

# Krishnamoorthy vs Sivakumar on 15 June, 2009

**Author: V. Ramasubramanian**

**Bench: V. Ramasubramanian**

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15-06-2009

CORAM

THE HONOURABLE MR. JUSTICE V. RAMASUBRAMANIAN

CRP(NPD) No.3076 of 2008

And

MP No.1 of 2008

Krishnamoorthy .. Petitioner

Vs.

1.Sivakumar

2.Sivaramalingam

3.Mrs.Rajamani

4.Ramalingam

5.Pandurangan

6.The Returning Officer-cum-  
Commissioner,  
Karamadai Panchayat Union,  
Karamadai,  
Mettupalayam Taluk.

7.The Secretary/Executive Officer,  
Thekkampatti Village Panchayat,  
Thekkampatti Post,  
Seeliyur (via),  
Mettupalayam 641 113.

8.The District Election Officer/District

Collector, Coimbatore.

9.The State Election Commission,  
Chennai, Tamil Nadu.

.. Respondents

This Revision is preferred under Article 227 of the Constitution of India, against the order of the District Judge, Coimbatore.  
For Petitioner : Mr.R.Muthukumaraswamy,  
Senior Counsel

For Respondent-1 : Mr.V.Raghavachari

For Respondent-2 : Mr.Srinath Sridevan

For Respondents-6to9 : Mrs.Shanthi Rakkappan,

O R D E R

The petitioner herein was elected as the President of Thekkampatti Panchayat, Mettupalayam Taluk, Coimbatore District, in the elections held on 13.10.2006. Challenging his election on the sole ground that he filed a false declaration suppressing details of the criminal cases pending trial against him and that therefore his nomination ought to have been rejected by the Returning Officer, the first respondent herein filed Election O.P.No.296 of 2006 on the file of the District Court, Coimbatore. It was allowed by the learned District Judge, declaring the election of the petitioner herein as null and void and directing a fresh election to be conducted. Challenging the said order upsetting his election, the petitioner has come up with the present Civil Revision Petition.

2. I have heard Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner, Mr.V.Raghavachari, learned counsel appearing for the first respondent, Mr.Srinath Sridevan, learned counsel appearing for the second respondent and Mrs.Shanthi Rakkappan, learned Government Advocate appearing for the respondents 6 to 9. It is seen from paragraph-4 of the order of the District Judge (under revision) that the other respondents remained ex parte in the Court below and hence notice to them is dispensed with.

3. In brief, the dispute on hand arises under the following circumstances:-

(a) In exercise of the powers conferred by Articles 243-K and 243 -ZA of the Constitution, read with the relevant provisions of the various State enactments dealing with local bodies, the Tamil Nadu State Election Commission issued a Notification bearing S.O.No.43/2006/TNSEC/EG dated 1.9.2006. It was issued in supersession of an earlier Notification dated 30.7.1998.

(b) As per the Notification dated 1.9.2006, every candidate desiring to contest an election to a local body, was required to furnish full and complete information, in regard to five matters referred to in paragraph 5 of the preamble to the Notification, at the time of filing his nomination paper. The information should be furnished in the form of an affidavit or declaration, as per the format annexed to the Notification.

(c) One of the five matters referred to in paragraph-5 of the preamble, about which a disclosure was made mandatory, was as to whether the candidate was accused, in any pending case, prior to six months of filing of the nomination, of any offence punishable with imprisonment for 2 years or more and in which, charges have been framed or cognizance taken by a Court of Law.

(d) Previously, the petitioner herein was the President of a Cooperative Society. On allegations of criminal breach of trust, falsification of accounts etc., a complaint came to be lodged against him and others in Crime No.10 of 2001. After investigation, the Police laid 8 different charge sheets, in C.C.Nos.3, 4, 5, 6, 7, 8, 9 and 10 of 2004 on the file of the Judicial Magistrate-IV, Coimbatore and the Magistrate took cognizance, much before the election Notification. On the date of the petitioner filing the nomination, these criminal cases were pending trial. It is not in dispute that charges were framed and cognizance taken in those 8 cases, for offences under Sections 120-B, 406, 408 and 477-A, IPC. Therefore there is no dispute that on the date of filing of the nomination, the petitioner was accused of offences punishable with imprisonment for 2 years and more and that his case was covered by the mandatory requirement to furnish information in terms of paragraph-5 of the preamble read with the operative portion of the Notification of the State Election Commission dated 1.9.2006.

(e) The petitioner in fact filed a declaration in the Form prescribed under the Notification, along with his nomination. But in the declaration and the affidavit, the petitioner merely mentioned Crime No.10 of 2001 and did not mention the details of the charge sheets filed against him, which were pending trial.

(f) Therefore, contending that there was no disclosure of full and complete information as required by the Notification and that therefore the nomination of the petitioner was liable for rejection, the first respondent filed the Election Petition and the challenge was upheld by the District Court, Coimbatore. Aggrieved, the petitioner is before this Court.

4. Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner, in his own inimitable style, took me to the genesis of the issue relating to the disclosure of information by candidates contesting elections. After inviting my attention to the first decision of the Delhi High Court in Association for Democratic Reforms case that led to the directions issued by the Supreme Court in Union of India Vs. Association for Democratic Reforms {2002 (5) SCC 294}, the learned Senior Counsel made reference to the Notifications issued by the Election Commission of India, the Amendment brought by the Parliament to the Representation of the People Act and the decision of the Supreme Court in Peoples Union of Civil Liberties Vs. Union of India {2003 (4) SCC 399}. The reference to these decisions and Notifications became necessary, in view of the fact that the Notification dated 1.9.2006 issued by the Tamil Nadu State Election Commission, was only an off shoot of those directions and the law that developed as a result.

5. After referring to those decisions and the Notifications of the Election Commission of India and the Notification of the State Election Commission, Mr.R.Muthukumaraswamy, learned Senior Counsel for the petitioner contended as follows:-

(a) All the 8 criminal cases pending against the petitioner, sprang only out of one First Information Report in Crime No.10 of 2001. Since several Board Members, Officers and servants of the Cooperative Society were jointly accused of committing various offences, a single first information report was filed. But the Police chose to file 8 independent final reports so that the Officers involved, the period of occurrence and the role of each one of them could be independently dealt with. In such circumstances, the petitioner cannot be accused of suppressing any information or filing a false declaration, when he has indicated in declaration, the crime number, out of which all the 8 criminal cases sprouted. Therefore the very conclusion drawn by the Court below that there was suppression of material information or filing of a false declaration, was erroneous.

(b) As per the law declared by the Supreme Court in the above decisions, the Election Commission of India under Article 324 and the State Election Commissions under Article 243-K, have plenary powers to issue directions for the superintendence, control and conduct of elections, but such directions can only cover the areas unoccupied by legislation. The qualifications and disqualifications of candidates contesting for elections are prescribed statutorily, (i) by the Representation of the People Act in respect of elections to State Legislatures and the Parliament and (ii) by the State Legislatures in respect of elections to local bodies. The requirement to furnish full and complete information relating to (i) the involvement in criminal cases (ii) the assets and liabilities and (iii) the educational qualifications of the candidates, are not prescribed by Acts of Parliament or Legislatures but by statutory orders or Notifications issued by ECI or State Election Commissions. However this prescription has received the seal of approval of the Apex Court, to the extent that it seeks to fill up the void in the Statutes. Therefore this requirement to furnish information is not to be elevated to the status of a disqualification prescribed under the Statute. Once it is understood as not amounting to a disqualification, it could be appreciated that the rejection of the nomination cannot follow as a consequence of not furnishing full and complete information. In other words, if a candidate files a declaration in the prescribed format, as required by the Notification dated 1.9.2006, the nomination cannot be rejected, even if the information found in the declaration is not full and complete.

(c) In any event, the grounds for declaring an election to be void are enumerated in Section 259 of the Tamil Nadu Panchayats Act, 1994. The Election Petition filed by the first respondent herein, would fall either under Sub Clause (i) or under Sub Clause (iv) of Clause (d) of sub section (1) of Section 259 of the Act. There is a distinction between the grounds enumerated in Clauses (a), (b) and (c) on the one hand and Clause (d) on the other hand, of Section 259 (1). If the election of a person

is sought to be declared void, on any of the grounds enumerated in Clauses (a), (b) and (c), it is enough if the election petitioner makes out those grounds, without any further need to show that the result of the election was materially affected on account of those grounds. But if the election of a person is assailed on the grounds listed in Clause (d) of Section 259 (1), the election petitioner should prove, apart from the existence of such grounds, that the result of the election has been materially affected thereupon. In this case, which falls under clause (d), there is neither any pleading nor proof to show that the ground for setting aside the election of the petitioner, actually materially affected the result of the election. Therefore, the District Court was not justified in setting aside the election when the essential requirement of Clause (d) was not satisfied, even in the pleadings.

On these grounds, the learned Senior Counsel for the petitioner assailed the order of the Court below.

6. Messers V.Raghavachari and Srinath Sridevan, learned counsel appearing respectively for the respondents 1 and 2, responded to the submissions of the learned Senior Counsel for the petitioner, as follows:-

(a) What is required by the Notification dated 1.9.2006 of the Tamil Nadu State Election Commission was not just a piece of some information which could either be false or incorrect or incomplete. The Notification requires "full and complete information" and hence the mere mentioning of the crime number in the declaration Form accompanying the nomination paper, will not satisfy the requirement of Notification. The petitioner was obliged and duty bound to disclose all the cases in which charges had been framed and cognizance taken and his failure to do so, rendered his nomination liable for rejection, as per the very Notification of the Election Commission.

(b) To say that the furnishing of incorrect or incomplete or false information cannot lead to the rejection of a nomination (as in the case of disqualification), would defeat the very purpose of the notification issued by the Election Commission. In all the cases referred to by the learned Senior Counsel for the petitioner, the Supreme Court considered the requirement to furnish full and complete information as arising out of the fundamental right of a citizen to know the antecedents of a candidate contesting the election. This fundamental right of the citizen, recognised by the Supreme Court, will get defeated by the contention that a person can escape unscathed, after furnishing a false declaration.

(c) The contention with reference to Section 259 (1) (d) is of no relevance when the very nomination of a candidate is liable for rejection, on account of his furnishing false information. The result of the election stood materially affected by the very improper acceptance of the nomination and hence nothing more is required than to show that there was suppression of information or furnishing of false information.

I have carefully considered the rival submissions. I shall now take them up one after another.

FIRST CONTENTION (WHETHER THERE WAS SUPPRESSION):

7. The first contention of the learned Senior Counsel for the petitioner may not detain us for a long time. Both sides agree on three fundamental matters of fact, namely,

(i) that charge sheets were filed against the petitioner and cognizance taken by the Judicial Magistrate-IV, Coimbatore in respect of 8 cases, all arising out of one crime number;

(ii) that the offences charged against the petitioner in all the 8 cases, were punishable with imprisonment for more than 2 years; and

(iii) that in the declaration annexed to the Nomination Form, the petitioner did not disclose the details of all the 8 charge sheets, but mentioned only one crime number, out of which all 8 charge sheets arose.

8. Paragraph-1 of the Order, contained in the Notification of the Election Commission dated 1.9.2006, requires every candidate to furnish "full and complete information with regard to all the 5 matters referred in paragraph-5 of the preamble". The 5 matters referred in paragraph-5 of the preamble to the Notification, are as follows:-

"(1) Whether the candidate is convicted/ acquitted/discharged of any criminal offence in the past; if any, whether he is punished with imprisonment or fine?

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law, if so, the details thereof.

(3) The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependents.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

9. In the light of the clear mandate contained in the Order of the State Election Commission, which forms part of the Notification dated 1.9.2006, the petitioner was obliged to make a disclosure of "full and complete information", of all the above five matters. The mentioning of a mere crime number, without mentioning the factum of filing of 8 charge sheets, which were already taken cognizance of, by the Criminal Court, would therefore certainly amount to non disclosure of "full and complete information".

10. The contention of the petitioner that all the 8 charge sheets stemmed out of a single FIR and that therefore the mentioning of the crime number in the prescribed form, satisfied the requirement of the law, is nothing but an attempt to cover up "suggestio falsi et suppressio veri". One of the earliest cases of suggestio falsi is perhaps that of Yudhishtira of Mahabharatha, who proclaimed in the battle front "Aswathama Hathah Kunjarah." Legend has it that the fall of Dronacharya was not primarily due to the proclamation so made (since he knew his son to be a chiranjeevi), but due to his shock and dismay that even Yudhishtira could utter a lie. It is needless to point out that such suppression of truth and suggestion of falsehood may hold good in war and love, where everything is considered fair. But it cannot be tolerated in law. Therefore, on the first question, I hold that there was no disclosure of full and complete information, by the petitioner in the declaration annexed to the Nomination Form.

11. As a matter of fact, the relevant portion of the Format of the Affidavit/Declaration which is to accompany the Nomination Form, reads as follows:-

"I,.....son/daughter/wife  
of.....aged .....years, resident of  
..... and a candidate at the above election, do hereby  
solemnly affirm and state on oath as under:-

1) I am / I am not accused of any offence(s) punishable with imprisonment for two years or more in a pending case(s) in which a charge(s) has / have been framed or cognizance taken by the Court(s) of competent jurisdiction.

(i) Case/First Information Report No./ Nos.

...

(ii) Police Station(s) ...

District(s) ...

State(s) ...

(iii)Section(s) of the concerned Act(s) and short description of the offence(s) for which the candidate has been charged ...

(iv)Court(s) which framed the charge(s) ...

(v) Date(s) on which the charge(s) was/were framed ...

(vi) Whether all or any of the Proceedings(s) have been stated by any Court(s) of competent Jurisdiction ...

2) I have been / have not been convicted of an offence(s) {other than any offence(s) referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of section 8 of the Representation of the People Act, 1951 (43 of 1951) and the relevant rural / urban Acts} and sentenced to imprisonment for one year or more.

(If the deponent is convicted and punished as aforesaid, he shall furnish the following information)

(i) Case/First Information Report No/Nos. ...

(ii) Police Station(s) ...

District(s)	...
State(s)	...
(iii) Court(s) which punished	...
(iv) Section(s) of the concerned Act(s) and short description of the offence(s) for which the candidate has ever been charged	...
(v) Date(s) on which the sentence(s) was / were pronounced	...
(vi) Details of appeals/revision/stay, etc., filed against the above sentence	...
(vii) Whether the sentence(s) has/have been stayed by any Court(s) of competent jurisdiction	...

3) I have/have not, in the past, been convicted of a criminal offence in the following case(s) and the details are as under (sentenced to imprisonment for less than one year):-

(If the deponent is convicted and punished as aforesaid he shall furnish the following information)

i) FIR No.(s)/Case No.(s) ...

a) Police Station(s) ...

District(s)	...
State(s)	...
ii) Section of the Act and description of the offence for which convicted.	...
iii) Date(s) of conviction	...
iv) Court(s) by which convicted	...
v) Punishment imposed (indicate period of imprisonment awarded and/or quantum of fine imposed)	...
vi) Details of appeals/revision/stay etc., filed against above conviction(s)	...
vii) Whether the sentences has/have been stayed by any Court(s) of competent	



jurisdiction

...

4) That I have in the past been discharged/acquitted in the following cases:-

i) FIR No./Case No. ...

a) Police Station(s) ...

b) District(s)

...

c) State(s)

...

ii) Section of the Act and description of  
the offence with which charged

...

iii) Name of the Court by which acquitted/  
discharged

...

iv) Date of acquittal/discharge

...

v) Details of appeal(s)/application(s) for  
revision/review, if any, filed against  
above acquittal/discharge

...

12. The above Format of the declaration also contains a column for verification at the end, which reads as follows:-

Verification I, the deponent above named, do hereby verify and declare that the contents of this affidavit/declaration are true and correct to the best of my knowledge and belief; and no part of it is false and nothing material has been concealed therefrom.

Verified at ..... this the ..... day of ..... 2006.

Deponent

Place:

Verified before me

Date:

(Signature of verifying authority with seal)

-----

Note: 1. The columns in this Form which are not applicable to the deponent may be struck off.

2. In the case of Election of Ward Member to Village Panchayat, the declaration to be furnished by candidate along with nomination paper before the Returning Officer."

13. The Notification also says that the above declaration should be in the form of an affidavit duly sworn before a Magistrate of First Class or a Notary Public or a Commissioner of Oaths, appointed by the High Court of the State or before an Officer competent for swearing an affidavit. Thus, an element of sanctity or solemnity is attached to the declaration, by the very fact that it is required to be in the form of an

affidavit sworn and attested in a particular manner. The last part of the verification contains a declaration that "nothing material has been concealed". Viewed from this perspective, it is clear that what was disclosed by the petitioner herein is not "full and complete information". The declaration of the petitioner actually fell far short of the requirement.

14. Since the very requirement to furnish information, is approved by the Apex court as forming part of the fundamental right of the citizen to know, there is a corresponding obligation on the part of the candidate contesting the elections to make a full and complete disclosure and not to provide a cross word puzzle for the voters and to leave them to make their own investigation to find out the whole truth. A mere registration of a FIR may not mean much to anyone. But the fact that a charge sheet has been filed and taken cognisance by a Magistrate is a significant factor, which may weigh with a voter exercising his choice consciously. Therefore the failure to disclose the same cannot be taken to be immaterial and hence first question is answered against the petitioner.

#### SECOND CONTENTION (CONSEQUENCE OF FILING A FALSE OR INCOMPLETE DECLARATION/AFFIDAVIT):

15. The second contention of the petitioner is that once a declaration is filed by a candidate, he satisfies the requirement of law and that the Returning Officer has no power to reject the nomination on the ground that the particulars contained therein are either false or not complete. According to the petitioner, the only course of action to be followed in such cases is to display in the notice board and disseminate any contra information furnished by the rival candidates.

16. In order to understand the scope of the second contention raised by the petitioner, it is necessary to trace the history and development of the law relating to disclosures, to be made by persons contesting for elections.

17. In the year 1999, the Association for Democratic Reforms filed a Writ Petition before the Delhi High Court, seeking a direction to the Union of India to implement the recommendations made by the Law Commission in its 170th Report and to make necessary changes under Rule 4 of Conduct of Election Rules, 1961. One of the recommendations made by the Law Commission was for debarring a candidate from contesting an election, if charges have been framed against him by a Court in respect of certain offences and the necessity for the candidates to furnish details of the criminal cases pending against them. Apart from the recommendations of the Law Commission, the Association for Democratic Reforms (hereinafter referred to as "ADR" for the sake of brevity) also relied upon the Report of the Vohra Committee, of the Government of India, Ministry of Home Affairs, which pointed out the nexus between politicians and those accused of criminal offences. In the light of the Reports of the Law Commission and the Vohra Committee, ADR sought, in the writ petition

filed before the Delhi High Court, a direction to the Election Commission, to make it mandatory for every candidate to provide information, by amending Forms 2-A to 2-E prescribed under the Conduct of Election Rules, 1961.

18. Though the Delhi High Court held, by its judgment dated 2.11.2000, that it is the function of the Parliament and not that of the Court, to make necessary amendments in the Representation of the People Act, 1951, the Delhi High Court nevertheless issued a direction to the Election Commission to secure to the voters, the following information, from the contesting candidates:-

- (i) Whether the candidate is accused of any offence punishable with imprisonment and if so, the details;
- (ii) The assets possessed by a candidate, his or her spouse and dependent relations;
- (iii) Facts giving insight into the candidate's competence, capacity and suitability for acting as an elected member, including details of the educational qualifications;
- (iv) Information considered necessary by the Election Commission for judging the capacity and capability of the political party fielding the candidate for election.

19. The above direction issued by the Delhi High Court was on the basis that a citizen of the country, whether an elector or not, has a fundamental right to receive information regarding the criminal activities of a candidate. The High Court took the view that for making a right choice, it is essential not to keep the antecedents of the candidate in the dark, as it will not be in the interest of democracy and the well being of the country.

20. The judgment of the Delhi High Court was taken on appeal to the Supreme Court by the Union of India and it was taken up along with a Writ Petition filed by the People's Union of Civil Liberties (referred to as "PUCL" in short), under Article 32 seeking certain similar directions.

21. After hearing elaborate arguments, the Supreme Court framed two questions, as arising for consideration in the matter and they are as follows:-

- (i) Whether the Election Commission is empowered to issue directions, as ordered by the High Court?
- (ii) Whether a voter-a citizen of the country has a right to get relevant information, such as the assets, qualifications and involvement in offences, of candidates, for being educated and informed for judging the suitability of a candidate contesting the election as MP or MLA?

22. After referring to various decisions, the Supreme Court summed up the legal position in paragraph-46 of its decision. The contents of paragraph-46 of the decision can be summarised in

brief as follows:-

- (i) The jurisdiction of the Election Commission is wide enough to include all powers necessary for the smooth conduct of the elections, including the entire process of election consisting of several stages and embracing many steps;
- (ii) The limitation on the plenary character of power is when Parliament or State Legislature has made a valid law. In case the law is silent, Article 324 is a reservoir of power. It is a residuary power and the phrase "superintendence, direction and control" appearing in Article 324 (1) should be construed liberally empowering the Election Commission to issue orders;
- (iii) Fair election contemplates disclosure by the candidate of his past, so as to give a proper choice to the candidate according to his thinking and opinion. Even if this stipulation is not very much effective for breaking a vicious circle, it will be a step-in-aid for the voters not to elect law breakers as law makers;
- (iv) To maintain the purity of elections and to bring about transparency, the Commission can ask details of the expenditure incurred by political parties;
- (v) The right to get information in democracy is recognised throughout as a natural right flowing from the concept of democracy;
- (vi) If the field meant for Legislature and Executive is left unoccupied, detrimental to public interest, the Supreme Court would have ample jurisdiction under Article 32 read with 141 and 142 of the Constitution;
- (vii) Voters' right to know the antecedents including the criminal past of the candidate contesting in the election, is much more fundamental and basic for the survival of democracy.

23. I have just given above, the gist of the legal position summarised by the Supreme Court in paragraph-46 of its judgment, without reproducing the same in entirety. However, what is stated in paragraph-46.4 is of particular importance to the issue on hand and hence it is reproduced as follows:-

"In a democracy, the electoral process has a strategic role. The little man of this country would have basic elementary right to know full particulars of a candidate who is to represent him in Parliament where laws to bind his liberty and property may be enacted."

24. After summarising the law in paragraph-46, the Supreme Court issued certain directions in paragraph-48, which read as follows:-

"48. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/ acquitted/discharged of any criminal offence in the past if any, whether he is punished with imprisonment or fine.

(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.

(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.

(4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or government dues.

(5) The educational qualifications of the candidate."

25. Following the above decision, the Election Commission of India decided to amend Forms 2-A to 2-E appended to the Conduct of Election Rules, 1961 and approached the Government of India seeking suitable Amendments. But the ECI was informed by the Government that steps were being taken in consultation with all political parties. Therefore finding that the time limit fixed by the Supreme Court in the above case was running out, the ECI issued an order bearing No.3/ER/2002/JS-II/Vol-III dated 28.6.2002 under Article 324 of the Constitution. The operative portion of the Order is in paragraph-14 and it reads as follows:-

"14. Now, therefore, the Election Commission, in pursuance of the above referred order dated 2nd May, 2002 of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control inter alia, of conduct of elections to Parliament and State Legislatures, hereby direct as follows:-

"(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a Council, shall furnish full and complete information in regard to all the five matters, specified by the Hon'ble Supreme Court and quoted in para-5 above, in an affidavit, the format whereof is annexed hereto as Annexure-1 to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the Returning Officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under Section 36 (2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character.

(5) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his Office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(6) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above."

26. However, almost simultaneously with the issue of the above order of the ECI, the President of India promulgated an Ordinance known as "Representation of the People (Amendment) Ordinance 2002". The validity of the Ordinance was challenged by the People's Union of Civil Liberties and a few others under Article 32. During the pendency of the proceedings, the Ordinance was repealed and the Representation of the People (Third Amendment) Act, 2002 was notified with retrospective effect. By the Amendment, Sections 33-A and 33-B were inserted to the Act and they read as follows:-

"33-A. Right to information. -- (1) A candidate shall, apart from any information which he is required to furnish, under this Act or the rules made thereunder, in his nomination paper delivered under sub-section (1) of Section 33, also furnish the information as to whether --

(i) he is accused of any offence punishable with imprisonment for two years or more in a pending case in which a charge has been framed by the Court of competent jurisdiction;

(ii) he has been convicted of an offence other than any offence referred to in sub-section (1) or sub-section (2), or covered in sub-section (3), of Section 8 and sentenced to imprisonment for one year or more.

(2) The candidate or his proposer, as the case may be, shall, at the time of delivering to the Returning Officer the nomination paper under sub-section (1) of Section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1).

(3) The Returning Officer shall, as soon as may be after the furnishing of information to him under sub-section (1), display the aforesaid information by affixing a copy of the affidavit, delivered under sub-section (2), at a conspicuous place at his Office for the information of the electors relating to a constituency for which the nomination paper is delivered.

33-B. Candidate to furnish information only under the Act and the rules .-- Notwithstanding anything contained in any judgment, decree or order of any Court or any direction, order or any other instruction issued by the Election Commission, no candidate shall be liable to disclose or furnish any such information, in respect of his election, which is not required to be disclosed or furnished under this Act or the rules made thereunder."

Since the ordinance under challenge was replaced by the Act, during the pendency of the proceedings, the pleadings and the prayer in the writ petitions were amended so as to confine the challenge to Section 33-B.

27. Ultimately, a three Member Bench of the Supreme Court, by separate judgments in Peoples Union of Civil Liberties Vs. Union of India {2003 (4) SCC 399}, held Section 33-B of the Representation of the People Act, 1951, brought forth by the Third Amendment Act, 2002, as unconstitutional. While doing so, Hon'ble Justice M.B.Shah, as he then was, took note of the Order issued by the Election Commission of India dated 28.6.2002 and held in paragraphs-72 and 73 of the judgment, as follows:-

"72. Before parting with the case, there is one aspect which is to be dealt with. After the judgment in Association for Democratic Reforms case {(2002) 5 SCC 294}, the Election Commission gave certain directions in implementation of the judgment by

its Order No.3/ER/2002/JS-II/Vol-III, dated 28.6.2002. In the course of arguments, learned Solicitor-General as well as learned Senior Counsel appearing for the intervenor (BJP) pointed out that Direction 4 is beyond the competence of the Election Commission and moreover, it is not necessary to give effect to the judgment of this Court. The said direction reads as follows:

"Furnishing of any wrong or incomplete information or suppression of any material information by any candidate in or from the said affidavit may also result in the rejection of his nomination paper where such wrong or incomplete information or suppression of material information is considered by the Returning Officer to be a defect of substantial character, apart from inviting penal consequences under the Indian Penal Code for furnishing wrong information to a public servant or suppression of material facts before him:

Provided that only such information shall be considered to be wrong or incomplete or amounting to suppression of material information as is capable of easy verification by the Returning Officer by reference to documentary proof adduced before him in the summary inquiry conducted by him at the time of scrutiny of nominations under Section 36 (2) of the Representation of the People Act, 1951, and only the information so verified shall be taken into account by him for further consideration of the question whether the same is a defect of substantial character."

73. While no exception can be taken to the insistence of affidavit with regard to the matters specified in the judgment in Association for Democratic Reforms case {(2002) 5 SCC 294}, the direction to reject the nomination paper for furnishing wrong information or concealing material information and providing for a summary enquiry at the time of scrutiny of the nominations, cannot be justified. In the case of assets and liabilities, it would be very difficult for the Returning Officer to consider the truth or otherwise of the details furnished with reference to the "documentary proof". Very often, in such matters the documentary proof may not be clinching and the candidate concerned may be handicapped to rebut the allegation then and there. If sufficient time is provided, he may be able to produce proof to contradict the objector's version. It is true that the aforesaid directions issued by the Election Commission are not under challenge but at the same time prima facie it appears that the Election Commission is required to revise its instructions in the light of directions issued in Association for Democratic Reforms case {(2002) 5 SCC 294} and as provided under the Representation of the People Act and its Third Amendment."

28. In their separate judgments, Hon'ble Justices P.Venkatarama Reddy and D.M.Dharmadhikari, did not touch upon the Order of the ECI dated 28.6.2002. The conclusions reached by M.B.Shah,J., were summarised in para 78-A to E. The conclusions arrived at by P.V.Reddy,J., were summarised in para 123(1) to (9). D.M.Dharmadhikari,J., in his opinion in para131, agreed with all the conclusions of M.B.Shah,J., in para78-A to E and agreed with the conclusions of P.V.Reddy,J., in para123(1),(2),(4),(5),(6),(7) and (9) and disagreed with the conclusions in para123(3) and (8). Therefore, it is to be taken that the views expressed by Hon'ble Justice M.B.Shah in para73 with regard to the direction contained in para 14.4 of the Order of the Election Commission of India



dated 28.6.2002, constituted the majority view.

29. As seen from the concluding part of paragraph-73 of the judgment of Hon'ble Justice M.B.Shah, extracted above, the Election Commission of India was directed to revise its instructions, in the light of the directions contained in the ADR case and in accordance with the Third Amendment to the Act. In tune with the concluding part of paragraph-73, Hon'ble Justice P.V.Reddy also held in paragraph-123 (9) that the Election Commission of India has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in the judgment. Paragraph-123 (9) requires reproduction, in order to understand what was laid down in paragraph-73. Hence paragraph-123 (9) is reproduced as follows:-

"(9) The Election Commission has to issue revised instructions to ensure implementation of Section 33-A subject to what is laid down in this judgment regarding the cases in which cognizance has been taken. The Election Commission's orders related to disclosure of assets and liabilities will still hold good and continue to be operative. However, Direction 4 of para-14 insofar as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced."

As stated above, in paragraph-131 of his separate judgment, Hon'ble Justice D.M.Dharmadhikari, concurred with the conclusions of Hon'ble Justice P.V.Reddy in paragraph-123 (9). Therefore, what was laid down in paragraph-73 by Hon'ble Justice M.B.Shah, read with the conclusion reached by Hon'ble Justice P.V.Reddy, in paragraph-123 (9) and concurred with, by Hon'ble Justice D.M.Dharmadhikari, in paragraph-131, should be taken to be the law on the point.

30. In pursuance of the aforesaid decision in PUCL case, the Election Commission of India, in fact, issued a revised Order bearing No. 3/ER/2003/JS-II dated 27.3.2003. In paragraph-13 of the Order, the Election Commission of India, noted the directions issued in the judgment of Hon'ble Justice P.V.Reddy in paragraph-123 (9) of the judgment and concurred by Hon'ble Justice D.M.Dharmadhikari. After noting those directions, the ECI issued revised instructions in paragraph-16 of its Order dated 27.3.2003. In paragraph-17 of the Order, the ECI also issued a clarification. Paragraphs-16 and 17 of the Order of ECI dated 27.3.2003, read as follows:-

"16. Now, therefore, the Election Commission, in pursuance of the above referred order dated 13th March, 2003, of the Hon'ble Supreme Court and in exercise of the powers, conferred on it by Article 324 of the Constitution, of superintendence, direction and control, inter alia, of conduct of elections to Parliament and State Legislatures, hereby issues, in supersession of its earlier order dated 28th June, 2002, its revised directions as follows:-

(1) Every candidate at the time of filing his nomination paper for any election to the Council of States, House of the People, Legislative Assembly of a State or the Legislative Council of a State having such a Council, shall furnish full and complete

information in regard to the matters specified by the Hon'ble Supreme Court and quoted in paras-13 and 14 above, in an affidavit, the format whereof is annexed hereto as Annexure-I to this order.

(2) The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State concerned.

(3) Non-furnishing of the affidavit by any candidate shall be considered to be violation of the order of the Hon'ble Supreme Court and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of scrutiny of nominations for such non-furnishing of the affidavit.

(4) The information so furnished by each candidate in the aforesaid affidavit shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his Office and also by making the copies thereof available freely and liberally to all other candidates and the representatives of the print and electronic media.

(5) If any rival candidate furnishes information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

17. For the removal of doubt, it is hereby clarified that the earlier direction contained in para-14 (4) of the earlier order dated 28th June, 2002, in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13th March, 2003 of the Apex Court. It is further clarified that apart from the affidavit in Annexure-I hereto referred to in para-16 (1) above, the candidate shall have to comply with all the other requirements as spelt out in the Representation of the People Act, 1951, as amended by the Representation of the People (Third Amendment) Act, 2002, and the Conduct of Election Rules, 1961, as amended by the Conduct of Elections (Amendment) Rules, 2002."

31. Thus, paragraph-14 (4) of the previous Notification of the ECI dated 28.6.2002, enabling the rejection of nomination of a candidate for furnishing wrong or incomplete information or suppression of any material information, was deleted by the subsequent Notification dated 27.3.2003. Consequently, the proviso under paragraph-14(4) of the previous notification, by which the Returning Officer was empowered to conduct a summary enquiry, also stood deleted along with the main paragraph-14(4). In other words, by the revised Order of the ECI dated 27.3.2003, the power of the Returning Officer to reject a nomination on the ground of furnishing of wrong or incomplete information as well as his power to conduct a summary enquiry, were both removed, by the Election Commission of India. As seen from paragraphs-13 and 17 of the revised Order dated 27.3.2003, the decision to remove paragraph-14(4) and the proviso thereto (contained in the previous Order dated 28.6.2002), was a conscious decision taken by the Election Commission, on an

understanding of the law laid down by the Supreme Court in PUCL case.

32. The Notification dated 1.9.2006, issued by the Tamil Nadu State Election Commission, in respect of the elections to local bodies, was nothing but a reproduction of the revised instructions contained in the Order of the Election Commission of India dated 27.3.2003. Paragraphs-1 to 5 of the operative part of the Order dated 1.9.2006 of the Tamil Nadu State Election Commission, is a reproduction, verbatim, of the directions 1 to 5 contained in paragraph-16 of the revised Order of the Election Commission of India dated 27.3.2003. Paragraph-6 of the operative part of the Order dated 1.9.2006 of the State Election Commission, is a reproduction of paragraph-19 of the Order of ECI dated 27.3.2003.

33. Paragraphs-1 to 6 of the operative portion of the Order of the State Election Commission, read as follows:-

"1. Every candidate at the time of filing his nomination paper for any election or casual election for electing a Member or Members or Chairperson or Chairpersons of any Panchayat or Municipality, shall furnish full and complete information in regard to all the five matters referred in paragraph-5 of the preamble, in an Affidavit or Declaration, as the case may be, in the format annexed hereto:-

Provided that having regard to the difficulties in swearing an affidavit in a village, a candidate at the election to a Ward Member of Village Panchayat under the Tamil Nadu Panchayats Act, 1994 shall, instead of filing an Affidavit, file before the Returning Officer a declaration in the same format annexed to this order:

2. The said affidavit by each candidate shall be duly sworn before a Magistrate of the First Class or a Notary Public or a Commissioner of Oaths appointed by the High Court of the State or before an Officer competent for swearing an affidavit.

3. Non-furnishing of the affidavit or declaration, as the case may be, by any candidate shall be considered to be violation of this order and the nomination of the candidate concerned shall be liable for rejection by the Returning Officer at the time of scrutiny of nomination for such non-furnishing of the affidavit/declaration, as the case may be.

4. The information so furnished by each candidate in the aforesaid affidavit or declaration as the case may be, shall be disseminated by the respective Returning Officers by displaying a copy of the affidavit on the notice board of his Office and also by making the copies thereof available to all other candidates on demand and to the representatives of the print and electronic media.

5. If any rival candidate furnished information to the contrary, by means of a duly sworn affidavit, then such affidavit of the rival candidate shall also be disseminated along with the affidavit of the candidate concerned in the manner directed above.

6. All the Returning Officers shall ensure that the copies of the affidavit/declaration, prescribed herein by the Tamil Nadu State Election Commission in the Annexure shall be delivered to the candidates along with the forms of nomination papers as part of the nomination papers."

34. In view of the above genesis of the law relating to disclosure of information concerning the antecedents, assets/liabilities and educational qualifications of candidates and in the light of the observations of the Supreme Court in paragraph-73 of its decision in PUCL case and the resultant deletion of paragraph-14(4) of the ECI Notification, it was contended by Mr.R.Muthukumaraswamy, learned Senior Counsel for the petitioner that even if the petitioner was held guilty of furnishing incomplete information or suppression of full information, the Returning Officer could not have rejected his nomination. It is his contention that by virtue of para-3 of the Notification of the Election Commission dated 1.9.2006, the "non-furnishing of the affidavit or declaration" alone may result in the rejection of the nomination and not the "furnishing of wrong or incomplete information or suppression of information." According to the learned Senior Counsel, the only consequence of furnishing wrong or incomplete information, as provided in para-5 of the same Notification, was that a rival candidate is entitled to furnish information to the contrary and the Returning Officer will be obliged to display both sets of information, on the notice board of the Office and disseminate the information to all the other candidates on demand and to the representatives of the print and electronic media. Thus according to the learned Senior Counsel for the petitioner, the act to be performed as well as the consequence of its non performance are indicated in the Notification of the Election Commission and hence this Court cannot improve upon the Notification and impose one more obligation and stipulate a consequence for its non performance.

35. In response to the above contention, Messers V.Raghavachari and Srinath Sridevan contended that a wrong/false/incomplete information is actually no information in the eye of law. To say, that a candidate has fulfilled the requirement to file an affidavit/declaration, even if such affidavit contains a false or incomplete information, would militate against the very object of the directions issued by the Supreme Court in ADR case and the Notification issued by the Election Commission pursuant thereto. Therefore the learned counsel for respondents 1 and 2 contended that if a person files an affidavit containing false or incomplete information, such affidavit made on oath, is no affidavit in the eye of law and the consequences of filing such an affidavit would be the same as the consequences of not filing an affidavit at all. In support of this contention, the learned counsel for the respondents 1 and 2 relied upon the decision of the Supreme Court in Srikrishna Private Ltd vs. ITO, Calcutta {1996 (9) SCC 534}, wherein the Supreme Court held that the obligation of an assessee to disclose the material facts, is not a mere disclosure, but a disclosure which is full and true and that a false disclosure is not a true disclosure.

36. In order to drive home their above contentions, the learned counsel for respondents 1 and 2 also relied upon some of the observations contained in the decision in ADR case. In paragraph-34 of ADR case, the Supreme Court emphasised that the members of a democratic society should be sufficiently informed. In paragraph-46.4, the Supreme Court said that "the little man of this country would have basic elementary right to know full particulars of a candidate".

37. In PUCL case, the directions issued in ADR case were fully approved. In paragraph-78(C) of the decision in PUCL case, Hon'ble Justice M.B.Shah, pointed out that the judgment in ADR case had attained finality. Though in his separate but concurring judgment, Hon'ble Justice P.V.Reddy, also held in paragraph-92 that the decision in ADR has attained finality, the learned Judge concluded in paragraph-123 (3) that the directives issued in ADR case would operate only "pro tempore" till the law is made by Legislature. However, Hon'ble Justice D.M.Dharmadhikari, differed from the conclusion of Hon'ble Justice P.V.Reddy in paragraph-123 (3), as seen from his opinion in paragraph-132. In paragraph-130, Hon' ble Justice D.M.Dharmadhikari held that the law as it stood after the Third Amendment Act, 2002, was deficient in ensuring free and fair elections and that therefore the Court had to strike down Section 33-B "so as to revive the law declared in ADR case".

38. Pointing out to the observations in PUCL case, the learned counsel for respondents 1 and 2 contended that the law laid down in ADR case holds the field and that therefore the Notification of the Election Commission should be interpreted to be in tune with the law so declared in ADR case. According to the learned counsel for the respondents 1 and 2, what was contemplated in ADR case was a full disclosure and not a partial disclosure. The learned counsel relied upon the opinion expressed in paragraph-38 of the judgment in ADR case, which reads as follows:-

"38. If right to telecast and right to view sport games and the right to impart such information is considered to be part and parcel of Article 19(1)(a), we fail to understand why the right of a citizen/voter a little man to know about the antecedents of his candidate cannot be held to be a fundamental right under Article 19(1)(a). In our view, democracy cannot survive without free and fair election, without free and fairly informed voters. Votes cast by uninformed voters in favour of X or Y candidate would be meaningless. As stated in the aforesaid passage, one-sided information, disinformation, misinformation and non-information, all equally create an uninformed citizenry which makes democracy a farce. Therefore, casting of a vote by a misinformed and non-informed voter or a voter having one-sided information only is bound to affect the democracy seriously. Freedom of speech and expression includes right to impart and receive information which includes freedom to hold opinions. Entertainment is implied in freedom of "speech and expression" and there is no reason to hold that freedom of speech and expression would not cover right to get material information with regard to a candidate who is contesting election for a post which is of utmost importance in the democracy."

39. Contending that the Notification of the Election Commission should be given a purposive interpretation, Mr.V.Raghavachari, learned counsel for the first respondent relied upon a decision of the Delhi High Court in Sh. Jaspal Singh Vs. Sh. O.P. Babbar {149 (2008) DLT 205}. In that case, the nomination of a candidate who desired to contest for the Delhi Legislative Assembly, was rejected by the Returning Officer in terms of Section 36 of the Representation of the People Act, 1951, on the ground (a) that the affidavit was incomplete and not attested on all pages and verification not attested and (b) that in the affidavit in Form 26, the candidate did not declare whether he is or is not convicted of an offence. An Election Petition was filed by a candidate who contested the election, seeking to declare the election of the returned candidate as void, on the

ground stated in Section 100(1)(c) of the Representation of the People Act, 1951, namely that the nomination of the other candidate was improperly rejected. All the parties before the Delhi High Court, were in agreement on the questions of fact viz., that the affidavit filed by the candidate whose nomination was rejected, was not in accordance with the requirements of the Rules and the Form prescribed under Rule 4A of the Conduct of Elections Rules 1961. However it was contended before the Delhi High Court that the power to reject a nomination is confined to the grounds stated in Clauses (a), (b) and (c) of sub section (2) of Section 36 of the Representation of the People Act, 1951, and that the non compliance of Section 33A of the Act or Rule 4A of the Conduct of Elections Rules, 1961 was not made a ground to reject the nomination, under Section 36 (2). The gist of the arguments made by the counsel for the election petitioner, was extracted by the Delhi High Court in paragraph-9 of its judgment, which reads as follows:-

"9. Conceding that the affidavit filed by S.Ranjit Singh was not as per the stipulated Form No.26 and hence not in compliance with Rule 4A of the Conduct of Elections Rules 1961, consequently Section 33A of the R.P. Act, 1951 was not complied with, Sh. N. Safaya learned counsel for the petitioners submitted that the right to reject a nomination paper vested in the Returning Officer under Section 36 of the R.P. Act, 1951 and that a nomination paper could be rejected only on the grounds stipulated in Clause (a), (b) and (c) of Sub-section (2) of Section 36 of the R.P. Act 1951. Counsel submitted that non compliance of Section 33A of the R.P. Act, 1951 or of Rule 4A of the Conduct of Elections Rules 1961 was not a ground available under any of the clauses of sub section (2) of Section 36 of the R.P. Act, 1951 to reject a nomination paper. Counsel submitted that the penalty prescribed for furnishing incorrect, concealing or failure to furnish information relating to Section 33A was as stipulated under Section 125A of the R.P. Act, 1951. It was urged that it is settled law that where consequence of violation of a statutory provision are enshrined in the statute, for violation of the statute, only consequences which can flow are the ones which are stipulated as a consequence in the statute and no more."

40. As I have done above, the Delhi High Court also traced the evolution of the law relating to disclosures. After taking note of paragraph-14 (4) and the proviso thereunder, of the earlier Notification of the ECI dated 28.6.2002, the Delhi High Court considered the effect of paragraph-73 of the decision of the Apex Court in PUCL case, with reference to the rules of interpretation, from paragraph-31 onwards. Ultimately, the Delhi High Court held in paragraphs-43 to 53 as follows:-

"43. Keeping in view the legislative history leading to the incorporation of Section 33A of the R.P. Act, 1951, Rule 4A of the Conduct of Elections Rules 1961 and Form 26 to the said Rules, it is apparent that the declaration required (with contents) under Section 33A is mandatory as said information has been held to be the right to know of each voter. Indeed in the decision reported as UIO Vs. Association of Democratic Reforms and Anr., MANU/ SC/ 0394/ 2002, it was held that right to get information in democracy is recognized all throughout and it is natural right flowing from the concept of democracy. It was further held that Article 19(1)(a) of the Constitution provides for freedom of speech and expression and that voter's speech or expression

in case of election would include casting of votes, that is to say, voters speak or express by casting votes and for this purpose the information about the candidates is a must.

44.. The use of the word "shall" in Section 33A of the R.P. Act, 1951, also guides to the mandatory character of the legislative provision.

45. To construe Section 33A of the R.P. Act, 1951, in any other manner would run contrary to the ratio of the decision of the Hon'ble Supreme Court in decision reported as UOI Vs. Association of Democratic Reforms and Anr., MANU/SC/0394/2002.

46. It is true that it was desirable to amend Section 36 of the R.P. Act, 1951, when Section 33A was inserted in the statute book and expressly provide for a rejection of a nomination paper which did not comply with Section 33A. But the problem at hand can be looked at from another angle.

47. A nomination paper is a nomination paper properly so called when it complies with the requirements of Section 33 and 33A of the R.P. Act, 1951. A nomination paper not in compliance thereof is a nomination paper improperly so called. It is no nomination paper in the eyes of law. Right to be a candidate at an election commences by filing a nomination paper, which has to be as per law.

48. Where a statute prescribes the manner in which an act can be performed, the act can be performed in the manner prescribed and in no other way.

49. Where the proforma of an application is statutorily prescribed and requirement of attachments are also statutorily prescribed and are mandatory, the application has to be as per the proforma and necessary attachments have to be annexed, failing which the application is no application in the eyes of the law.

50. In exercise of it's plenary power of superintendence, control and regulation of elections under Article 324 of the Constitution of India, the Election Commission issued the directions to the Returning Officers vide Order No.3/ER/2002/JS-II/Vol.III dated 28.6.2002. The order mandates to the Returning Officers to reject nomination papers not complying with the said directive. Cognizance of the directive was taken by the Hon'ble Supreme Court in the decision reported as MANU/SC/0234/2003 People Union for Civil Liberties Vs. UOI. The Hon'ble Supreme Court categorically held that no exception can be taken to the insistence of affidavit with regard to the matter specified in the judgment in Association for Democratic Reforms case.

51. Thus purposively read, it has to be held that non compliance with Section 33A of the R.P. Act 1951 and Rules 4A of the Conduct of Elections Rules 1961 renders a

nomination paper a nomination paper improperly so called and hence liable to be rejected.

52. That filing false or incomplete affidavit of disclosure is made punishable under Section 125A of the R.P. Act 1951 is also a pointer to it's mandatory character.

53. The argument that the only penalty of not complying with Section 33A of the R.P. Act, 1951 is as prescribed under Section 125A of the R.P. Act, 1951 holds no water as Section 125A operates in the post electoral process whereas issue of accepting or rejecting a nomination paper has to be dealt with in relation to the power to be exercised when a nomination paper is received."

41. Relying upon the above passages from the decision of the Delhi High Court, it was contended by the learned counsel for the respondents 1 and 2 that a candidate cannot get away by filing a false or incomplete affidavit, as it would violate the fundamental right of the voters to get correct information, on the foundation of which, this entire edifice has been built.

42. With reference to the observations made by the Supreme Court in paragraph-73 of its decision in PUCL case, it was contended by the learned counsel for the respondents 1 and 2 that the same were made with particular reference to the power of the Returning Officer to conduct a summary enquiry and not with reference to the essential requirement to file an affidavit disclosing full and complete material information. It must be recapitulated that paragraph-14(4) of the ECI Notification dated 28.6.2002, made a nomination paper liable for rejection, if it contains wrong or false information. The proviso thereunder enabled the Returning Officer to conduct a summary enquiry in terms of Section 36 (2) of the Representation of the People Act, 1951, if the information furnished in the affidavit is considered to be wrong or incomplete or amounting to suppression of material information, as is capable of easy verification. Therefore the learned counsel for the respondents 1 and 2 contended that the observations of the Supreme Court in paragraph-73 in PUCL case, were to be taken only as relating to the enquiry and not to be taken as relating to the liability of the nomination paper for rejection on the ground of wrong or incomplete information.

43. The learned counsel for the respondents 1 and 2 also relied upon the decisions of the Supreme Court in S.P.Chengalvaraya Naidu Vs. Jagannath {(1994) 1 SCC 1} and A.V.Papayya Sastri Vs. Government of A.P. {AIR 2007 SC 1546} and contended that fraud vitiates all solemn acts and that a false affidavit filed by a candidate amounted to fraud perpetrated by the candidate. They also relied upon the decision of a Division Bench of the Bombay High Court in Parinda Milind Keer Vs. Indian Oil Corporation {2008 (1) Bom. C.R. 182} and the decision of a Division Bench of the Delhi High Court in Mr.Kuldip Gandotra Vs. Union of India {136 (2007) DLT 44}, in support of their contention that a person who filed a false affidavit cannot get away by contending that he had complied with the requirement of the letter of the law, though not the spirit of the law. They also invited my attention to the evidence of the Returning Officer, examined as RW.2, wherein he admitted that the affidavit of the petitioner accompanying the nomination Form, was not displayed in the notice board of his Office. Therefore the learned counsel contended that the whole exercise for which the Election Notification prescribed an affidavit to be filed, was made futile, by the petitioner



not furnishing "full and complete information" and the Returning Officer not displaying the affidavit in the notice board, for the purpose of disseminating information among the voters.

44. However, Mr.R.Muthukumaraswamy, learned Senior Counsel appearing for the petitioner countered the aforesaid arguments by submitting that the law as it stands today, imposes only an obligation to file an affidavit in the form prescribed. The Notification of the State Election Commission also provides for dissemination of information among the electors, if any information contrary to what was supplied in the affidavit of the candidate, was brought to its notice by the rival candidates. Paragraph-73 of the PUCL case has been understood by the Election Commission of India itself in a particular manner and the ECI issued a revised Notification dated 27.3.2003, deleting entire paragraph-14(4) of the previous notification, along with the proviso. A candidate contesting an election cannot be imposed with an obligation other than what is imposed (i) under the Act or (ii) under the Rules or (iii) under the Orders/ Notifications issued by the Election Commission. When the Election Commission has consciously deleted paragraph-14(4) of its Notification dated 28.6.2002, after the decision of the Supreme Court in PUCL case (with particular reference to paragraph-73), it is not possible to reintroduce the same by way of judicial interpretation. In other words, the contention of the learned Senior Counsel for the petitioner is that today the Court is called upon to see if the nomination of the petitioner was liable for rejection, only in terms of the Notification of the State Election Commission dated 1.9.2006 (which is in pari materia with the Notification of ECI dated 27.3.2003). By giving an interpretation to the Notification in a particular manner, the Court should not bring back to life, what was specifically undone by the Election Commission, by deleting paragraph-14(4) of the previous Notification. This is especially so while interpreting laws relating to elections, as these laws have to be understood in the backdrop of the democratic process that they seek to serve.

45. I have carefully considered the rival contentions. The learned counsel on both sides agree that there is certainly a mandatory requirement on the part of a candidate contesting the election, to file an affidavit/ declaration duly verified and attested, in the manner prescribed by the notification issued by the State Election Commission. The learned counsel on both sides also agree that a total failure on the part of a candidate to file such an affidavit/declaration, makes his nomination liable for rejection. But the point on which the learned counsel on both sides differ, is with regard to the consequences of a candidate filing an affidavit either containing a false or incorrect information or not containing full and complete information. While it is the contention of the petitioner that the only consequence of the filing of an affidavit with incomplete or incorrect information is the dissemination of any contrary information furnished by a rival candidate, it is the contention of the respondents that such an affidavit is no affidavit in the eye of law.

46. In order to test the veracity of the rival contentions, one may have to see, what an affidavit is and what are its ingredients. An affidavit is normally understood to be a formal sworn statement of fact, signed by the declarant, (known in law as "affiant") and witnessed by a person authorised to administer the oath. The name is Medieval Latin for 'he has declared upon oath '. If we look into the origin of the word "affidavit", it appears that it came from the Latin "affidare", meaning "to plight one's faith or to give or swear fealty, i.e., fidelity" (fidum ad alium dare). This is why a swearing of the oath of fidelity or of fealty to one's lord, under whose protection the quasi vassal (feudal tenant)

has voluntarily come, is known as "affidatio" and an oath taken by Lords in Parliament is known as "affidatio dominorum"

47. The Cyclopedia of Law and Procedure by William Mack (Vol. XXIX, page 1297, edition 1908) defines an oath as follows:-

"It is as an avowal of truth before God or more exactly an appeal to God to regard the truth of the words of him who swears and punish him if he utters falsehood. In its broadest sense, it includes any form of attestation by which a party signifies that he is bound in conscience to perform an act faithfully and truthfully."

In the same book, an affirmation is defined as follows:-

"An affirmation is a solemn and formal declaration or assertion that an affidavit is true, that the witness will tell the truth etc., this being substituted for an oath in certain cases."

48. Section 3(3) of the General Clauses Act, 1897, defines an affidavit to include "an affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing". The word "oath", which is derived from the Saxon word "eoth" signifies something which ought to be performed with a sacred and religious mind (sacramentum, a sacra et mente). It is defined under Section 3(37) of the General Clauses Act, to include "affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing". The word "swear" is defined under Section 3(62) of the Act, to include "affirming and declaring in the case of persons by law allowed to affirm or declare instead of swearing".

49. In *M.Veerabhadra Rao vs. Tek Chand* {1984 (Supp) SCC 571}, the Supreme Court held as follows:-

"17. The expression 'affidavit' has been commonly understood to mean a sworn statement in writing made especially under oath or an affirmation before an authorised Magistrate or Officer. Affidavit has been defined in sub-clause (3) of Section 3 of the General Clauses Act, 1897 to include "affirmation and declaration in the case of person by law allowed to affirm or declare instead of swearing". The essential ingredients of an affidavit are that the statements or declarations are made by the deponent relevant to the subject matter and in order to add sanctity to it, he swears or affirms the truth of the statements made in the presence of a person who in law is authorised either to administer oath or to accept the affirmation. The responsibility for making precise and accurate statements in affidavit were emphasised by this Court in *Krishan Chander Nayar vs. Chairman, Central Tractor Organisation*. {AIR 1962 SC 602}. The part or the role assigned to the person entitled to administer oath is no less sacrosanct."

50. Thus, it is clear from the origin of these expressions and the above dictum of the Supreme Court that the act of making a statement on oath or affirmation is sacrosanct. Though historically the act of making a statement on oath, was a method of reminding the witness strongly of the Divine punishment somewhere in store for false swearing and thus of putting him in a frame of mind calculated to speak only the truth as he saw it, in the course of the 19th Century, the focus shifted from Divine vengeance to one's own conscience. Therefore a person who is obliged in law, to make such a statement or declaration has to ensure that what is stated or declared by him is the truth, the whole truth and nothing but truth. This is why even in the matter of appointment of persons to public services, the Supreme Court held in *Kendriya Vidyalaya Sangathan vs. Ram Ratan Yadav* {2003 (3) SCC 437} that a candidate who suppressed material information and/or gave false information cannot claim a right to continue in service.

50. Section 8 of The Oaths Act, 1969, makes it obligatory for a person swearing to an affidavit, to state the truth. It reads as follows:-

"8. Persons giving evidence bound to state the truth. - Every person giving evidence on any subject before any Court or person hereby authorised to administer oaths and affirmation shall be bound to state the truth on such subject."

Though the above provision per se applies to judicial oaths (as seen from the preamble) made by witnesses, interpreters and jurors, there is nothing to suggest that there is no obligation for the candidates contesting elections to speak the truth and to make declarations in the prescribed format. As a matter of fact, the notification of the Election Commission dated 1.9.2006 requires the furnishing of information as prescribed, in the form of an affidavit/declaration administered/attested before a Magistrate of First Class, a Notary Public or a Commissioner of Oaths, in the same manner as prescribed by the provisions of the Oaths Act, 1969. This demonstrates that the requirement to furnish "full and complete information", was not intended to be an empty ritual performed by a non believer (in the very act of affirmation), but was intended to be sanctimonious. Therefore, a candidate is not entitled to just satisfy the letter of the law and make it sacrilegious.

51. The person who failed to make a disclosure of "full and complete information" as required by the notification of the State Election Commission dated 1.9.2006, cannot contend that no consequence could befall upon him by such act of omission/commission on his part. As rightly contended by the learned counsel appearing for the respondents 1 and 2, the observations of the Supreme Court in *PUCCL case* {2003 (4) SCC 399}, especially in paragraph-73 has to be understood to mean that the Returning Officer cannot be invested with the power to conduct a roving enquiry at the time of scrutiny of nominations, to find out if the declaration made by the candidates contesting in the election contained all and true facts. Once an affidavit/declaration is filed by a candidate, the Returning Officer is obliged to display the same in the Notice Board along with any information to the contrary, made available by rival candidates. The Returning Officer is also obliged to furnish copies of both, to all the candidates on demand and to the representatives of the print and electronic media. The prescription of such a procedure, coupled with the observations of the Supreme court in para 73 of the judgment in *PUCCL case* (and the deletion of para 14.4 in the notification of the

Election Commission) is an indication of the fact that the Returning Officer may not be entitled to conduct an enquiry about the truth or veracity of either the information furnished by the candidates concerned or the contra information furnished by the rival candidate. If the Returning Officer cannot and is not obliged to conduct an enquiry to find out if the information furnished by the candidate is the truth and whole truth, then he may not be entitled to reject the nomination of the candidate on the ground that the information furnished in the affidavit/declaration is not "full and complete". To this extent, the petitioner is right in his contention that the nomination of a candidate cannot be rejected by the Returning Officer on the ground that there was no full and complete disclosure.

52. But it does not mean that a person who furnished false information or who failed to furnish full and complete information, would be allowed to escape scot-free. Section 125-A of The Representation of The People Act, 1951, (inserted by Amendment Act 72 of 2002) makes the furnishing of false information or failure to furnish information, a punishable offence. It reads as follows:-

"125-A. Penalty for filing false affidavit, etc. - A candidate who himself or through his proposer, with intent to be elected in an election, -

(i) fails to furnish information relating to sub-section (1) of Section 33-A; or

(ii) gives false information which he knows or has reason to believe to be false; or

(iii) conceals any information, in his nomination paper delivered under sub-section (1) of Section 33 or in his affidavit which is required to be delivered under sub-section (2) of Section 33-A, as the case may be, shall, notwithstanding anything contained in any other law for the time being in force, be punishable with imprisonment for a term which may extend to six months, or with fine, or with both."

A similar provision is found in Section 251 of The Tamil Nadu Panchayats Act, 1994, which makes a person liable to be punished with fine not exceeding Rs.100/-, if he omits to furnish any information as required either by this Act or by any notice or other proceedings issued thereunder or if he knowingly furnishes false information. Therefore it is clear that the failure to furnish correct information and the furnishing of false or incorrect information, is made a punishable offence.

53. To say that the furnishing of false information or failure to furnish full and complete information may invite just a penalty of Rs.100/-, but it cannot dethrone an elected member, is to make the very prescription, a mockery. Though the Returning Officer may not be competent to adjudicate on the correctness or completeness of the contents of the affidavit filed by a candidate, the Election Tribunal (District Court) would certainly be entitled to set aside the election on that score, either under Section 259(1) (b) or under Section 259(1)(d)(iv) of The Tamil Nadu Panchayats Act, 1994.

54. Section 259 reads as follows:-

"259. Grounds for declaring elections to be void (1) Subject to the provisions of sub-section (2), if the District Judge is of opinion -

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or,

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

(c) that any nomination paper has been improperly rejected, or

(d) that the result of the election insofar as it concerns a returned candidate has been materially affected -

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

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the Court, a returned candidate has been guilty by an agent of any corrupt practice, but the Court is satisfied -

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

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) 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 Court may decide that the election of the returned candidate is not void."

Clause (b) of sub section (1) of Section 259 enables the District Court to declare the election of the returned candidate to be void, if he has committed any corrupt practice. Under Section 260(2) of the Act, "undue influence", as defined in Section 123(2) of The Representation of The People Act, 1951,

is a corrupt practice, for the purpose of Section 259 (1) (b).

55. Section 123 (2) of The Representation of The People Act, 1951, indicates as to what constitutes undue influence and it reads as follows:-

"(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."

56. The above definition of the expression "undue influence" is actually wider than the definition of the same expression under the Indian Contract Act, 1872. Under Section 16 of The Contract Act, a contract can be said to be induced by undue influence only when a relationship of such a nature subsists between the contracting parties, that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage. But to constitute an undue influence in terms of Section 123 (2) of The Representation of The People Act, 1951, which is just adopted under Section 260 (2) of The Tamil Nadu Panchayats Act, 1994, it is not necessary that one of the parties (candidate contesting the election) is in a position to dominate the will of the other (the voter) and the former uses the same to obtain an unfair advantage. It is enough, for the purpose of Section 260(2) of The Tamil Nadu Panchayats Act, 1994, if the candidate contesting the election interferes or attempts to interfere, with the free exercise of any electoral right by the voter or the other candidates.

57. Any incorrect information, wrong information, incomplete information, false information, one-sided information, disinformation, misinformation and non-information, would certainly interfere with the free exercise of the electoral right of the voter, inasmuch as his choice of candidate

will be influenced greatly by the information so furnished or withheld. Just as free and voluntary consent is an essential requisite of a valid contract, the free exercise of an electoral right, is an essential requirement of a fair election. Just as a consent is said to be free under Section 14 of The Contract Act, only when it is not caused by undue influence (among other things), the exercise of an electoral right can be said to be free, under Section 260(2) of The Tamil Nadu Panchayats Act, 1994 read with Section 123 (2) of The Representation of The People Act, 1951, only if it is not caused by undue influence as defined therein.

58. Therefore, in my considered view, the following propositions emerge out of the statutory provisions as well as the law laid down by the Apex Court:-

(a) A candidate contesting an election is obliged to make a disclosure of "full and complete information", with regard to the 5 matters referred to in paragraph-5 of the preamble to the notification of the State Election Commission dated 1.9.2006, in the form of an affidavit/ declaration, in the prescribed format;

(b) If a candidate fails to furnish full and complete information or furnishes incomplete, incorrect or false information, in the affidavit/ declaration, the Returning Officer may not be entitled to conduct an enquiry into the sufficiency or correctness of the particulars furnished in the affidavit/declaration and he may not also be entitled to reject the nomination on the ground that there is no full and complete disclosure;

(c) However, if a candidate furnishes incomplete, incorrect or false information or fails to furnish full and complete information, with regard to those 5 matters, in his affidavit/declaration, it would be a ground for the District Judge to set aside the election under Section 259(1)(b), if the information so furnished or withheld, would amount to "undue influence" within the meaning of Section 123(2) of The Representation of The People Act, 1951 read with Section 260(2) of The Tamil Nadu Panchayats Act, 1994. Therefore the District Judge can go into the question whether full and complete information was furnished by the returned candidate in his affidavit/declaration and whether the information furnished/withheld is of such a nature, as to interfere with the free exercise of the electoral right, including the free choice of the candidate.

(d) As we have seen earlier, the disclosure to be made by a candidate relates to

(i) conviction/acquittal/discharge in a criminal case;

(ii) pendency of any criminal case for any offence punishable with imprisonment for 2 years or more and in which charge is framed or cognizance taken;

(iii) assets of the candidate and his spouse;

(iv) liabilities including liabilities to public financial institutions and Government dues; and

(v) educational qualifications.

An incorrect or incomplete statement relating to some of the above matters, may not amount to interference with the free exercise of the electoral right of the voters and consequently to undue influence. But an incorrect or incomplete information relating to other matters, may certainly amount to undue influence. For example, an incorrect statement relating to the educational qualification of the candidate may not swing the choice of the voter either in his favour or away from him. Similarly, the omission of a candidate to disclose an acquittal or discharge in a criminal case, may not also swing the votes. But the failure to disclose a conviction or the pendency of a case in which charge has been framed in respect of an offence punishable with imprisonment for 2 years and more, may certainly interfere with the freedom of choice of the voter, as he may be carried away by such non disclosure or disclosure of false or incorrect information. Therefore, it will be open to the District Judge (Election Tribunal) to see the nature of the information suppressed or supplied, to find out if it was capable of influencing the freedom of choice of the voters. If the false, incorrect or incomplete information was capable of influencing the freedom of choice of the voters, then it will fall under the category of "undue influence" within the meaning of Section 260(2) of the Tamil Nadu Panchayats Act, 1994 read with Section 123(2) of the Representation of the People Act, 1951. Otherwise, it may not amount to undue influence.

(e) If the information withheld or furnished by the returned candidate is found by the District Judge, to be of such a nature as not amounting to undue influence, in terms of Section 260(2), the election can still be set aside in terms of Section 259(1)(d)(iv). As seen from the language of Section 259(1)(d)(iv), it empowers the District Judge to set aside an election, if it is found that the result of such election, in so far as it concerns the returned candidate, has been materially affected, by the non compliance with the provisions of the Act, Rules or orders issued thereunder. The failure to furnish "full and complete information", as required by the order of the Election Commission dated 1.9.2006, would tantamount to non compliance with the orders issued under the Act, in terms of sub clause (iv) of clause (d) of sub section (1) of Section 259. Therefore, even if the failure of a candidate to furnish "full and complete information" does not amount to undue influence, his case may fall under Section 259 (1)(d)(iv). But if it falls under Section 259 (1) (d) (iv), the District Judge should be satisfied, both about the factum of non compliance with the provisions of the Act, Rules or orders and also about the fact that the results of the election in so far as it concerns the returned candidate, were materially affected. The question as to whether the results of the election were materially affected or not, has no relevance, if the case falls under clauses (a), (b) and (c) of sub section (1) of Section 259. But if a case falls under clause (d), that question assumes significance.



59. If the above principles of law are applied to the case on hand, it could be seen that the petitioner admittedly did not furnish "full and complete information" relating to his implication in criminal cases. The mentioning of just one crime number, without mentioning the details of 8 charge sheets filed against him and taken cognizance by the Magistrate, cannot be taken to be a fair disclosure of full and complete information as required by the notification of the Election Commission. The order of the Election Commission is very clear in that it does not speak about First Information Reports. The order makes it mandatory to mention the details of only those charges framed and taken cognizance by a Court of law, in respect of offences punishable with imprisonment for 2 years or more. The failure of the petitioner to furnish the details of these 8 charge sheets, already taken cognizance of, by a competent Court of law, for offences punishable with imprisonment for 2 years or more, had the potential to interfere with the freedom of choice of the voters. Therefore, it is nothing but an "attempt to interfere with the free exercise of electoral right" which would fall within the meaning of "undue influence" and consequently "a corrupt practice" under Section 259(1)(b) read with Section 260(2) of The Tamil Nadu Panchayats Act, 1994. In such circumstances, the District Judge was right in ultimately setting aside the election, though the ground on which he set it aside, may not be correct.

### THIRD CONTENTION (NECESSARY INGREDIENT OF SECTION 259 (1) (d):

60. The third contention of Mr.R.Muthukumaraswamy, learned Senior Counsel for the petitioner is that if the election of a candidate is sought to be set aside on any of the grounds specified in Clause (d) of sub section (1) of Section 259, the election petitioner is required not only to prove the existence of such a ground, but also to prove that the result of the election was materially affected, on account of that ground. It is his contention that the grounds stated in Clauses (a), (b) and (c) stand on a different footing than the grounds stated in Clause (d) of Section 259 (1).

61. In support the above contention, the learned Senior Counsel relied upon the decision of the Apex Court in Manohar Joshi Vs. Nitin Bhaurao Patil {1996 (1) SCC 169} and the decision of S.S.Subramani, J., in R.Vijayalakshmi Vs. Krishnaveni Lakshmaiyya {AIR 1999 Mad. 391}.

62. Section 100 of the Representation of the People Act, 1951, is in pari materia with Section 259. Clauses (a), (b) and (c) of sub section (1) of Section 100 of the R.P. Act, 1951, are equivalent to Clauses (a), (b) and (c) of sub section (1) of Section 259 of the Tamil Nadu Panchayats Act, 1994. Clause (d) is identical in both. In the decision of the Supreme Court relied upon by the learned Senior Counsel for the petitioner, the Supreme Court noted the distinction between Clause (b) and Clause (d) in paragraph-39, as follows:-

"39. The distinction between clause (b) of sub-section (1) and sub-clause (ii) of clause (d) therein is significant. The ground in clause (b) provides that the commission of any corrupt practice by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent by itself is sufficient to declare the election to be void. On the other hand, the commission of any corrupt practice in the interests of the returned candidate by an agent other than his election agent (without the further requirement of the ingredient of consent of a

returned candidate or his election agent) is a ground for declaring the election to be void only when it is further pleaded and proved that the result of the election insofar as it concerns a returned candidate has been materially affected. This ground is further subject to sub-section (2) of Section 100 of which the onus is on the returned candidate."

63. In the decision of S.S.Subramani, J., in R.Vijayalakshmi's case, the election of the returned candidate was challenged on the ground that her name was registered in two Wards. Though the allegation was found to be true, the Tribunal held that it did not vitiate the election. While agreeing with the view taken by the Tribunal, the learned Judge held that to bring a case within any of the grounds stated in Clause (d) of sub section (1) of Section 259, it must be pleaded and proved that the irregularity complained, materially affected the result of the election.

64. There is no difficulty in accepting this contention of the learned Senior Counsel for the petitioner, in view of the plain language of clause (d) of sub section (1) of Section 259, which stands on a different footing from the language employed in the other clauses of the same sub section. But the rider contained in the first part of Clause (d) has to be understood in the context in which it is made. While clauses (a), (b) and (c) broadly deal with situations within the control of the returned candidate, clause (d) contemplates situations beyond the control of the returned candidate. Therefore the law makers have made a distinction between situations within the control of the returned candidate and situations beyond his control. If the case of the returned candidate falls within clauses (a), (b) or (c), he is liable to forfeit his victory, irrespective of whether his acts of omission and commission had a bearing upon the ultimate outcome or not. But if something had happened beyond his control and without his blessings and his case falls under clause (d), he need not be penalised, for no fault of his, except when such act or omission on the part of the Returning Officer or any other person, over whom he had no control or to whom he had not given his consent, materially affected the outcome of the election. This is the broad frame work within which the distinction between clauses (a), (b) and (c) on the one hand and clause (d) on the other hand, has to be understood. That it is so is made clear also by sub section (2) of Section 259.

65. Keeping the above principles in mind, if we look at the case on hand, it is seen that the admitted failure of the petitioner to make a disclosure of the full and complete information, regarding the 8 charge sheets filed against him, virtually amounted to an interference with the free exercise of the electoral rights of the voters and consequently fell within the meaning of the expression "undue influence". The voters had a choice not to vote for a candidate involved in 8 criminal cases, of which cognizance had already been taken. The free exercise of that right, was infringed by the failure to comply with the mandatory requirement prescribed by the notification of the Election Commission. Therefore, the result of the election, in so far as it concerned the petitioner (returned candidate) was in fact, materially affected, by his act of omission. Hence the order of the District Judge, setting aside the election, though on a different ground, cannot be said to be perverse or illegal, so as to warrant any interference under Article 227 of the Constitution.

66. Therefore for all the above reasons, I hold that though the Returning Officer is not expected to conduct an enquiry into the correctness of the contents of the affidavit/ declaration filed by the

petitioner and to reject the nomination of the petitioner, the election of the petitioner was liable to be set aside, both on the ground of undue influence amounting to corrupt practice under Section 259(1)(b) and on the ground of non compliance with statutory requirements under Section 259(1)(d)(iv) of The Tamil Nadu Panchayats Act, 1994. Hence the order of the District Judge, setting aside the election of the petitioner, cannot be interfered with. Therefore, the Civil Revision Petition is dismissed. No costs. Consequently connected miscellaneous petitions is also dismissed.

Svn To

1.The Returning Officer-cum-

Commissioner, Karamadai Panchayat Union, Karamadai, Mettupalayam Taluk.

2.The Secretary/Executive Officer, Thekkampatti Village Panchayat, Thekkampatti Post, Seeliyur (via), Mettupalayam 641 113.

3.The District Election Officer/District Collector, Coimbatore.

4.The State Election Commission, Chennai, Tamil Nadu