of either House of

Parliament -

(a) if he holds any office of profit under the Government of India or the Government of any State, other than an office declared by Parliament by

law not to disqualify its holder;

(b) if he is of unsound mind and stands so declared by a competent court;

(c) if he is an undischarged insolvent;

(d) if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or

adherence to a foreign State;

(e) if he is so disqualified by or under any law made by Parliament.

(2) A person shall be disqualified for being a member of either House of Parliament if he is so disqualified under the Tenth Schedule.

30. Section 8 of the Representation of the People Act, 1951, also enumerates disqualification for certain offences. In the instant case, in exercise of

the duty cast on him u/s 36 of the Representation of the People Act, the Returning Officer, C.W.1, did not find any one of the disqualifications

enumerated in Article 102 of the Constitution or Section 8 of the Representation of People Act, 1951. Thus, this Court is unable to notice any

illegality or infirmity or impropriety in the acceptance of the nomination paper of the returned candidate by the Returning Officer. It is not the case

of the petitioner that the requirements under Sections 32 and 33 of the Representation of the People Act were not furnished. So long as the

petitioner does not show any one of the disqualifications in Articles 84, 102, 173 and 191 of the Constitution of India, the acceptance of the

nomination of the second respondent by the Returning Officer was perfectly legal and valid, and hence, the same cannot be questioned.

31. Placing much reliance on Section 29(A) of the Representation of the People Act, which deals with the registration of the political parties with

the Election Commission of India, the learned Counsel for the petitioner would

submit that the proforma of application for registration of a political party is clearly envisaged under the said provision; that as per Clause III(iv), an affidavit duly signed by the President of the Registering Authority, shall be filed to the effect that no member of the organization was a member of any other political party registered with the Commission; that in the instant case, the returned candidate claimed that he became a member of the DMK political party on 1.4.2004, but has not resigned from the primary membership of TNIUML, which was also a registered political party, before he joined the DMK political party, and thus, there was a clear legal bar for the second respondent to become a member of the DMK political party, which was registered as a political party with the Election Commission of India. Attractive though the contention put forth by the learned Counsel for the petitioner at the first sight, it cannot stand the scrutiny of law. Section 29(A)(1), (2)(a) and (5) reads as follows:

(1) Any association or body of individual citizens of India calling itself a political party and intending to avail itself of the provisions of this Part shall make an application to the Election Commission for its registration as a political party for the purposes of this Act.

(2) Every such application shall be made:-

(a) if the association or body is in existence at the commencement of the Representation of the People (Amendment) Act, 1988 (1 of 1989), within sixty days next following such commencement;

(b)....

(3)....

(4)....

(5) The application under sub-section (1) shall be accompanied by a copy of the memorandum of rules and regulations of the association or body, by whatever name called, and such memorandum or rules and regulations shall contain a specific provision that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India.

32. No doubt, the memorandum of rules and regulations should be conformed to the provisions of Clause 5 of Section 29(A) of the

Representation of the People Act. The provisions of Section 29(A)(2)(a) are applicable to the DMK political party, a registered one, and an

affidavit to the effect that no member of the organization is a member of any other political party registered with the Commission, should have also

been filed before the same was registered with the Election Commission. The case of the petitioner, as could be seen from the averments in the

election petition, more than once, is that TNIUML is a registered political party. Contrary to the above, it is contended by the defence that it is a

social organization and not a political party. The petitioner relied on Ex.P18, a letter from the State Election Commission to the President,

TNSIUML. A reading of Ex.P18 would clearly indicate that it was issued pursuant to the Tamil Nadu Panchayat Elections Symbols (Reservation

and Allotment) Order, 1995, and hence, it can be stated that it has no application to the Assembly and Parliamentary elections.

33. The learned Counsel for the petitioner relied on a copy of a plaint in O.S. No. 12832/96 marked as Ex.P16, wherein it is shown that

TNIUML is a registered political party. The returned candidate relied on the list of registered political parties published by the Tamil Nadu State

Election Commission on 6.5.2004, which is marked as Ex.R2, and the list of registered, but unrecognized political parties, in India, published by

the Election Commission of India and downloaded from the website of the Election Commission on 27.9.2005 marked as Ex.R3. A scrutiny of

these two lists in particular the list of the registered political parties issued by the State Election Commission on 6.5.20 04, which just preceded the

election in question, would reveal that TNIUML is not shown in the list, and thus, it would be quite evident that TNIUML was not a registered

political party as far as the 14th Lok Sabha Elections are concerned, which is the subject matter of this election petition. In view of the above

documentary evidence, it would be highly difficult to find that TNIUML was a registered political party at the time of the 14th Lok Sabha

Elections. From the averments made in the course of the counter, as rightly pointed out by the learned Counsel for the petitioner, it could be seen

that TNIUML is shown as a political party. Even as per the petitioner's case, it was not a recognized political party. From the piece of the

documentary evidence referred to above, it could be seen that it was not even a registered political party at the eve of the 14th Lok Sabha

Election. Even assuming that the returned candidate was a member of a political party and even if it is a registered political party, so long as that is not shown as one of the disqualifications to become a member, under the provisions of the Representation of the People Act referred to above, the contentions of the petitioner's side have got to be rejected. The petitioner has not disclosed any provision of law under which a candidate is required to furnish information about his admission as a member of a registered political party. So long it is not obligatory on the part of the candidate contesting the election to furnish such membership information, it cannot be stated that the returned candidate has suppressed any requisite information. On the contrary, when he filed the nomination, it was clearly stated that he was contesting the election as a member of the DMK political party, and the nomination papers also contained the declaration given by the General Secretary of that political party to the effect that the second respondent was set up as a candidate of that political party in the 14 th Parliamentary General Elections to be held in Vellore Constituency. Thus, from the available evidence, it cannot be held that the second respondent has suppressed the fact that he held two political party memberships and has not disclosed in the declaration made by him before the Returning Officer at the time of the filing of the nomination.

34. In order to make out a case seeking to declare an election void u/s 100(1)(d) (iv) of the Representation of the People Act, it is absolutely necessary for the election petitioner to specifically plead that the election insofar as it concerned the returned candidate, has been materially affected by the non-compliance of the provisions of the Act or of the Rules thereunder. A duty is cast upon the petitioner challenging the election, to show positively that the result of the election of the second respondent, returned candidate, has been materially affected by the non-compliance of the provisions of the Act. The petitioner has to necessarily demonstrate that the poll would have gone against the successful candidate if the provisions of the Act have been strictly complied with. In the instant case, what has all been pleaded by the petitioner in paragraph 3 of the election petition is as follows:

...The petitioner further states on account of projecting the 2nd respondent as DMK political party member and had created much confusion in the

minds of the electorate and majority of the electorate have refrain from voting causing substantial waste votes and also several electorates had

refrained from polling and the same had been the reason which had affected the results of the election materially and by falsely alleging that the 2nd

respondent is the DMK party candidate he had own the election. The petitioner states that he was present at the time of nomination and was also

present at the time of the scrutiny of the said nomination of the AIADMK candidate the 3rd respondent.

35. A very reading of the above averments would clearly indicate that they are bald. Even as per the evidence of the petitioner, the average polling

in any parliamentary constituency was 55 to 60%; but, in the election in question, the polling was 61.19%. Admittedly, when the political parties

faced the 14th Lok Sabha General Elections, they aligned themselves into two pre-poll formations namely DPA and NDA. The DPA was headed

by DMK, and the NDA was headed by AIADMK. The entire electioneering was done by the two major pre-poll formations, and hence, it cannot

be stated that it was not made known to the public that to which alignment, a particular political party and movement belonged. In the instant case,

there is nothing to infer that there was any confusion prevailed in the mind of the electorates. In the face of the poll percentage of 61.19, which

even according to the petitioner, fell excess than the usual percentage of the poll in the elections in the past, the contention that large number of

voters have abstained from voting, and if the voting during that election, was on higher percentage, the defeated candidate would have become

successful cannot be accepted. It is also noticed that the margin between the returned candidate and the defeated candidate was 1,78,610, and

hence, at no stretch of imagination, it can be held that the election petitioner has made the requisite pleadings either, or demonstrated by sufficient

proof that the result of the election of the second respondent has been materially affected by the non-compliance of the provisions of the Act. In

such circumstances, the petitioner cannot seek a declaration that the election of the returned candidate is void, since he has miserably failed to

prove that there was either improper acceptance of the nomination or as a consequence, the election insofar as it concerned the second

respondent, has been materially affected. Hence, the above issues are answered accordingly.

36. In the result, this election petition fails, and the same is dismissed, leaving the parties to bear their costs.