



புதுச்சேரி மாநில அரசிதழ்

La Gazette de L'État de Poudouchéry

The Gazette of Puducherry

PART - I

சிறப்பு வெளியீடு

EXTRAORDINAIRE

EXTRAORDINARY

அதிகாரம் பெற்ற
வெளியீடு

Publiée par
Autorité

Published by
Authority

எண்	} 22	புதுச்சேரி	புதன்கிழமை	2023 ௨௫	஫ப்ரவரி ௧௫	15 ௨
No.		Poudouchéry	Mercredi	15	Février	2023 (26 Magha 1944)
No.		Puducherry	Wednesday	15th	February	2023

GOVERNMENT OF PUDUCHERRY
ELECTIONS DEPARTMENT

No. E.81(EP)/2021-80.

Puducherry, dated 7th February 2023.

The Election Commission of India's Notification No. 82/PUDU-LA/ (EP 06 of 2021)/2023, dated 18-01-2023, regarding Order of the High Court of Madras, dated 20-12-2022 in the Election Petition No. 06 of 2021 is hereby published for information of the public.

P. JAWAHAR, I.A.S.,
Chief Electoral Officer.

SECRETARIAT OF THE ELECTION COMMISSION OF INDIA*Nirvachan Sadan, Ashoka Road,**New Delhi-110 001,**Dated : 18th January, 2023,**28 Paush, 1944 (Saka).***NOTIFICATION**

No. 82/PUDU-LA/(EP 06 of 2021)/2023:- In pursuance of section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Madras dated 20-12-2022 in Election Petition No. 06 of 2021.

(Here Print the Judgment/Order Attached)

(By order)

MALAY MALLICK,
Principal Secretary,
Election Commission of India.

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

Tuesday, the 20th day of December 2022

The Hon'ble Mr. Justice N.SATHISH KUMAR

Election Petition No. 6 of 2021

ELF No. 6 of 2021

S. Gopal, s/o. Singaram, No. 9/6A, 1st Cross Street,
Navashakthi Nagar, Thattanchavady,
Puducherry-605 009.

. . Petitioner

-VS-

1. G. Nehru @ Kuppusamy, s/o. Gopalsamy,
No. 32D, Bharathipuram Main Road, Govindasalai,
Puducherry-605 001.
2. Omsakthisekar, s/o. Subramanian,
No. 35, Netaji Subhash Chandra Bose Street,
Kosaplayam, Puducherry-605 013.
3. A. Siraj @ Kanimohammed, s/o. Abdul Muthaleef,
Nos. 6, 7th Cross Street, Subbiah Nagar,
Puducherry-605 001.
4. S. Shakthivel, s/o. B.Seethapathy, No. 46, 1st Street,
Thiru Vi.Ka Nagar, Mudaliarpettai, Puducherry-605 004.
5. L. Karunanithi, s/o. Louis, No. 12, Sangothiamman Koil Street,
Orleanpet, Puducherry-605 001.
6. K. Purushothaman, s/o. Kesavan, No. 16, Reddiyar Street,
Irulan Santhai, Kuruvintham Post, Bahour Commune,
Puducherry.

7. J. Ravi @ Purushothaman, s/o. Jayaraman, No. 20, D-2 Block, Kandoctor Thottam, Priyadharshini Nagar, Govindasalai, Orleanpet, Puducheny-605 011.
8. G. Gopal, s/o. Gunasekar, No. 24, Karungara Pillai Street, DR Nagar, Kosapalayam, Puducheny-605 013.
9. M. Gopalakrishnan, s/o. Munusamy, No. 60, Sundara Maistry Street, Kosapalayam, Puducheny-605 013.
10. M. Sankar, s/o. D. Mohampuri, No. 36, Othavadai Street, Orleanpet, Puducherry-605 005.
11. P. Gopalakrishnan, s/o. Perumal, No. 21, Vanidasan Street, Kuyavalpalayam, Puducherry-605 013.
12. R. Cadiressan, s/o. Radhakrishnan, No. 3, 1st Cross School Street, Veeraraghava Mudaliar Thottam, Govindasalai, Puducherry-605 011.
13. R. Raja, s/o. Rajamanickam, No. 112, Anthoniyar Koil Street, Govindasalai, Puducherry-605 113.
14. V. Hariharane, s/o. Veeraraghavan, No. 134, Thiyagu Mudaliar Street, Raj Bhavan, Puducherry-605 001.
15. The Returning Officer No. VI, Orleanpet Constituency, General Elections to Puducherry Legislative Assembly 2021, Office of the Returning Officer-*cum*-Deputy Labour Commissioner, Labour Departmental Complex, Vazhudavoor Road, Puducherry-605 009.
16. The Election Commission of India, Represented by its Chief Electoral Officer - Puducherry, Office of the Chief Electoral Officer, Villiainur Road, Reddiarpalyam, Puducherry-605 010. . . Respondents/
Respondents

(**Respondents 15 and 16 struck off from the respondents as per order of this Hon'ble Court, dated 03-12-2021 made in OA.No. 634 of 2021 **)

The Election Petition praying that this Hon'ble Court be pleased to (i) declare the election of the 1st Respondent herein as the returned candidate of No. 16, Orleanpet Constituency in the 15th General Elections to Puducherry Legislative Assembly, 2021 as *void*; (ii) declare that the Petitioner herein has been duly elected in the said No. 16 Orleanpet Constituency in the 15th General Elections to Puducherry Legislative Assembly, 2021; (iii) record finding that the 1st Respondent herein has committed corrupt practice in the said Elections in terms of section 123(4) of Representation of People Act, 1951 (iv) direct the 1st Respondent to pay costs of this Election Petition to the Petitioner herein.

This Election petition having been heard on 14-12-2022 for orders in the presence of Mr. P. Dinesh Kumar, Advocate, for the Election Petitioner herein; Mr. AR.L. Sundaresan, Senior Counsel for Mrs. A.L. Gandhimathi, Advocate, for the 1st Respondent herein; and Mr. B. Bala Vijayan, Advocate, for the 2nd Respondent herein; and upon reading the Petition and affidavit of S. Gopal filed herein and counter affidavit of G. Nehru @ Kuppusamy filed herein; and the evidence adduced herein and the exhibits marked thereon; and this Court having stood over for consideration till this day and coming on this day before this Court for orders in the presence of the abovesaid Advocates, and this Court having observed that in the instant case, the petitioner has come out with vague pleadings in his election petition and absolutely there is no substantial evidence to substantiate the allegation of corrupt practice and the election petitioner has failed to prove that any corrupt practices has been committed by the first respondent or his election agent or that the corrupt practice has been committed at the instance of the first respondent and the election of the first respondent cannot be set aside on the allegation of corrupt practice and when a person has been democratically elected, he cannot be thrown out merely at the whims and fancies of the defeated candidate without any materials and IT IS ORDERED AS FOLLOWS:-

That the Election Petition No. 6 of 2021 be and is hereby dismissed.

2. That there shall be no order as to cost.

WITNESS, The Hon'ble Mr. Justice T. Raja, Acting Chief Justice, High Court at Madras, Aforesaid this the 20th Day of December 2022.

ASSISTANT REGISTRAR,
Original Side-II.

(Certified to be true copy)

Dated at Madras this the 3rd day of January 2023.

COURT OFFICER (O.S).

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

PK
02-01-2023

ELP. No. 6 of 2021

Decree

Dated : 20-12-2022

The Hon'ble Mr. Justice N. SATHISH KUMAR

For approval : 02-01-2023

Approved on : 03-01-2023

Copy to:-

1. The Election Commission of India,
Nirvachan Sadan, Ashoka Road, New Delhi.

2. The Election Commission of India,
Represented by its Chief Electoral Officer -
Puducherry, Office of the Chief Electoral
Officer, Villiainur Road, Reddiarpalyam,
Puducherry-605 010.

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(ORDINARY ORIGINAL CIVIL JURISDICTION)**

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This Election petition having been heard on 14-12-2022 for orders in the presence of Mr. P. Dinesh Kumar, Advocate, for the Election Petitioner herein; Mr. AR.L. Sundaresan, Senior Counsel for Mrs. A.L. Gandhimathi, Advocate, for the 1st Respondent herein; and Mr. B. Bala Vijayan, Advocate, for the 2nd Respondent herein; and upon reading the Petition and affidavit of S. Gopal filed herein and counter affidavit of G. Nehru @ Kuppusamy filed herein; and the evidence adduced herein and the exhibits marked thereon; and this Court having stood over for consideration till this day and coming on this day before this Court for orders in the presence of the abovesaid Advocates, and

the Court made the following order

The Election Petition has been filed for a declaration to declare the election of the first respondent as returned candidate from No. 16, Orleampet Legislative Assembly Constituency as *null* and *void*.

2. The averments made in the election petition, in brief, is as follows:

(i) The petitioner contested the general election to Puducherry Legislative Assembly, 2021 from Orleampet Constituency. He was fielded as a candidate on behalf of the DMK political party. The respondents 1 to 14 also contested the election. The polling was held on 06-04-2021.

(ii) It is further averred by the petitioner in the election petition that the said Orleampet Constituency is a stronghold of DMK party. The Legislative seat of the above-mentioned constituency has been continuously secured by DMK party through popular vote since 1996 Legislative Assembly Elections except 2011 Election. So, the likelihood of the DMK party securing the seat in the present 2021 elections remained strong and undoubted.

(iii) It is further contended by the petitioner that in a weekly magazine titled "Samathuvam" a defamatory news article has been published under the title "King of Usurious interest involved in smuggling of Idols in Puducherry, amassed properties worth of 500 crores who was penniless when migrated to Puducherry" in the month of November 2018.

(iv) As the above defamatory statement was relating to the petitioner, the petitioner approached the Press Council of India by lodging a complaint. After enquiry, the Press Council of India adjudicated the matter and by an order, dated 22-08-2019, ordered for censure of the said news magazine.

(v) When the matter stood thus, on 04-04-2021, two days prior to the polling, the petitioner came to know through his Election Agent Mr. R. Sakthivel that leaflets containing disparaging and defamatory contents about the petitioner are being circulated among the voters in large numbers within the said Constituency by some miscreants. The said leaflets were secured from a voter of Orleampet Constituency namely, Mr. JR. Xavier Rajesh, who is a functionary of DMK party to whom the said leaflets were circulated and he has handed over the same to the petitioner.

(vi) In the said leaflet, a news article published in the year 2018 in Samathuvam magazine was found in addition to that a newspaper cutting, concerning news of land grabbing of public property by some private person is also extracted in the said leaflet by stating that the petitioner herein had committed the said land grabbing and the said land grabbing has been stopped with the intervention of Puducherry Planning Authority at the instance of the petitioner herein. Similarly, the said leaflet also contains picture of partially constructed building under the caption "grabbed place".

(vii) On enquiry, the petitioner came to know that one Mr. Magesh, s/o. Muthuvel, Mr. Suriya, s/o. Moorthi, Mr. Ranjith, s/o. Ezhumalai, Mr. Suresh, s/o. Kumar, Mr. Kandasamy, s/o. Settu and Mr. Sezhiyan, s/o. Malaiyan, have circulated the above-mentioned leaflet to large number of voters within the Orleampet constituency during the last days, *i.e.*, since, 02-04-2021 before conclusion of Election campaign period. The said persons are the staunch supporters of the first respondent herein and had been engaged in the electioneering works on behalf of the first respondent herein.

(viii) It is the case of the petitioner that the first respondent as part of his election campaign had instigated the above-mentioned members to circulate the aforementioned leaflets amongst the general public in the said constituency. Immediately on acquiring knowledge of the same, the petitioner lodged a complaint with Orleampet Police Station and following the same a FIR has been registered in FIRNo. 32 of 2021, dated 04-04-2021.

(ix) Further, according to the petitioner, before the petitioner's election agent could intervene to stop the circulation of leaflet, the same was circulated to large number of voters. From the newspaper cutting extracted in the defamatory leaflet which mentioned that it was first respondent who lodged complaint against

the land grabbing mentioned in the leaflet. The first respondent with an ill intention of offending the prospects of the petitioner had instigated his followers/supporters to circulate the aforementioned leaflet, knowing fully well that the contents of the same are blatant lie and baseless. The circulation of the said leaflets had serious prejudiced the reputation of the petitioner and his party in the minds of the voters and general public.

(x) The act of the first respondent in publishing false statement about the petitioner offending his election prospectus clearly constitutes corrupt practice of publication/circulation of false, disparaging, defamatory statement by the 1st respondent through his party men and supporters in relation to personal character and conduct of the petitioner had prejudiced the prospectus of the petitioner's election.

(xi) In the election the first respondent has been declared as a winning candidate by a margin of 2093 votes and declared as successful returned Candidate. Hence, it is the contention of the petitioner that the act of corrupt practice by the first respondent has materially affected the petitioner's election prospects and had resulted in the petitioner finishing second in the election. The general public, in particular the voters of said constituency were made to believe that the contents of the letter are true and many voters turned against the petitioner in view of the false and defamatory statements issued at the instance of the first respondent and thus, materially altered the election results. Therefore, having secured the second position in the total votes count table, the petitioner herein is entitled to be declared as duly elected candidate in the above-mentioned election.

(xii) Thus, the first respondent has involved in the above corrupt practices which has materially affected the result of the election. Hence, the present election petition has been filed to set aside the election of the first respondent.

3. The first respondent filed a counter affidavit stating *inter alia* as follows:

(i) The first respondent denied the allegation that the leaflets containing defamatory statements were circulated at his instigation. It is his case that he is totally unaware of the alleged circulation of the said leaflet. The persons who were named in the election petitioner are not the supporters of the first respondent nor was their service engaged by the first respondent nor the first respondent consented for any such leaflet being circulated by the said persons. Thus, the first respondent has not involved himself with the alleged circulation of the alleged leaflet on 04-04-2021 or on any other date.

(ii) The first respondent has got nothing to do with the complaint which is the subject matter of FIR in Crime No. 32 of 2021, dated 04-04-2021. According to the first respondent, the said complaint has been lodged just for the purpose of laying the foundation for a false election petition.

(iii) It is his further case that by popular choice among the electorate, he has succeeded in the election. The petitioner did not have the confidence of the majority of the voters in the constituency and hence, he lost the election.

(iv) When the election petitioner has come forward with the allegation of corrupt practices, he is expected to give material facts and full particulars regarding the alleged corrupt practices and he cannot make out a case of corrupt practice by making bald and frivolous allegation without any material particulars.

(v) The first respondent has not indulged in any corrupt practice as alleged by the election petitioner. Hence, oppose this petition.

4. Based on the above pleadings, the following issues were framed for trial and adjudication:

(1) Whether the first respondent had indulged in corrupt practice in terms of section 123(4) of the Representation of People Act, 1951 ?

(2) Whether the election of the first respondent is liable to be declared to be *void* ?

(3) Whether the petitioner is entitled to be declared as duly elected candidate ?

(4) To what other reliefs the petitioner is entitled to ?

5. During trial, Mr. S. Gopal, the petitioner herein, examined himself as P.W.1 and he also examined two more witnesses *viz.*, Mr. Sakthivel as P.W.2 and Mr. Agilan as P.W.3 and marked as many as 6 documents, *viz.*, Exs.P1 to P6. On the side of the first respondent, Mr. G. Nehru @ Kuppusamy examined himself as R.W.1 and marked as many as 3 documents, *viz.*, Exs. R1 to R3.

6. Mr. P. Dinesh Kumar, learned Counsel appearing for the petitioner would submit that the evidence of P.Ws.1 to 3 clearly establish the fact that Ex.P1 leaflets were circulated at the instigation of the first respondent. Ex.P2 FIR and Ex.P3 and Ex.P5 clearly proves the fact that the first respondent has instigated his supporters to circulate Ex.P1 leaflets containing defamatory article which has impacted the result of the election.

7. It is his contention that the petitioner lost the election with a margin of 2093 votes only. Had Ex.P1 has not been circulated among the voters, the petitioner would have won the election from that constituency. It is his contention that in the said constituency only the candidates fielded on behalf of the DMK party had won the election because they have a strong support base. He further submitted that from the year 1996 onwards in all the Legislative Assembly Elections except in the year 2011, the candidates fielded by DMK party have won the election. Thus, according to the learned Counsel the prospects of winning chance of the petitioner has been shattered due to the involvement of the first respondent in corrupt practices, particularly by circulating defamatory articles about the petitioner.

8. Further, according to the petitioner, Ex.P5 and complaint given by the petitioner to the local Police for alleged encroachment and construction of the building in violation of the building rules clearly substantiate the stand of the petitioner that Ex.P1 leaflets were circulated only at the instigation of the first respondent. Hence, it is his contention that from the evidence adduced and the documents filed would prove the fact that only the first respondent is instrumental in circulating Ex.P1 leaflets. Therefore, it is his contention that the Court also can consider the circumstances available in the evidence and easily come to the conclusion that due to the circulation of the defamatory statements, the election results have been seriously impacted and the petitioner's winning chances has been affected materially. Therefore, it is his contention that as the petitioner has established the corrupt practice on the part of the first respondent, the election of the first respondent has to be set aside and the petitioner has to be declared as the successful candidate.

9. Mr. AR.L. Sundaesan, learned Senior Counsel, appearing for the first respondent would submit that the election petition is nothing, but, an abuse of process of law. There is no material whatsoever available on record to even infer that the first respondent has circulated Ex.P1 leaflets. The evidences of P.Ws. 1

to 3 taken into consideration together, there is no evidence available on record to show that Ex.P1 was circulated among the voters by the first respondent or with the consent of the first respondent or his election agent to construe it as a corrupt practice.

10. It is his further contention that evidences of P.Ws.2 and 3 itself is hearsay and they have no direct knowledge about the persons who circulated Ex.P1 leaflets and there are serious discrepancies in the evidences of P.Ws. 1 to 3 with regard to persons who had circulated Ex.P1. He further submitted that absolutely there is no merit in the election petition and as far as polling is concerned, every constituency is small constituency consisting of about 20,000 voters. The first respondent has been declared as the returned candidate and secured more than 2093 votes than the election petitioner, *i.e.*, more than 10% of the total votes polled. Therefore, the contention of the petitioner that the constituency is a stronghold of the DMK party is far fetched. In fact DMK has lost the election in the same constituency in the previous election also. Hence, the learned Senior Counsel submitted that when the election was held democratically, the same cannot be undone by frivolous petition, hence oppose the election petition.

11. Heard Mr. P. Dinesh Kumar, learned Counsel appearing for the petitioner and Mr. AR.L. Sundaresan, learned Senior Counsel, appearing for the first respondent and perused the records carefully.

Issue Nos. 1 to 4

12. The election petition has been filed to set aside the election of the first respondent mainly on the ground that the corrupt practices committed by the first respondent in circulating of Ex.P1 leaflets which has materially affected the election and thus, the first respondent has violated the provisions of section 123(4) of the Representation of the People Act, 1951.

13. Before considering the above allegations, it will be useful to refer to the relevant provisions in the Representation of the People Act, 1951 which are alleged to have been violated by the first respondent:

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

(1) ***

(2) ***

(3) ***

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

14. The High Court deciding a election petition is a Tribunal deciding an election dispute and its powers are by creature of Statute, under which, the Tribunal is empowered to hear the election petition. It is settled law that any election petition is not an action at law or a suit in equity, but, it is purely a statutory proceedings and the Courts possess no common law power. The statutory provision of the election law are to be strictly construed and its requirements should be strictly

observed. A right to be elected is neither a fundamental right nor a common law right, it is only a statutory right and the Courts cannot go beyond the pleadings of the parties. There must be a proper pleadings and it should be established by adducing acceptable evidence that by the alleged illegality or irregularity the result of the election has been materially affected.

15. So far as charges of corrupt practices in the election, it is trite law that allegation of corrupt practice is substantially akin to a criminal charge. The commission of a corrupt practice entails serious penal consequences, it not only vitiates the election of the candidate concerned but also disqualifies him/her from taking part in future elections for a considerable period. In such circumstances, the trial of an election petition being in the nature of an accusation and it is as same as in a criminal trial, the returned candidate is presumed to be innocent until the guilt is proved against him. The onus is on the election petitioner to establish each and every charge by clear and impeccable evidence beyond reasonable doubt.

16. The Hon'ble Supreme Court in *Jeet Mohinder Singh Vs. Harminster Singh Jassi* reported in (1999) 9 SCC 386 in paragraph 40, has held as follows:

“40. “(i) The success of a candidate who has won at an election should not be lightly interfered with. Any petition seeking such interference must strictly conform to the requirements of the law. Though the purity of the election process has to be safeguarded and the Court shall be vigilant to see that people do not get elected by flagrant breaches of law or by committing corrupt practices, the setting aside of an election involves serious consequences not only for the returned candidate and the constituency, but, also for the public at large inasmuch as reelection involves an enormous load on the public funds and administration. [See: *Jagan Nath Vs. Jaswant Singh, Gajanan Krishnaji Bapat Vs. Dattaji Raghobaji Meghe*].

(ii) Charge of corrupt practice is quasi-criminal in character. If, substantiated, it leads not only to the setting aside of the election of the successful candidate, but, also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow: Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial. [See: *Quamarul Islam Vs. S.K. Kanta, F.A. Sapa Vs. Singora, Manohar Joshi, etc., Vs. Damodar Tatyaba alias Dada Saheb Rupwati, etc., and Ram Singh Vs. Col. Ram Singh*].’

17. In yet another judgement the Hon'ble Supreme Court in *Daulat Ram Chauhan Vs. Anand Sharma* reported in (1984) 2 SCC 64 has held in paragraph 18 as follows:

“18. We must remember that in order to constitute corrupt practice which entails not only the dismissal of the election petition, but, also other serious consequences like disbaring the candidate concerned from contesting a future elections for a period of six years, the allegations must be very strongly and

narrowly construed to the very spirit and letter of the law. In other words, in order to constitute corrupt practices, the following necessary particulars, statement of facts and essential ingredients must be contained in the pleadings:-

(1) Direct and detailed nature of corrupt practice as defined in the Act.

(2) details of every important particular must be stated giving the time, place, names of persons, use of words and expressions, *etc.*

(3) it must clearly appear from the allegations that the corrupt practices alleged were indulged in by (a) the candidate himself (b) his authorised election agent or any other person with his express or implied consent.”

18. Keeping the above principles in mind, let us consider the issues involved in the election petition.

19. It is not disputed that the petitioner and the respondents 1 to 14 contested the election for the Legislative Assembly in Puducherry from Orleanpet constituency held on 06-04-2021. The first respondent was declared as the successful candidate and he has won by a margin of 2093 votes as against the election petitioner. The evidence adduced on record clearly shows that every constituency in Puducherry is only small area and consists of around 20,000 odd voters. The margin secured by the first respondent will be more than 10% of the total votes polled in the particular constituency and these facts are not in dispute and there is no other allegation except corrupt practice of circulating defamatory pamphlets in the election petition itself. With regard to the conduct of election by the officials there is no allegation whatsoever made.

20. The only allegation of the election petitioner is that since Ex.P1 leaflets containing defamatory statement were circulated prior to the election by some of the supports of the first respondent at his instigation, the result of the election has been changed by prejudicing the minds of the people and there by the petitioner has lost in the election at a margin of 2093 votes.

21. In the election petition in paragraph 6, it is the specific plea of the election petitioner that some defamatory leaflets were circulated by some miscreants and the same was informed to the petitioner by the election agent Mr. Sakthivel. Further it is his case that Ex.P1 was handed over by one Mr. JR. Xavier Rajesh to the petitioner, there upon a criminal complaint has been lodged, which resulted in filing of the FIR.

22. It is relevant to note that in paragraph 7 of the election petition, it is stated by the petitioner that some six persons namely Mr. Magesh, s/o. Muthuvel, Mr. Suriya, s/o. Moorthi, Mr. Ranjith, s/o. Ezhumalai, Mr. Suresh, s/o. Kurmar, Mr. Kandasamy, s/o. Settu and Mr. Sezhiyan s/o. Malaiyan circulated the above-mentioned Ex.P1 leaflets and the said persons are the strong supporters of the first respondent herein who had been engaged in the election work by the first respondent herein. Except the above allegation in the entire election petition there was no specific plea as to the manner in which the said persons are related to the first respondent.

23. Be that as it may, P.W.1 in his evidence has stated that Ex.P1 was circulated by the first respondent's election agent on his instructions, whereas, there is no plea in the entire election petition that the election agent of the first respondent has circulated it.

24. The entire evidence of P.W.1 when perused makes it very clear that he has no direct knowledge about the circulation and he was informed by the area secretary Mr. Sakthivel (P.W.2). P.W.2 in his evidence has indicated that he was informed by somebody that Ex.P1 leaflets of containing defamatory article published in Samathuvam Magazine was circulated among the public.

25. It is relevant to note that though it is alleged that Ex.P1 was circulated by some miscreants and a copy was handed over by one Mr. JR. Xavier Rajesh, the said Mr. JR. Xavier Rajesh has not been examined before this Court. Be that as it may, one Mr. Sakthivel who was examined as P.W.2, in his evidence stated that he also did not know the first hand information about the persons who circulated Ex.P1 and he came to know that about five persons who are supporters of the first respondent have circulated Ex.P1 leaflets amongst the voters and he has also admitted that he has not seen the leaflets circulated directly and he was informed that one Magesh, Ranjit, Kandasamy, Chezian and Suresh had circulated Ex.P1 leaflet copies. The entire evidence of P.W.2 is seen, he does not have direct knowledge as to who circulated Ex.P1.

26. P.W.3 one Mr. Agilan was examined by the petitioner and in his evidence he has stated that around 03.30 to 04.00 p.m. one Mr. Suresh Kumar and Surya dropped some pamphlets in his house and he immediately informed the same to their area Secretary and he has lodged a complaint. His cross-examination clearly shows that he is now working as a P.A. to the Leader of the Opposition in the Legislative Assembly and he also belongs to the same D.M.K. political party. His cross-examination farther shows that he heard some bike sound and he came out and he saw the said persons dropping the papers. Therefore, he did not file any complaint in this regard and he immediately informed their Area Secretary Mr. Sakthivel (P.W.2) who informed him that on 04-04-2021 itself he has filed a complaint. His evidence also indicates that he was in the DMK party from the year 2007 and he has not given any registered complaint before any officials in this regard. His evidence further shows that he and P.W.2 were brought to the Court only to give deposition on behalf of P.W.1.

27. Be that as it may, according to P.W.1, the circulation of Ex.P1 was made known to P.W.1 by P.W.2. However, P.W.2 in his evidence has never stated that only P.W.3 has informed him, whereas, P.W.3 in his evidence has stated that when he has informed P.W.2 at that time P.W.2 has informed him that he has already given a complaint in this regard. It is relevant to note that P.W.2 came to know about the circulation from P.W.3. however it is a mystery as to how P.W.2 had lodged a complaint prior to P.W.3 informing him.

28. If, the entire evidence of P.W.3 has been considered except stating that some persons have dropped some leaflets In front of the house of P.W.3, no evidence whatsoever is available on record to prove nexus between the said persons and the first respondent. Therefore, the evidence of P.W.2 and P.W.3 cannot be given much importance and with regard to the circulation of the pamphlets, particularly the evidence of P.W.2 only remains as hearsay. He has not seen directly the persons who circulated the leaflets and his evidence indicate that he was only informed by others. P.W.3 in his evidence has stated that he only saw two persons, viz., Mr. Suresh Kumar and Surya, whereas the election petition refers about six names. According to P.W.3 he has also informed P.W.2 and P.W.2 has informed that he has already lodged a complaint. Thus, there are discrepancies in the evidence between all these witnesses. At any event, the entire evidence of P.Ws.1 to 3 taken into consideration, same is not reliable as there is no materials or evidence

discernible from their evidence to show that the so called two persons have any direct nexus with the first respondent. Further, with regard to Ex.P1 there is no evidence as to who made the Xerox copy, the author is not known and there is no proof of circulation.

29. It is not the case of P.W.1 that Ex.P1 was handed over to him, P.W.1 in his entire evidence has stated that he was informed by the area Secretary Mr. Sakthivel, It is not the case of P.W.1 in his entire evidence that Ex.P1 was handed over to him by the said Mr. Sakthivel. Similarly, P.W.2 in his evidence has stated that Ex.P1 was given to him by one Mr. JR. Xavier Rajesh, but, the said Mr. JR. Xavier Rajesh has not been examined for reasons best known to the election petitioner. In his entire evidence, P.W.2 has never stated that he handed over Ex.P1 to P.W.1. Similarly, in his evidence also P.W.3 did not indicate that he has handed over Ex.P1 to either P.W.2 or P.W.1. Therefore, the very origin from where Ex.P1 was received by P.W.1 has not been established. Therefore, Ex.P1 cannot be given any importance.

30. Much emphasis has been made by the learned Counsel appearing for the petitioner to show that Ex.P1 was collated with various reports and circulated, no evidence whatsoever was produced to prove how this collation has taken place in Ex.P1, where it was printed and xeroxed, absolutely there is no evidence. Even in the FIR lodged on 04-04-2021 marked as Ex.P2 no material could be found against the R.W.1 and he has not arrayed as an accused in the FIR. Much emphasis has been made on the representation made by the first respondent, dated 05-07-2021 to the District Collector to take action against the petitioner on behalf of the people to remove the unauthorisedly encroached land and building from the custody of the petitioner.

31. It is relevant to note that it is the case of the first respondent that such representation has been given as a people representative much after the election. Therefore, this Court is of the view that merely as an elected representative he has given some complaint to remove the unauthorized building which was said to be encroached on a Government land, that cannot be a ground to presume that circulation could have been made on the instigation of the first respondent.

32. In order to bring the act of corrupt practice of the first respondent within the meaning of section 123(4) of the Representation of the People Act, 1951 it must be established that the publication by a candidate or his agent or by any other person with the consent of the candidate or his election agent containing any statement of fact which is false. Therefore, to hold that there is corrupt practice by publication it must be established that such publication of defamatory article or statement made by the candidate himself or his election agent or by any other person with the consent of the candidate or his election agent. In the absence of any material to prove the alleged circulation made directly by the first respondent or his election agent or by any other person with the consent of the first respondent or his election agent, merely because some alleged publication were stated to have been circulated by some person, it is not possible for this Court to infer that such circulation has been made only by the first respondent.

33. Further, there is discrepancies in the evidence of P.Ws. 1 to 3. P.W.1 in his cross-examination has stated the leaflets were circulated at night time, whereas, P.W.3 has stated that the leaflets were dropped only in the day time and how the leaflets have come into the custody of P.W.1 also there is no evidence. Merely on the ground that after the election, the first respondent made some representation to remove the unauthorized construction in the encroached area by the petitioner, it cannot be held that the first respondent has circulated Ex.P1.

34. Further, total voters in the said constituency as admitted by the petitioner himself is only 24,000 and approximately 19,000 votes were polled. The candidate contested on behalf of AIADMK has secured third place. The evidence of P.W.1 also clearly shows that in the year 2011 the DMK had lost election in the said constituency. The first respondent has also already contested in the previous election and had lost it and in this election he was elected as an independent candidate. Therefore, in the absence of any evidence to show that only the first respondent or his election agent or any other person with his consent has circulated the leaflets containing defamatory statements as against the petitioner, the allegation of corrupt practice as against the first respondent has to fail.

35. It is an admitted fact that in the year 2019 some statements have been published in Samathuvam magazine and the matter went up to Press Council of India and the Press Council of India has ordered censure of the said magazine. Therefore, possibility of circulation of subject leaflets by any other persons who has also contested the election cannot be ruled out. Therefore, merely because the first respondent has defeated a political party candidate the allegation cannot be pitted against him to non-suit him from the election result. The first respondent has been elected democratically and no other allegations have been made against him.

36. It is well settled that a statement of fact contained in a newspaper or magazine is only hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in Court and deposing to have perceived the fact reported. The Hon'ble Supreme Court in *Quamarul Islam Vs. S.K.Kanta* reported in 7994 Supp (3) SCC 5 in paragraph 48 has held as follows: -

“48. Newspaper reports by themselves are not evidence of the contents thereof. Those reports are only hearsay evidence. These have to be proved and the manner of proving a newspaper report is well settled. Since, in this case, neither the reporter who heard the speech and sent the report was examined nor even his reports produced, the production of the newspaper by the Editor and publisher, P.W.4 by itself cannot amount to proving the contents of the newspaper reports. Newspaper, is at the best secondary evidence of its contents and is not admissible in evidence without proper proof of the contents under the Indian Evidence Act.....”

Hence, the petitioner cannot rely upon newspaper reports in the absence of examining the Reporter or the Editor to that effect.

37. As already stated to prove the charges of corrupt practice in an election petition, the proof of commission of corrupt practices must be clear, cogent, specific and reliable as the charge of a corrupt practice is almost like a criminal charge and the onus is on the person who brings forth that charge to prove it by leading reliable, trustworthy and satisfactory evidence and the Election cannot be set aside on mere possibilities, unless the allegation of corrupt practices are satisfactorily proved, election of the returned candidate cannot be set aside.

38. In the instant case, the petitioner has come out with vague pleadings in his election petition and absolutely there is no substantial evidence to substantiate the allegation of corrupt practice. With the available evidence on record, it is not possible to connect the first respondent with the corrupt practice alleged in the election petition. The election petitioner has miserably failed to prove the allegations made in the petition with clear and cogent evidence. The election petitioner has failed to prove that any corrupt practices has been committed by the first respondent or his election agent or that the corrupt practice has been

committed at the instance of the first respondent. As the petitioner has miserably failed to prove that the first respondent has committed any corrupt practice in the election, the election of the first respondent cannot be set aside on the allegation of corrupt practice.

39. Such view of the matter, when a person has been democratically elected, he cannot be thrown out merely at the whims and fancies of the defeated candidate without any materials. Accordingly, all the issues are answered against the election petitioner.

40. In the result, this Court finds no merit in the election petition and it deserves only to be dismissed and accordingly dismissed. No costs.

Witness, The Hon'ble Mr. Justice T. Raja, Acting Chief Justice, High Court at Madras, Aforesaid this the 20th Day of December 2022.

ASSISTANT REGISTRAR
Original Side-II

(Certified to be true copy)

Dated at Madras this the 3rd day of January 2023.

COURT OFFICER (O.S.)

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

List of Witnesses examined on the side of the Election Petitioner

S. Gopal	–	P.W.1
Sakthivel	–	P.W.2
Agilan	–	P.W.3

List of documents marked on the side of the Election Petitioner

Sl. No.	Exhibits	Description of Documents	Dated
(1)	(2)	(3)	(4)
1.	P1	Leaflet	—
2.	P2	Press Council of India order	22-08-2019
3.	P3	FIR No. 32 of 2021	04-04-2021
4.	P4	Article in Samathuvam Magazine	22-28 November, 2018
5.	P5	Information received through RTI Act from the Deputy Collector (Revenue) North, Puducherry.	07-10-2022
6.	P6	Voter's Identity Card of P.W.3 Agilan	—

List of Witness examined on the side of the First Respondent

G. Nehru @ Kuppusamy	–	R.W.1
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List of documents marked on the side of the First Respondent

Sl. No.	Exhibits	Description of Documents	Dated
(1)	(2)	(3)	(4)
1.	R1	First respondent letter to District Collector	05-07-2021
2.	R2	Director of School Education letter to the Chief Executive Officer, Puducherry Slum Clearance Board.	01-07-2021
3.	R3	Tahsildar letter to the Deputy Collector (Revenue) North, Puducherry.	13-07-2021

ASSISTANT REGISTRAR,
Original Side-II.

PK
02-01-2023

ELP. No. 6 of 2021

ORDER

Dated : 20-12-2022

The Hon'ble Mr. Justice N. SATHISH KUMAR

For approval : 02-01-2023

Approved on : 03-01-2023

Copy to:-

1. The Election Commission of India,
Nirvachan Sadan, Ashoka Road, New Delhi.

2. The Election Commission of India,
Represented by its Chief Electoral Officer -
Puducherry, Office of the Chief Electoral
Officer, Villiainur Road, Reddiarpalyam,
Puducherry-605 010.