

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.04.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.MANIKUMAR
and
THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.Nos.11977 and 11978 of 2019
and W.M.P. Nos.12233 and 12235 of 2019

A.C.Shanmugam

.. Petitioner in W.P.
No.11977 of 2019

K.Sugumar

.. Petitioner in W.P.
No.11978 of 2019

vs

- 1.Union of India
Ministry of Law & Justice
4th Floor, A-Wing, Shastri Bhawan
New Delhi-110001
2. Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi-110001
3. Chief Election Commissioner, Tamil Nadu
Public (Elections) Department, Secretariat
Fort St.George
Chennai-600 009
4. Additional Secretary to the Government of India
Ministry of Law & Justice
4th floor, A-Wing, Shastri Bhawan
New Delhi-110001

.. Respondent in both
Writ petitions

Common Prayer: Writ petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus calling for the records comprised in the impugned notification bearing reference number S.O. 1609(E) and F.No.H-11024/1/2019-Leg.II, dated 16.04.2019, and issued by the 1st Respondent and quash the same as illegal, arbitrary and unconstitutional and consequently direct the respondents to conduct the election to 8- Vellore Parliamentary Constituency as scheduled on 18.04.2019.

For Petitioner in : Mr.Satish Parasaran,
W.P. No.11977/2019 Senior Counsel
for Mr.R.Parthasarathy

For Petitioner in : Mr.AR.L.Sundaresan,
W.P. No.11978/2019 Senior Counsel
for M/s.AL.Ganthimathi

For Respondents : Mr.Niranjan Rajagopalan
for R2 and 3

COMMON ORDER

(Common Order of this Court was delivered by
S.MANIKUMAR, J. and SUBRAMONIUM PRASAD, J.)

W.P.No.11977 of 2019 is filed by Mr.A.C.Shanmugam, seeking for a writ of Certiorarified Mandamus, to quash the records, comprised in the notification bearing reference number S.O. 1609(E) and F.No.H-11024/1/2019-Leg-II, dated 16.04.2019, issued by the 1st respondent, which has effectively directed countermanding/cancellation of the parliamentary constituency on 18.04.2019 and consequently, direct to

the respondents to proceed with the conduct of the Parliamentary/Lok Sabha elections for the Vellore Parliamentary Constituency as scheduled on 18.04.2019.

2. Prayer in W.P.No.11978 of 2019, filed by an independent candidate, Mr.K.Sugumar, is also for the same relief.

3. As both the writ petitions are filed for the same relief, prayer with averments and submissions in common, they are taken up together and disposed of by a common order.

Facts in W.P.No.11977 of 2019 are as follows:

4. It is the case of Mr.A.C.Shanmugam, petitioner, that he is a candidate contesting in the 17th Lok Sabha Elections from the Vellore Parliamentary Constituency in Tamil Nadu, representing the AIADMK party. The polling for the said election is to be held on 18.04.2019. While so, the Petitioner came across news reports published by several leading media houses regarding raids conducted by the Election Commission officials along with officials from the Income Tax Department in premises allegedly belonging to or associated with a

candidate contesting the elections on behalf of a rival political party, during the night intervening between 29.03.2019 & 30.03.2019 and thereafter. It is understood from these news reports that excess cash amounting to several lakhs, if not crores, have been seized from the premises belonging to the said candidate as well as those belonging to his associates. It is understood that the Election Commission has subsequently initiated investigations into allegations that the said cash was intended to be used for the purpose of illegally influencing voters.

5. It is further contended that if the same is proved, it would only establish that the candidate has indulged in multiple violations of election laws, including Clause I(4) of the Model Code of Conduct (MCC) which mandates that candidates shall not commit any 'corrupt practices'. The said conduct is in violation of other statutory provisions as well as the Manual on the MCC (March 2019 -Document No. 21, Edition No.1) issued by the Election Commission of India [Para 4.4.2(B)(IX)]. The said Manual mandates that Candidates shall not carry / possess "huge amounts of cash during elections".

6. According to the petitioner the conduct of the said candidate is

<http://www.judis.nic.in> also liable to be investigated for violation of Section 8A of the

Representation of Peoples Act, 1951 (hereinafter, referred to as the 'RP Act'). However, as is evident from a bare perusal of the said provision, the statutory mechanism envisages only the disqualification of a candidate for the commission of such corrupt practices. As such, the proper remedial measure in the present case, assuming that the Election Commission's findings are accurate, would be the disqualification of the concerned candidate.

7. In such circumstances, the 1st Respondent herein has however proceeded to issue the impugned notification numbered F.No.H-11024/1/2019-Leg.II dated 16.04.2019, wherein, it has sought to "partially rescind the Notification No.1389, dated 19th March 2019 in so far as it relates to calling upon the said 8- Vellore parliamentary constituency in Tamil Nadu to elect a member to the Lok Sabha...", and the same is ex facie illegal, arbitrary and disproportionate and that the same is also in violation of the provisions of the Representation of the People Act, 1951. Challenging the impugned notification, Petitioner has filed the present writ petition on the following grounds:

**Impugned Notification lies in violation of the
Constitutional Scheme:**

(i) Impugned Notification would amount to a violation

of the petitioners' fundamental rights guaranteed under the Articles 14, 19 & 21 of the Indian Constitution.

(ii) Impugned Notification is also ultra vires the powers of the 1st Respondent or the Hon'ble President of India under the Constitution in as much as the same does not envisage any such power vesting with the Hon'ble President to countermand an election in the given circumstances. It is submitted that, while Article 324 of the Constitution vests the power of general superintendence and control over elections with the Election Commission, no such powers are vested with the 1st Respondent or the Hon'ble President of India following the announcement of elections. In the post-notification stage, the only power that vests with the Hon'ble President of India lies under Article 103. Admittedly, the impugned notification has not been issued by the President in exercise of the said power which is wholly inapplicable to the countermanding or cancellation of elections.

(iii) Power of countermanding the elections does not vest with the 1st Respondent or the Hon'ble President of India under the Indian Constitution. In such circumstances, the Impugned Notification is clearly ultra vires the provisions of the Constitution, which do not vest any power with the Respondents to issue such a Notification.

(iv) Powers of the Hon'ble President under law work themselves out once a notification is issued under Section 14 of the RP Act. The conduct of the elections called for

under the aforesaid provisions is then shifted constitutionally to the Election Commission, as evinced from a plain reading of Article 324 of the Constitution. Thereafter, the Hon'ble President is conferred with only limited powers under Article 103 of the Constitution for disqualification in certain circumstances. Therefore, the present exercise of power by the Hon'ble President and the 1st Respondent is impermissible under the constitutional scheme.

(v) It is only the Election Commission that can then supervise or control an election, which may also be done only as per the law laid down in the form of the RP Act, as held by the Hon'ble Apex Court in various decisions. As such, the Impugned Notification which has ostensibly been issued under Section 14 of the RP Act read with Section 21 of the General Clauses Act, lies in contravention of the Constitutional mandate conferred upon the Election Commission for the conduct of elections.

Impugned Notification lies in violation of the law made by Parliament under Article 327 of the Constitution:

(vi) Impugned Notification also lies in violation of the RP Act, which is a law made by the Parliament under Article 327 of the Constitution with respect to "all matters relating to...elections" It is humbly submitted that Section 8A of the RP Act. The said provision envisages the appropriate remedy in cases of corrupt practices, wherein the action is liable to be taken for disqualification of the

concerned candidate and not to countermand the elections as a whole. The said interpretation is further strengthened on a conjoint reading of the said provision with Sections 57, 58 & 58A of the RP Act, which expressly stipulate the only circumstances under which an election may be adjourned or countermanded.

(vii) The abovesaid provisions clearly evidence that the legislature, in its wisdom, has envisaged countermanding or adjournment of elections only in such cases as law & order violations, natural disasters etc. While the incidence of corrupt practices has been recognized and remedied under Section 8A, the same stands expressly excluded as a ground for countermanding or adjournment under these provisions. In such circumstances, it is respectfully submitted that the RP Act does not permit countermanding or adjournment of elections in any manner, directly or indirectly, on account of 'corrupt practices' by any candidate. The statutory remedy in such cases is the disqualification of the candidate and not the cancellation of an election itself.

(viii) It is also well-settled that Article 324 of the Constitution of India empowers the Election Commission to control the conduct of all elections to Parliament and to the Legislature of every State. The limitation on this plenary character is only when the Parliament or the State Legislature has made a valid law relating to or in connection with the elections. In the instant case,

however, such a law exists in the form of the RP Act which, as enunciated hereinabove, expressly stipulates the circumstances under which an election may be countermanded. The well-recognized legal maxim, *expressio unius est exclusio alterius* applies and the countermanding of elections on other grounds (especially those for which other penal consequences have been specifically envisaged under Section 8A of the RP Act) cannot be done by invoking any residual power under Article 324 of the Constitution also. As such, the EC Recommendations as well as the Impugned Notification are liable to be set aside in so far as they violate the Representation of the People Act, 1951.

Impugned Notification constitutes an arbitrary exercise of a judicial function:

(ix) A bare perusal of the EC Proceedings evinces that the issuance of the Impugned Notification is not merely an administrative action, but an action taken based on a quasi-judicial finding of culpability by the Election Commission. In so far as the Election Commission has proceeded on such a quasi judicial determination carrying serious civil consequences, the same cannot be given effect to vide an administrative order. It is well-settled that Section 21 of the General Clauses Act is also inapplicable to such instances where the proceedings culminating in the concerned order are quasi-judicial in nature.

(x) In cases, where allegations of 'corrupt practices'

are made against a particular candidate, the nature of remedial proceedings envisaged are judicial, whereby the issue must be heard in accordance with Section 80 and the other concomitant provisions of the RP Act, as per which the issue is to be determined by a competent court. Even in cases where the Election Commission seeks to disqualify a candidate, the same is an action carrying civil consequences, wherein the proceedings cannot be conducted in violation of the principles of natural justice. The impugned notification seeks to bye-pass the judicial process envisaged under law for determination of the existence of such corrupt practices by ostensibly penalizing the same through an administrative order.

(xi) In any event, the circumvention of the said judicial process by the 1st Respondent or the Hon'ble President of India is an action that is envisaged neither under the Constitution nor under any statute. A determination has been made regarding the culpability of a certain candidate in the EC Recommendations. Furthermore, based on this ex parte determination of guilt on the part of one candidate, punishment has been recommended for all parties involved by countermanding the entire election rather than punishing the concerned candidate. As such, the Impugned Notification suffers from a fundamental misapplication of law and is ex facie liable to be set aside.

The Impugned Notification is liable to be set aside as arbitrary and disproportionate:

(xii) The Impugned Notification is arbitrary and liable to be set aside in so far as the same seeks to achieve in an indirect manner, what cannot be achieved directly. It is evident, as enunciated hereinabove, that the RP Act itself envisages the circumstances in which the Election Commission may countermand or adjourn an election. As such, the Election Commission has sought to overstep its prescribed jurisdiction in the instant case by seeking to do indirectly what it has not been permitted to do directly. It is a well settled proposition of law that, when a statute envisages a certain act to be done in a certain manner, it shall be done in that manner or not at all. As such, the Impugned Notification is a colorable exercise of power that falls afoul of Article 14 of the Constitution.

(xiii) A bare perusal of the EC Recommendations clearly demonstrates that all the findings in the instant case were admittedly against only one candidate of another party, who is a rival of the petitioner. There have been no allegations levelled against the petitioner, let alone any opportunity for hearing for the Petitioner, or for any other candidate contesting from the said constituency. In such circumstances, the Impugned Notification seeks to penalize all candidates for the alleged violation of law by one candidate. The said act is patently disproportionate in so far as the desired effect of remedying the corrupt practice

can be achieved by disqualifying just the concerned candidate. As such, the Impugned Notification contravenes Article 14 of the Constitution.

(xiv) Impugned Notification also fails to achieve the objective of dissuading corrupt practices. On the contrary, the present action may set a precedent for the setting up of dummy candidates who may openly propagate corruption with the objective of having an election cancelled with the sole intention of harming any candidate who has a certain chance of victory. The legislature, in its wisdom, has penalized corrupt practices by any candidate by imposing sanctions against the said candidate. The Impugned Notification, in so far as it seeks to penalize all candidates for the same, is manifestly arbitrary and unjust.

(xv) Impugned Notification also occasions grave losses to the public exchequer, directly and indirectly, in so far as the amounts expended towards the conduct of the election as well as the time devoted by several government functionaries to carry out the same has been rendered worthless by the Impugned Notification. While the conduct of free and fair elections is no doubt the paramount consideration, the same can be achieved by disqualification in the present case. In such circumstances, the aforesaid wastage occasioned to the public exchequer is wholly needless and, as such, the Impugned Notification suffers from arbitrariness and lies in violation of Article 14 of the Constitution.

(xvi) Impugned Notification is also vitiated by arbitrariness in as much as the EC Proceedings itself record that the tainted candidate was "making preparations" to target votes in the constituency and that the same was prevented. In such circumstances, it is unclear as to how there can be said to exist a vitiated atmosphere for the conduct of elections. There are seizures of cash every day across the state and the country and, in view of the efficient discharge of its duties by the Election Commission, there is no question of any corrupt practices having been commissioned. In such circumstances, the action of effectively countermanding the elections itself, despite the bribing of voters admittedly having been prevented, is excessive and arbitrary.

Facts in W.P.No.11978 of 2019 are as follows:

8. It is the case of K.Sugumar, petitioner in W.P.No.11978 of 2019 that he is an independent candidate, contesting from 8-Vellore Constituency for the Lok Sabha elections. On 19.03.2019, the Hon'ble President of India, pursuant to the recommendation of the Election Commission, issued notification No.1389(E), calling upon the parliamentary constituencies of 13 States/Union Territories, including 39 parliamentary constituencies in the State of Tamil Nadu. Thereafter, the Election Commission had issued a further notification No.55(E),

dated 19.03.2019, fixing the date of the polling in the State of Tamil Nadu on 18.04.2019. Additionally, in pursuance of Section 30 of the Act, it also fixed the schedule for the conduct of the elections to the Parliamentary Constituencies as follows:

- A. 26.03.2019- Last date for making nominations.
- B. 27.03.2019- Date for scrutiny of nominations.
- C. 29.03.2019- Last date for withdrawal of candidatures.
- D. 27.05.2019- Date before which election shall be completed in all the parliamentary constituencies.

The petitioner submitted his nomination on time, along with all the relevant particulars, as required by the Election Commission. After filing his nomination, he started campaigning, without violating the Model Code of Conduct. While campaigning, various media reports were released, stating that undeclared monies had allegedly been seized at the residence of the Secretary of a major political party, and at the residences of his alleged accomplices. In fact, the reports also mentioned that after the initial operation was completed, a subsequent amount totaling over Rs.11 crore was seized.

9. According to the petitioner, if the allegations are proved to

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should be disqualified, after investigation is conducted under Section 8A of the Representation of Peoples Act, 1951. Additionally, bribery is an offence under Section 171 B of the Indian Penal Code and any conviction for the offensive of bribery, even if it resulting in the payment of a very nominal fee, will automatically disqualify the convicted person/candidate for a minimum period of 6 years, under Section 8(1) of the Representation of the People Act, 1951. The alleged offence may also constitute a “corrupt practice” under Section 123(1) of the Representation of People Act 1951, which would result in the election of the returned candidate being declared void and the candidate found guilty of commission of such corrupt practice can also be disqualified by the Hon'ble President on the recommendation of the Commission.

10. Therefore, the Election Commission is duty bound, to take actions as mentioned under Section 8A of the Representation of Peoples Act, 1951, and after following the due process, to disqualify the candidate from contesting in the elections for the Vellore Lok Sabha Constituency. However, instead of disqualifying the candidate from contesting in the elections, the entire Lok Sabha elections for the Vellore constituency in effect, has been cancelled, through the

wherein the 1st Respondent has “partially rescinded the notification No.1389, dated 19th March 2019 in so far as it relates to calling upon the said 8-Vellore parliamentary constituency in Tamil Nadu to elect a member to the Lok Sabha...” Annexure to the Impugned Notification elaborates the proceedings of the Election Commission of India, dated 14.04.2019, clearly detailing the history and timeline, relating to the seizures of the alleged undeclared monies.

11. It is the further case of the petitioner that though the Election Commission has got adequate materials to take action, against the accused candidate in accordance with law, the Commission has instead decided to recommend to the President of India to rescind/cancel the 8-Vellore Parliamentary Constituency Election in Tamil Nadu. In the present case, the Election Commission has prevented the alleged corrupt practice from being carried out by seizing the undeclared monies. In fact, as mentioned in Paragraph 19 of the Proceedings, the DGIT (Inv.) himself notes that:

“... The unpackaged Portion of the cash and unused labels, which were also seized clearly indicate that the candidate was making preparations (Emphasis added) to cover all the target voters in the said parliamentary constituency.”

Therefore, even assuming that the allegations of corrupt practices are true, bribing of voters has been prevented by the Election Commission and there is no necessity to rescind the voting process for the entire constituency.

12. The petitioner has further submitted that though in the past, elections have been rescinded on similar circumstances, the present case is distinguishable, on the grounds that the present election relates to Lok Sabha, not assembly or Rajya Sabha and even assuming that the power to rescind is available, it was exercised by the Election Commission and not the President. Therefore, the petitioner has contended that the Impugned Notification is illegal and unconstitutional and mainly discriminates against an independent candidates like him, who has already invested their meagre savings for contesting the elections, and does not have the financial capability to re-contest the elections. The Election Commission, on the one hand, has clearly stated that the electoral process has been vitiated on account of alleged unlawful activities, on behalf of the accused candidate and some members/workers of the political party in question, while on the other hand, the Election Commission has recommended action to be taken, which will directly affect innocent contestants, including the petitioner.

Hence, the petitioner has challenged the Impugned Notification on the following grounds,

(i) That Impugned Notification is arbitrary and liable to be set aside insofar as the same is illegal and unconstitutional.

(ii) That the Impugned Notification is a violation of the Petitioner's fundamental rights guaranteed under Articles 14, 19 & 21 of the Indian Constitution.

(iii) That the Impugned Notification is liable to be set aside in so far as the Impugned Notification actively discriminates against independent candidates like the Petitioner herein. While major political parties have the financial bandwidth necessary to conduct and compete in re-elections, independent candidates like petitioner will not have the financial capacity to take part in the electoral process once again. The petitioner is a man of meagre means and has taken part in the electoral process at his own expense and cost, and cannot be made to suffer due to the alleged corrupt actions of another. Therefore, the Impugned Notification is discriminatory against independent candidates like the Petitioner, is a colourable exercise of power that falls afoul of Article 14 of the Constitution and is liable to be set aside.

(iv) That the Impugned Notification is liable to be set aside in so far as it fails to achieve the objectives of preventing corrupt practices, and in fact enables them. It is humbly submitted that if elections are rescinded on the

ground that monies were attempted to influence voters by one candidate alone, it will lead to a situation where political parties under the fear of losing the elections, will voluntarily set up dummy candidates and engage in corrupt practices, so as to rescind the elections. It is submitted that this is especially damaging to independent candidates like the Petitioner herein, who will not have the capacity to constantly take part in elections and whose chance to win the elections will be greatly compromised. Therefore, the Impugned Notification is liable to be set aside.

(v) That the Impugned Notification is liable to be set aside in so far as the Election Commission themselves have admitted that while an attempt was made to influence the voters, it has been prevented due to the prompt actions of the Election Commission. It is submitted that when the alleged offence has been prevented, the Election Commission has, without basis, stated in its proceedings that allowing the current electoral process to proceed and to conduct the poll in the constituency in such a vitiated atmosphere, will severely jeopardize the conduct of free and fair elections. However, the Election Commission fails to mention the reasons as to why instead of taking actions against the accused candidate and other members of his political party, the entire election needs to be rescinded. Therefore, the Impugned notification is liable to be set aside.

(vi) That the Impugned Notification is liable to be set

aside as discriminatory and lacking in application of mind. It is humbly submitted that while the seizure of allegedly undeclared monies from the associates of a major political party's secretary has resulted in the rescission of the Lok Sabha election, there has been no such action taken in respect of the Assembly elections. It is submitted that if the monies were used to influence voters in Vellore, then the rescission of the Lok Sabha election for Vellore constituency alone, without a similar action being taken in respect of the Assembly elections in Vellore is arbitrary and discriminatory and contravenes Article 14 of the Constitution.

(vii) That the Impugned Notification is liable to be set aside as disproportionate and lacking in due application of mind. Election Commission in its proceedings has admittedly compiled precise details of alleged corrupt activities against a candidate of another party and has also stated categorically that unlawful activities have been carried out only by the abovementioned member and others of that political party alone. However, instead of taking disciplinary actions against that candidate alone, the Impugned Notification seeks for rescission of the entire electoral process. It is humbly submitted that Impugned Notification seeks to penalize all the candidates contesting elections in the Vellore Constituency for the violation of law by one candidate. Therefore, the Impugned Notification contravenes Article 14 of the Constitution and

is grossly disproportionate in nature.

(viii) That the Impugned Notification is ultra vires the powers of the Hon'ble President of India or the 1st Respondent herein. It is humbly submitted that the power of general superintendence only vests with the Election Commission of India, and not with the Hon'ble President of India. In fact, as evinced from the case law provided in the proceedings of the Election Commission dated 14.04.2019 itself, it is clear that the power to countermand or rescind elections lies with the Election Commission alone. However, even that power may only be exercised in the situations as provided for under the Representation of People Act, 1951. It is humbly submitted that the present case is not covered under Sections 57, 58 & 58A of the Representation of People Act, which provides the situations in which an election may be countermanded or adjourned by the Election Commission. Therefore, it is submitted that the Impugned Notification is ultra vires the Constitution in so far as the 1st Respondent or the Hon'ble President of India does not have the power to issue such a Notification.

(ix) That the Impugned notification is liable to be set aside as lacking in due application of mind. Neither the Impugned Notification nor the proceedings of the Election Commission annexed therewith provides any cogent reason as to what is the necessity to both, take disciplinary actions against the accused candidate/other members of the political party and also to rescind the entire electoral

process in the constituency. It is submitted that the Election Commission has rectified the situation and filed FIR's against the accused candidate, and other members. The proceedings also do not mention any other instance of alleged corrupt practice that has taken place in the Vellore Constituency, either by the accused candidate or any other candidate. Therefore, the impugned notification be set aside.

SUBMISSIONS MADE BY THE LEARNED SENIOR COUNSEL FOR THE PETITIONER AND THE LEARNED COUNSEL FOR THE ELECTION COMMISSION OF INDIA.

13. According to Mr.Satish Parasaran, learned Senior Counsel for the petitioner in W.P.No.11977 of 2019, paragraph No.35 of the impugned proceeding is the finding of the Election Commission of India, wherein, the person indulged in corrupt practice, has been identified as Shri.Kathir Anand and some members/workers of the political party in question. Referring to paragraph No.16 of the recommendations of the Election Commission of India, he submitted that upon seizure of cash, distribution has already been prevented.

14. Referring to Section 14 of the Representation of the People

Act, 1951, learned Senior Counsel for the petitioner in W.P.No.11977 of

2019, submitted that once a notification, under Section 14(2) of the Representation of the People Act, 1951, is issued under the abovesaid provision and consequently, when the Election Commission of India in the Official Gazette, dated 19.03.2019, has notified the announcement of dates for nomination, scrutiny, withdrawal, etc., then the Hon'ble President has no power to interfere with the process of elections.

15. Learned Senior Counsel for the petitioner in W.P.No.11977 of 2019, submitted that the power exercised by the Hon'ble President, is a hybrid power, invoking Article 324 of the Constitution of India and Section 21 of the General Clauses Act, 1897. According to him, the Hon'ble President of India cannot exercise the power, under Article 324 of the Constitution of India, to cancel the election.

16. Referring to **Mohinder Singh Gill v. The Chief Election Commissioner, New Delhi**, reported in 1978 (1) SCC 405, learned Senior Counsel for the petitioner in W.P.No.11977 of 2019, submitted that the Election Commission of India can only disqualify a person, who has indulged in corrupt practices and in the case on hand, the rival candidates and that there is no need to countermand the entire

17. Referring to Sections 58 and 58(A) of the Representation of the People Act, 1951, learned Senior Counsel for the petitioner in W.P.No.11977 of 2019, submitted that the said statute enumerates certain Acts to be taken into consideration for ordering fresh poll, ie., destruction of ballot papers, booth capturing, etc., and when the legislation provides for specific instances, countermanding of the elections and allegations of corrupt practices by a candidate, cannot be a reason for cancelling the elections. According to him, this is a classic case of corrupt practice by one of the candidates and for the sole act of one candidate, the entire election need not be stalled. Heavens would not fall down, the elections can go on and results be kept in abeyance, till the matters are finally disposed of. He further submitted that cancelling of elections, is highly disproportionate.

18. Mr.Sathish Parasaran, learned senior counsel appearing for the petitioner in W.P. No.11977 of 2019 contended that once a Notification is issued by the President under Section 14 of the RP Act, 1951, then the Election Commission of India has to conduct the elections in accordance with the schedule fixed in Section 30 of the RP Act, 1951. He further contended that once the election process has started then,

<http://www.judis.nic.in> countermanding of elections or directions for holding fresh polls can be

issued only in circumstances contemplated under Section 58 and 58-A of the RP Act, 1951 exists. He further submitted that the Election Commission of India does not have the powers to countermand the elections in any other circumstances. He also contended that a reading of the entire recommendation would show that the allegations in the recommendation to rescind the election is directed only against one candidate. He submitted that for this purpose, the entire election need not be rescinded. He submitted that the consequences of corrupt practices are given in the RP Act, 1951. The Election Commission ought not to have countermanded the entire election.

19. Learned Senior Counsel further submitted that the entire allegation in the recommendation, dated 14.4.2019 is that the Election Commission of India has unearthed huge amounts of cash from a candidate belonging to a political party which was meant for distribution to the voters and this according to the Election Commission will have the effect of affecting the purity in elections. He submitted that an FIR has already been lodged and the candidate concerned will face trial. He further submitted that if the candidate is found to be guilty then he will be punished under the Penal Code and at the same time, will be

of India r/w Sections 8 and 8-A of the RP Act, 1951. He submitted that if the allegations against the candidate are proved, he is elected his election will be set aside, but if he is not elected, then there will be no effect on the final outcome of the result, but he will be disqualified from contesting any elections for a period of six years from the date of conviction. He submitted that Election Commission was therefore not justified in recommending cancellation of the elections to 8-Vellore Parliamentary Constituency.

20. Mr.Sathish Parasaran, learned Senior Counsel appearing for the petitioner in W.P.No.11977 of 2019, further submitted that the reading of the recommendations would show that distribution of money to the voters has been prevented and therefore the purity of elections has not been disturbed. He also contended in any event, the Hon'ble President does not have the power to rescind the election. He submitted that if elections are countermanded/rescinded on the allegation of distribution of money, then it will amount to inserting to a new provision in the RP Act, 1951 after from Section 58 and 58-A. He further submitted that on the facts of the present case countermanding election is too drastic step. In the alternative, he contended that even if

power to make such a recommendation, then the circumstances must be such that it was not in the contemplation of the authorities and should have come as a surprise. Learned Senior Counsel further submitted that if the recommendation of the Election Commission has to be accepted, then in every constituency where there is a seizure of money, election must be rescinded. He submitted that no yardstick is available to determine as to when election must be cancelled, when money meant for distribution to voters is seized.

21. According to the learned Senior Counsel, corrupt practices alleged to have been indulged by a candidate, is not a serious issue, to rescind the election, contrary to the legitimate expectation, to exercise the right of voting by the voters and also the other contestants, who are in the fray of election and not alleged to have been indulged in any corrupt practices. Election Commission should not countermand, because of the corrupt practices of only one candidate. He submitted that the reasons assigned in the impugned order are extraneous, arbitrary, and therefore, the notification is liable to be set aside.

22. According to the learned Senior Counsel, conducting of elections, would not be vitiated by the atmosphere, allegedly projected

by the Election Commission of India, as it would severely jeopardize the conduct of fair and free elections in 8-Vellore Parliamentary Constituency. In support of the above contentions, he took this Court to the relevant passages in the recommendation of the Election Commission of India as well as the provisions of the Representation of the People Act, 1951 and Article 324 of the Constitution of India.

23. Mr.ARL.Sundaresan, learned Senior Counsel for the petitioner in W.P.No.11978 of 2019, an independent candidate, took this Court to the relevant dates of election notification, dated 19.03.2019, issued under the Representation of the People Act, 1951, by the Election Commission of India. According to him, what triggered for cancellation of the election by this impugned notification, dated 16.04.2019, is an allegation of seizure of cash on 30.03.2019, but the candidate, his father and one Mr.Pooncholai, a party functionary of DMK, have denied about cash found. Between 30.03.2019 and 14.04.2019, the dates on which, seizure and recommendations, sent to the Hon'ble President of India by the Election Commission, only First Information Report, has been registered.

24. According to the learned Senior Counsel, if after the trial, the candidate is punished for the offences, stated supra, he will suffer disqualification. Acts alleged would fall under the definition of corrupt practices, which attracts disqualification under Section 8-A of the Representation of the People Act, 1951. In any event, if prosecution succeeds, he would be punished for corrupt practices and lateron, he would be disqualified. But that alone cannot be the reason to countermand or cancel the elections. He further contended that to maintain purity and for conducting free and fair elections, it does not require to rescind the instant election, without any justifiable reason and that there is no rational behind the decision taken by the Election Commission of India.

25. Referring to contents in paragraph No.25 of the recommendation of the Election Commission of India, Mr.ARL.Sundaresan, learned Senior Counsel for the petitioner in W.P.No.11978 of 2019, submitted that finding of the Election Commission that there was a inducement and allurement to electors by the candidate, political party, and their associates by distribution of money, which has been going on at a large scale and in a clandestine

manner, vitiating the purity of the electoral process and disturbing the

level playing field in Vellore Parliamentary Constituency, is without any basis.

26. According to the learned Senior Counsel, no sooner money is seized, distribution has been prevented. Besides there are no materials in the recommendation for coming to the conclusion that distribution was going on at a larger scale and in a clandestine manner. Nowhere, in the letter, dated 14.04.2019, the Election Commission of India, has stated the place, time, of distribution of cash.

27. Referring to the ultimate paragraph of the recommendation, dated 14.04.2019, learned Senior Counsel for the petitioner in W.P.No.11978 of 2019, submitted that the conclusion of the Election Commission of India that there is a vitiated atmosphere, which would severely jeopardize the conduct free and fair elections in 8-Vellore Parliamentary Constituency, is wholly erroneous, for the reason that there was only a seizure on 30.03.2019 and that there was no distribution. Mere seizure cannot be a sole reason for the conclusion of the Election Commission to state that conduct of the election is conducive and that there is a vitiated atmosphere.

28. Learned Senior Counsel further submitted that if found guilty and if the said candidate has been elected, then his election will be set aside apart from incurring disqualification for a period of six years from contesting elections. He further submitted that there is no yardstick as to how much cash should be recovered for cancelling an election.

29. Per contra, Mr.Niranjana Rajagopalan, learned counsel appearing for the Election Commission of India submitted that on 14.04.2019, the Election Commission of India has recommended to the President of India, to rescind the Election Notification, dated 19.03.2019, insofar as it relates to calling upon 8-Vellore Parliamentary Constituency in Tamil Nadu.

30. Referring to Paragraph 18 of the recommendation, dated 14.04.2019 of the Election Commission of India, learned counsel for the Election Commission of India submitted that the cash seized; statement of the Senior Manager of Canara Bank, Regional Office, Vellore; exchange of denomination notes; and admission to facilitate the distribution, were brought to the notice of the Hon'ble President of India. He further submitted that the factum of seizure is one aspect and

the report of the Office of the Director General of Income Tax (Investigation), is another. Report of the Director General of Income Tax (Investigation), was one of the documents, sent along with the recommendations of the Election Commission of India, wherein, after the words, “to cover all the”, the word, “remaining” as found in the original report, is inadvertently not typed in the extract, enclosed in the typed set of papers to this petitions. Report of the Director General of Income Tax (Investigation) is part of the documents sent along with the recommendations of the Election Commission of India. He has also produced the documents.

31. Learned counsel for the Election Commission of India further submitted that the distribution of cash has already been done and that the unpacked portion of the cash and used label, clearly indicates that the candidate was making preparation to cover all the remaining target voters in the Vellore Parliamentary Constituency and that is why, at Paragraph 25 of the recommendation, dated 14.04.2019, submitted to the Hon'ble President of India, Election Commission of India, has stated that after careful analysis and examination, came to the conclusion that distribution of money has been going on at a large scale and in a clandestine manner, vitiating the purity of the electoral process and disturbing the level playing field in Vellore Parliamentary Constituency.

32. Referring to Paragraph 22 of the recommendations, dated 14.04.2019, learned counsel for the Election Commission of India, submitted that not only, there is a report from the electoral officer about seizure of cash, there is also a report from the Director General of Income Tax (Investigation); that the Chief Election Commissioner has appointed an Expenditure Observer. Accordingly, vide letter, dated 07.04.2019, the Expenditure Observer appointed by the Election Commission, has stated that the envelopes containing the cash ward-wise details of Vaniyambadi and K.V.Kuppam Assembly Constituencies of Vellore Parliamentary Constituency. The Expenditure Observer has stated that this pertains to two out of six segments in the Parliamentary Constituency and they are not in a position to ascertain, as to whether, something similar has not happened in other assembly segments also. Expenditure Observer appointed by the Election Commission, has categorically stated that influence of cash in the election process is visible and may hamper free and fair election. At Paragraph No.23 of the Recommendation, dated 14.04.2019, it is stated as follows:

“The Special Expenditure Observer for Tamil Nadu, filed a report dated 08.04.2019 regarding the search and seizure operates undertaken by the IT Department in Vellore. It has been stated that the searches have unearthed a systematic design to influence voters through

inducements. These activities come under the ambit of “corrupt practices” as per Section 123 of RP Act, 1951. The Special Expenditure Observer is of the opinion that the situation is not conducive for the conduct of free and fair elections.”

33. Thus, the learned counsel for the Election Commission of India submitted that there are four reports, one made at the time of seizure and others are, (i) Report of the Director General of Income Tax (Investigation); (ii) Expenditure Observer's report, dated 07.04.2019; (iii) Report of the Special Expenditure Observer for Tamil Nadu, dated 08.04.2019 and (iv) Final Report of the Chief Election Commissioner, dated 12.04.2019. According to him, there are sufficient materials to arrive at the subjective satisfaction that environment is vitiated and that the same would severely jeopardize the conduct of free and fair elections in 8-Vellore Parliamentary Constituency.

34. Referring to Paragraph 6 in **Mohinder Singh Gill's** case, learned counsel for the Election Commission of India, submitted that it is for the Election Commission of India to consider, as to whether, the environment is conducive or not, for conducting a free and fair elections and it is not, as to how many candidates were involved in the corrupt

practices, but it is the environment, which requires to be considered for the conduct of smooth, free and fair elections, maintaining its purity. He further submitted that it is for the Election Commission of India to consider, as to whether, the environment is vitiated. According to him, what matters is environment and not the number of the candidates.

35. Learned counsel for the Election Commission of India further submitted that the Election Commission of India has taken note of the seizure, report of the Director General of Income-Tax (Investigation), reports of the Expenditure Observer appointed by the Election Commission and the Special Expenditure Observer for Tamil Nadu, who are the experts in their own fields and after careful analysis and examination, has arrived at a conclusion that the atmosphere is vitiated and such opinion of the experts, cannot be the matter of judicial review and the Court cannot substitute the views.

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36. Referring to the penal provisions quoted by the learned counsel for the petitioners, ie., Sections 8, 8-A, 100 and 123 of the Representation of the People Act, 1951, learned counsel for the Election Commission of India submitted that they apply only to a person, who has indulged in corrupt practices and that Section 123 of the abovesaid Act,

is a post election event and when corrupt practices and illegality are prima facie found, the Election Commission, which is mandated under the Constitution of India, to conduct a free and fair elections, cannot be a mute spectator. There could be a possibility of setting aside the election, based on the materials available against a candidate, who has indulged in malpractice or corrupt practice, but that would not take away the powers and duties of the Commission to ensure a free and fair elections. According to him, the Commission is vested with the constitutional duty to conduct a free and fair elections.

37. According to the learned counsel for the Election Commission of India, the petitioners are trying to trivialize the issue, where huge money is involved. Extreme step for rescinding the election was necessitated, due to the abovesaid facts. He drew the attention of this Court to the aspect of bribery in the elections recorded in Paragraphs 26 to 28 of the Election Commission of India's recommendation, dated 14.04.2019 and also as to how, the Commission has come to the conclusion before recommending to the Hon'ble President of India. He further submitted that the Election Commission has also taken note of the judgment of the Hon'ble Supreme Court and

38. By way of reply and referring to the reported judgment of Jharkhand High Court in **Jay Shankar Pathak v. Election Commission of India** reported in **AIR 2012 Jhar. 58**, Mr.Satish Parasaran, learned Senior Counsel for the petitioner in W.P.No.11977 of 2019, submitted that in the said case, both sides have alleged to have paid money and therefore, the Election Commission of India, came to the conclusion that the election should be cancelled. Whereas, in the present case, only the rival candidate and others were indulged in corrupt practices and for that reason alone, the election should not have been postponed. According to him, **Jay Shankar Pathak's** case, is not applicable to the case on hand.

39. Mr.Satish Parasaran, learned Senior Counsel for the petitioner in W.P.No.11977 of 2019, also distinguished the case of the Andhra Pradesh High Court in **N.Kristappa v. Chief Election Commissioner** reported in **AIR 1995 AP 212**, stating that the said judgment can only have persuasive value and not binding on this Court, besides an act of abduction has not been included in Sections 58 and 58-A of the Representation of the People Act, 1951.

40. By way of reply, Mr.ARL.Sundaresan, learned Senior Counsel appearing for the petitioner in W.P.No.11978 of 2019, submitted that there is anomaly in the recommendation, dated 14.04.2019, and according to him, law is stated in Paragraphs 26 and 27 and whereas, the finding “distribution is going on” is without any materials. According to the learned Senior Counsel, Paragraph 19 of the recommendation is the only basis for the findings recorded by the Election Commission of India that distribution of money has been going on a large scale, which finding is not supported by any other material. In sum and substance, he submitted that the allegation that cash has already been distributed, is not supported.

Heard the learned counsel appearing for the parties and perused the materials available on record.

41. Before adverting to the rival contentions, it is relevant to have a cursory look at the provisions, referred to by the learned counsel appearing for the parties.

42. Representation of the People Act, 1951 is an act to provide for the conduct of elections in the Houses of Parliament and to the

House or Houses of the Legislature of each State, the qualifications and disqualifications for membership of those Houses, the corrupt practices and other offences at or in connection with such elections and the decision of doubts and disputes arising out of or in connection with such elections.

43. Part III of the Representation of The People Act, 1951 deals with notification of general elections. Section 14 deals with notification for General election to the Houses of the people and it reads thus:

"14. Notification for general election to the House of the People:-

(1) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of clause (2) of article 83."

44. Chapter IV of Part-V deals with the Poll. Section 58, deals with fresh poll in the case of destruction, etc., of ballot papers and Section 58-A deals with the adjournment of poll or countermanding of election on the ground of booth capturing. Both the Sections are reproduced hereunder:

"58. Fresh poll in the case of destruction, etc., of ballot boxes:-

(1) If at any election,—

(a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or

(aa) any voting machine develops a mechanical failure during the course of the recording of votes; or

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll, the returning officer shall forthwith report the matter to the Election Commission.

(2) Thereupon the Election Commission shall, after taking all material circumstances into account; either—

(a) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the mechanical failure of the voting machine or the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.

(3) The provisions of this Act and of any rules or

orders made thereunder shall apply to every such fresh poll as they apply to the original poll.

58A. Adjournment of poll or countermanding of election on the ground of booth capturing.—

(1) If at any election,—

(a) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

(2) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) and after taking all material circumstances into account, either—

(a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may deem fit; or

(b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency."

45. Chapter III of Part-VI deals with the Trial of election

petitions. Section 98 deals with the decision of the High Court. Section

99 speaks about other orders to be made by the High Court. Both the

sections are reproduced hereunder:

"98. Decision of the High Court:-

At the conclusion of the trial of an election petition the High Court shall make an order—

- (a) dismissing the election petition; or
- (b) declaring the election of all or any of the returned candidates to be void; or
- (c) declaring the election of all or any of the returned candidates to be void and the petitioner or any other candidate to have been duly elected.

99. Other orders to be made by the High Court:-

(1) At the time of making an order under section 98 [the High Court] shall also make an order—

(a) where any charge is made in the petition of any corrupt practice having been committed at the election, recording—

(i) a finding whether any corrupt practice has or has not been proved to have been committed at the election, and the nature of that corrupt practice; and

(ii) the names of all persons, if any, who have been proved at the trial to have been guilty of any corrupt practice and the nature of that practice; and

(b) fixing the total amount of costs payable and specifying the persons by and to whom costs shall be paid: Provided that a person who is not a party to the petition shall not be named in the order under sub-clause (ii) of clause (a) unless—

(a) he has been given notice to appear before the High Court and to show cause why he should not be so named; and

(b) if he appears in pursuance of the notice, he has been given an opportunity of cross-examining any witness who has already been examined by the High Court and has given evidence against him, of calling evidence in his defence and of being heard."

46. Section 100 deals with the grounds for declaring the election to be void which includes, any corrupt practice, committed by

the returned candidate or his election agent etc., For brevity, Section 100 is reproduced,

"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) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(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 or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took

all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents,
then the High Court may decide that the election of the returned candidate is not void.

47. Section 103 deals with the communication of orders of the High Court and the said section is extracted hereunder:

"103. Communication of orders of the High Court:-
The High Court shall, as soon as may be after the conclusion of the trial of an election petition, intimate the substance of the decision to the Election Commission and the Speaker or Chairman, as the case may be, of the House of Parliament or of the State Legislature concerned and, as soon as may be thereafter, shall send to the Election Commission an authenticated copy of the decision."

48. Section 106 deals with transmission of the order to the appropriate authority, etc., and its publication, which is extracted hereunder:

"106. Transmission of order to the appropriate authority, etc., and its publication:-

As soon as may be after the receipt of any order made by the High Court under section 98 or section 99, the Election Commission shall forward copies of the order to the appropriate authority and, in the case where such order relates to an election to a House of Parliament or to an election to the House or a House of the Legislature of a State, also to the Speaker or Chairman, as the case may be, of the House concerned and shall cause the order to be published-

(a) where the order relates to an election to a House of Parliament, in the Gazette of India as well as in the Official Gazette of the State concerned; and

(b) where the order relates to an election to the House or a House of the Legislature of the State, in the Official Gazette of the State."

49. Part VII of the Representation of The People Act, 1951 deals with Corrupt Practices and Electoral Offences. Section 123 defines corrupt practices, as follows:

"123. Corrupt practices:- The following shall be deemed to be corrupt practices for the purposes of this Act:

(1) "Bribery", that is to say-

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or

refrain from voting, or any candidate to withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent], with the free exercise of any electoral right:

Provided that— (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of, or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects

of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent], of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;
- (f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, desh mukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and
- (g) such other class of persons in the service of the Government as may be prescribed:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.

(8) booth capturing by a candidate or his agent or other person.

Explanation.— (1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent of that candidate.

(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof-

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was appointed with effect from the said date, or in the case of

resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.

(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A."

50. Article 324 speaks about the Superintendence, direction and control of elections to be vested in an Election Commission and the same is reproduced.

324. (1) The superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission (referred to in this Constitution as the Election Commission).

(2) The Election Commission shall consist of the Chief Election Commissioner and such number of other Election Commissioners, if any, as the President may from time to time fix and the appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

(3) When any other Election Commissioner is so appointed the Chief Election Commissioner shall act as the Chairman of the Election Commission.

(4) Before each general election to the House of the People and to the Legislative Assembly of each State, and before the first general election and thereafter before each biennial election to the Legislative Council of each State having such Council, the President may also appoint after consultation with the Election Commission such Regional Commissioners as he may consider necessary to assist the Election Commission in the performance of the functions conferred on the Commission by clause (1).

(5) Subject to the provisions of any law made by

Parliament, the conditions of service and tenure of office of the Election Commissioners and the Regional Commissioners shall be such as the President may by rule determine:

Provided that the Chief Election Commissioner shall not be removed from his office except in like manner and on the like grounds as a Judge of the Supreme Court and the conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment:

Provided further that any other Election Commissioner or a Regional Commissioner shall not be removed from office except on the recommendation of the Chief Election Commissioner.

(6) The President, or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by clause (1).

51. Article 327 envisages the power of Parliament to make provision with respect to elections to Legislatures and the same reads thus:

327. Subject to the provisions of this Constitution, Parliament may from time to time by law make provision with respect to all matters relating to, or in connection with, elections to either House of Parliament or to the House or either House of the Legislature of a State including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of such House or Houses.

52. Article 329 speaks about the bar to interference by Courts in electoral matters and the same is reproduced:

329. Bar to interference by courts in electoral matters:

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under article 327 or article 328, shall not be called in question in any court;

(b) no election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.

53. A perusal of the enclosures in the typed set of papers, more particularly the notification dated 19.03.2019 shows that the Election Commission of India, has decided to hold a general election for the purpose of constituting a new House of the People, on the expiration of the term of Sixteenth House of the people. Therefore, the Election Commission of India, in exercise of powers under sub-section (2) of Section 14 of the Representation of the People Act, 1951, recommended for a Notification for holding the General Election to the House of People. On the recommendation of the Election Commission of India, the Hon'ble President of India issued a Notification on 19.3.2019 calling upon all Parliamentary Constituencies in accordance with the provisions

of the Representation of People Act, 1951. This Notification was issued under Section 14(2) of the Representation of the People Act, 1951. At the risk of repetition, the said Section is extracted hereunder:

"14. Notification for general election to the House of the People. —(1) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder:

Provided that where a general election is held otherwise than on the dissolution of the existing House of the People, no such notification shall be issued at any time earlier than six months prior to the date on which the duration of that House would expire under the provisions of clause (2) of article 83."

54. A reading of Section 14(2) of the Representation of the People Act, 1951, makes it clear that for the purpose of holding a general election, recommendation has to be made by the Election Commission of India requesting the Hon'ble President, to issue notifications to be published in the Gazette of India. Accordingly, when a request was made, the Hon'ble President has given his assent and accordingly, notification dated 19.03.2019 has been issued by the

Ministry of Law and Justice (Legislative Department) for the elections in
Parliamentary Constituencies, Tamil Nadu,

MINISTRY OF LAW AND JUSTICE
(Legislative Department)
NOTIFICATION
New Delhi, the 19th March, 2019

S.O.1389(E). - Whereas it has been decided to hold a general election for the purpose of constituting a new House of the People, on the expiration of the term of Sixteenth House of the People:

Now, therefore, in pursuance of sub-section (2) of section 14 of the Representation of the People Act, 1951 (43 of 1951), the President is pleased to call upon the Parliamentary constituencies, specified, in column (2) of the Table given below comprised within the corresponding States or Union Territory, as the case may be, of Assam, Bihar, Chhattisgarh, Jammu & Kashmir, Karnataka, Maharashtra, Manipur, Odisha, Tamil Nadu, Tripura, Uttar Pradesh, West Bengal and Puducherry as specified in column (1) of the said Table, to elect the Members in accordance with the provisions of the said Act and of the rules and orders made thereunder:

STATE (1)	PARLIAMENTARY CONSTITUENCY (2)
Tamil Nadu	8 - Vellore

55. A reading of the notification dated 19.03.2019, makes it abundantly clear that the Hon'ble President has exercised his power only under Sec. 14(2) of the Representation of the People Act, 1951 and

notification dated 19.03.2019 has been issued. Section 30 of the RP Act,

1951 provides that as soon as the Notification under Section 14(2) of the RP Act, 1951 is issued, the Election Commission, by notification in the official gazette appoint:

- (a) the last date for making nominations, which shall be the 7th day of the date of publication of notification under Section 14(2);
- (b) the last date for scrutiny of nominations, which shall be the day immediately following the last date for making nominations;
- (c) the last date for withdrawal of candidates, which shall be the second day after the scrutiny of the nominations;
- (d) the dates on which a poll shall if necessary be taken, which shall not be earlier than the 14th day of the last date for withdrawal of the candidate;
- (e) the date before which the elections shall be completed.

56. Following, the notification issued in terms of Sub-Section 2 of Section 14 of the Representation of the People Act, 1951, Election Commission of India, has issued another notification dated 19.03.2019, stating out the dates viz for nominations, for scrutiny, for withdrawal and dates of polling with the hours for the said purpose for the different parliamentary constituencies, in various States.

57. The above mentioned notification has been issued by the Election Commission of India, for Vellore Parliamentary Constituency, 26th March was the last date for making nomination, 27th March was the date for scrutiny of nomination, 29th March was the last date for withdrawal of the candidate and the polling date was fixed as 18th April 2019, to be conducted between 7.00 a.m and 6.00 p.m. The relevant portion of the notification dated 19.3.2019 fixing the above mentioned dates, reads as under:

ELECTION COMMISSION OF INDIA
NOTIFICATION
New Delhi, the 19th March, 2019

O.N. 55(E). - WHEREAS, the President of India has, by notification issued under sub-section (2) of Section 14 of the Representation of People Act, 1951 (43 of 195) and published in the Gazette of India on the 19th March, 2019 (Tuesday), been pleased to call upon each of the parliamentary constituencies, specified of the Schedule below, in the States or Union Territories mentioned in column (2), of the Schedule in column (1), to elect members to the House of the People, in accordance with the provisions of the said Act and of the rules and orders made thereunder:

2. **Now, therefore**, in pursuance of Sections 30 and 56 of the said Act, the Election Commission of India hereby

(A) **Appoints**, with respect to the said election, from each of the parliamentary constituencies specified in the said Schedule,

(a) **the 26th March, 2019** (Tuesday), as the last date for making nominations;

(b) **the 27th March, 2019** (Wednesday), as the date for scrutiny of nominations;

(c) the 29th March, 2019 (Friday), as the last date for withdrawal of candidatures;

(d) the date specified in column (3) of the SCHEDULE below, as the date on which a poll shall, if necessary, be taken in the parliamentary constituencies, specified in the corresponding entry in column (2) of the said Schedule; and

(e) the 27th May, 2019 (Monday), as the date before which the election shall be completed in all the above mentioned parliamentary constituencies; and

(B) Fixes the hours specified in column (4) of the said Schedule, as the hours during which the poll shall, if necessary, be taken in the constituencies, specified in the corresponding entry in column (2) of the said Schedule, on the date specified against such constituency in column (3) thereof, for the above election.

SCHEDULE

Parliamentary Constituencies, Dates and Hours of Poll
PHASE-II

State/Union Territory	Parliamentary Constituency/ assembly Constituency segment	Date of Poll	Hours of Poll
Tamil Nadu	8-Vellore	18th April, 2019 (Thursday)	7.00 a.m to 6.00 p.m

58. As stated earlier, the petitioner in W.P. No.11977 of 2019 was nominated by the All India Anna Dravida Munnetra Kazhagam to contest as its candidate in Vellore Parliamentary Constituency. The petitioner in W.P. No.11978 of 2019, filed his nomination to contest as an independent candidate for contesting elections in the same

59. The Election Commission of India, by its proceedings dated 14.4.2019 made a recommendation to The Hon'ble The President of India to rescind the election notification No.S.O.1389(E) dated 19.3.2019 insofar as it relates to calling upon the said 8-Vellore Parliamentary Constituency in Tamil Nadu to elect a member to the Lok Sabha. The Hon'ble The President of India, by Notification dated 16.4.2019, accepted the recommendation dated 14.4.2019 of the Election Commission of India and rescinded the election notification No.S.O.1309(E) dated 19.3.2019 insofar as it relates to calling upon 8-Vellore Parliamentary Constituency in Tamil Nadu, to elect a member to the Lok Sabha.

60. The recommendation of the Election Commission of India dated 14.4.2019 and the consequential Notification (impugned herein) rescinding the election for 8-Vellore Parliamentary Constituency in Tamil Nadu, reads as under:

ANNEXURE
ELECTION COMMISSION OF INDIA

Nirvachan Sadan Ashoka Road
New Delhi- 110001

PROCEEDINGS

VELLORE PARLIAMENTARY CONSTITUENCY IN TAMILNADU- REGARDING

The term of the 16 Lok Sabha is set to expire on 3rd of June, 2019 and, accordingly, the election schedule for General Election to constitute new Lok Sabha was announced vide Press Note No. ECI/PN/23/2019 on the 10th of March, 2019. Article 324 of the Constitution of India bestows the relevant powers, duties and functions upon the Election Commission of India to conduct free and fair elections, while Section 14 of the Representation of the People Act, 1951 provides for notifying the election.

2. The General Election from 97 Parliamentary Constituencies (PCs), including 39 PCs in the State of Tamil Nadu was called by the Hon'ble President vide notification No.H-11024(1)/2019-Leg.II dated 19th March 2019. The schedule for the election to the Lok Sabha from the State of Tamil Nadu was fixed by the Commission under Sections 30 and 56 of the Representation of the People Act, 1951. The different dates for various stages of elections for the aforesaid 97 PCs including the 39 PCs in Tamil Nadu areas under:

- (a) the 19th of March, 2019 (Tuesday), as the date of issue of notification;
- (b) the 26 of March, 2019 (Tuesday), as the last date for filing nominations;
- (c) the 27 of March, 2019 (Wednesday), as the date for the scrutiny of nominations;
- (d) the 29th of March, 2019 (Friday), as the last date of the withdrawal of candidatures;
- (e) the 18th of April, 2019 (Thursday), as the date on which the poll will be held;
- (f) the 23rd of May, 2019 (Thursday), as the date for counting of votes; and
- (g) The 27th of May 2019 (Monday), as the date before which the election shall be completed.

3. The Commission made elaborate arrangements for conduct of free and fair polls in the state of Tamil Nadu and in this regard issued extensive guidelines for

monitoring of expenditure of the candidates and political parties, enforcement of Model Code of Conduct (MCC), maintenance of law and order etc. Immediately on announcement of the elections, on 10th March, 2019, the enforcement of MCC was commenced by putting in place 702 Flying Squad Teams (FSTs), 234 Static Surveillance Teams (SSTs) and 234 Video Surveillance Teams (VSTs) across the state, at any given time. A total of 2106 FSTs and 702 SSTs were deployed in the State.

4. The vehicles of Flying Squads and Static Surveillance Teams were GPS enabled in order to ensure that their position and movement could be monitored from a central control room. An app called C-VIGIL was also activated to involve citizens in filing photographic / videographic evidence of incidents if inducements in the form of cash, alcohol, drugs, free gifts is resorted to by candidates or members of political parties to sway voters. This app allows real time monitoring of FSTs which attend to the complaints received. C-VIGIL and GPS based monitoring was to ensure that there is no delay in movement of these teams to attend to the complaints, a camera was also fixed on the top of vehicles so as to monitor how the complaints were handled by the teams after reaching the spot, which were monitored from the respective DEO's control room.

5. Further, preventive measures including action under Cr.PC were undertaken throughout the state resulting in 15 persons being bound down and execution of 17,242 Non-bailable Warrants. To prevent any Violence before and during the polls, doubtful licensed arms were deposited.

6. In the normal course, the Election Commission of India deploys 1 Expenditure Observer per Parliamentary Constituency in every State that goes to poll. However, the Chief Electoral Officer (CEO), after carrying out due diligence based on previous experience, sought the services of two Expenditure Observers per Parliamentary Constituency in the state of Tamil Nadu. Accordingly, 78 Expenditure Observers were deployed in 39 PCs in Tamil Nadu.

7. Furthermore, the Commission deployed one

Special Expenditure Observer from 19th March, 2019 for the state, considering that the whole state was deemed to be expenditure sensitive by the CEO. The Special Observer was deployed to supervise and monitor the work being done by the electoral machinery and to ensure that stringent and effective enforcement action is undertaken based on intelligence inputs and complaints received through C-VIGIL and Voter Helpline 1950 against all persons / entities trying to induce voters by distributing cash, liquor and freebies etc. in order to vitiate the poll process. The ECT was, thus, not leaving any stone unturned to ensure free and fair election.

8. The Commission made the following additional arrangements:

(a) CCTV / Surveillance Cameras were deployed in major streets and junctions in the state to record the movement of vehicles and undesirable elements.

(b) Highly visible SVEEP campaign was launched throughout the state with a focus on ethical voting was launched to popularise the toll-free number of the complaint monitoring control room and voter helpline and to make people aware about the penal provisions on bribing of voters.

(c) All the districts in the state had Income Tax teams which were assigned the duty to attend to complaints of storage / distribution of money. They were asked to work in close co-ordination with police authorities.

(d) Surveillance was also stepped up at important places like railway stations, airport, bus stands, taxi and auto stands.

9. Many complaints were received by the ECI on possibilities of inducement of electors by distributing cash and gifts in innovative forms like tokens, prepaid phone recharge coupons, newspaper subscription, milk tokens, money transfer in no frill accounts in banks and even mobile wallet payment to mobile phone holders. The ECI had put in place an elaborate system for prevention of any such malpractices:

(a) All suspicious transactions in excess of Rs. 10 lakhs, using banking channels, were being monitored by FIU-IND and reports being generated were being shared with enforcement agencies;

(b) Suspicious transactions of smaller amounts through bank accounts were being reported directly to the district authorities for necessary action;

(c) Enforcement agencies like Department of Revenue Intelligence, Narcotics Control Bureau and Enforcement Directorate were co-opted to help in the control of cash, liquor and drugs which are used to induce voters and vitiate the atmosphere;

(d) Central Armed Police Forces, including Central Industrial Security Force and Railway Protection Force were sensitised regarding their role in checking in the movement of any articles which can be used for inducement of voters;

(e) The mobile phone top up of postpaid plans, newspaper agents, milk vendors were monitored electronically or otherwise to prevent misuse of such channels (f) Teams of Sales Tax (commercial tax) department were pressed into service to immediately verify sale of goods through tokens.

10. Detailed enquiries were conducted on various complaints received relating to inducement/bribing of voters. On the complaints of distribution of money, gift articles and violation of MCC, till 11.04.2019, 147 FIRs were registered in the State of Tamil Nadu for expenditure related transgressions.

11. A preliminary report dated 30th of March, 2019 was received in the Commission from the Nodal Officer of Election Expenditure Monitoring of the Income Tax Department. As per this report, Rs. 19.57 lakhs had been recovered from the residence of Sh. Durai Murugan, Treasurer of the Dravida Munnetra Kazhagam (DMK), out of which Rs. 10.57 lakhs were seized as being unexplained. The search also yielded printouts with ward number and amounts written against them. The report stated that the search action u/s 132 of the Income Tax Act, 1961 was still continuing in parts of Kingston Engineering College, Vellore and further investigation

was in progress.

12. Further, a report dated 5th of April, 2019, was received from the Director General of Income Tax (Investigation) regarding the findings in the search and seizures operations in the cases of Sh. D.M. Kathir Anand, Sh. Durai Murugan and Durai Murugan Educational Trust. It was informed to the Commission that various enforcement agencies, including the Income Tax Department, had been receiving inputs regarding huge amounts of unaccounted cash stored at the residence of Sh. Durai Murugan, MLA and Treasurer of DMK party and Sh. D.M. Kathir Anand, s/o Sh. Durai Murugan and contesting candidate for Vellore Parliamentary Constituency and also in Kingston Engineering College run by Durai Murugan Educational Trust of which Sh. D.M. Kathir Anand, Smt. K. Sangeetha, w/o Sh. D.M. Kathir Anand and Smt. D. Shantha Kumari, w/o Sh. Durai Murugan are the Trustees. This information was corroborated through local enquiries conducted discreetly and it was found that there were some suspicious activities relating to elections being carried out in the college premises after college hours.

13. The aforesaid report of the DGTT(Inv.) further elaborates on the facts stated in the preliminary report referred to in para 11, highlighting that search warrants were issued based on information on record and the search teams entered the residential premises of Sh. Kathir Anand and Sh. Durai Murugan in Vellore at 3:00 a.m. on 30.03.2019. Rs. 19.57 lakhs were found, out of which Rs. 10.57 lakhs were seized as unexplained after considering the cash declared in the election affidavit etc. Apart from this, 82 loose sheets (computer printouts) containing details of number of voters in each assembly segment of Vellore Parliamentary Constituency and the amount required at the rate of Rs. 500 per vote and at Rs. 200 per vote for distribution to 100%, 80% and 60% of the total number of voters. The report mentions that due to the presence of a large crowd which had entered the premises and prevented any further activity of the search team, the proceedings were concluded at 10:50 a.m. on 30.03.2019.

14. The said report of the DGIT(Inv.) Chennai states that, Kingston Engineering College was simultaneously searched from 8:00 a.m. onwards on 30th of March, 2019 as the search teams had not been allowed to enter early in the morning by the security personnel purportedly due to the presence of ladies in the girls' hostel. The search team observed that evidently there was prior rummaging of the premises and removal of material including the control panel of the CCTV as well as the hard disks of the computers. Further discreet surveillance resulted in the confirmation that a large amount of cash and other incriminating material had indeed been shifted out of the college premises while the teams were being denied entry.

15. Further as per DGIT report, based on the intelligence gathered during the discreet surveillance, certain premises of close associates of the candidate Shri Kathir Anand and their relatives were identified and fresh searches u/s 132 of the Income Tax Act, 1961, at Katapadi Taluk, Vellore District were initiated on 01.04.2019. Cash totalling Rs. 11.48 Cr., kept in cartons, gunny bags, plastic bags etc. was found from the residence of one Sh. Damodaran, who is brother-in-law of one Sh. Srinivasan, a DMK functionary. The cash found in bags was further packed in plastic packets on which computer-generated labels were pasted. The labels contain the name of the assembly segments (in Vellore PC), name and number of blocks, name and number of wards, total number of voters and amount at the rate of Rs. 200 per vote. The total amount of cash in the plastic packets tallied with the amount written on the label. Most of the currency found was of the denomination of Rs. 200. Only an amount of Rs. 99 lakhs was in the denomination of Rs. 2000 and Rs. 500 and this amount had not been packed in plastic packets for distribution. Apart from Rs. 2.8 Crores, in the denomination of Rs. 200, found in cartons, the rest of the amount, approximately Rs. 7.68 Crores was packed and ready for distribution. In addition, unused labels, loose sheets with details of ward-wise breakup of voters and documents related to Kingston Engineering College were found.

16. The report mentions that Shri Srinivasan alias Poonjolai Srinivasan, in his statement recorded u/s 131 of the Income Tax Act, 1961, owned up the cash found, without giving any Other details regarding the source of this aforesaid cash. Even in respect of the quantum of cash, he has stated that it would be approximately Rs. 9 Cr. He has never filed IT returns and did not give any consistent answer regarding his source of living. He mentioned the source of money found to be from real estate business but could not cite even one deal done by him and thus, could not substantiate the source of cash with any credible evidence. He also stated that he was Town Secretary (Agriculture Wing) of DMK party in Katpadi. He further stated in his statement that he has prepared these packets of cash for distribution to voters. When these facts were confronted to Shri Kathir Anand and Shri Durai Murugan, they have acknowledged that they knew Sh. Poonjolai Srinivasan as a party functionary of DMK but denied knowledge about the cash found.

17. The younger nephew of Sh. Srinivasan, namely Sh. Surender Babu, s/o Sh. Damodaran was also available in the premises where the cash was found but expressed ignorance about the existence of cash in their house. In his sworn statement before IT Authorities, he stated that his uncle P. Srinivasan had taken the key of the house from him in the evening of 30.03.2019 and that Sh. Srinivasan had only kept the cash and other papers in the night of 30.03.2019. Sh. Surendra Babu also stated that some associates of Sh. Kathir Anand had called him on 30th and 31st of March, 2019 to check whether Sh. Srinivasan a.k.a. Poonjolai Srinivasan had come to the place or not. This, prima facie, explains the nexus between the candidate Shri Kathir Anand and Shri Srinivasan.

18. Further, the source of the above-mentioned seized cash was investigated by the Income Tax Department by making independent inquiries from Canara Bank and by conducting consequential search operations. In this regard, a report was received from the

Director General of Income Tax (Investigation), Chennai on 12.04.2019 stating that an amount of Rs. 10.5 Cr. (out of seized cash of Rs.11.48 Cr.) in Rs. 200 denomination was counted using the latest counting machines which capture the serial numbers of the currency notes and the RBI was requested to trace the origin/currency chest from which these were issued. It was found that the same have been issued from the cash chest of Canara Bank, Vellore Branch. A response was sought from the Managers of the cash chest, namely, Sh. Singaram and Sh. Vinod Krishnan regarding the matter. They have responded vide letter dated 10.04.2019 that the same was done at the behest of Sh. M. Dayanidhi, Senior Manager at Canara Bank Regional Office, Vellore whereby they raised their internal Branch Advise Requisition and exchanged higher denomination notes for Rs. 200 denomination notes. As a consequence, Sh. Dayanidhi's residence was searched and his statement taken by the Income Tax Department. He admitted to have facilitated the exchange of currency for Sh. Poonjolai Srinivasan, a DMK Party functionary. He stated that cash was exchanged in 3 to 4 instalments in March, 2019 and the stated purpose was to meet incidental party expenses and to distribute to people brought for party meetings. The report also explains the modus operandi followed for the said exchange of currency.

19. The DGIT(Inv.) has also made the following concluding remarks, "It is evident from the events that unfolded from the evening of 29.3.2019 till the recovery of cash on 01.04.2019, the manner in which the cash was packed, the papers found along with the cash and the statements of the persons concerned that the unaccounted cash was indeed packed in the Kingston engineering College and the residence of Shri Kathir Anand and Shri Durai Murugan and it was clandestinely shifted to the premises of a relative of a Party functionary during the period when stiff resistance was offered to the Monitoring Team from entering the residence and cash belonging to the main persons and that the cash was indeed meant for distribution to the voters in the ensuing General Elections-2019 for the

Vellore PC where Sh. D.M. Kathir Anand is a contesting candidate. The unpackaged portion of the cash and the unused labels which were also seized clearly indicate that the candidate was making preparations to cover all the target voters in the said Parliamentary Constituency.

20. The above-mentioned findings of the search and seizure action by the Income tax authorities were communicated to the DEO and the SP of Vellore by the Investigation Directorate in Chennai and accordingly an FIR bearing Case No. 205/2019 was lodged by the district administration at Katapadi P S on 10th April 2019 u/s 125A(1) of the RP Act, 1951 r/w 171E, 171 B(2) of the Indian Penal Code against three named accused, namely, Shri D . M. Kathir Anand, Shri Srinivasan alias Poonjolai Srinivasan and Shri Damodaran.

21. The candidate, Sh. D.M Kathir Anand, filed a representation dated 7.4.2019 which was received in the Commission on 10.4.2019 requesting the Commission not to act on the report of Income Tax if it is contrary to the truth and to ask the Income Tax Department to be impartial, un-biased and neutral. The CEO has already considered the representation of Sh. Kathir Anand and made the following recommendation, "the reporting of the Income Tax Department and the FIR filed reveal certain specific wrongdoings by a candidate and his associates. The candidate has contested the reports of the Income tax Department. In my view, independent report of the Expenditure Observers can also be called for by the Commission to decide this issue, since the election process should not be allowed to be vitiated by any political party or candidate. "

22. The Expenditure Observers vide their report dated 07.04.2019 stated that the envelopes containing the cash had ward-wise details of Vaniyambadi and K.V. Kuppani Assembly Constituencies of Vellore PC. They state that while this pertains to two out of six segments in the PC. they are not in a position to ascertain whether something similar has not happened in other assembly segments also. It is further stated that the influence of cash in the election process is visible and may hamper free and fair election.

23. Special Expenditure Observer for Tamil Nadu filed a report dated 08.04.2019 regarding the search and seizure operations undertaken by the IT Department in Vellore. It has been stated that the searches have unearthed a systematic design to influence voters through inducements. These activities come under the ambit of "corrupt practices" as per Section 123 of the RP Act, 1951. The Special Expenditure Observer is of the opinion that the situation is not conducive for the conduct of free and fair elections.

24. The CEO Tamil Nadu has filed his final report on the matter vide Letter No. 4636/Ele.X/2019-12, dated 12 April 2019, wherein he has stated as under:

These cash seizures of Rs. 11.48 Cr. along with evidence in the form of computer printouts detailing proposed assembly segment, ward and booth wise money distribution suggests a clear cut pattern and design to induce the electors at a large scale across the Vellore Parliamentary Constituency, which is against the principle of free and fair elections. This organised way of inducement of voters has thus vitiated the electoral environment which is now not conducive for conducting free, ethical election in Vellore Parliamentary Constituency at this juncture".

25. The Commission has carefully analysed and examined the whole situation as prevailing in the said constituency. It is apparent from the facts and the evidence brought on record, which is narrated above, that inducement and allurements to electors by the candidate, political party and their associates by distribution of money has been going on at a large scale and in a clandestine manner, vitiating the purity of the electoral process and disturbing the level playing field in Vellore Parliamentary Constituency.

26. It may be noted that the election law seriously frowns upon acts of 'bribery' during elections and those indulging in such acts are visited upon with severe penalties under the law. Bribing any person during elections with the objective of inducing him or any other person to exercise any electoral right or, even inducing or attempting to induce any person to exercise any such

right for such consideration, is an electoral offence under section 171B of the Indian Penal Code, and is punishable with imprisonment of either description for a term extending up to one year or, with fine, or with both. Any conviction for the offence of 'bribery', even if resulting in the imposition of a very nominal fine, will automatically disqualify the convicted person for a minimum period of six years under section 8(1) of the Representation of the People Act, 1951. Further, such 'bribery' at elections is also a corrupt practice under section 123(1) of the Representation of the People Act, 1951 which can result in the election of the returned candidate being declared void and the candidate found guilty of commission of such corrupt practice can also be disqualified by the President on the recommendation of the Commission for a further period of six years. The above provisions in the law, making 'bribery' an electoral offence and also a corrupt practice, have been made with the manifest object of ensuring purity of the election process. Purity of electoral process has been placed on a higher pedestal than even the secrecy of ballot which is considered to be sacrosanct in democratic elections. It is worthwhile to point out that in order to maintain purity of election process, even the voting system at elections to the Rajya Sabha has been amended in 2003 to provide for 'open voting' where allegations were often made that the electors at those elections were being offered various forms of allurements and inducements to obtain their votes. The Hon'ble Supreme Court, before whom the above amendment to the law to provide for open voting at elections to Rajya Sabha was questioned, observed in *Kuldip Nayar v. Union of India and Ors.* [AIR 2006 SC 3127] that though the secrecy of ballot and purity of elections should normally co-exist, the principle of secrecy of vote must yield to the purity of election to further the object of a free and fair election. Observations to the same effect were made earlier also by the Hon'ble Supreme Court in the case of *Raghbir Singh Gill v. Gurcharan Singh Tohra* [AIR 1980 SC 1362] to sub-serve the larger public interest, namely, purity of

election for ensuring free and fair election.

27. It is pertinent here to take note of the fact that the above mentioned provisions relating to offence of 'bribery' in the Indian Penal Code were introduced in the year 1920 and the "corrupt practice" of bribery found its mention in the Representation of the People Act in 1951, as originally enacted, when these acts were considered as aberrations and exceptions, whereas the facts narrated above and the reports received by the Commission now paint a wholly different picture in as much as the said aberrations and exceptions seem to have become the main features of election campaigning in the said constituency.

28. Apart from the above, the law of the country also aims to eliminate the role and influence of big money in the electoral process. Therefore, the law has prescribed limits of election expenses which the candidates may incur or authorise in connection with their election. The incurring or authorising expenditure in excess of the prescribed limit is a corrupt practice under section 123(6) of the Representation of the People Act, 1951, the commission whereof would result in the election of the returned candidate being void and also attracting a disqualification for a period up to six years. The law further requires each contesting candidate to maintain a true and separate account of his election expenses under section 77 of the RP Act and the failure to render a true and correct account of the election expenditure may invite disqualification for three years under section 10A of the said Act.

29. The Hon'ble Supreme Court has observed in *Kanwar Lai Gupta v. Amarnath Chawla and Ors.* [AIR 1975 SC 308] that the 'object of limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process.' The Hon'ble Supreme Court further observed the following in respect of the object of the provision limiting the expenditure:

"it should be open to any individual or any political party, howsoever small, to be able to contest an election on footing of equality with any other individual or political party, howsoever rich and well financed it may

be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength",

30. The distribution of money and other gift items to electors by the candidates, political parties and their agents defeats the salutary provisions of law relating to electoral offence and corrupt practice relating to 'bribery'. It also violates the provisions of "corrupt practice" under section 123(6) of the R.P. Act relating to the prescription of limits of election expenses and requiring the candidates to maintain true and correct accounts of their election expenses under section 77 and section 10A., as obviously the expenditure on illegal gratification and bribery of electors would be concealed and not shown by the candidates in their accounts of election expenses. The Hon'ble Supreme Court recognised this issue and expressed its lament on the same in the following words in the case of *Ashok Shankarrao Chawan v. Madhavrao Kinhalkar* [(2014) 7 SCC 99]

"53. It is common knowledge as is widely published in the press and media that nowadays in public elections payment of cash to the electorate is rampant and the Election Commission finds it extremely difficult to control such a menace. There is no truthfulness in the attitude and actions of the contesting candidates in sticking to the requirement of law, in particular to Section 77 and there is every attempt being made to violate the restrictions imposed in the matter of incurring election expenses with a view to woo the electorate concerned and thereby, gaining their votes in their favour by corrupt means viz. by purchasing the votes. Therefore, this Court cannot turn a Nelson's eye and state that Sections 77(1) and (3), as well as Section 78 would be relevant only for the purpose of ascertaining the corrupt practices under Section 123(6) of the Act and that such requirement of incurring bona fide and correct expenditure need not be a requirement for ascertainment for the Election Commission while exercising its powers under Section 10-A of the Act. In fact, ascertainment of the requirement under Section

77(3) viz. the expenses incurred do not exceed the limit prescribed can be made both for the purpose of an enquiry under Section 10-A, as well as in the event of a candidate exceeding the limit as a corrupt practice for the purpose of invalidating the election. Therefore, the requirement under Section 77(3) has got twin objectives to be fulfilled”.

31. As has been observed by the Hon'ble Supreme Court in *T. N. Seshan v. Union of India* [1995 (4) SCC 611] as under: '

"Democracy being the basic feature of our constitutional setup, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/or executive interference

32. Viewed in the light of the above principles of purity of elections and to save the elections from the pernicious effect of money power so as to maintain the sanctity of elections envisaged under the Constitution and as upheld by the Hon'ble Supreme Court, it becomes imperative on the part of the Commission to ensure that the above principles and the sanctity of the electoral process must be maintained and preserved by the Commission at all costs. The very object underlying the constitution of the Election Commission as an independent constitutional authority under Article 324 of the Constitution is to ensure that the elections to Parliament and State Legislatures are conducted in a free and fair manner where the purity of elections receives the highest priority. The Hon'ble Supreme Court, in the case of *Mohinder Singh Gill v. Chief Election Commissioner and Ors.* [(1978) 1 SCC 405], has laid great stress on the conduct of free and fair elections and has observed that Article 324 of the Constitution is a reservoir of power for the Election Commission to act for the avowed purpose of pushing forward a free and fair

election. In *Mohinder Singh Gill v. Chief Election Commissioner* (supra), the Hon'ble Supreme Court further observed that free and fair elections supply the vis viva to democracy. For the sake of convenience and to draw authority therefrom, the relevant paragraphs of the said judgment are noted as under:

"38. Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function.

40. [...] Ordering a re-poll for a whole constituency under compulsion of circumstances may be directed for the conduct of elections and can be saved by Article 324 – provided it is bona fide necessary for the vindication of the free verdict of the electorate and the abandonment of the previous poll was because it failed to achieve that goal".

92. [...] (2)(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order viz. elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own wrong. To

pul the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication.

113. [...] Since the conduct of all elections to the various legislative bodies and to the offices of the President and the Vice-President is vested under Article 324(1) in the Election Commission, the framers of the Constitution took care to leaving scope for exercise of residuary power by the Commission, in its own right, as a creature of the Constitution, in the infinite variety of situations that may emerge from time to time in such a large democracy as ours. Every contingency could not be foreseen, or anticipated with precision. That is why there is no hedging in Article 324. The Commission may be required to cope with some situation which may not be provided for in the enacted laws and the rules. That seems to be the *raison d'être* for the opening clause in Articles 327 and 328 which leaves the exercise of powers under Article 324 operative and effective when it is reasonably called for in a vacuous area.

114. The Chief Election Commissioner has thus to pass appropriate orders on receipt of reports from the Returning Officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass appropriate orders. Moreover, the power has to be exercised with promptitude".

33. In the past, in similar circumstances, the Commission was constrained to rescind the elections from 134- Aravakurichi, 174-Thanjavur Assembly Constituencies, in Tamil Nadu at the general election to the Tamil Nadu Legislative Assembly in May, 2016 and 11- Dr. Radhakrishnan Nagar Assembly Constituency in the byelections scheduled to be held on 12th April, 2017 in Tamil Nadu. It is pertinent to note that the entire election process related to the biennial election to the Council of States by members of the Jharkhand Legislative Assembly scheduled to be held in March 2012 was rescinded (after actual polling) on the basis of complaints received by the Commission which showed

that certain candidates were indulging in bribery of voters and the fact that a huge amount of about Rs. 2 crores were seized by enforcement agencies on the day of poll which was suspected to be used for bribery in that election. The said rescission was challenged before the Hon'ble High Court of Jharkhand in **Jay Shankar Pathak and Pradeep Kumar Balmuchu v Election Commission of India**

[ATR 2012 (JHAR) 58] wherein the Petitioners challenged not only the jurisdiction of the Election Commission of India but also the reasonability of its decision. The Hon'ble High Court not only upheld the decision of the Election Commission but also hailed it as a necessary step to ensure free and fair elections. It is noteworthy to mention the following observations of the Hon'ble High Court:

"17. [...] we are of the considered opinion that the present issue raised by the writ petitioners certainly question the power of Election Commission in taking a step to rescind the election, even in gravest to gravest of its rarest to rarest case as it is the only step of such great consequence taken by the Election Commission after independence of country and in our opinion, the decision is fully supported by reason and based upon cogent trustworthy evidence, though limited to purpose, so as to not to give chance to any person to enjoy high status of being Member of Parliament, It is true some innocent and honest candidate may have to suffer as all are not corrupt but such honest person should sacrifice his opportunity in larger public interest.

19. [...] Therefore, in the present case, the Election Commission was right in its wisdom to take immediate action and recommend cancellation of election notification itself that fresh election may be conducted expeditiously.

25. [...] Assuming that none of the party was involved in illegal consideration for vote of its member then also in the fact situation where the involvement of the money was so much and out of which some of the money has been intercepted by the vigilant cell of the Income Tax Department on the instruction of the Election

Commission and the Election Commission has presumed that it was a grave case of large scale horse trading and money power play and took the extraordinary steps in extraordinary situation and which is not contrary to any statutory provisions of law and which action is based on substantive material evidence, then at this juncture, it would be relevant to quote from the judgment of the Hon'ble Supreme Court delivered in the case of M.S. Gill (Supra), wherein the Hon'ble Supreme Court observed that:

"once the appointment is made by the President the Election Commission remain insulated from extraneous influences and that cannot be achieved unless it has an amplitude of powers in the conduct of elections-of course in accordance with the existing laws but where these are absent, and yet a situation has to be tackled the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situations. He must lawfully exercise his power independently, in all matters relating to the conduct of elections and see that the elections process is completed properly in a free and fair manner. "An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually implied and that are necessary to the exercise of the power of the performance of the duty that which is dearly implied in as much a part of a law as that which is expressed."

26. In these cases, we are of the considered opinion that the Election Commission has acted befitting to its office by taking extraordinary steps of stopping the counting promptly and stopping the result of the poll and forthwith recommended for rescinding the election notification to Her Excellency the President of India. The Election Commission recommendations are since based on facts and materials and this Court is not appellate Court to re-examine the evidence and material to find

out the correctness in the process of the Election Commission.

30. We are of the considered opinion that when decision is taken for entire election and when here in this case, the entire election may be consisting of only two seats but was for the Council of States (Rajya Sabha), and election is by preferential vote, then it is immaterial if money has been paid for vote of one of the candidate, then certainly the second preference of such voter, who is corrupt, also pollute the election and it is difficult to collect any evidence that whether money was to paid for first preference or second preference. In that peculiar facts and circumstances, the Election Commission was required to look into the totality of the facts for taking an administrative decision. [...] Therefore, we are of the considered opinion that in the present facts and circumstances of the case, the Election Commission was not left with only option to cancel the votes of these candidates but was fully justified in feeling for cancellation of election".

34. It is also not out of place to note the observations of the Hon'ble High Court of Andhra Pradesh in N.Kristappa v. Chief Election Commissioner and Ors. [AIR 1995 AP 212] where the order of the Commission rescinding the elections for 163-Gorantla Assembly Constituency on the ground that a candidate of a political party was abducted and prevented from filing his nomination papers was challenged. The Hon'ble High Court while upholding the orders of the Commission held as under:

25. [...] Article 324(1) of the Constitution of India confers powers of superintendence, direction and control on the Election Commission. The Election Commission is entitled to exercise certain powers under Art. 324 itself on its own right, in an area not covered by Representation of the People Act and the Rules. In this case, the first respondent on the basis of the reports received from respondents 2 and 3, in exercise of plenary powers vested in him under Art. 324 of the Constitution of India read with Rs. 30 and 133 of the Representation of the People Act, 1951 has recommended the Governor

of Andhra Pradesh State to rescind the election process insofar as it relates to 163-Gorantla Assembly Constituency, with a promise that the election would be commenced afresh.

26. [...] The action of the first respondent in recommending the rescission of election process in 163-Gorantla Assembly Constituency cannot be looked in isolation in respect of a particular, political party's point of view, but has to be looked in the overall facts and circumstances of the case. In the given circumstances, the first respondent felt that the purity of the election process has been irretrievably sullied in 163-Gorantla Assembly Constituency and if the election process is allowed to be completed in the said constituency, it cannot reflect the true choice of the electorate of the Constituency. Therefore, no malafides could be attributed to the first respondent inasmuch as he recommended rescission of the election process in 163-Gorantla Assembly Constituency as the circumstances are not conducive to allow the election process in the said constituency".

35. Having regard to the above constitutional and legal position enjoining upon the Commission the duty of conducting free and fair elections and upholding the purity of election and after taking into account all relevant facts and circumstances of the present case, the Commission is fully satisfied that the current electoral process in the said 8-Vellore Parliamentary Constituency in Tamil Nadu has been seriously vitiated on account of the above-mentioned unlawful activities on behalf of the candidate, Sh. Kathir Anand, and some members/workers of the political party in question. In the Commission's considered opinion, allowing the current electoral process to proceed and conducting the poll in the constituency on 18th April, 2019, as scheduled, in such a vitiated atmosphere would severely jeopardise the conduct of free and fair election in the said 8-Vellore Parliamentary Constituency.

36. Accordingly, the Commission hereby recommends, under Article 324 of the Constitution read with Section 21 of the General Clauses Act, 1897 and all

other powers enabling it in this behalf to the Hon'ble President that he may be pleased to rescind the Election Notification No. H-11024(1)/2019-Leg.II dated 19th March 2019. in so far as it relates to calling upon the said 8-Vellore Parliamentary Constituency in Tamil Nadu to elect a member to the Lok Sabha.

MINISTRY OF LAW AND JUSTICE
(Legislative Department)
NOTIFICATION

New Delhi, the 16th April, 2019

S.O. 1609(E).—Whereas the Election Commission vide its Proceedings No. 464/2019/EPS dated 12th March, 2019 had recommended issue of a notification by the President under section 14 of the Representation of the People Act, 1951 (43 of 1951) (herein referred to as the said Act) calling upon the parliamentary constituencies to elect the members of the House of the People to constitute the 17th Lok Sabha;

And whereas in pursuance of the recommendations of the Election Commission, a notification No. 1389 (E) dated 19th March, 2019, has been issued by the President calling upon the Parliamentary Constituencies of 13 States/Union territories in the said notification which, inter-alia, included the 39 parliamentary constituencies of the State of Tamil Nadu;

And whereas the Election Commission has, inter-alia, fixed the schedule for the above mentioned Constituencies by its notification No. 55 (E) dated 19th March, 2019 issued under section 30 read with section 56 of the said Act and by the said notification, fixed the poll to be taken on 18th April, 2019 in the State of Tamil Nadu;

And whereas the Election Commission vide its proceedings No. 464/ECI/LET/TERR/TN/SS-I/2019 dated 14th April, 2019 (copy annexed as Annexure to this notification), has informed that the commission is fully satisfied that the current electoral process in 8-Vellore parliamentary constituency in Tamil Nadu has been

seriously vitiated on account of unlawful activities of certain candidates and some members/workers of the political party and in the Commission's considered opinion, allowing the current electoral process to proceed and conducting the poll in the said constituency on 18th April, 2019, as scheduled, in such a vitiated atmosphere would severely jeopardize the conduct of free and fair election in said Constituency. Accordingly, the Commission has recommended in exercise of the powers vested in it under article 324 of the Constitution read with section 21 of the General Clauses Act, 1897 and all other powers enabling it in this behalf, to the Hon'ble President that he may be Pleased to rescind the election notification No.1389 (E) dated 19th March, 2019, in so far as it relates to calling upon the said constituency in Tamil Nadu to elect a member to the Lok Sabha;

And whereas on considering the recommendations of the Election Commission, made in this regard the President is satisfied that the notification No. 1389 (E) dated 19th March, 2019 may, in so far as it relates to calling upon the said 8-Vellore parliamentary constituency in Tamil Nadu to elect a member to the Lok Sabha, be rescinded;

Now, therefore, the President is pleased to partially rescind the notification No. 1389 (E) dated 19th March, 2019, in so far as it relates to calling upon the said 8-Vellore parliamentary constituency in Tamil Nadu to elect a member to the Lok Sabha and accordingly makes the following amendment in the said notification, namely: -

In the said notification, in the TABLE, against the entry "Tamil Nadu", in column 2, the entry " 8-Vellore" shall be omitted.

[F. No. H-l 1024/1/2019-Leg. II]

Dr. REETA VASISHTA

Addl. Secy.

for the petitioner in W.P.No.11977 of 2019, that the Hon'ble President, has exercised a hybrid power, under Article 324 and Sec.21 of the General Clauses Act for cancelling, No.8- Vellore Parliamentary Constituency election. Notification dated 16.04.2019, preceded by recommendation of the Election Commission of India.

62. At paragraph 36, recommendations have been made by the Election Commission of India under Art.324 of the Constitution of India r/w Sec.21 of the General Clauses Act,1897, enabling the Commission in this behalf to the Hon'ble President, he may rescind the Election Notification No. H-11024(1)/2019-Leg.II dated 19th March 2019, in so far as it relates to calling upon the said 8-Vellore Parliamentary Constituency in Tamil Nadu to elect a member to the Lok Sabha, is concerned.

63. After giving due consideration, to the recommendations in exercise of the powers u/s.14, the Hon'ble President was satisfied and pleased to partially rescind the notification S.O.1389(E) dated 19.03.2019, insofar as it relates to calling upon the said Vellore Parliamentary Constituency in Tamil Nadu to elect the member in Lok Sabha, is concerned. Accordingly, Ministry of Law and Justice has issued

notification as required u/s. 14(2) of the Representation of the People Act, 1951. At the risk of repetition Section 14 is reproduced:-

14. Notification for general election to the House of the People. —(1) A general election shall be held for the purpose of constituting a new House of the People on the expiration of the duration of the existing House or on its dissolution.

(2) For the said purpose the President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder

64. Reading of the above, makes it clear that Election Commission of India in exercise of its powers vested under Article 324 of the Constitution of India r/w. Sec.21 of the General Clauses Act and all other powers enabling the commission in this behalf, has recommended by the Hon'ble President who may be pleased to rescind the election notification S.O.1389(E) dated 19.04.2019 in so far as it relates to calling upon the said constituency in Tamil Nadu to elect the member in Lok Sabha and that it is not the Hon'ble President who has exercised the powers u/s. 324 r/w. 21 of General Clauses Act, 1897, as argued by Mr.Sathish Parasaran, learned Senior counsel. Such hybrid power has not been exercised by the Hon'ble President. On the contra, the Hon'ble

President has exercised his powers only under u/s. 14 of the Representation of the People Act, 1951.

65. Section 21 of the General Clauses Act, 1897, deals with the power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws and the same reads thus:

"21. Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws - Where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any 26[notifications], orders, rules or bye-laws so issued."

66. A reading of Article 324 of the Constitution of India makes it clear that Election Commission of India has powers over the superintendence, direction and control and preparation of electoral rolls for and conduct of all elections to the Parliament and Legislature of the every State and of elections to the Officers of the President and Vice President held under the Constitution which shall be vested in a Commission (referred to in this Constitution as the Election commission)

67. In **Mohinder Singh Gill and another vs. Chief Election**

Commissioner, New Delhi and others, reported in 1978 1 SCC 405, the

Hon'ble Supreme Court considered the scope and power of the Election Commission of India. It was a case where, elections are held for Punjab 13-Ferozepore Parliamentary Constituency which consisted of 9 assembly segments polling took place on 16.03.1977. In respect of 5 assembly segments polling took place on 20.03.1977 and the remaining on the next day. Appellant Mohinder Singh Gill and third respondent therein were the principal contestants. Appellant contended that when counting in all the assembly segments was completed at the respective segment head quarters, copies of the results were given to the candidates and local tally telephonically communicated to the Returning Officer. There was violence at some places, ballot papers were destroyed. Ultimately it turned out to be postponing the declaration of results by the Returning Officer. When disruption of the declaratory part of the elections, it was brought to the notice of the commission, the commission not only stopped with the cancellation but followed it up two weeks later with a direction to held fresh poll to the whole constituency involving nine segments although there were no complaints about polling in any of the constituencies and ballot papers of eight constituencies were available intact with the Returning Officer and only Fazilka segment ballot papers were destroyed or damaged on the way (Postal ballots). Thus it can be seen form the Mohinder Singh Gill's case,

the allegations, of destroying the postal ballot papers, mobility of a mob violence was only against one candidate the third respondent therein and not other candidates, in the said elections. As stated supra, the appellant and third respondent therein Mohinder Singh Gill's case were the principal contestants.

68. The powers of the Election Commission under Article 324 of the Constitution of India has been discussed by the Hon'ble Supreme Court in a number of judgments. In ***Mohinder Singh Gill vs. Chief Election Commissioner*** reported in (1978) 1 SCC 405, while dealing with a challenge to an order of the Election Commission to cancel the whole poll for the 13-Ferozpur Parliamentary Constituency and for holding fresh polls, the Constitutional Bench of the Hon'ble Supreme Court, held as under:

"2. Every significant case has an unwritten legend and indelible lesson. This appeal is no exception, whatever its formal result. The message, as we will see at the end of the decision, relates to the pervasive philosophy of democratic elections which Sir Winston Churchill vivified in matchless words:

"At the bottom of all tributes paid to democracy is the little man, walking into a little booth, with a little pencil, making a little cross on a little bit of paper – no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of the point."

If we may add, the little, large Indian shall not be hijacked from the course of free and fair elections by mob

muscle methods, or subtle perversion of discretion by men “dressed in little, brief authority”. For “be you ever so high, the law is above you”.

3. The moral may be stated with telling terseness in the words of William Pitt: “Where laws end, tyranny begins”. Embracing both these mandates and emphasising their combined effect is the elemental law and politics of power best expressed by Benjamin Disraeli [Vivian Grey, BK VI Ch 7] :

“I repeat ... that all power is a trust – that we, are accountable for its exercise – that, from the people and for the people, all springs, and all must exist.”

12. A free and fair election based on universal adult franchise is the basic; the regulatory procedures vis-a-vis the repositories of functions and the distribution of legislative, executive and judicative roles in the total scheme, directed towards the holding of free elections, are the specifics. Part XV of the Constitution plus the Representation of the People Act, 1950 (for short, “the 1950 Act”) and the Representation of the People Act, 1951 (for short, “the Act”), Rules framed thereunder, instructions issued and exercises prescribed, constitute the package of electoral law governing the parliamentary and assembly elections in the country. The super-authority is the Election Commission, the kingpin is the returning officer, the minions are the presiding officers in the polling stations and the electoral engineering is in conformity with the elaborate legislative provisions.

13. The scheme is this. The President of India (under Section 14) ignites the general elections across the nation by calling upon the people, divided into several constituencies and registered in the electoral rolls, to choose their representatives to the Lok Sabha. The constitutionally appointed authority, the Election Commission, takes over the whole conduct and supervision of the mammoth enterprise involving a plethora of details and variety of activities, and starts off with the notification of the time-table for the several stages of the election (Section 30). The assembly line operations then begin. An administrative machinery and technology to execute these enormous and diverse jobs is fabricated by the Act,

creating officers, powers and duties, delegation of functions and location of polling stations. The precise exercises following upon the calendar for the poll commencing from presentation of nomination papers, polling drill and felling of votes, culminating in the declaration and report of results are covered by specific prescriptions in the Act and the Rules. The secrecy of the ballot, the authenticity of the voting paper and its later identifiability with reference to particular polling stations, have been thoughtfully provided for. Myriad other matters necessary for smooth elections have been taken care of by several provisions of the Act.

17. We now enter the constitutional zone relating to the controversy in this case. Although both sides have formulated the plural problems with some divergence, we may compress them into three cardinal questions:

“(1) Is Article 329(d) a blanket ban on all manner of questions which may have impact on the ultimate result of the election, arising between two temporal termini viz. the notification by the President calling for the election and the declaration of the result by the returning officer? Is Article 226 also covered by this embargo and, if so, is Section 100 broad enough to accommodate every kind of objection, constitutional, legal or factual, which may have the result of invalidation of an election and the declaration of the petitioner as the returned candidate and direct the organisation of any steps necessary to give full relief?

(2) Can the Election Commission, clothed with the comprehensive functions under Article 324 of the Constitution, cancel the whole poll of a constituency after it has been held, but before the formal declaration of the result has been made, and direct a fresh poll without reference to the guidelines under Sections 58 and 64(A) of the Act, or other legal prescription or legislative backing? If such plenary power exists, is it exercisable on the basis of his inscrutable “subjective satisfaction” or only on a reviewable objective assessment reached on the basis of circumstances vitiating a free and fair election and warranting the stoppage of declaration of the result and directions of a fresh poll not merely of particular polling stations but of the total constituency?

(3) Assuming a constitutionally vested capacity under Article 324 to direct re-poll, is it exercisable only in conformity with natural justice and geared to the sole goal of a free, popular verdict if frustrated on the first occasion? Or, is the Election Commission immune to the observance of the doctrine of natural justice on account of any recognised exceptions to the application of the said principle and unaccountable for his action even before the Election Court?"

36. Having held against the maintainability of the writ petition, we should have parted with the case finally. But counsel for both the candidates and, more particularly, the learned Addl. Solicitor-General, appearing for the Election Commission, submitted that the breadth, amplitude and implications, the direction and depth of Article 324 and, equally important, the question of natural justice raised under Article 324 are of such public importance and largely fallow field, going by prior pronouncements, and so strategic for our democracy and its power process that this Court must decide the issue here and now. Article 141 empowers and obligates this Court to declare the law for the country when the occasion asks for it. Counsel, otherwise opposing one another, insistently concurred in their request that, for the working of the electoral machinery and understanding of the powers and duties vested in the functionaries constituting the infrastructure it is essential to sketch the ambit and import of Article 324. This point undoubtedly arises before us even in considering the prohibition under Article 329 and has been argued fully. In any view, the Election Tribunal will be faced with this issue and the law must be laid down so that there may be no future error while disposing of the election petition or when the Commission is called upon to act on later occasion. This is the particular reason for our proceeding to decide what the content and parameters of Article 324 are, contextually limited to situations analogous to the present.

38. Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function. It is true that Article 324

has to be read in the light of the constitutional scheme and the 1950 Act and the 1951 Act. Sri Rao is right to the extent he insists that if competent legislation is enacted as visualised in Article 327 the Commission cannot shake itself free from the enacted prescriptions. After all, as Mathew, J. has observed in *Indira Gandhi* (p. 523) (see p. 136, paras 335-6):

“In the opinion of some of the Judges constituting the majority in *Bharati's case* [*Kesavananda Bharati v. State of Kerala*, (1973) 4 SCC 225.] rule of law is a basic structure of the Constitution apart from democracy.

The rule of law postulates the pervasiveness of the spirit of law throughout the whole range of Government in the sense of excluding arbitrary official action in any sphere.”

And the supremacy of valid law over the Commission argues itself. No one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Article 324. Likewise, his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system.

39. Even so, situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Article 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324, in our view, operates in areas left unoccupied by legislation and the words “superintendence, direction and control, as well as ‘conduct of all elections’, are the broadest terms”. Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may manipulate the system into elected despotism — instances of such phenomena are the tears of

history. To that the retort may be that the judicial branch, at the appropriate stage, with the potency of its benignant power and within the leading strings of legal guidelines, can call the bluff, quash the action and bring order into the process. Whether we make a triumph or travesty of democracy depends on the man as much as on the Great National Parchment. Secondly, when a high functionary like the Commissioner is vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously. Moreover, as held in *Virendra* [*Virendra v. State of Punjab*, AIR 1957 SC 896 : 1958 SCR 308] and *Harishankar* [*Harishankar Baglav. State of M.P.*, AIR 1954 SC 465 : 1954 Cri LJ 1322 : (1955) 1 SCR 380] discretion vested in a high functionary may be reasonably trusted to be used properly, not perversely. If it is misused, certainly the Court has power to strike down the act. This is well established and does not need further case law confirmation. Moreover, it is useful to remember the warning of Chandrachud, J.:

“But the electorate lives in the hope that a sacred power will not so flagrantly be abused and the moving finger of history warns of the consequences that inevitably flow when absolute power has corrupted absolutely. The fear of perversion is no test of power. [*Indira Nehru Gandhi v. Raj Narain*, 1975 Supp SCC 1, 251 (para 661) : (1976) 2 SCR 347, 657] ”

40. The learned Addl. Solicitor-General brought to our notice rulings of this Court and of the High Courts which have held that Article 324 was a plenary power which enabled the Commission to act even in the absence of specific legislation though not contrary to valid legislation. Ordering a re-poll for a whole constituency under compulsion of circumstances may be directed for the conduct of elections and can be saved by Article 324 – provided it is bona fide necessary for the vindication of the free verdict of the electorate and the abandonment of the previous poll was because it failed to achieve that goal. While we repel Sri Rao's broadside attack on Article 324 as confined to what the Act has conferred, we concede that even Article 324 does not exalt the Commission into a law

unto itself. Broad authority does not bar scrutiny into specific validity of the particular order.

41. Our conclusion on this limb of the contention is that Article 324 is wide enough to supplement the powers under the Act, as here, but subject to the several conditions on its exercise we have set out.

52. So now we are face to face with the naked issue of natural justice and its pro tem exclusion on grounds of necessity and non-stultification of the on-going election. The Commission claims that a direction for re-poll is an “emergency” exception. The rules of natural justice are rooted in all legal systems, not any “new theology” and are manifested in the twin principles of *nemo iudex in causa sua* and *audi alteram partem*. We are not concerned here with the former since no case of bias has been urged. The grievance ventilated is that of being condemned unheard. Sporadic applications or catalogue of instances cannot make for a scientific statement of the law and so we have to weave consistent criteria of application and principles for carving out exceptions. If the rule is sound and not negated by statute, we should not devalue it nor hesitate to hold every *functionary* who affects others' right to it. The *audi alteram partem* rule has a few facets two of which are (a) notice of the case to be met; and (b) opportunity to explain. Let us study how far the situation on hand can coexist with canons of natural justice. While natural justice is universally respected, the standards vary with situations contracting into a brief, even post-decisional opportunity, or expanding into trial-type trappings.

53. *Ridge v. Baldwin* [(1964) AC 40 : (1963) 2 All ER 66] is a leading case which restored light to an area “benighted by the narrow conceptualism of the previous decade”, to borrow Professor Clark's expression. [*Natural Justice : Substance and Shadow* ‘Public Law’ Journal – Spring 1975] Good administration demands fairplay in action and this simple desideratum is the fount of natural justice. We have already said that the classification of functions as “judicial” or “administrative” is a stultifying shibboleth, discarded in India as in England. Today, in our jurisprudence, the advances made by natural justice far exceed old frontiers and if judicial creativity belights

penumbral areas it is only for improving the quality of government by injecting fairplay into its wheels.

54. The learned Addl. Solicitor-General welcomed the dramatic pace of enlargement in the application of natural justice. But he argued for inhibiting its spread into forbidden spaces lest the basic values of Article 329 be nullified. In short, his point is that where utmost promptitude is needed – and that is the *raison d'être* of exclusion of intermediate legal proceedings in election matters – natural justice may be impractical and may paralyze, thus balking the object of expeditious completion. He drew further inspiration from another factor to validate the exclusion of natural justice from the Commission's actions, except where specifically stipulated by statute. He pointed out what we have earlier mentioned – that an election litigation is one in which the whole constituency of several lakhs of people is involved and, if the Election Commission were under an obligation to hear affected parties it may, logically, have to give notice to lakhs of people and not merely to candidates. This will make an ass of the law and, therefore, that is not the law. This *reductio ad absurdum* also has to be examined.

55. Law cannot be divorced from life and so it is that the life of the law is not logic but experience. If, by the experiential test, importing the right to be heard will paralyze the process, law will exclude it. It has been said that no army can be commanded by a debating society, but it is also true that the House of Commons did debate, during the days of debacle and disaster, agony and crisis of the Second World War, the life-and-death aspects of the supreme command by the then British Prime Minister “to the distress of all our friends and to the delight of all our foes” – too historic to be lost on jurisprudence. Law lives not in a world of abstractions but in a cosmos of concreteness and to give up something good must be limited to extreme cases. If to condemn unheard is wrong, it is wrong except where it is overborne by dire social necessity. Such is the sensible perspective we should adopt if ad hoc or haphazard solutions should be eschewed.

92. Diffusion, even more elaborate discussion, tends to blur the precision of the conclusion in a judgment and so

it is meet that we synopsise the formulations. Of course, the condensed statement we make is for convenience, not for exclusion of the relevance or attenuation of the binding impact of the detailed argumentation. For this limited purpose, we set down our holdings:

“(1)(a) Article 329(b) is a blanket ban on litigative challenges to electoral steps taken by the Election Commission and its officers for carrying forward the process of election to its culmination in the formal declaration of the result.

(b) Election, in this context, has a very wide connotation commencing from the Presidential notification calling upon the electorate to elect and culminating in the final declaration of the returned candidate.

(2)(a) The Constitution contemplates a free and fair election and vests comprehensive responsibilities of superintendence, direction and control of the conduct of elections in the Election Commission. This responsibility may cover powers, duties and functions of many sorts, administrative or other, depending on the circumstances.

(b) Two limitations at least are laid on its plenary character in the exercise thereof. Firstly, when Parliament or any State Legislature has made valid law relating to or in connection with elections, the Commission, shall act in conformity with, not in violation of, such provisions but where such law is silent Article 324 is a reservoir of power to act for the avowed purpose of, not divorced from, pushing forward a free and fair election with expedition. Secondly, the Commission shall be responsible to the rule of law, act bona fide and be amenable to the norms of natural justice insofar as conformance to such canons can reasonably and realistically be required of it as fairplay-in-action in a most important area of the constitutional order viz. elections. Fairness does import an obligation to see that no wrongdoer candidate benefits by his own wrong. To put the matter beyond doubt, natural justice enlivens and applies to the specific case of order for total re-poll, although not in full panoply but in flexible practicability. Whether it has been complied with is left open for the Tribunal's adjudication.

(3) The conspectus of provisions bearing on the

subject of elections clearly expresses the rule that there is a remedy for every wrong done during the election in progress although it is postponed to the post-election stage and procedure as predicated in Article 329(b) and the 1951 Act. The Election Tribunal has, under the various provisions of the Act, large enough powers to give relief to an injured candidate if he makes out a case and such processual amplitude of power extends to directions to the Election Commission or other appropriate agency to hold a poll, to bring up the ballots or do other thing necessary for fulfilment of the jurisdiction to undo illegality and injustice and do complete justice within the parameters set by the existing law.”

93. In sum, a pragmatic *modus vivendi* between the Commission's paramount constitutional responsibility vis-a-vis elections and the rule of law vibrant with fair acting by every authority and remedy for every right breached, is reached.

120. The contention that the President can revoke, alter or amend the notification under Section 14 of the Act or that he can promulgate an ordinance in an appropriate case does not however answer the question. The question will have to be decided on the scope and ambit of power under Article 324(1) of the Constitution which vests the conduct of elections in the Election Commission. It is true that in exercise of powers under Article 324(1) the Election Commission cannot do something impinging upon the power of the President in making the notification under Section 14 of the Act. But after the notification has been issued by the President, the entire electoral process is in the charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without reference to any outside agency. We do not find any limitation in Article 324(1) from which it can be held that where the law made under Article 327 or the relevant Rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. We are clearly of opinion that the Election Commission is competent in an appropriate case to

order re-poll of an entire constituency where necessary. It will be an exercise of power within the ambit of its functions under Article 324. The submission that there is complete lack of power to make the impugned order under Article 324 is devoid of substance."

69. Though Mr. Sathish Parasaran, learned Senior Counsel for the writ petitioner in W.P.No.11977 of 2019 contended that the Representation of the People Act, 1951 provides for several situations, to bring it under the scope of corrupt practices viz., Sec.58, 58A, and Sec.123 of the respectively of the Representation of People Act, 1951 and that therefore, if at all there is any act which can be brought under the definition of corrupt practice the same alone can be considered and recommended to the competent authority for disqualification of that candidate/s and that the same cannot be a subject matter for cancellation of elections, this Court is not inclined to accept the said submission for the reason that, the Hon'ble Supreme Court at Paragraph 38 has made it clear that "even so, situations may arise which enacted law has not provided". Paragraph 45 of the judgment in Mohinder Singh Gill's case would also fortify our views where the Hon'ble Supreme Court has taken note of the rulings of the Hon'ble Apex Court and High Courts, which have held that Article 324 confers the power enabling the commission to act even in the absence of a specific legislature not

contained in the legislature.

70. In **Jaishankar Patak vs. Election Commission of India** reported in **AIR 2012 JHAR 58**, one R.K. Agrawal was an independent candidate, contesting in the election. Search operation was carried out in a car running from Jamshedpur to Ranchi and a cash of 2.15 crores was recovered and on a prima facie enquiry it was reported that the aforesaid cash was unaccounted and that the same was carried to be handed over to the said R.K.Agarwal. Taking note of the same, in exercise of powers under Article 324 of the Constitution of India r/w. 21 of the General Clauses Act, 1897 , the Election Commission of India, recommended for rescinding the entire election process, and accepting the recommendation, the Hon'ble President of India rescinded the notification dated 12.03.2012, whereby and whereunder election of two members of the council of States, Rajyasabha was notified.

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71. Challenging the same Mr.Jai shankar Pathak filed a Public Interest Litigation in W.P.No.1801 of 2012 and another person Mr.Pradeep Kumar Balmuchu has filed W.P(c) 1802 of 2012 both were taken together. Here again the allegation was with respect to only one candidate alleged to have engaged in corrupt practices, in connection

with the election, on behalf of one of the independent candidates, namely, R.K.Agarwal and this incident could not vitiate the entire election process and, therefore, recommendation of the Election Commission to the Hon'ble President of India is not tenable, in the eye of law. Learned counsel for the petitioners therein also submitted that, the Election Commission of India was well aware that the Parliament has already considered the allegation of involvement of money power in election and specifically in Biennial election to the Council of States held different dates.

72. Reference was also made to the punishment provided under Sections 8 and 8(A) of the Representation of the People Act, 1951, etc. Contention has also been made that candidates, ought to have been provided with notice for being heard. For brevity, paragraph Nos.5, 8, 9 and 10, are extracted hereunder:-

“5. Therefore, according to the learned counsel for the petitioner, the Election Commission could not have stopped the process of election by giving reference to recovery of Rs.2.15 Crores which alleged to may have been used in connection with election on behalf of one of the Independent candidate, namely, R.K.Agarwal and this incident could not vitiate the entire election process and, therefore, recommendation of the Election Commission to the President of India is not tenable in the eyes of law. Learned counsel for the petitioners vehemently submitted that the Election Commission of India was well aware that

the Parliament has already considered the allegation of involvement of money power in election and specifically in Biennial election to the Council of States held in March-April, 2000 and the Ethics Committee of the Parliament in para-19 of its report presented to Parliament on 8th December, 1998, recommended that issue relating to open ballot system for elections to the Rajya Sabha be examined , because of the allegation of money power made in Media in respect of above election of the Council of States, as held in March-April, 2000. Then the Ethics Committee of the Parliament observed:

"(3) In the light of the above, aforesaid issues were examined in depth by the Government and it has been decided to do away with the requirement of residence of a particular State or Union Territory for contesting election to the Council of States from that State or Union Territory and also to introduce open ballot system for elections to the Council of States" .

8. It is also submitted that as the scheme of the R.P. Act, 1951, upon committing of an offence punishable under various sections of various Acts enumerated in clause (a to n) and punishment is upto the extent of sentence given in clause (I) and (II) under sub-section(1) of Section 8 and the person committing such offence under sub-section (3) of Section 8 are disqualified to contest the election. Section 8A and 9 prescribed the disqualification on the ground of corrupt practice and deals with the persons who have been dismissed because of corruption or disloyalty. Sections 9,10 and 10A also prescribe disqualification of the persons from contesting the election . In chapter IV disqualification for voting also has also been declared by the statutory provision. All above clauses of the provisions have been shown to us by the learned counsel for the petitioners to demonstrate that R.P. Act, 1951 is complete Code and take care of offenders and prevent them from entering into the Parliament or Legislative Assemblies.

9. In addition to the above, learned counsel for the petitioners drew our attention to Section 58A and submitted that the Election Commission has power to adjourn the poll or even countermand the election but such power is on the ground enumerated under sub-section (1) of Section 58A,

which includes cases of booth capturing, which may take place at a polling station or at a place fixed for the poll or booth capturing takes place in any place for counting of votes and result of the counting at that place cannot be ascertained and upon receiving of the report of Returning Officer about such booth capturing, the Election Commission may declare the poll at that polling station or place to be void and may fix any other day for the fresh poll for that polling station. Not only this, under clause (b) of sub-section (2) of Section 58A, the Election Commission can countermand the election of that constituency. Therefore, for countermanding of the election also, there is a provision in the R.P. Act, 1951 but making a recommendation for rescinding the notification issued for the election is not provided anywhere in the Act of 1951. Learned counsel for the petitioners submitted that Election Commission has been given power of superintendence and has power to issue direction and control over the preparation of electoral rolls and responsible for conduct of all elections to the Parliament and Legislative Assemblies of every State and even to the office of the President and Vice President under Article 324 of the Constitution of India but any of the above powers can be exercised only in accordance with law and particularly when the issue of money power, which may have been termed as horse trading by the Election Commission of India in the present case and has been already considered by the Parliament and only provisions have been provided by the Parliament by amending the R.P. Act, 1951 removing the requirement of resident and domicile in the State of election and provided procedure for open ballot then that procedure alone could have been resorted by the Election Commission and in case of any of voter, as alleged in the case that three of the Voters, namely, Shri Vishnu Bhaiya (JVM), Shri K.N. Tripathy of Indian National Congress and Shri Suresh Paswan (RJD) shown their ballot to the person other than their representatives or agent and thus violated the prescribed voting system, which is contrary to Rule 39AA. Then in that situation, the Polling Officer of the polling under the direction of the Presiding Officer could have taken back the ballot paper from the voter and could have marked

"cancelled" over the ballot paper, but it was not done by the Presiding Officer or the Polling Officer. However, because of this reason, the Election Commission could not have recommended for rescinding the election notification itself. Because of the reason that consequence of showing the marked ballots to unauthorized persons has its own consequence under the proviso to Section 59 read with Rule 39A and 39AA. Learned counsel for the petitioner relying the judgment of the Hon'ble Supreme Court, delivered in Kuldip Nayar's case (supra) submitted that the Hon'ble Supreme Court has considered in paragraph 441 and notice the difference between the elections to the Council of States and General elections. The Hon'ble Supreme Court observed that in General elections, electorates have to vote in a secret manner without fear and if their votes would be disclosed to anyone it may result in victimization. For voter in general election, there is no party affiliation and hence the choice is entirely with the voter. The Hon'ble Supreme Court held that so is not in the case when elections are held to the Council of States as the electors are elected Members of the Legislative Assemblies, who, in turn, have party affiliation. Then in para-451 observed that it cannot be forgotten that existence of political parties is an essential feature of our Parliamentary democracy and that it can be a matter of concern for Parliament if, it finds that electors were resorting cross voting under the garb of conscience voting, flouting party discipline in the name of secrecy of voting. This would weaken the party discipline over the errant legislators. Political parties are the sine qua non of parliamentary democracy in our country and the protection of party discipline can be introduced as an essential feature of purity of elections in case of indirect elections.

10. Relying upon earlier decision of the Constitution Bench of the Hon'ble Supreme Court, delivered in the case of Mohinder Singh Gill and Anr. Vrs. Chief Election Commissioner, New Delhi & Ors. { (1978) 1 SCC 405} submitted that where a candidate has reached the end of the battle and the whole poll is upset, he has right to notice and to be heard. Therefore, before taking any decision by the Election Commission, the Election Commission should have heard the petitioner, particularly, Pradeep Kumar

Balmachu, who is the candidate in the present Rajya Sabha election, which has been recommended to be cancelled by the Election Commission to the President of India. The petitioner, Pradeep Kumar Balmuchu, submitted representation to the Election Commission on 31st March, 2012 and also submitted representation of the same date i.e., 31st March, 2012 to Her Excellency, the Hon'ble President of India. Then before taking a decision even by the Election Commission for sending a recommendation for rescinding the election notification dated 12th March, 2012, the petitioner should have been given an opportunity, which has not been given. Therefore, that recommendation deserves to be quashed and set aside. Learned counsel for the petitioners relied upon the same judgment of Mohinder Singh Gill's case (Supra) whereby the Hon'ble Supreme Court after setting down the limits to the plenary powers of the Election Commission held that when Parliament and State Legislature has made any valid law relating to or in connection with elections, the commission, shall act in conformity with, not in violation, such provisions and further held in paragraph 75 that people's faith in democratic process is hyper-sensitive, it is republican realism to keep alive audi alteram even in emergencies, even amidst the clash of arms. Therefore, even in the case of re-poll the principle of natural justice is required to be observed."

73. After considering the rival submissions, a Hon'ble Division Bench of Jharkhand High Court, at paragraph No.19, has framed the following questions,

"a.) Whether the Election Commission who has power under Article 324 relating to superintendence, direction, control and conduct of election which is a plenary power but these powers are subject to limitation i.e., law enacted by Parliament or any State legislature relating to or in

connection with election and Whether the Commission in present situation acted in conformity with such laws and not in violation of such provisions.

b.) Whether the Commission has acted bonafidely and was required to follow the norms of principles of natural justice and fair play?

c.) Whether the Parliament has specially framed the law dealing with the aforesaid situation relating to horse trading/involvement of the money power in conduct of election and the Election Commission or the authorities have only power to take action under Indian Penal Code and under R.P. Act, 1951 relating to the offence of bribery? d.) Whether the only way is to get election set at naught by filing election petition after declaration of result and there is no other remedy that the election commission, like seeking rescinding of the election notification from the President of India?

e.) Whether the Election Commission had only power to cancel the vote of those voters who have shown their ballots after mark to the unauthorized person and that fact cannot be taken into consideration while judging the entire process of the election?

f.) Whether the rescinding of the election will be giving benefit to the person indulged in the horse trading?"

74. Insofar as, Question No.1 relating to Article 324 of the Constitution, at paragraph No.20, the Hon'ble Division Bench of Jharkhand High Court, held as follows:-

"20. So far first question is concerned, the power of Election Commissioner 324 of the Constitution is concerned, the powers are very wide. The Election Commission which is a constitutional authority has been vested with the power of superintendence, direction and control of the preparation of the electoral roll and for conduct of all elections to Parliament and to the legislature of the States and of election to the office of President and Vice- President has been vested with all pervasive power. Interpreting Article

324 of the Constitution of India, the Hon'ble Supreme Court in the case of Mohinder Singh Gill in paragraph 38 and 39 held as follows:

"38. Article 324, which we have set out earlier, is a plenary provision vesting the whole responsibility for national and State elections and, therefore, the necessary powers to discharge that function. It is true that Article 324 has to be read in the light of the constitutional scheme and the 1950 Act and the 1951 Act. Shri Rao is right to the extent he insists that if competent legislation is enacted as visualised in Article 327 the Commission shake itself from the enacted prescriptions."

The Hon'ble Supreme Court observed :- "And the Supremacy of valid law over the commission argues itself. No one is an imperium in imperio in our constitutional order. It is reasonable to hold that the Commissioner cannot defy the law armed by Article 324, likewise his functions are subject to the norms of fairness and he cannot act arbitrarily. Unchecked power is alien to our system."

39..... That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification for existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324 in our view operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms Myriad maybes, too mystic to be precisely presaged, may call for prompt action to reach the goal of free and fair election. It has been argued that this will create a constitutional despot beyond the pale of accountability; a Frankenstein's monster who may manipulate the system into elected despotism.-- instances of such phenomena are the tears of history. To that the retort may be that the Judicial branch, the appropriate stage with the potency of its benignant power and within the leading srings of legal guidelines, can call the bluff, quash the action and bring order in process. Whether we make a triumph or travesty of democracy depend on the man as much as on the Great National Parchment. When high functionary like the Commissioner is

vested wide powers the law expects him to act fairly and legally. Article 324 is geared to accomplishment of free and fair election expeditiously.

And in paragraph 40 of the said judgment, the Hon'ble Supreme Court held that the Supreme Court in earlier rulings and other High Courts have held Article 324 plenary power which enabled the Commission to Act even in the absence of specific legislation though not contrary to valid legislation. Ordering a re-poll for a whole constituency under compulsion of circumstances may be directed for the conduct of elections and can be saved by Article 324-- provided it is bona fide necessary for the vindication of the free verdict of the electoral and the abandonment of the previous poll was because it failed to achieve that goal. Therefore, in view of the observations made by the Hon'ble Supreme Court in paragraph 39 of the said case, the Election Commission can exercise its power under Article 324 in the areas left unoccupied by legislation and in view of the said judgment of the Hon'ble Supreme Court the word 'superintendence, direction and control' as well as 'conduct of business' are the broadest term. The Election Commission may be called upon to prompt action to reach the goal of free and fair election and apprehension against this proposition has been rejected by the Hon'ble Supreme Court by declaring that the retort may be that the judicial branch, at the appropriate stage with the potency of its benignant power and within the leading strings of legal guidelines, can call the bluff, quash the action and bring order into the process. However, the Hon'ble Supreme Court reiterated the fact that such high functionary like the Election Commission, as has been the view shown by the Hon'ble Supreme Court in the case of *Pundu Swami* (1952) SCR 218 and held that such authorities vested with wide powers the law expects him to act fairly and legally. Article 324 is geared to the accomplishment of free and fair election expeditiously. However, such power if misused certainly the Court has power to strike down the act. Therefore, in the present case, the Election Commission was right in its wisdom to take immediate action and recommend cancellation of election notification itself that fresh election may be conducted expeditiously."

75. The Hon'ble Division Bench of Jharkhand High Court considered the issue as to whether law enacted by the Parliament to take full care of this situation of allegation of large scale horse trading and huge money play in the process of election and whether Election Commission has acted contrary to that specific law on the subject by recommendation to rescind the election notification. Answering the same, at paragraph Nos.21 to 27, the Court held as follows:-

“21. Now the question arises whether any law enacted by the Parliament to take full care of this situation of allegation of large scale horse trading and huge money play in the process of election and the Election Commission has acted contrary to that specific law on the subject by recommending the rescinding of the election notification.

Learned counsel for the petitioners drew our attention to the Election Commission's impugned recommendation, recommending the rescinding of the election by the Hon'ble President of India and submitted that Election Commission itself was conscious that the Parliament has considered this aspect of the matter of horse trading and money power in the process of election and thereafter amended Section 59 of the R.P. Act, 1951 and inserted Rule 39A and 39AA and quoted the recommendation of the Ethics Committee by the parliament, which we would also like to quote :

"2. The Ethics Committee of the parliament in paragraph-19 of its first report presented to parliament on 8th December, 1988 recommended that the issue relating to open ballot system for elections to the Rajya Sabha be examined. The issue has again given rise to concerns in the wake of allegations of money power made in the media in respect to biennial elections to the Council of States held in March-April, 2000.

3. In the light of the above, the aforementioned issues were examined in depth by the government and it has been decided to do away with the requirement of residence of a particular State or Union Territory for contesting election to the Council of States from the State or Union Territory and also to introduce open ballot system for elections to the Council of States ."

22. According to the learned counsel for the petitioners, when the law has been made by the Parliament to deal with the situation of money power play in the election and particularly by taking example from the election of the Rajya Sabha and provided that this situation can be taken care of by providing open ballot system and by deleting the provisions of requirement of having residence of a particular State or Union Territory for contesting the election for the Council of States from that State or Union Territory then the Election Commission could not act beyond the measures taken by the Parliament enactment. If the parliament consciously did not frame any rule more than what it had done after considering the issue of allegation of money power play in election , then the Parliament has excluded all other and more measure in dealing with this issue of money power play and horse trading. It is also submitted that the various provisions are there where any person indulging in the bribing can be prescribed and if one is elected by means of bribe, his election can be set aside. "Bribing" is a corrupt practice as defined in Section 123(1) of the R.P. Act, 1951 and person involved in the bribing can be prosecuted even if he only attempted to bribe under Section 171(B) of the Indian Penal Code. If a person has shown ballot to unauthorized person then his vote can be cancelled. Therefore, these are the measures which alone could have been taken by the Election Commission.

23. After considering the submission of the learned counsel for the petitioners, we are of the considered opinion that the Parliament has not amended Section 59 and inserted Rule 39A and Rule 39AA as a measure to deal with all contingency of money power play and horse trading in the election process. The two steps taken of the removal of the requirement of residence of a member of a State or

Union Territory for contesting election to the Council of States from that State or Union Territory and provided for open ballot, may be two of the mode prescribed so as to reduce the chance of money power play and horse trading in the process of election . What will happen , when outsider is involved such immoral, unethical and criminal activities? This is only a one of narrow question to find out that whether above amendments are the only answer to the grave problem of play of money power? It is true that validity of the amendment has been upheld by the Hon'ble Supreme Court in the case of Kudeep Nayar(Supra). At this juncture, we would like to observe that issue before the Hon'ble Supreme Court , in that case, was with respect to the challenge of the abovesaid amendment only made by the Representation of the People Act(Amendment (Act 40 of 2003) by which requirement of residence/domicile has been dispensed with and open ballot was declared to be valid mode of fair poling. While considering this issue, the Hon'ble Supreme Court already considered the issue of cross-voting and corruption in the voting and corrupt consideration. However, it was confined to subject of affiliation of the member of the political party. The Hon'ble Supreme Court in para-459 clearly observed that amendment has been brought in on the basis of the need to avoid cross-voting and wipe out evils of corruption as also to maintain the integrity of our democratic set up. The Hon'ble Supreme Court took note of the fact that it has already been noted by the Parliament that in election to Council of States , members elected on behalf of the political parties misused the secret ballot and cross-voting . It was reported that some members indulged in cross voting for consideration. Then it was observed that breach of discipline for collateral and corrupt consideration removed the faith of the people in a multi party democracy.

24. We may reiterate that the issue raised before the Hon'ble Supreme Court in Kuldip Nayar's case(Supra) was with respect to challenge to the validity of the amendment, which we referred above, and in that context the Hon'ble Supreme Court held that the members of legislative assembly may indulge in cross-voting , which may be against the whip of the political party and against the party

discipline and therefore, the party's representative may see the ballot marked by the electoral to maintain the discipline of the party and avoid the cross-voting.

25. There was no issue involved in the case of Kuldeep Nayar of seeking cancellation of election notification on allegation of horse trading and money power play. In the case in hand, according to the writ petitioner themselves the allegation of money power play is upon independent candidate and not on any party candidate (we are not deciding or holding any of the candidates or member of legislative assembly guilty and considering the allegation only) and as per the law laid down by the Hon'ble Supreme Court in the judgment of Kuldeep Nayar the voters who are the members of political party alone are required to show the ballot paper to parties representative and not to others. Three members of the political party shown ballot paper to unauthorized persons. And one of allegation with proof presented before the Commission was that several political parties MLAs proposed to independent candidates. Such facts were taken into account by the Election Commission, which independently may not be of importance but in background of facts of present case are very important. Their votes have not been cancelled, may be due to mistake of the officer conducting the election, but fact is that those votes had been cast. The open vote may secure the discipline of political party and may avoid the cross voting in horse trading and money play to some extent but while interpreting the power of the high functioning authority like Election Commission, we cannot hold that apart from what has been provided by the said amendment of removal of condition of domicile and open vote system is full and complete answer to the grave problem. Now the time has come to look into the availability of huge funds which availability has been proved in this case and not disputed by the politicians rather admitted by them and there is allegation of paying money to the party itself (fact yet not proved). If it happens so, then in that situation, the amendments are of no use because they take care of securing the discipline of the members of the political party within the political party. It may avoid the corruption if party is strong as the party can reject any wrong doers by

claiming that all had cast votes in favour of such person who was not indulged in horse trading. This is not imaginary but the allegation has come in almost all newspapers in circulation in the State of Jharkhand with one voice and have raised doubt without any bias and ill-feeling about the involvement of not only members to political party but offer of money to parties (we wish so may not be true) but in future such cases may come through also whether Election Commission to pray god only as observed by the Supreme Court in the case of M.S. Gill (Supra). We can take judicial notice of the newspaper reportings because of the fact that, that was unanimous voice of media in State and the language used by the media was not derogatory, defamatory or with any bias for one or others. Not only this but the Election Commission has also taken note of the media report shown by one of the members of Parliament Gurudas Dasgupta and it is also reported in the media that the seized amount was not only the amount which has been sent from Jamshedpur to Ranchi and petitioners themselves admitted in their petition that, at least, Rs. 2.15 crores was intercepted by the Income Tax Department and that was sent for the votes. Assuming that none of the party was involved in illegal consideration for vote of its member then also in the fact situation where the involvement of the money was so much and out of which some of the money has been intercepted by the vigilant cell of the Income Tax Department on the instruction of the Election Commission and the Election Commission has presumed that it was a grave case of large scale horse trading and money power play and took the extraordinary steps in extraordinary situation and which is not contrary to any statutory provisions of law and which action is based on substantive material evidence, then at this juncture, it would be relevant to quote from the judgment of the Hon'ble Supreme Court delivered in the case of M.S. Gill (Supra), wherein the Hon'ble Supreme Court observed that "once the appointment is made by the President the Election Commission remain insulated from extraneous influences and that cannot be achieved unless it has an amplitude of powers in the conduct of elections--of course in accordance with the existing laws but where these are absent, and yet

a situation has to be tackled the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situations. He must lawfully exercise his power independently, in all matters relating to the conduct of elections, and see that the elections process is completed properly in a free and fair manner. "An express statutory grant of power or the imposition of a definite duty carries with it by implication, in the absence of a limitation, authority to employ all the means that are usually implied and that are necessary to the exercise of the power of the performance of the dutythat which is clearly implied in as much a part of a law as that which is expressed."

26. In our opinion, the Election Commission did what the Hon'ble Supreme Court expects from high functionary authority like Election Commission that, even if the law and the rules are absent even then if Election Commission comes across such a situation and he is to tackle that situation then he should not remain with folded hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of powers to deal with the situations. The Hon'ble Supreme Court has clearly held that the question raised by the petitioner that Election Commission must exercise his power independently in all matters relating to the conduct of free and fair elections and see that election process is completed properly in a free and fair manner.

The Hon'ble Supreme Court further in paragraph 115 of M.S Gill's case (Supra) clearly held that the Election Commission is entitled to exercise certain powers under Article 324 itself on its own right, in an area not covered by the act and rules. Whether the power is exercised in an arbitrary or capricious manner is a completely different question.

27. In these cases, we are of the considered opinion that the Election Commission has acted befitting to its office by taking extraordinary steps of stopping the counting

promptly and stopping the result of the poll and forthwith recommended for rescinding the election notification to Her Excellency the President of India. The Election Commission recommendations are since based on facts and materials and this Court is not appellate Court to re-examine the evidence and material to find out the correctness in the process of the Election Commission. The petitioners also rightly did not pray for appreciating the evidence which were considered by the Election Commission and very interestingly none of the fact narrated in the recommendation of the Election Commission, made in recommendation to rescind the election notification has been disputed by the petitioners and yet the petitioners assailed the recommendation of the Election Commission to the President of India. The petitioners even did not dispute, rather say admitted that three of the Members of the legislative Assembly violated the rules and it inadvertently or for any reason their votes have not been cancelled by the Incharge of the election. So, is in addition to the fact that the petitioners themselves have stated in the writ petitions that money was meant for the election in question and intercepted by the Income Tax Department and thereby only this money could not be paid to the relevant persons to the influence and pollute the election of the two seats of the Rajya Sabha . How there can be any cause of action to the writ petitioners in these circumstances to take the help of technicalities of the law , but the writ petitioners ignored the fact that Article 226 of the Constitution of India is the extraordinary equitable jurisdiction of the High Court and it is not an ordinary jurisdiction of any Court where on the basis of legal right , one can claim the relief which cannot be denied by the court on account of misconduct of the party and that relief cannot be denied on equitable ground. There are number of cases, which already lay down that even if there is illegality the High Court in writ jurisdiction i.e., in extraordinary equitable jurisdiction need not to correct that illegality if the conduct of the petitioner disentitles him from the relief. So is the position in this case. The petitioners after admitting all the fault and flaws in election process to the extent of making the entire election process corrupt with no limit of corruption

involving crores of rupees out of which only a few crores of rupees has been intercepted, still challenged the action of Election Commission, such conduct of petitioners is condemned.”

76. Insofar as, the contention of affording an opportunity of hearing, the Hon'ble Division Bench at paragraph Nos.28 and 29, held as follows:-

"28. Now, the learned counsel for the petitioners has raised another legal issue that the election as a whole could not have been cancelled without affording an opportunity of hearing to the writ petitioners.

Before proceeding to decide this issue we make it clear that the challenge in this petition is to the recommendation of the Election Commission made to President of India. The Commission itself has not countermanded the election. Such recommendation of Commission may be accepted by the Her Excellency President of India. We may recapitulate here that the Election Commission is vested with the power under Article 324 of the Constitution of India and is discharging this responsibility by following procedures provided in the Representation of Peoples Act, 1951. In the Act there is no provision for submitting a request for rescinding of the election notification to the President of India. Section 12 of the Act of 1951 provides that on the recommendation of the Election Commission the President shall by one or more notification published in the Gazette of India call upon the elected members of the legislative assembly of each of the State concerned to elect Members in accordance with the provisions of Act of 1951 for Council of States. Learned counsel for the petitioners submitted that Section 12 clearly indicate that on recommendation of the Election Commission the President shall issue notification for election and, therefore, it is mandatory upon the President of India to accept the recommendation of Election Commission. Therefore, according to the learned counsel

for the petitioners by the same analogy the President of India shall be bound by the recommendation made by the Election Commission by which the Election Commission has requested for rescinding the election. The argument is far fetched as well as far away from the law. We are not going to interpret the word "shall" used in Section 12 with reference to the action to be taken the President of India, on recommendation of the Election Commission and if it is held that the word "shall" mandate duty upon President of India to accept the recommendation of the Election Commission even then that principle cannot be applied on recommendation submitted by the Election Commission to the President of India in its administrative function and the Hon'ble President of India can either accept or can reject the recommendation of the Election Commission for want of any law putting a command upon the highest office in India i.e., upon the President of India, which can take away the discretion of the President of India in the matter of such serious issue of cancellation of notification issued by the President of India itself. Therefore, the contention of the petitioners that the recommendation is binding upon the President of India is rejected.

29. Learned counsel for the petitioner submitted that the order to start the process of election is quasi judicial order as held by the Hon'ble Supreme Court in the case of Mohinder Singh Gill (Supra), therefore, an appropriate hearing should have been given to the petitioner which not having been given even on demand of the petitioner. In the case of M.S. Gill (Supra), the facts were entirely different. That was the case of booth capturing and order was passed by the Election Commission for re-poll and not for a new election, which clearly indicated by the Supreme Court in paragraph 13, wherein it has been specifically made clear that the order of Election Commission was for re-poll and fresh poll and not a new election. The Election Commission has power to countermand the election under Section 58 A sub-section 2 of Clause (b) but Section 58A has no application to the facts in the case in hand and learned counsel for the petitioner also rightly submitted that there was none of the contingency as given under Section 58 A sub-section 2 of Clause (b) and, therefore, no order

countermanding could have been passed by the Election Commission. The Election Commission also has power to order for adjournment of poll and re-poll. All those powers may be exercised under Statutory provisions of R.P. Act, 1951 and if some of those orders, may be quasi judicial, but it could not be held that every order of the Election Commission is quasi judicial order, if it relates to the Election and particularly when Election Commission is addressing to President of India in such matter. As we have noticed that the recommendation of Election commission to the President of India has not been under any specific provision of the Act of 1951 or but is specific provision of the Constitution of India i.e. Article 324, which cast duty upon the Election Commission to conduct the election, obviously with utmost fairness and purity. The power to superintendence, direction and control includes to take appropriate steps by the Election Commission and it is not necessary for the Election Commission to merely order for re-poll in a case when allegation of corrupt practice in entire process of election has been substantiated by the evidence and Election Commission satisfied that without cancellation of entire election there cannot be free and fair election for the post of the Rajya Sabha then this decision is under Article 324 of the Constitution of India and is taken in administrative and supervisory jurisdiction of the Election Commission for which no opportunity of hearing can be demanded by anybody. We may further expand the issue of principles of natural justice and of requirement of hearing. The principle of natural justice require opportunity of hearing to the parties who may be effected by the decision of the authority. If any election is cancelled by the Election Commission who is the effecting party? Only candidate? Whether public is not the affected party? Whether the Election Commission should hear the candidates only in a matter where there is allegation of corruption at highest possible extent and persons who are to be represented by candidate selected in such polluted election are not required to be heard and take decision after hearing only candidates who may satisfy the authority only ex-parte, in absence of public hearing?

consideration in appropriate case because in case in hand, we are of the opinion that for taking a decision by the Election Commission on the basis of substantial piece of evidence and taking a decision in administrative side by the Election Commission the petitioners, in the facts of the case, were not entitled to any opportunity of hearing , therefore, we need not to go into other questions referred above.”

77. In *N.Kristappa vs. Chief Election Commissioner and others*, reported in *AIR 1995 AP 212*, one Sri Siddaiah, a candidate of Congress-I, was abducted in the morning of 08-11-1994 by his rival group with an intention to prevent him to file his nomination papers. He was freed on the next day i.e., on 09-11-1994. On the above facts, the Chief Election Commissioner, the first respondent therein, in exercise of powers conferred under Article 324 of the Constitution of India and Sections 30 and 153 of the Act read with Section 21 of the General Clauses Act, 1897 recommended to the Excellency Governor of Andhra Pradesh that he be pleased to rescind the notification No.597/Elec. F/94-1, General Administration (Elec. F) Department, dated 01-11-1994 issued by him, under Section 15(2) of the Act, in so far as it relates to calling upon the said 163-Gorantla Assembly Constituency. Accepting the recommendation, the election notification was rescinded. Challenge was made on the grounds that in the absence of any specific provision either in the Representation of the People Act, 1951 or under any rule to meet

the contingency of this nature (abduction of a candidate) and contention was made that Chief Election Commissioner, the first respondent therein, was not clothed with any power to recommend for rescinding election for 163 - Gorantal Assembly Constituency. After considering the rival submissions, a learned Single Judge of the Hon'ble Andhra Pradesh High Court, has framed two questions for consideration, as hereunder:-

“12. Two questions prominently emanate from the above submissions, for consideration before this Court, viz.,
(1) Whether the first respondent is vested with the power to recommend the Governor of Andhra Pradesh to rescind the election Notification insofar as it relates to 163-Gorantla Assembly Constituency is concerned And
(2) Whether the action of the first respondent would amount to arbitrary exercise of power attributable to mala fides”

After considering the decision of the Hon'ble Supreme Court in ***Mohinder Singh Gill*** case, a learned Single Judge of Andhra Pradesh High Court, discussed and held as follows:-

“13. The election process for State Assemblies as well as Parliamentary Constituencies is contemplated under the Representation of the People Act, 1950 and 1951 (for short 'the Act'). The election process for the respective State Assemblies is set in motion by the issuance of notification under Section 15(2) of the Act by the Governor/Administrator of respective States. Thereupon, other requirements have been prescribed in terms of various provisions of the Act to be complied with for conducting elections. The entire election process is manned by a

competent agency called 'Election Commission'. Article 324 of the Constitution of India postulates the superintendence, direction and control of election to be vested in an 'Election Commission'. Clause (1) of Article 324 specially deals with the power of superintendence, direction and control of the preparation of the electoral rolls for, and the conduct of, all elections to Parliament and to the Legislature of every State and of elections to the offices of President and Vice-President held under this Constitution shall be vested in a Commission referred to in the Constitution as 'Election Commission.'

14. Clause (6) of Article 324 provides the President or the Governor of a State, shall, when so requested by the Election Commission, make available to the Election Commission or to a Regional Commissioner such staff as may be necessary for the discharge of the functions conferred on the Election Commission by Clause (1).

15. Thus, Article 324 of the Constitution of India makes provisions for a Centralised Election machinery. The Election Commission is empowered to issue all necessary directions for the purpose of conducting smooth, free and fair elections.

16. Article 329(b) of the Constitution of India postulates the bar to interference by Courts in electoral matters. The embargo imposed under Article 329 barring interference and the power of Election Commission under Article 324 have been extensively considered by the Supreme Court of India in *N. P. Ponnuswami v. The Returning Officer*, : [1952]1SCR218 and *Mohinder Singh Gill v. The Chief Election Commission*, : [1978]2SCR272 .

17. Dealing with the powers of the Election Commission under Article 324, the Supreme Court of India in the decision cited supra, has held :

“Functions as referred to in Article 324(6) include powers as well as duties. It is incomprehensible that a person or body can discharge any functions without exercising powers. Powers and duties are integrated with function. The Chief Election Commissioner has to pass appropriate orders on receipt of reports from the returning officer with regard to any situation arising in the course of an election and power cannot be denied to him to pass

appropriate orders. Moreover, the power has to be exercised with promptitude. Whether an order passed in wrong, arbitrary or is otherwise invalid, relates to the mode of exercising the power and does not touch upon the existence of the power in him if it is there either under the Representation of the People Act or the rules made in that behalf or under Article 324(1).

The Commission is entitled to exercise certain powers under Article 324 itself or its own right, in an area not covered by Representation of the People Act and the rules... It is true that in exercise of powers under Article 324(1) the Election Commission cannot do something impinging upon the power of the President in making the notification under Section 14 of the Representation of the People Act. But after the notification has been issued by the President, the entire electoral process is in the charge of the Election Commission and the Commission is exclusively responsible for the conduct of the election without reference to any outside agency. There is no limitation in that where the law made under Article 327 or the relevant rules made thereunder do not provide for the mechanism of dealing with a certain extraordinary situation, the hands of the Election Commission are tied and it cannot independently decide for itself what to do in a matter relating to an election. The Election Commission is competent in an appropriate case to order re-poll of an entire constituency where necessary. It will be an exercise of power within the ambit of its functions under Article 324'.

18. The authoritative pronouncements of the Apex Court referred to above undoubtedly, lay down that the Election Commission is sufficiently clothed with the power though not vested under the Act, but even by invoking the plenary powers conferred on it under Article 324 and issue appropriate directions for the conduct of free and fair elections in a given case.

19. Having regard to these pronouncements of the Apex Court, I am not persuaded to hold that the Election Commission is not vested with the power to issue directions rescinding the election notification of 163-Gorantla Assembly Constituency."

<http://www.judis.nic>. On the question as to whether the Chief Election Commissioner, the first

respondent therein, had exceeded in his limits and acted contrary to Article 324 of the Constitution of India, at paragraph Nos.21 to 32, the learned single Judge discussed and answered, as hereunder:-

“21. The pillars of democracy rest on the system of free and fair elections to the Assembly or to the Parliamentary constituencies. The will of the people is expressed through their elected representatives. To ensure free and fair election, a special machinery is provided to man the election process. Article 324 makes provision for a centralised electoral machinery. Necessary legislation have been enacted in the nature of Representation of the People Act, 1950 and 1951. Once the entire election process has been brought under the purview and control of the Election Commission, an authority constituted under Article 324, it is the responsibility of that authority to device ways and means for conduct of free and fair elections wherever necessary.

22. In the State of Andhra Pradesh, notification for conduct of elections to the State Assembly was issued by the Governor of Andhra Pradesh on 1-11-1994. The election process is set in motion by the issuance of notification and the last date for filing nominations is fixed as 8-11-1994. Aspirants who wished to contest elections representing various political parties also were to file their nominations on or before the said date. Sri Siddaiah said to be the nominee of the Congress-I party, was to file his nomination on 8-11-1994. Circumstances indicate that he was abducted and was prevented from filing his nomination papers on the said date i.e., 8-11-1994. The process of scrutiny and withdrawal was subsequently completed and the final list of contesting candidates was also announced. As I said earlier, the pillars of democracy rest on the election process by people participating in electing the representatives of their choice, peaceful and conducive atmosphere is warranted for the people to exercise their franchise without fear or favour.

23. Instances are glaring when the election process is thwarted by musclemen by booth-capturing and destroying

ballot boxes. At times, when a candidate of certain recognised political party dies during the election process, election to the particular constituency is countermanded. When natural calamity occurs, polling is re-scheduled. The Representation of the People Act has met these contingencies by incorporating necessary provisions in the Act. No provision is contemplated either in the Representation of the People Act or the rules made thereunder to meet a contingency arising out of a situation where a candidate has been abducted and prevented from filing his or her nomination papers. And therefore, in the absence of any specific provision to meet a contingency of this nature, the Election Commission invokes its plenary power vested in it under Article 324 of the Constitution of India.

24. Here is a case where a candidate of a political party has been abducted by the rival group and was prevented from filing nomination papers. The resultant effect is that Sri Siddaiah the abducted candidate could not file his nomination on the last date of filing nominations i.e., on 8-11-1994. In a situation where candidates representing political parties are prevented from filing nomination papers and if the election process is allowed to be completed, could see that election process be called free and fair? And whether the results of such an election would truly reflect the will of the people of that particular constituency This is a million dollar question. When a candidate of a political party is prevented from filing his nomination by certain elements, would the gullible electorate of 163-Gorantla Assembly Constituency be free to exercise their franchise. It is not the case that the electorate enmasse exercise their franchise in favour of one candidate only. It is immaterial to which party a candidate belong to. But the electorates are handicapped in choosing a candidate of their choice when some candidates are whisked away from the arena of contest. In this view of the matter, what is to be seen is whether purity in electoral process could be achieved. When candidates are abducted and prevented from filing nominations, could it be presumed that ordinary voter would be free to exercise his franchise in favour of a candidate of his choice. These are

all some of the ground realities and Courts cannot ignore these realities.

25. The object of providing a Centralised Election Machinery is only in such direction to ensure purity in electoral process. In a contingency of this nature, could it be said that the first respondent is helpless and has to be a silent spectator? To my mind, the first respondent is not without power to remedy the situation. Article 324(1) of the Constitution of India confers powers of superintendence, direction and control on the Election Commission. The Election Commission is entitled to exercise certain powers under Art. 324 itself on its own right, in an area not covered by Representation of the People Act and the Rules. In this case, the first respondent on the basis of the reports received from respondents 2 and 3, in exercise of plenary powers vested in him under Art. 324 . of the Constitution of India read with Ss. 30 and 153 of the Representation of the People Act, 1951 has recommended the Governor of Andhra Pradesh State to rescind the election process insofar as it relates to 163-Gorantla Assembly Constituency, with a promise that the election would be commenced afresh.

26. When a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned ,and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. The argument advanced by Sri S. Ramachandra Rao counsel for the petitioner in W.P. No. 20130/94 and Sri Seshagiri Rao, learned senior counsel appearing on behalf of the petitioner's counsel Sri C. Kodanda Ram in W.P. No. 20283/94 that the first respondent has acted arbitrarily and with a mala fide intention in canvassing for the cause of a particular political party is not acceptable to; this Court. The action of the first respondent in recommending the rescission of election process in 163-Gorantla Assembly Constituency cannot be looked in isolation in respect of a particular, political party's point of view, but has to be looked in the overall facts and circumstances of the case. In the given circumstances, the first respondent felt that the purity of the election process has been irretrievably sullied in 163-Gorantla Assembly Constituency and if the election process is allowed to be completed in the said constituency,

it cannot reflect the true choice of the electorate of the Constituency. Therefore, no mala fides could be attributed to the first respondent inasmuch as he recommended rescission of the election process in 163-Gorantla Assembly Constituency as the circumstances are not conducive to allow the election process in the said constituency. After all, the first respondent did not rescind the election process in 163-Gorantla Assembly Constituency once for all. It is made clear in the notification issued by the Governor of Andhra Pradesh, dated 11-11-1994 that election process in the said constituency would be commenced anew. Therefore, I see no force in the contention of Sri S. Ramachandra Rao, learned counsel for the petitioner in W.P. No. 20130/94 that the electorate of 163-Gorantla Assembly Constituency are denied from exercising their franchise. The rescission of election process in the said constituency is not without valid reasons inasmuch as a candidate of a political party was abducted and prevented from filing his nomination papers. The first respondent felt that in the given circumstances, it is not conducive to allow the election process to go on as the atmosphere is vitiated and the election if allowed to continue, would not reflect the true choice of the electorate. In all probability, election process to 163-Gorantla Assembly Constituency, is deferred for the time being in view of the volatile situation prevalent in the said Assembly constituency.

27. Situations may arise which enacted law has not provided for. Legislators are not prophets but pragmatists. So it is that the Constitution has made comprehensive provision in Art. 324 to take care of surprise situations. That power itself has to be exercised, not mindlessly nor mala fide, not arbitrarily nor with partiality but in keeping with the guidelines of the rule of law and not stultifying the Presidential notification nor existing legislation. More is not necessary to specify; less is insufficient to leave unsaid. Article 324 of the Constitution of India, to my mind, operates in areas left unoccupied by legislation and the words 'superintendence, direction and control' as well as 'conduct of all elections' are the broadest terms. When a high functionary like the Election Commissioner is vested with wide powers, the law expects him to act fairly and

legally. Article 324 is geared to the accomplishment of free and fair elections expeditiously. Moreover, discretion vested in a high functionary may be reasonably trusted to be used properly, not perversely. If it is misused, certainly the Court has power to strike down the act.

28. It is relevant to extract the words of Lord Denning, which are instructive :

'Law does not stand still. It moves continually. Once this is recognised, then the task of the Judge is put on a higher plane. He must consciously seek to mould the law so as to serve the needs of the time, must not be a mere mechanic, a mere working mason, laying brick on brick, without thought to the overall design. He must be an architect-thinking of the structure as a whole building for society a system of law which is strong, durable and just. It is on his work that civilised society itself depends.'

29. The words of Lord Denning are so inspiring and pragmatic. The Courts are to be pragmatic in adjudicating a dispute by consciously seeking to mould the law so as to serve the needs of the time.

30. The facts and circumstances of the case on record, undoubtedly, disclose that the purity of election process was irretrievably sullied in 163-Gorantla Assembly Constituency at the threshold itself as a candidate of a political party was abducted and prevented from filing his nomination papers. Therefore, in my view, the action of the first respondent in recommending the rescission of election notification dated 1-11-1994 insofar as it relates to 163-Gorantla Assembly Constituency cannot be held to be exercising of power arbitrarily and with a mala fide intention.

31. The Supreme Court has, time and again, held that the actions or directions in conduct of elections in a free and fair manner shall be left to the Election Commission and Courts shall not, ordinarily, interfere in an order passed by the Election Commission, unless it is brought to the notice of the Courts that the Election Commission has exercised the power which it was not vested with, or it acted in arbitrary manner.

32. As discussed above, in the overall object of achieving the purity of the election process to remain

intact, I am not persuaded to hold that the first respondent has acted arbitrarily or with any mala fide intention while recommending the Governor of Andhra Pradesh to rescind the election process insofar as it relates to 163-Gorantla Assembly Constituency of Anantapur District. The second question is accordingly, answered.”

78. Though Mr.Sathish Parasaran, learned Senior counsel for the petitioner in W.P.No.11977 of 2019 submitted that the Judgment of the Jharkhand High Court and Andhra Pradesh High Court, can have only persuasive value and not binding on this Court, on principle it is acceptable, but on the facts and circumstances, both the judgments, which followed the decisions of the Hon'ble Supreme Court in Mohinder Singh Gill's case, cannot be brushed aside. Election Commission of India, has given due consideration to the above, and other judgments on the aspect of bribery and this Court is inclined to accept the reasoning of the above High Courts.

79. Thus, from reading of three judgments in ***Mohinder Singh Gill and Another vs. The Chief Election Commissioner, New Delhi***, reported in (1978) 1 SCC 405; in ***Jay Shankar Pathak vs. Election Commission of India and others***, reported in AIR 2012 Jhar 58 and in ***N.Kristappa vs. Chief Election Commissioner and others***, reported in AIR 1995 AP 212, in terms of expression use in Article 324 of the

the preparation of electoral rolls and responsible for conduct of all elections to the Parliament and Legislative Assemblies of every State, we hold that the Election Commission of India is expected to act promptly, which has been done in this case.

80. Election Commission of India, is empowered to consider any situation, which is not enumerated in the legislation. Election Commission of India is vested with wide powers and it would not be appropriate to contend that only in the case of violation of Sections 58 and 58A of the Representation of the People Act, they can act. At the risk of repetition, Section 58 of the Representation of the People Act, 1951 deals with,

“Fresh poll in the case of destruction, etc., of ballot boxes.—(1) If at any election,—

(a) any ballot box used at a polling station or at a place fixed for the poll is unlawfully taken out of the custody of the presiding officer or the returning officer, or is accidentally or intentionally destroyed or lost, or is damaged or tampered with, to such an extent, that the result of the poll at that polling station or place cannot be ascertained; or

(aa) any voting machine develops a mechanical failure during the course of the recording of votes; or

(b) any such error or irregularity in procedure as is likely to vitiate the poll is committed at a polling station or at a place fixed for the poll, the returning officer shall forthwith report the matter to the Election Commission.

(2) Thereupon the Election Commission shall, after taking all material circumstances into account; either—

(a) declare the poll at that polling station or place to be void, appoint a day, and fix the hours, for taking a fresh poll at that polling station or place and notify the day so appointed and the hours so fixed in such manner as it may deem fit, or

(b) if satisfied that the result of a fresh poll at that polling station or place will not, in any way, affect the result of the election or that the mechanical failure of the voting machine or the error or irregularity in procedure is not material, issue such directions to the returning officer as it may deem proper for the further conduct and completion of the election.

(3) The provisions of this Act and of any rules or orders made thereunder shall apply to every such fresh poll as they apply to the original poll."

81. Section 58A deals with adjournment of poll or countermanding of election on the ground of booth capturing and the same is extracted hereunder:

"(1) If at any election,—

(a) booth capturing has taken place at a polling station or at a place fixed for the poll (hereafter in this section referred to as a place) in such a manner that the result of the poll at that polling station or place cannot be ascertained; or

(b) booth capturing takes place in any place for counting of votes in such a manner that the result of the counting at that place cannot be ascertained, the returning officer shall forthwith report the matter to the Election Commission.

(2) The Election Commission shall, on the receipt of a report from the returning officer under sub-section (1) and after taking all material circumstances into account, either—

(a) declare that the poll at that polling station or place be void, appoint a day, and fix the hours, for taking fresh poll at that polling station or place and notify the date so appointed and hours so fixed in such manner as it may

deem fit; or

(b) if satisfied that in view of the large number of polling stations or places involved in booth capturing the result of the election is likely to be affected, or that booth capturing had affected counting of votes in such a manner as to affect the result of the election, countermand the election in that constituency."

In the case on hand, situation does not attract Sections 58 and 58A of the Act.

82. Aspect of corrupt practices covered under Section 123 of the Representation of the People Act, 1951, is extracted hereunder:

"Corrupt practices.—The following shall be deemed to be corrupt practices for the purposes of this Act:—

(1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or 4 [to withdraw or not to withdraw] from being a candidate at an election, or

(b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for 5 [having withdrawn or not having withdrawn] his candidature; or

(ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or

(b) by any person whomsoever for himself or any other person for voting or refraining from voting, or

inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to withdraw or not to withdraw] his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:
Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

(ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;

(b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause.

(3) The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of his religion, race, caste, community or language or the use of, or appeal to religious symbols or the use of,

or appeal to, national symbols, such as the national flag or the national emblem, for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate:

Provided that no symbol allotted under this Act to a candidate shall be deemed to be a religious symbol or a national symbol for the purposes of this clause.

(3A) The promotion of, or attempt to promote, feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person with the consent of a candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

(3B) The propagation of the practice or the commission of sati or its glorification by a candidate or his agent or any other person with the consent of the candidate or his election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate.

Explanation.—For the purposes of this clause, "sati" and "glorification" in relation to sati shall have the meanings respectively assigned to them in the Commission of Sati (Prevention) Act, 1987 (3 of 1988).

(4) The publication by a candidate or his agent or by any other person with the consent of a candidate or his election agent, of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidature, or withdrawal, * * * of any candidate, being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section

25 or a place fixed under sub-section (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power:

Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The incurring or authorizing of expenditure in contravention of section 77.

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person whether or not in the service of the Government and belonging to any of the following classes, namely:—

- (a) gazetted officers;
- (b) stipendiary judges and magistrates;
- (c) members of the armed forces of the Union;
- (d) members of the police forces;
- (e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the

Government as may be prescribed:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election;

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections.

(8) booth capturing by a candidate or his agent or other person.

Explanation.—(1) In this section, the expression "agent" includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

(2) For the purposes of clause (7), a person shall be deemed to assist in the furtherance of the prospects of a candidate's election if he acts as an election agent * * * of that candidate.

(3) For the purposes of clause (7), notwithstanding anything contained in any other law, the publication in the Official Gazette of the appointment, resignation, termination of service, dismissal or removal from service of a person in the service of the Central Government (including a person serving in connection with the administration of a Union territory) or of a State Government shall be conclusive proof—

(i) of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, and

(ii) where the date of taking effect of such appointment, resignation, termination of service, dismissal or removal from service, as the case may be, is stated in such publication, also of the fact that such person was

appointed with effect from the said date, or in the case of resignation, termination of service, dismissal or removal from service, such person ceased to be in such service with effect from the said date.

(4) For the purposes of clause (8), "booth capturing" shall have the same meaning as in section 135A.

83. Election Commission of India, has to act, whenever there are sufficient substantive materials made arrive at a satisfaction as to whether a free and fair elections, is conducted and when situation or which Act enact and not provide there for and Commission cannot be a mute spectator for any illegal activities, more so, in the case on hand corrupt practices by distribution of money, which has been categorically recorded in the report of the Director of Income Tax (Investigation) dated 07.04.2019, however inadvertent omission, remaining target voters. As rightly contended by Mr.Niranjan Rajagopalan, learned counsel for Election Commission of India, finding of indulging in corrupt practices is a post event of elections.

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84. As rightly contended by the learned counsel for the Election Commission of India, not only there is a seizure, there are also reports from Director General of Income Tax (Investigation), Expenditure Observer and Special Expenditure Observer for Tamil Nadu, and Chief Election Commissioner. After considering all the reports, the Election

Commission of India has arrived at a conclusion that there was inducement and allurements to electors by the candidate, political party, and their associates and distribution of money has been going on at a larger scale and in a clandestine manner, vitiating the purity of the electoral process and disturbing the level playing field in Vellore Parliamentary Constituency, is without any basis.

85. Contention of Mr. Satish Parasaran, learned Senior Counsel for the petitioner in W.P.No.11977 of 2019 is that the moment, the Hon'ble President has assented to elections, and accordingly, notification issued under Section 14(2) of the Representation of the People Act, 1951, and consequently, the Election Commission of India, notified the same in the Official Gazette, setting out the last date of nominations, date for scrutiny of nominations and last date for withdrawal of candidatures, etc., the Hon'ble President has no powers to rescind the notification already issued, under Section 14(2) of Representation of the People Act, 1951, cannot be countenanced for the reason that reading of sub-Section (1) of Section 14 of the abovesaid Act, shows that the general elections shall be held for the purpose of constituting a new House of the People on the expiration of the duration

<http://www.judis.nic.in> of the existing House or on its dissolution and as per sub-Section (2) of

the said Act, for the said purpose, the Hon'ble President shall, by one or more notifications published in the Gazette of India on such date or dates as may be recommended by the Election Commission, call upon all parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder. Whereas, as per Section 30 of the said Act, as soon as the notification calling upon a constituency to elect a member or members is issued, the Election Commission shall, by notification in the Official Gazette, appoint-

(a) the last date for making nominations, which shall be the seventh day after the date of publication of the first-mentioned notification or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(b) the date for the scrutiny of nominations, which shall be the day immediately following the last date for making nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(c) the last date for the withdrawal of candidatures, which shall be the second day after the date for the scrutiny of nominations or, if that day is a public holiday, the next succeeding day which is not a public holiday;

(d) the date or dates on which a poll shall, if necessary, be taken, which or the first of which shall be a

date not earlier than the fourteenth day after the last date for the withdrawal of candidatures; and

(e) the date before which the election shall be completed.

86. Thus, it could be seen that there are two notifications. One issued under Section 14(2) of the Representation of the People Act, 1951, published in the Gazette of India, calling upon all the Parliamentary constituencies to elect members in accordance with the provisions of this Act and of the rules and orders made thereunder and the other, under Section 30 of the said Act, the Election Commission shall, by notification in the Official Gazette.

87. Reading of the notification issued under Section 14(2) of the Representation of the People Act, 1951, shows that such notification has been issued by the Ministry of Law and Justice, Government of India, whereas, the notification issued under Section 30 and 56 of the Representation of the People Act, 1951, is by the Election Commission of India. At this juncture, we also deem it fit to extract 56 of the said Act,

"56. Fixing time for poll:- The Election Commission shall fix the hours during which the poll will be taken; and the hours so fixed shall be published in such manner as may be prescribed:

Provided that the total period allotted on any one day

for polling at an election in a Parliamentary or Assembly constituency shall not be less than eight hours."

88. Contention of the petitioners that the moment, a notification under Section 14(2) of the abovesaid Act, is issued, powers is conferred with the Election Commission of India to conduct elections, under Article 324 of the Constitution of India, till the elections are completed in all respects, the Hon'ble President has no powers to rescind the election, cannot be accepted, for the two reasons.

89. Section 21 of the General Clauses Act, dealing with Power to issue, to include power to add to, amend, vary or rescind notifications, orders, rules or bye-laws and the said Section states that where, by any Central Act or Regulation, a power to issue notifications, orders, rules or bye-laws is conferred, then that power includes a power, exercisable in the like manner and subject to the like sanction and conditions (if any), to add to, amend, vary or rescind any notifications, orders, rules or bye-laws so issued.

90. Reading of the above makes it clear that the Election Commission of India, which is empowered to recommend under Section 14(2) of the Representation of the People Act, 1951, to the Hon'ble

President of India, to call upon all parliamentary constituencies to elect members in accordance with the provisions of the Representation of the People Act and of the rules and orders made thereunder, is also vested with the power to send recommendations, not only for postponement, but for cancellation as well, depending upon the situation, which the legislature would not have contemplated, as held in **Mohinder Singh Gill's** case (cited supra).

91. Instances in Sections 58 and 58A of the Representation of the People Act, 1951, at best, can be termed only as illustrative. In a given case, after issuance of the notification under Section 14(2) of the Act, or during any of the process of the election, which involves, viz., submission of nomination, scrutiny, withdrawal and actual conduct of election, ie., polling, there could be situations, say for instance, law and order problem, natural calamity and other factors, warranting analysis of the whole situation for suitable recommendation to the Hon'ble President to rescind the notification already issued.

92. Election Commission of India has got powers to conduct or postpone the elections, but Election Commission of India has no powers to rescind the notification issued under Section 14(2) of the

Representation of the People Act, 1951, under which, elections are directed to be conducted. Genesis in conducting the elections is the notification issued by the Hon'ble President, under Section 14(2) of the Act and the species is the notification under Sections 30 and 56 of the said Act. In the light of the above, the contention that the Hon'ble President, who has issued the earlier notification, dated 19.03.2019, has no powers to rescind the said notification, under Section 14(2) of the Act, is not tenable. Though in the subject notification, dated 16.04.2019, the Ministry of Law and Justice, has not quoted Section 21 of the General Clauses Act, we are of the considered opinion, the said Section can be made applicable to the case on hand.

93. The next issue to be considered is whether, the Election Commission of India had any material to arrive at a conclusion that distribution of money has been going on at a larger scale and in a clandestine manner, vitiating the purity of the electoral process and disturbing the level playing field in Vellore Parliamentary Constituency. Now let us consider the sequence of events, from 30.03.2019, when the election commission has received a preliminary report from the Nodal Officer of Election Expenditure Monitoring of the Income Tax Department,

was received in the Commission from the Nodal Officer of Election Expenditure Monitoring of the Income Tax Department. As per this report, Rs. 19.57 lakhs had been recovered from the residence of Sh. Durai Murugan, Treasurer of the Dravida Munnetra Kazhagam (DMK), out of which Rs. 10.57 lakhs were seized as being unexplained. The search also yielded printouts with ward number and amounts written against them. The report stated that the search action u/s 132 of the Income Tax Act, 1961 was still continuing in parts of Kingston Engineering College, Vellore and further investigation was in progress.

12. Further, a report dated 5th of April, 2019, was received from the Director General of Income Tax (Investigation) regarding the findings in the search and seizures operations in the cases of Sh. D.M. Kathir Anand, Sh. Durai Murugan and Durai Murugan Educational Trust. It was informed to the Commission that various enforcement agencies, including the Income Tax Department, had been receiving inputs regarding huge amounts of unaccounted cash stored at the residence of Sh. Durai Murugan, MLA and Treasurer of DMK party and Sh. D.M. Kathir Anand, s/o Sh. Durai Murugan and contesting candidate for Vellore Parliamentary Constituency and also in Kingston Engineering College run by Durai Murugan Educational Trust of which Sh. D.M. Kathir Anand, Smt. K. Sangeetha, w/o Sh. D.M. Kathir Anand and Smt. D. Shantha Kumari, w/o Sh. Durai Murugan are the Trustees. This information was corroborated through local enquiries conducted discreetly and it was found that there were some suspicious activities relating to elections being carried out in the college premises after college hours.

13. The aforesaid report of the DGTT(Inv.) further elaborates on the facts stated in the preliminary report referred to in para 11, highlighting that search warrants were issued based on information on record and the search teams entered the residential premises of Sh. Kathir Anand and Sh. Durai Murugan in Vellore at 3:00 a.m. on 30.03.2019. Rs. 19.57 lakhs were found, out of which Rs. 10.57 lakhs were seized as unexplained after considering the cash declared in the election affidavit etc. Apart from this, 82 loose sheets (computer printouts) containing details

of number of voters in each assembly segment of Vellore Parliamentary Constituency and the amount required at the rate of Rs. 500 per vote and at Rs. 200 per vote for distribution to 100%, 80% and 60% of the total number of voters. The report mentions that due to the presence of a large crowd which had entered the premises and prevented any further activity of the search team, the proceedings were concluded at 10:50 a.m. on 30.03.2019.

14. The said report of the DGIT(Inv.) Chennai states that, Kingston Engineering College was simultaneously searched from 8:00 a.m. onwards on 30th of March, 2019 as the search teams had not been allowed to enter early in the morning by the security personnel purportedly due to the presence of ladies in the girls' hostel. The search team observed that evidently there was prior rummaging of the premises and removal of material including the control panel of the CCTV as well as the hard disks of the computers. Further discreet surveillance resulted in the confirmation that a large amount of cash and other incriminating material had indeed been shifted out of the college premises while the teams were being denied entry.

15. Further as per DGIT report, based on the intelligence gathered during the discreet surveillance, certain premises of close associates of the candidate Shri Kathir Anand and their relatives were identified and fresh searches u/s 132 of the Income Tax Act, 1961, at Katapadi Taluk, Vellore District were initiated on 01.04.2019. Cash totalling Rs. 11.48 Cr., kept in cartons, gunny bags, plastic bags etc. was found from the residence of one Sh. Damodaran, who is brother-in-law of one Sh. Srinivasan, a DMK functionary. The cash found in bags was further packed in plastic packets on which computer-generated labels were pasted. The labels contain the name of the assembly segments (in Vellore PC), name and number of blocks, name and number of wards, total number of voters and amount at the rate of Rs. 200 per vote. The total amount of cash in the plastic packets tallied with the amount written on the label. Most of the currency found was of the denomination of Rs. 200. Only an amount of Rs. 99 lakhs was in the denomination of Rs. 2000 and Rs. 500 and this amount had not been packed in plastic packets for

distribution. Apart from Rs. 2.8 Crores, in the denomination of Rs. 200, found in cartons, the rest of the amount, approximately Rs. 7.68 Crores was packed and ready for distribution. In addition, unused labels, loose sheets with details of ward-wise breakup of voters and documents related to Kingston Engineering College were found."

94. From the above narration of facts, from the recommendation of the Election Commission of India, dated 14.04.2019, sent to the Hon'ble President, for notification, under Section 14(2) of the Representation of the People Act, 1951, it could be seen that after the seizure, the Election Commission of India, has referred this matter to the Director General of Income Tax (Investigation) and after investigation and obtaining statements from the concerned, including one Mr.M.Dayanidhi, Senior Manager from the Canara Bank, Regional Office, Vellore, as to how, there was exchange of higher denomination notes for Rs.200 denomination notes, the Director General of Income Tax (Investigation), has submitted a report, dated 07.04.2019, which is extracted hereunder:

"19. The DGIT(Inv.) has also made the following concluding remarks, "It is evident from the events that unfolded from the evening of 29.3.2019 till the recovery of cash on 01.04.2019, the manner in which the cash was packed, the papers found along with the cash and the statements of the persons concerned that the unaccounted cash was indeed packed in the Kingston engineering College and the residence of Shri Kathir Anand and Shri Durai Murugan and it was clandestinely shifted to the premises of

a relative of a Party functionary during the period when stiff resistance was offered to the Monitoring Team from entering the residence and cash belonging to the main persons and that the cash was indeed meant for distribution to the voters in the ensuing General Elections-2019 for the Vellore PC where Sh. D.M. Kathir Anand is a contesting candidate. The unpackaged portion of the cash and the unused labels which were also seized clearly indicate that the candidate was making preparations to cover all the target voters in the said Parliamentary Constituency."

95. A criminal case has been registered in Cr.No.205 of 2019, on the file of the Katpadi Police Station, for the offences, under Section 125A(1) of the RP Act, 1951 r/w 171E, 171 B(2) of the Indian Penal Code, against three named accused, namely, Shri D.M.Kathir Anand, Shri Srinivasan alias Poonjolai Srinivasan and Shri Damodaran. Expenditure Observer appointed by the Chief Election Officer, has submitted a report, dated 07.04.2019, stating that the envelopes containing the cash had ward-wise details of Vaniyambadi and K.V.Kuppani Assembly Constituencies of Vellore PC and that while this pertains to two out of six segments in the PC, they are not in a position to ascertain whether something similar has not happened in other assembly segments also. It was further stated that the influence of cash in the election process is visible and may hamper free and fair election.

report, dated 08.04.2019 regarding the search and seizure operations undertaken by the IT Department in Vellore. He has stated that the searches have unearthed a systematic design to influence voters through inducements and that these activities come under the ambit of "corrupt practices" as per Section 123 of the RP Act, 1951. Therefore, the Special Expenditure Observer was of the opinion that the situation is not conducive for the conduct of free and fair elections.

97. Going through the reports, the Chief Election Commissioner, has submitted a report, dated 12.04.2019. Thus, from the date of seizure, i.e., on 30.03.2019, there has been investigation by the Income Tax Department and simultaneously, by the Expenditure Observer and the Special Expenditure Observer for Tamil Nadu. After receipt of the reports, the Election Commission of India, has carefully analysed and prima facie found that there was inducement and allurement to electors by the candidate, political party, and their associates and distribution of money has been going on at a larger scale and in a clandestine manner, vitiating the purity of the electoral process and disturbing the level playing field in Vellore Parliamentary Constituency.

has also considered that how bribery during the elections would affect the purity of the elections. Paragraphs 26, 27 and 28 of the recommendation, dated 14.04.2019, are extracted hereunder:

"26. It may be noted that the election law seriously frowns upon acts of 'bribery' during elections and those indulging in such acts are visited upon with severe penalties under the law. Bribing any person during elections with the objective of inducing him or any other person to exercise any electoral right or, even inducing or attempting to induce any person to exercise any such right for such consideration, is an electoral offence under section 171B of the Indian Penal Code, and is punishable with imprisonment of either description for a term extending up to one year or, with fine, or with both. Any conviction for the offence of 'bribery', even if resulting in the imposition of a very nominal fine, will automatically disqualify the convicted person for a minimum period of six years under section 8(1) of the Representation of the People Act, 1951. Further, such 'bribery' at elections is also a corrupt practice under section 123(1) of the Representation of the People Act, 1951 which can result in the election of the returned candidate being declared void and the candidate found guilty of commission of such corrupt practice can also be disqualified by the President on the recommendation of the Commission for a further period of six years. The above provisions in the law, making 'bribery' an electoral offence and also a corrupt practice, have been made with the manifest object of ensuring purity of the election process. Purity of electoral process has been placed on a higher pedestal than even the secrecy of ballot which is considered to be sacrosanct in democratic elections. It is worthwhile to point out that in order to maintain purity of election process, even the voting system at elections to the Rajya Sabha has been amended in 2003 to provide for 'open voting' where allegations were often made that the electors at those elections were being offered various forms of

allurements and inducements to obtain their votes. The Hon'ble Supreme Court, before whom the above amendment to the law to provide for open voting at elections to Rajya Sabha was questioned, observed in *Kuldip Nayar v. Union of India and Ors.* [AIR 2006 SC 3127] that though the secrecy of ballot and purity of elections should normally co-exist, the principle of secrecy of vote must yield to the purity of election to further the object of a free and fair election. Observations to the same effect were made earlier also by the Hon'ble Supreme Court in the case of *Raghubir Singh Gill v. Gurcharan Singh Tohra* [AIR 1980 SC 1362] to sub-serve the larger public interest, namely, purity of election for ensuring free and fair election.

27. It is pertinent here to take note of the fact that the above mentioned provisions relating to offence of 'bribery' in the Indian Penal Code were introduced in the year 1920 and the "corrupt practice" of bribery found its mention in the Representation of the People Act in 1951, as originally enacted, when these acts were considered as aberrations and exceptions, whereas the facts narrated above and the reports received by the Commission now paint a wholly different picture in as much as the said aberrations and exceptions seem to have become the main features of election campaigning in the said constituency.

28. Apart from the above, the law of the country also aims to eliminate the role and influence of big money in the electoral process. Therefore, the law has prescribed limits of election expenses which the candidates may incur or authorise in connection with their election. The incurring or authorising expenditure in excess of the prescribed limit is a corrupt practice under section 123(6) of the Representation of the People Act, 1951, the commission whereof would result in the election of the returned candidate being void and also attracting a disqualification for a period up to six years. The law further requires each contesting candidate to maintain a true and separate account of his election expenses under section 77 of the RP Act and the failure to render a true and correct account of the election

expenditure may invite disqualification for three years under section 10A of the said Act.

99. Thus, it could be seen that the Election Commission of India, has conspicuously felt that the abovesaid acts were not only to be construed as considered as aberrations and exceptions, but they have also meant bribery or any other acts, as inducement and allurements to electors by the candidate. In this regard, the Election Commission of India has also considered the decision in **Ashok Shankar Rao Chawan vs. Madhava Rao Kinhalakar** reported in (2014) 7 SCC 99.

100. Reading of the entire recommendation shows that to arrive at a subjective satisfaction and the duties of the Election Commission of India, as contemplated under Section 324 of the Constitution of India, i.e., to conduct elections for all the States, the Commission has to consider, as to whether, there was any corrupt practice/bribery, or there was any conducive atmosphere and whether it would severely jeopardize the conduct of free and fair elections. Considering the above, the Election Commission of India, has rightly recommended under Article 324 of the Constitution of India and Section 21 of the General Clauses Act, 1897 and all other powers enabling it in this behalf to the Hon'ble President.

101. Though the learned Senior Counsel for the petitioners contended that the facts, stated supra and the materials available, could not give rise to a conclusion by the Election Commission of India to send the recommendation and that the same would not vitiate atmosphere, having regard to the seizure of cash and reports of the experts, viz., Director General of Income-Tax (Investigation), Expenditure Observer, Special Expenditure Observer for Tamil Nadu and the final report of the Chief Election Commissioner, we are of the view that the Election Commission of India are enjoined with the duty, under Article 324 of the Constitution of India and he is the authority to come to the conclusion, as to whether, the environment is conducive or not and if there are any materials that there is no conducive of environment or atmosphere, he can postpone or cancel the election, by taking opinion of the experts and in such circumstances, as rightly contended by the learned counsel for the Election Commission of India, courts should be restraint, in interfering with the opinion of the Election Commission of India. Courts also cannot substitute the opinion of the Election Commission of the India, who has taken the views of the experts.

102. Another contention made by the learned Senior Counsel for the petitioners that there are sufficient provisions in the Representation of the People Act, 1951, to disqualify and prosecute any person involved in the corrupt practices for violation of Sections 58, 58-A and 123 of the Representation of the People Act, 1951 and therefore, there is no need to cancel the entire election and that action can be taken against the candidate, under Section 123 of the Representation of the People Act, 1951 also, cannot be countenanced, for the reason that the election is not conducted only for the contestants and it is for the public of the constituency and therefore, the Commission has to consider the situations, which are not envisaged, in the Representation of the People Act, 1951.

103 As stated supra, some of the instances, which do not fall under the Act, but requires consideration by the Election Commission of India to take appropriate action, whether to postpone or cancel, may be spread of terror in voting and in not permitting voters to cast their votes, by use of muscle power, and such other acts, not specified in the legislation and that is why, in **Mohinder Singh Gill's** case (cited supra), the Hon'ble Supreme Court has explained the wide powers of the

104. As rightly contended by the learned Commission of India, the opinion of the Election Commission of India, regarding seizure of the amount, intended to be distributed to allure all the voters, cannot be allowed to be trivialized in the conduct of free and fair elections. On the other hand, such issues should be dealt with firmly and iron hand.

105. A perusal of the Notification shows that the recommendation has been made by the Election Commission of India under Article 324 of the Consitution of India, to the Hon'ble President who had issued the Notification to conduct the election in exercise of powers under Section 14 of the RP Act, 1951. It is settled that only the authority who has issued the notification to conduct the election can rescind the same and a subordinate authority cannot set aside a notification issued by the superior authority.

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106. The argument of Mr.Sathish Parasaran that once a Notification is issued under Section 14 the of the RP Act, 1951, then fresh polls can be ordered only in cases of booth capturing etc. which are mentioned in Section 58 and 58-A of the RP Act, 1951 cannot be accepted. The Election Commission cannot be said to powerless to take

decisions when there is evidence of malpractices committed by candidates. The Hon'ble Supreme Court in *Mohinder Singh Gill's* case has held that Article 324 of the Consitution of India gives power to the Election Commission to act and pass orders even in the absence of a specific provision under the RP Act, 1951. Rescinding a poll or ordering a re-poll for the entire constituency under circumstances, not specifically stated in the legislation, can still be recommended by the Election Commission of India provided, it is necessary for the conduct of a free and fair election and the action/s complained of, are such, which have the effect of affecting the purity in elections. The Hon'ble Supreme Court has time and again held that the words "and the conduct of" has to be given an under interpretation. It is the duty of the Election commission to take prompt and corrective action to ensure free and fair election.

107. The argument of the petitioners that since the allegations in the entire recommendation for cancellation of election is only directed against the acts of one candidate, and therefore the entire election need not be rescinded, cannot be accepted. In the case of Mohinder Singh Gill's case, the precise argument of the appellant was that he had almost won the elections and the election ought not to have been

cancelled because of the action of the third respondent in using his muscle power to snatch the postal ballot papers pertaining to only one segment, was not accepted by the Hon'ble Supreme Court. It has the effect on the entire election that has to be considered.

108. Similarly in the case of **Jayashankar Pataak's** case, the allegation was against one candidate from whom substantial amount of money spent for luring the voters was seized.

109. Similarly, reliance placed by the Election Commission on the judgment of the Andhra Pradesh High Court in **N.Kristappa vs. Chief Election Commissioner and others** reported in **AIR 1995 AP 212**, wherein the Election Commission rescinded the election when one candidate was abducted cannot be said to be misplaced.

110. Mr.Niranjan Rajagopalan, learned counsel for the Election Commission of India is correct in his submission that it is the overall effect of the malpractice complained of must be seen even though if the act has been committed only by one candidate or has been committed against one candidate. The election process cannot be permitted to be

vitiated.

111. A reading of the proceedings of the Election Commission would show that there were materials before the Election Commission that money was distributed to voters. The recommendation of the Election Commission places reliance on a communication by the Joint Director of Income Tax (Inv.) Unit I to the Chief Election Commission. The said letter states that money power was being used to lure voters which has the pernicious effect of affecting the purity in election process. At the risk of repetition, paragraph 10 of the said letter reads as under:

"10. It is evident from the events that unfolded from the evening of 29.3.2019 till the recovery of cash on 01.04.2019, the manner in which the cash was packaged, the papers found along with the cash and the statements of the persons concerned that the unaccounted cash was indeed packed in the Kingston Engineering College and the residence of Shri Kathir Anand and Shri Durai Murugan and it was clandestinely shifted to the premises of a relative of the Party functionary during the period when stiff resistance was offered to the Monitoring Teams from entering the residence and college belonging to the main persons and that the cash was indeed meant for distribution to the voters in the ensuing General Elections - 2019 for the Vellore Parliamentary Constituency in which Shri D.M.Kathir Anand is a contesting candidate. The unpackaged portion of the cash and the unused labels, which were also seized, clearly indicate that the candidate was making preparations to cover all the

remaining target voters in the Parliamentary Constituency."

112. The report also contains other materials such as (1) Loose sheet seized in the residence of Shri Duraimurugan and Shri D.M.Kathir Anand, (2) Statement of Kathir Anand dated 30.3.2019, (3) Statement of Shri.Srinivasan dated 1.4.2019, (4) Free translation statement of Shri Srinivasan dated 1.4.2019, (5) Question No.25 of Statement of Shri.Srinivasan dated 1.4.2019 (Tamil and Free Translation in English), (6) Statement of Shri Surender Babu dated 1.4.2019, (7) Statement of Shri Durai Murugan dated 1.4.2019, (8) Statement of Shri D.M.Kathir Anand dated 1.4.2019, (9) Photo and (10) Pen drive consists of visuals of cash and other materials found on 1.4.2019 and visuals of obstructions caused by the DMK People on 29.3.2019.

113. A perusal of these materials would show that huge amount of cash was intended to be used to lure voters. The reliance of the Election Commission on paragraph 53 of the judgment of the Hon'ble supreme Court in **Ashok Shankar Rao Chawan vs. Madhava Rao Kinhalkar** reported in (2014) 7 SCC 99 wherein, the Hon'ble Supreme Court had noticed that in elections payment of cash to the electorate is rampant and the Election Commission finds it difficult to control such a menace

is not unjustified.

114. On the materials placed before the Election Commission, it cannot be said that the Election Commission was not justified in recommending to rescind the notification already issued for 8-Vellore Parliamentary Constituency.

115. The fact that the candidate against whom allegation of corrupt practice or bribery is made, if found guilty will be disqualified from contesting elections for a period of six years from his release and that even if he is elected, his election will be set aside is no answer to permit an election to be conducted if the purity of election is affected. To repeat menace of luring voters by paying money has to be dealt with iron hands. As stated earlier it is not the number of candidates who have indulged in giving money to the voters to be seen, but the overall effect on the election process has to be considered. Elections cannot be permitted to be conducted when there is evidence that huge amount of cash kept for distribution to the voters. The report of the Joint Director of Income Tax (Inv.) Unit I, would state that money has been distributed. Election therefore cannot be permitted to be conducted in such an vitiated atmosphere.

116. When does challenge to corrupt practice arises; who can raise the said plea? It is open for an electorate/candidate to challenge in the Election Petition? Whether the Election Commission, can consider the same, during the period between the date of notification issued under Section 14(2) of the RP Act, 1951, till results are declared keeping in mind, what the Constitution of India, mandates Election Commission of India, under Article 324 of the Constitution of India, superintendence, direction and control of elections vest in the Election Commission and to conduct all elections, we are of the view that Article 324 confers wide powers on the Election Commission of India, to consider all the situations, from Stage-I nomination, till the end, i.e. Stage 4, declaration of results. Right given to the contestant or a voter, as the case may be, to question corrupt practice of a candidate, by way of a Election Petition is altogether different from Election Commission of India, exercising power under Article 324 of the Constitution of India, Section 14(2) of the RP Act, 1951 r/w Section 21 of the General Clauses Act, 1897.

117. The expression "superintendence, direction and control of

elections vested in the Election Commission as to conduct of elections",

cannot be ignored by courts, to arrive at a conclusion that the Election Commission of India, is not conferred with any power or jurisdiction, to arrive at any decision, either subjective or objective, based on evidence/material, to take an appropriate decision, to recommend to the Hon'ble President of India, to rescind the notification already given.

118. For whom the election is conducted? Whether for the candidate or for the public? Whether malpractices/corrupt practices, alleged to have been committed by a candidate or agent, party members from the stage of submission of nomination papers till the conclusion of the elections that is declaration, be allowed to be watched by the Election Commission of India and thereafter, take suitable action to disqualify a candidate elected, found to be guilty of the malpractice/corrupt practice and whether the Election Commission of India is not empowered under Section 14(2) of the RP Act, 1951 to seek for rescinding the earlier notification, if the Election Commission of India on the materials available on record, prima facie comes to the conclusion that in the election should be conducted in a free and fair manner, maintaining the purity of the elections in terms of the constitutional mandate under Article 324 of the Constitution of India and the environment is not conducive?

119. Should the Election Commission of India has to wait till the outcome of an election petition to disqualify the candidate or conviction under the Criminal Law which leads to action under Sections 8 and 8-A of the RP Act, 1951 and whether the Election Commission of India is powerless to take note of the malpractices/corrupt practices from the stage of nomination till the declaration of results and cannot recommend to the Hon'ble President of India to rescind the earlier notification issued calling upon elections to be conducted for the constituencies? Considering the wide powers given to the Election Commission of India as held in Mohinder Singh Gill's case when there is sufficient material/evidence, the Election Commission of India should be held to possess all the powers to take prompt action whether to postpone or countermand the election, as the case may be. It could be for one polling booth or many or considering the entire material available on record, to arrive at the conclusion to appropriately send recommendations to the Hon'ble President of India. Mandate of the Election Commission of India is to have a free, fair elections maintaining its purity. Subjective satisfaction arrived at by the Election Commission of India on the basis of experts opinion, cannot in a routine manner be interfered by the courts. The words superintendence, direction and

control of elections vested in Election Commission and to conduct all elections, should be given the widest scope and power to the Election Commission of India, to maintain purity in elections.

120. Whether the Election Commission of India should be termed as a combination of three wise monkeys, to close its mouth, eyes and ears, to whatever happens between the date of submission of the nomination till the declaration of the results. Our answer is a clear “no”.

121. The essence of any democratic system is the process of free and fair elections and purity in elections to be maintained. The recommendation of the Election Commission and the consequent notification of the first respondent rescinding the election do not require any interference.

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122. The writ petitions are dismissed. However, there shall be no order as to cost. Consequently, the connected writ miscellaneous petitions are closed.

17.04.2019

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking :

asr/kpr/dm

To

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2. Election Commission of India
Nirvachan Sadan, Ashoka Road
New Delhi-110001.

S.MANIKUMAR, J.,
AND
SUBRAMONIUM PRASAD, J.,

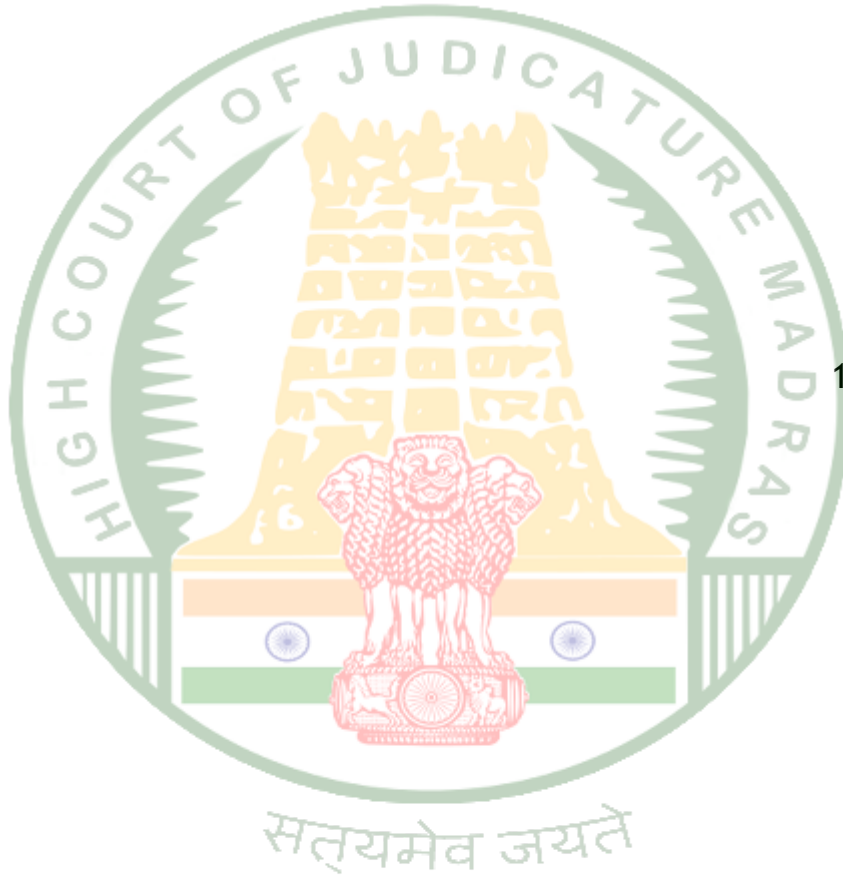
asr

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W.P.Nos.11977 and 11978 of 2019
and W.M.P. Nos.12233 and 12235 of 2019



17.4.2019

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