

100

IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL WRIT JURISDICTION

W.P.(C) No. 784 OF 2015

IN THE MATTER OF:

Lok Prahari, through its General Secretary

S.N. Shukla

.....Petitioner

Versus

Union of India and Others

...Respondents

COUNTER AFFIDAVIT FOR AND ON BEHALF OF THE

RESPONDENT NO. 2 -

ELECTION COMMISSION OF INDIA

I, Vijay Kumar Pandey, Son of Shri Late Daya Nand Pandey, Aged about 38 years, working as Director(law) with the Respondent No. 2, at Nirvachan Sadan, Ashoka Road, New Delhi-110001, do hereby solemnly affirm and state as under:

1. That I am working as Director(law) with the Respondent No. 2 Election Commission of India and as such well conversant about the facts and circumstances relevant to the captioned matter and thus competent to swear and depose the present affidavit.
2. The answering Respondent-Election Commission of India (ECI) has been championing the cause of decriminalization of politics and within the Constitutional and statutory framework, wherever possible with the aid of Article 324 has also issued necessary instructions in furtherance of the mandate to conduct free and fair elections as also to decriminalize the democracy.

3. Since the prayers made in the accompanying PIL are not adversarial, the answering Respondent No. 2 - Election Commission of India (ECI) supports the cause espoused by the Petitioner organization, which is a step ahead towards a (i) healthier democracy, (ii) in furtherance of level playing field for participative democracy, and (iii) free and fair elections. The ECI supports the prayer No 1 as it has already written to Ministry of Law and Justice to amend the Form 26 for including the source of income of candidate and spouse vide letter no 3/4/ECI/LET/FUNC/JUD/SDR/VOL-I/2016, dated 07.09.2016.
4. The increasing role of money power in elections is too well known and is one of the maladies which sometimes reduces the process of election into a mere farce by placing some privileged candidates with financial resources in a distinctly advantageous position as compared to other candidates. The result of such an election cannot reflect the true choice of the people. The system also sometimes deprives qualified and able persons of the prerogative to represent masses.
5. It is noteworthy to mention that the answering Respondent regularly engages with other agencies for checking use of money power during elections. The answering Respondent has also recommended several amendments in the Representation of the People Act, 1951 in furtherance of the objective to check and remove maladies caused by criminal antecedents of candidates and misuse of money.
6. That nuisance by misuse of money caused to the democracy and free and fair elections reached the new low when the answering

Respondent was constrained to rescind the notification and conduct of polls in two Assembly Constituencies (Aravakurichi and Thanjavur) of Tamil Nadu. The unprecedented harsh step was taken following reports by observers, special teams of central observers, report of the special team of observers of large scale distribution of money and gifts to voters by candidates and political parties.

32. Having regard to the above constitutional and legal position enjoining upon the Commission the duty of conducting free and fair elections and upholding the purity of election and after taking into account all relevant facts and circumstances of the present case, the Commission is satisfied that the current electoral process in the said 28 134-Aravakurichi and 174-Thanjavur Assembly Constituencies in Tamil Nadu has been seriously vitiated on account of unlawful activities of the candidates and political parties and their workers in bribing the electors and unlawfully inducing them by offering money and other gifts of consumable items to woo them in their favour. 33. As mentioned above, when the Commission postponed the poll in these constituencies, it had held the hope that contesting candidates and the major parties, who are mainly to be blamed for the crisis, will relent and stop further acts of bribing voters but to the utter dismay of the Commission, allurements of voters by unlawful means still continued even after postponement of polls as seen from report received by the Commission about seizure of an amount of Rs.5,72,000 on 18th May, 2016. In the Commission's considered opinion, allowing the electoral process to proceed and conduct the postponed poll in the constituencies on 13th June, 2016, as scheduled, in such vitiated atmosphere would severely jeopardize the conduct of free and fair election in the said constituencies, and would not be reflective of the true choice of the electorate. If the Commission permits the election process to continue in such vitiated level playing field, it would be failing in its constitutional duty of ensuring free and fair elections for which it has been created as a specially empowered constitutional authority. For the above reasons, the Commission is also not able to persuade itself to conduct the poll in the above constituencies before the 1st June, 2016. While the Commission would like to stress that the Commission's attempt has always been to conduct elections in timely manner, the important Constitutional mandate of having to ensure free and fair elections cannot be overlooked. In the present case, for the reasons recorded above, the Commission is satisfied that the election process in the two 29 constituencies cannot be allowed to proceed and ought to be rescinded so that fresh elections may be conducted de-novo in these two constituencies when the atmosphere becomes conducive to the holding of free and fair elections after a reasonable lapse of time.

34. Accordingly, the Commission hereby recommends, under Article 324 of the Constitution and sections 15, 30 and 153 of the Representation of the People Act, 1951, read with Section 21 of the General Clauses Act, 1897 and all other powers enabling it in this behalf, to the Governor of the State of Tamil Nadu that he may be pleased to partially rescind the notification No.464/TN-LA/2016 dated 22nd March, 2016, insofar as that notification relates to the calling upon the 134-Aravakurichi and 174-Thanjavur assembly constituencies of Tamil Nadu State to elect a member each to the Legislative Assembly of the State. Revised schedule for the said two Constituencies of 134-Aravakurichi and 174-Thanjavur will be recommended by the Election Commission in due course of time.

A copy of the order dated 27.05.2016 passed by the Election Commission of India is annexed hereto and marked as Annexure R-

115 143
1 (Page No. to).

7. It is submitted that so far as the first prayer in the captioned writ petition is concerned, the information about source(s) of income of candidates, their spouses and dependants will be a step in the direction of enhancing transparency and should form part of the declaration in Col. (9) of Form 26. The Answering Respondent Commission vide its letter no. 3/4/ECI/LET/FUNC/JUD/SDR/Vol.I/2016 dated 7.09.2016 has already requested the Ministry of Law and Justice to consider the proposed amendments made in column (3) and column (9) of Form 26 and in total affirmation with the prayer made by the petitioner.

A copy of the letter dated 07.09.2016 sent by the answering Respondent to the Ministry of Law and Justice is annexed hereto and marked as Annexure R-2 (Page Nos. ¹⁴⁴ to ¹⁴⁵)

8. It is submitted that the existing Form 26 does not give any information in respect to the sources of income of the candidate, his/ her spouse and dependents to enable the electors to form an informed choice as to whether the increase of the income of the candidate from the previous election is reasonable or not. The present framework only allows the electors to have the PAN details of the candidate, his/ her spouse and dependents. According to law, no one except the assessing officer & his superior officer is allowed to see a person's tax return. Under Section 280 of the Income Tax Act, 1961 there is prosecution provision against the Officer of the department if he leaks a person's tax return details unauthorized to anyone. Usually under the Right to

164

Information Act, 2005 (RTI Act) or even under Section 138 of the Income Tax Act, 1961 the Central Information Commission and the Income Tax Department, do not provide the information as to anyone due to lack of public interest in the requisition.

9. It is submitted that the aforesaid issues do not allow the general public to have any information in respect of the source of income of the candidate and as such for the purpose of effective implementation of the judgments of this Hon'ble Court in true letter and spirit and i.e. give effect to the electors' right to choose, the Form 26 should be amended to make it necessary to provide details of the sources of income of the candidate, their spouses and dependants.

10. It is submitted that the 170th Law Commission Report was the first to suggest that a new Section 4A needs to be added to the Representation of the People Act, 1951 (hereinafter R.P Act, 1951) mandating that, a person shall be ineligible to contest elections unless he files an affidavit disclosing assets possessed by him, his spouse and dependent relatives. The R.P. Act, 1951 was amended and Section 33B was introduced which had the effect of reversing the direction of the Supreme Court regarding disclosure of assets and educational qualifications. The said amendment was challenged before this Hon'ble Court and in the judgments reported as PUCL v. U.O.I & Ors. (2003 4 SCC 399), Section 33B was declared unconstitutional.

11. The PUCL (*supra*) judgment clarified that a returning officer could not reject the nomination paper on the ground that candidate's information provided in affidavit was false.

12. In another case of Arun Dattaray Sawant v. Kisan Shankar Kathore the Bombay High Court Judge said that the R.O., in accordance with PUCL judgment could not subject nomination paper on the ground of false information. Nevertheless, since the candidate's nomination paper suffered from defects, it amounted to a case of improper acceptance of nomination paper under Section 100(1)(d)(i) and the election was liable to be set aside on this ground.

13. The aforesaid decision of the High Court of Bombay was challenged before this Hon'ble Court. This Hon'ble Court while upholding the decision of the High Court held that the non-disclosure of the returned candidates' wife assets was a substantial lapse and the information contained in the affidavit of the returned candidate cannot be treated to be substantial compliance.

14. In the matter of Kisan Shankar Kathore v. Arun Dattatray Sawant, (2014) 14 SCC 162, while dismissing the appeal filed by the returned candidate and upholding the order of the High Court of Bombay allowing the election petition, this Hon'ble Court held as under:

37. We have already discussed in detail each item of non-disclosure as well as defence of the appellant pertaining thereto. For the reasons recorded in detail at that stage by the High Court and stated above, with which we agree, we are of the opinion that its finding about non-disclosure of the information qua all the aspects is without blemish. There is a specific format in which the information is to be given, which was not adhered to.

38. With these remarks we proceed to deal with the first aspect. Insofar as non-disclosure of the electricity dues is concerned, in the given facts of the case, we are of the opinion that it may not be a serious lapse. No doubt, the dues were outstanding, at the same time, there was a bona fide dispute about the outstanding dues in respect of the first electricity meter. It would have been better on the part of the appellant to give the information along with a note about the dispute, as suggested by the High Court, we still feel that when the appellant nurtured belief in a bona fide manner that because of the said dispute he is not to give the information about the outstanding amount, as it had not become "payable", this should not be treated as a material lapse. Likewise, as far as the second electricity meter is concerned, it was in the premises which was rented out to the tenants and the dues were payable by the tenants in the first instance. Again, in such circumstances, one can bona fide believe that the tenants would pay the outstanding amount. No doubt, if the tenants do not pay the amount the liability would have been that of the owner i.e. the appellant. However, at the time of filing the nomination, the appellant could not presume that the tenants would not pay the amount and, therefore, it had become his liability. Same is the position with regard to non-payment of a sum of Rs 1783 as outstanding municipal dues, where there was a genuine dispute as to revaluation and reassessment for the purpose of assessing the taxes was yet to be undertaken. Having said so, we may clarify that it would depend on the facts and circumstances of each case as to whether such a non-disclosure would amount to material lapse or not. We are, thus, clarifying that our aforesaid observation in the facts of the present case should not be treated as having general application.

39. Even if it is so, in respect of the aforesaid aspects, on other non-disclosures, the case of the appellant has to fail. We find a clear case of non-disclosure of Bungalow No. 866 in the name of the appellant's wife, which is a substantial lapse. So is the case about the non-disclosure of vehicle in the name of the appellant's wife. Likewise, non-disclosure of the appellant's interest/share in the partnership firm is a very serious and major lapse. On all these aspects, we find that the defence/explanation furnished by the appellant does not inspire any confidence. It is simply an afterthought attempt to wriggle out of the material lapse on the part of the appellant in not disclosing the required information, which was substantial. We, therefore, are of the view that in the affidavits given by the appellant along with the nomination form, material information about the assets was not disclosed and, therefore, it is not possible to accept the argument of the appellant that information contained in the affidavits be treated as sufficient/substantial compliance.

40. We have already reproduced above the relevant portions of judgments in Assn. for Democratic Reforms² and People's Union for Civil Liberties⁵ and the guidelines issued by the Election Commission pursuant thereto. A conjoint and combined reading thereof clearly establishes that the main reason for issuing directions by this Court and

107

guidelines by the Election Commission pursuant thereto is that the citizens have fundamental right under Article 19(1)(a) of the Constitution of India to know about the candidates contesting the elections and this is the primary reason that casts a solemn obligation on these candidates to furnish information regarding the criminal antecedents, educational qualifications and assets held by the candidate, his spouse and dependent children. It is on that basis that not only the Election Commission has issued guidelines, but also prepared formats in which the affidavits are to be filed. As a fortiori, it follows that if the required information as per the said format in respect of the assets of the candidate, his wife and dependent children is not given, it would amount to suppression/non-disclosure.

41. It was argued that the acceptance of nomination is as per Section 33 of the Act, which contains requirement for a valid nomination. Further Section 36(2) deals with the rejection of nomination on grounds specified therein. It was the submission of the learned Senior Counsel that at the time of scrutiny of the nomination under Section 36, nomination could be rejected only if any of the grounds stipulated in sub-section (2) are satisfied and there cannot be any "deemed" ground, which is not covered by Section 36(2) of the Act. Therefore, the Returning Officer had rightly accepted the nomination form as none of the grounds specified in sub-section (2) of Section 36 were attracted. He further submitted that Sections 8-A, 9, 9-A, 10 and 10-A provide disqualifications for the Members of Parliament and the State Legislature. As per the counsel, from the scheme of the Act it can be seen that at the time of scrutiny of nomination, all that the Returning Officer is required to examine is as to whether the candidate suffers from any of the disqualifications mentioned in Sections 8 to 10-A of the Act and as to whether the nomination is in the form prescribed by Section 33 and accompanied by the documents mentioned in sub-sections (2) to (7) of Section 33 and whether it is accompanied by an affidavit prescribed by Rule 4-A and the deposit required by Section 34 of the Act. Apart from the aforesaid, the Returning Officer is not empowered to reject the nomination on any other ground. He argued that the right of the Returning Officer to conduct a summary inquiry into the correctness or otherwise of the contents of the affidavit filed along with the nomination was expressly taken away as can be seen from the judgment of this Court in *People's Union for Civil Liberties 5*. Having noted that the Returning Officer has no power to reject a nomination where false information is furnished or material information is suppressed, the Election Commission of India and the Union of India have requested this Court to treat the same as equal to a blank affidavit, as noted in *Resurgence India*.

42. It is difficult to accept the aforesaid submissions of the learned Senior Counsel as that would amount to nullifying the effect of the judgments as well as guidelines issued by the Election Commission.

43. When the information is given by a candidate in the affidavit filed along with the nomination paper and objections are raised thereto questioning the correctness of the information or alleging that there is non-disclosure of certain important information, it may not be possible for the Returning Officer at that time to conduct a detailed examination. Summary enquiry may not suffice. The present case is itself an example which loudly demonstrates this. At the same time, it would not be possible for the Returning Officer to reject the nomination for want of verification about the allegations made by the objector. In such a case, when ultimately it is proved that it was a case of non-disclosure and either the affidavit was false or it did not contain complete information leading to suppression, it can be held at that stage that the nomination was improperly accepted. Ms Meenakshi Arora, learned Senior Counsel appearing for the Election Commission, rightly argued that such an enquiry can be only at a later stage and the appropriate stage would be in an election petition as in the instant case, when the election is challenged. The grounds stated in Section 36(2) are those which can be examined there and then and on that basis the Returning Officer would be in a position to reject the nomination. Likewise, where the blanks are left in an affidavit, nomination can be rejected there and then. In other cases where detailed enquiry is needed, it would depend upon the outcome thereof, in an election petition, as to whether the nomination was properly accepted or it was a case of improper acceptance. Once it is found that it was a case of improper acceptance, as there was misinformation or suppression of material information, one can state that question of rejection in such a case was only deferred to a later date. When the Court gives such a finding, which would have resulted in rejection, the effect would be same, namely, such a candidate was not entitled to contest and the election is void. Otherwise, it would be an anomalous situation that even when criminal proceedings under Section 125-A of the Act can be initiated and the selected candidate is criminally prosecuted and convicted, but the result of his election cannot be questioned. This cannot be countenanced.

44. The upshot of the aforesaid discussion would be to hold that the present appeal is totally devoid of any merits and is, accordingly, dismissed.

15. The pronouncement of law under the aforesaid decision, it can be concluded that if details are omitted despite reminder by R.O. in the nomination papers, it is fit to be rejected, however, if information is false, prosecution under Section 125 A is possible however consequences upon conviction depend on facts of each individual case.

169

Due to paucity of time and complexities involved it would not be appropriate to provide for rejection of nomination papers by the R.O.

16. The ECI has time and again stressed on the importance of filing of true information by the candidates standing for elections in their respective affidavits. The filing of false affidavits in matters of election can have extremely serious consequences and have the tendency to affect the purity of elections.

- a. The ECI in its proposal for electoral reform sent to the government in 2004 has proposed that an amendment must be brought to Section 125 A to enhance the punishment on filing false affidavits to 2 years' imprisonment without the alternative clause of fine, and also that the offence should be included in the list of offences listed in sub-section (1) of section 8 which would attract disqualification on conviction.
- b. The Commission also proposed that furnishing of false affidavit or suspension of material information in the affidavit should also be specified as ground for challenging the election under section 100 (1) of the RP Act, 1951.
- c. Under the provisions of section 36, the grounds for rejection of nomination papers do not include the case of a candidate who fails to submit the affidavit under section 33A in the prescribed manner. In order to remove any doubt, ECI also recommended that in clause (b) of sub-section (2) of section 36, 'Section 33A' may also be inserted.

17. The answering respondent submits that it would be desirable to include the act of filing false affidavits as offence in the list of 'corrupt practices' under section 123 of the RP Act, 1951, in order to provide effective deterrent against filing of false affidavit. It is pertinent to mention herein that this views of the answering Respondent was even endorsed by the Law Commission in its 244th Report on 'Electoral Disqualifications' in the year 2014. ECI has always shown its commitment towards maintaining the purity of elections and what is required is to bring in suitable amendment by the legislature for effective check on electoral malpractices.

18. It is submitted that though prayer 1 (iii) does not claim any relief against the answering Respondent, however, it is pertinent to mention herein that the answering Respondent has written letters to the Chief Secretaries of all the States calling for the information about the pending case against the sitting legislatures vide its letter No.509/214/2011/RCC/228 dated 2

19. It is submitted that the answering Respondent affirms prayer 2, 3 and 4 made by the petitioner to bring in transparency so that no candidate escapes liability by the reason of a lacuna in the existing law.

20. The answering Respondent-ECI has always supported and considered such reforms which bring about transparency in the election process.

21. It is submitted that since, the Government Servants being "public Servants" are subject to these rigorous requirements, for the sake of probity in public life, there is every justification for extending the

111

scope of 9A for including government contracts with interest of spouse and dependents directly or by Hindu undivided family/trust/partnership firm(s)/ private company (companies)/ in which the candidate and his spouse and dependents have a share or interest.

22. The Government officials being "public servants" are subject to various restrictions even for the activities of their spouses and dependents as per CCS (Conduct) Rules, 1964. Rule 4(3) of the CCS (Conduct) Rules, 1964 reads as follows :

"No Government servant shall in the discharge of his official duties deal with any matter or give or sanction any contract to any company or firm or any other person if any member of his family is employed in that company or firm or under that person or if he or any member of his family is interested in such matter or contract in any other manner and the Government servant shall refer every such matter or contract to his official superior and the matter or contract shall thereafter be disposed of according to the instructions of the authority to whom the reference is made."

23. Furthermore, the DoPT vide its circular dated 20/07/2016 has further extended the definition of "Members of the Family" by including the wife or husband, son or daughter, parents, brothers or sisters or any person related to any of them by blood or marriage, whether they are dependent on the Government servant or not.

24. Section 13 (1) (e) of the Prevention of Corruption Act, 1988 entails commission of criminal misconduct by the public servant himself or any person on his behalf, whereby he or person in his behalf, is in possession or has, at any time during the period of his office, been in

possession for which the public servant cannot satisfactorily account, of pecuniary resources or property disproportionate to his known sources of income.

25. The phrase in the above provision, "any person on his behalf", in majority situations includes either spouse or any other relative of the public servant. Thus, in advent of spouse or any relative of the public servant, if found in possession of any pecuniary resources or property disproportionate to the known sources of income of spouse or any relative of the public servant, which the public servant cannot satisfactorily account for, the person will attract a criminal prosecution under Section 13(1)(e).

26. Under Section 13 (1) (e)/13 (2) of the Prevention of Corruption Act, 1988 the possession of pecuniary resources or property by public servant disproportionate to his known sources of income and his inability to satisfactorily account for the same can lead to conviction and sentence.

27. Therefore, observing the functionality under the above provision, engagement of an election candidate in Government Contracts, under Section 9A must include spouse and dependents of the candidate in having the interest in subsisting the Government contract to establish a transparency in the Representation of People's Act, 1951 with respect to the Government Contracts entered into by the candidate as well as

their link with the family members of the candidate and their interest in those contracts.

28. This Hon'ble Court in the judgment reported P.V. Narsimha Rao v. State (CBI / SPE) (reported as 1998 4 SCC 626) held that there is no doubt in regard to, that a Member of Parliament, or of a Legislative Assembly, holds an office and that he is required and authorised thereby to carry out a public duty. In another word, a member of Parliament, or of a Legislative Assembly, is a 'public servant for the purposes of the Prevention of Corruption Act, 1988. If the person is found to be a public servant within the meaning of the definition, he must be taken to be a public servant for the purposes of all provisions in the statute in which the expression 'public servant' occurs. It was also held that that merely because there is no authority which is competent to remove a public servant and to grant sanction for his prosecution under Section 19(1) it cannot be said that a Member of Parliament is outside the purview of the 1988 Act. Hereby it is clear from the given judgment that Members of Parliament are inclusive in the definition of the "public servant" and Prevention of Corruption Act, 1988 is applicable to them in entirety.

29. In light of the aforesaid submission, the answering respondent proposes that in order to give effect to the prayers of the petitioner it will be necessary to construe the word person as appearing in Section 9

A of the RP Act, 1951 widely so as to include the following within its ambit the following :-

- i. an individual,
- ii. a Hindu undivided family,
- iii. a company,
- iv. a trust,
- v. a firm,
- vi. an association of persons or a body of individuals, whether incorporated or not,
- vii. a local authority, and
- viii. every artificial juridical person, not falling within any of the preceding sub-clauses.

30. The answering respondent beseeches this Hon'ble Court to pass appropriate directions, which may be in furtherance of eradicating electoral mal practices.

V. U. Pandey

DEPONENT

विजय कुमार पांडेय
Vijay Kumar Pandey
निदेशक/Director
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

Verification

I, the deponent above named, do hereby verify that the facts stated in para no. 1- of my above affidavit are true and correct to the best of my knowledge and belief. No part of it is false and nothing material has been concealed there from.

Verified at New Delhi on this 30th day of December, 2016.

V. U. Pandey

DEPONENT

विजय कुमार पांडेय
Vijay Kumar Pandey
निदेशक/Director
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

ELECTION COMMISSION OF INDIA

NirvachanSadan, Ashoka Road, New Delhi - 110001.

In ref: General Election to the Legislative Assembly of Tamil Nadu, 2016 - Holding of Election from 134-Aravakurichi and 174-Thanjavur Assembly Constituencies.

PROCEEDINGS

The General election to the Legislative Assembly of Tamil Nadu was called by the Governor of Tamil Nadu on 22nd April, 2016, by his notification of the said date under section 15 of the Representation of the People Act, 1951. On the same date, the Election Commission also issued notification under sections 30 and 56 of the said Act regarding appointment of dates for various stages of elections and fixation of hours of poll for all the Assembly Constituencies including 134-Aravakurichi and 174-Thanjavur assembly constituencies in the State of Tamil Nadu, with respect to the said election in each of the constituencies:-

- (a) the 29th April, 2016 (Friday), as the last date for making nominations;
- (b) the 30th April, 2016 (Saturday), as the date for the scrutiny of nominations;
- (c) the 2nd May, 2016 (Monday), as the last date for the withdrawal of candidatures;

- (d) the 16th May, 2016 (Monday), as the date on which a poll shall, if necessary, be taken; and
- (e) the 21st May, 2016 (Saturday), as the date before which the election shall be completed; and

2. The Commission in its detailed order dated 14.5.2016 elaborated that:

" On 22nd April 2016, the Income Tax Department conducted a search in the residence of one Shri Ambunathan, S/o Shri Periyasami based in Aravakurichi Assembly constituency. During that search, an amount of Rs.4.77 crores was seized by the Income Tax authorities along with some other incriminating documents which revealed a number of notings showing proximity to some prominent Ministers of the Tamil Nadu Government and belonging to the All India Anna Dravida Munnetra Kazhagam. In addition, 200 saris and dhotis were also seized. There were notings to show that saris and dhotis have been purchased for Rs. 1.30 crore. Further, a number of currency counting machines were also seized along with some un-registered ambulance vehicles, which were suspected to be used for transporting the money. A case was registered under various sections of the Indian penal code and section 5 of the Emblems and Names (Prevention of Improper use) Act, 1950. The aforesaid seizure of money and gift items gave rise to a petition from the opposition parties demanding a CBI enquiry in the matter.

4. On 10th May, 2016, the Income Tax Department conducted another search in the residence of Shri K.C. Palanisamy, the candidate of Dravida Munnetra Kazhagam in the 134-Aravakurichi Assembly constituency, and his son Shri K.C.P. Sivaraman in Karur and Chennai respectively. The total cash seized in the above search amounted to Rs.1.98 crore, out of which

117

Rs.95 lakh was seized from the house of the candidate Shri K.C. Palanisamy. The Income Tax Department has videographed both the above mentioned searches and seizures.

5. Further, seven FIRs have been registered in 134-Aravakurichi Assembly Constituency. In one of these FIRs, registered under section 171B of the Indian Penal code, the complaint was that a person was distributing money to some people in the constituency and when the officials reached the spot, the person distributing the money fled from the scene abandoning Rs.68,000/-. Furthermore, 429 litres of liquor has been seized in the constituency and 33 complaints of money distribution have been registered in the Grievance Redress portal on Money Distribution of the constituency set up by the election authorities"

3. The Commission in its order dated 14.05.2016 held that the illegal inducement of electors by distribution of money and other gift items by the candidates and political parties defeats not only the statutory provisions of electoral offence and corrupt practice relating to 'bribery', but also the provisions of corrupt practice under Section 123(6) of the said Act relating to the prescription of limits of election expenses and requiring the candidates to maintain true and correct accounts of their election expenses under Section 77 and Section 10A. For the detailed reason given in its order, the Commission ordered, drawing power under Article 324 of the Constitution and Sections 30 and 153 of the Representation of the People Act, 1951, read with Section 21 of the General Clauses Act, 1897, that allowing the electoral process to proceed would undermine the conduct of fair elections, and that the conduct of the poll in the said 134-Aravakurichi Assembly Constituency in Tamil Nadu shall be deferred, for the time being, so that the vitiating effect of the money

power created by the distribution of money and gift items to the electors of the Constituency loses its intensity and a more congenial atmosphere conducive to the conduct of free and fair election is created. Therefore the above poll would be held on 23rd May 2016 and the same was published in the Gazette Notification dated 15.05.2016.

4. The Commission in a separate order dated 15.05.2016, with respect to 174-Thanjavur Assembly Constituency postponed the poll in the said constituency also to 23.05.2016 and the same was notified on 15th May 2016 vide Gazette notifications dated 15.05.2016. The Commission considered the report received from the Expenditure Observer, wherein he had elaborated seizure of cash in a lodge along with documents linking distribution of cash to the electors of Thanjavur. Relevant part of the report is reproduced below:

"On 13.5.2016, based on a tip off, the FST went to a lodge, named Muthu Lodge, in Thanjavur. It was informed that Money was being distributed at that place. The FST seized Rs. 5 Lakhs from the terrace of the lodge. Many rubber bands were found lying there indicating distribution of huge cash. The FST was asked to collect them as evidence and to search for more cash' Four hand written papers were also found (Attached as Annexure "A" for ready reference).

On first three pages details of wards with areas and names of few people were written. On the fourth page, at the right top corner, a figure of 35,00,000 was written. Below that two names, 'saravanan' and 'Manohar' were written' After these names, few figures were written. The FIR was lodged against all the persons whose names were written on these papers. The SP was requested to identify all the persons and after interrogation, to recover the money distributed to them. He was also requested to identify the persons mentioned as 'saravanan' and

'Manohar' who appeared to be key persons and to interrogate on priority. It was found that Saravanan was the son of the Owner of lodge and was present in the lodge at the time of FST's action. He was taken into custody by the police for interrogation. The other person, Manohar, could not be traced.

As the information was about huge money distribution and the papers were also indicating the same, on the directions of the undersigned, another team of FST was rushed to the lodge for thorough search. Meanwhile, police had also taken few people into custody for enquiries whose names were mentioned in those hand written pages. There was one more lodge of the same owner adjacent to the raided lodge. It was also searched by the FST. In the evening cash of another 15 Lakhs was found from one of the rooms of the lodge. Many papers related to election campaigning and money distribution were found. FIR was lodged against the persons whose names were mentioned in those papers. The lodge was sealed.

On 14.5.2016, the undersigned was patrolling in the vulnerable areas of the constituency. At one place, a car was found suspicious. The FST was called and the car was searched. A lot of pamphlets of AIMMK party which not printed with permission were found. Besides that, a bunch of photo copies of handwritten notes was found (Attached as Annexure "B"). These pages give the details of ward wise distribution of money at the rate Rs. 500 per vote. This is account of 13 wards and the total of distributed money comes to Rs. 1.40 Crores. FIR was lodged against the person found in the car. The SP was requested to further investigate the matter and take it to the logical conclusion. Directions have been given to seize the car.

There are total 51 wards in the Thanjavur Constituency. From above pages it is observed that Rs 1.40 Crores were distributed in 13wards. It indicates that despite of all the possible efforts taken by the election observation machinery, more than Rs. 6 crores were distributed by a

120

single candidate in the constituency. It is very painful to report that only about Rs. 21 Lakhs were seized during the election campaigning despite of sincere efforts by the undersigned with the available resources."

5. Subsequently, the Election Commission in its Letter No.464/TN-LAA/2016, dated 17.05.2016 constituted team of officers separately for each of the two constituencies to look into the causes that led to large scale distribution of gifts etc., in these two constituencies, inspite of the best efforts by the Commission. Members of the teams consisted of senior officers of IAS, IPS , IRS and officers from the Income Tax Department. The aforesaid teams submitted their reports within the time given i.e., by 19.5.2016. The Thanjavur team elaborated about the complaints and progress of investigation on earlier cash seizures. It reported detailing the Seizure of cash of Rs. 25,48,850/- in Thanjavur AC- 174 in the three cases as below

"(i) 15/03/2016. Village Nanjikottai.

Seizure of Rs. 34,000/-(Thirty four thousands only) from one Mr. Saravanan, resident of RMS colony, Thanjavur on 15/05/2016. He is the vice president of the student Federation of AIADMK. He was arrested and released on bail as the offence is a bailable offence. Case is pending investigation.

(ii) 13/05/2016. Thanjavur

Seizure of Rs. 5,04,350/- (Five lakhs four thousand three fifty only) and certain documents pertaining to the Assembly elections from Muthu Lodge, Alagammal Nagar, Baskarapuram, Thanjavur on 13.05.2016. 5 Accused persons were arrested in this case including the owner of the lodge, Mr. Baskaran. All the accused were arrested and released on bail

121

7

as the offences registered against them were bailable offences. Case is pending investigation.

(iii) 13/05/2016. Thanjavur.

Seizure of Rs.15,10,500 (Fifteen Lakhs ten thousand five hundred rupees only) and certain documents pertaining to the Assembly elections from the same Muthu Lodge, Alagammalnagar, Baskarapuram, Thanjavur, at 22,30 hrs. During the first seizure of Rs. 5,04,350,-from the terrace of Muthu Lodge, certain documents were seized wherein names of certain people were mentioned. It was suspected that money was distributed to them recently. The SP who was at Kumbakonam was requested to find out these people and recover the money. After verification, the SP told that according to his information, the money has not been distributed but it is still lying in the lodge. On his input, additional Flying Squad Team was sent to search the lodge thoroughly. The team found Rs. 15,10,500/- from a room which was opened with a duplicate key. 2 accused persons were arrested."

6. The Thanjavur team further reported that

"After the receipt of the Commission's directions the Police observer and the General observer visited afterwards and enquired from some sample Voters about the actual distribution of money.Enquiries were also made by sending the staff attached with the observers when some people admitted that they were paid Rs 100 to 500/- by the candidate's representatives.....

It is also submitted that the above mentioned observers also spoke to people from different categories and found that by and large the people appreciated the action of the election commission of postponing the polling dates is a good action and will definitely curb the malpractices in elections. There is also a perception that the postponement of the date for the polling by a few days may not be that effective and the polling should have been postponed by a longer time."

7. The team from Aravakurichi constituency in its report dated 19.05.2016 analyzed in detail distribution of cash and gifts and seizure in the constituency and reported as follows¹

122

"on 22.04.16: Search on the residence of Sh. Anbunathan by the IT department and recovery of:

- i. Rs. 4.77 Crores and incriminating documents
- ii. Seizure of 200 saris & dhotis with noting to show that they had been purchased for Rs. 1.3 Crores.
- iii. Currency Counting Machines.
- iv. Un-registered 'ambulance'
- b. 10.05.16: Search on the properties of Sh KC Palinasamy, DMK Candidate by the IT Department & recovery of Rs 1.98 crores
- c. Recovery of Rs. 68,000 in Meenakshipuram, Aravakurichi on 12.05.16 and registration of Criminal offence under section 171(E) IPC
- d. Seizure of 1425.10 litres of liquor till the Polling day
- e. 33 Complaints of Money distribution registered in the Grievance Redressal Portal
- f. Rs. 8.43 Crores seized in all (Including that mentioned above) during the Election process."

8. Elaborating the measures taken to get the complaints from the citizens and other details about the seizure of cash it further reported that there is

"Tough Competition and 'fight for survival' between the candidates: The candidates of the two major political parties for 134- Aravakurichi AC are Senthil Balaji from AIADMK & KC Palinasamy from DMK.

Both the above candidates have been important functionaries in the Government when the respective parties were in power. Thus, it is a matter of Political survival which may have led the candidates to resort to unethical practice of distribution of cash, gifts etc.

It is pertinent to note that the AIADMK candidate, Senthil Balaji, has in the past contested from 135- Karur AC and has been 'directed' by his party to contest in 2016 Assembly Elections from 134- Aravakurichi AC.

Sound financial capacity of the candidates: Some of the candidates in the fray for 134- Aravakurichi AC are financially well-off due to their forays in business. Availability of liquid assets may have led some of them to resort to unethical practice of distribution of cash....."

"During the interaction with a wide spectrum of people, including media, respectable citizens, Govt. employees etc, it was brought to the notice of all three observers (General, Police & Revenue) that Money distribution

123

has played a major role to vitiate the Election process in Aravakurichi AC area.

Although specific information on record could not be obtained, it has been informed to all three of us that money to the extent of Rs. 2000 to 5,000 per voter was distributed by the two major political parties in Aravakurichi AC. The Rs. 8.3 crores that has been recovered during the Election process is only the tip of the Iceberg. (This statement, however, needs to be looked at from the perspective of money distribution in other parts of TN also, as reported by the media)

It is also widely perceived that the major portion of the unethical and illegal activity, distribution of cash in Aravakurichi AC has been completed by 14.06.16 and has already vitiated the atmosphere.

Further The money has already been distributed in the constituencies by 14.5.2016 and hence the vitiation is already in place for any election that will be held in the near future. Even after postponement of election in one of the assembly constituencies, 11 complaints were received between 17-18/5/2016 and a cash seizure was made amounting to Rs.5.72 lakhs;

From the recovery of documents seized during raids, there ample evidence gathered that reveals direct linkage with the parties and syndicate of money distribution. ;

A general on-the-spot enquiry by the officers shows that distribution of money is rampant as a rule but no one is venturing to put it in black and white probably because of law that bribe receiver is equally guilty as is the bribe giver. Distribution of cash has been of the order of Rs.1000-2000 per voter and in one instance; a voter who is presently abroad, parties had left the due share of money at the residence of his parents even though the parents refused to accept the bribe;"

9. Based on the reports of the aforesaid two teams about vitiation of polls due to continued influence of money and gift to the voters of these constituencies, the Commission felt that further examination of possibilities of conduct of free and fair poll in the said two

127

constituencies is necessary and decided to reschedule the date of poll to 13th June, 2016.

10. The Election Commission vide its order 505/meetings/2015/EEPS/vol-3 dated 18th May 2016, deployed additional two special observers each to these two constituencies. For further conducting a detailed enquiry on FIR/complaints lodged relating to election expenditure monitoring. The Special observers of 134-Aravakurichi constituency have reported on 19.5.2016 that:

"Apropos of the above it is submitted that the undersigned were deputed for conducting a detailed inquiry on the FIR/Complaints lodged relating to Election Expenditure Monitoring in respect of the above Assembly Constituency.(AC-134, Tamil Nadu).

2. In continuation of the earlier interim report dated 19.05.2016, the final report is being submitted hereby on the basis of information obtained today from the relevant police authorities and the DEO of the constituency concerned about the truth of the allegations/complaints mentioned in the FIR and the progress made thereon after the filing of such FIRs/Complaints. Before embarking upon a discussion of the principal issue, it is deemed apposite to recapitulate the facts in brief. The Investigation Wing of the Income Tax Department had conducted two search actions u/s 132 of the Income Tax Act 1961, in the case of Shri C.P. Anbunathan at Karur on 22.04.2016 and Shri K.C. Palanisamy at Karur and Chennai on 10.05.2016.

3.A Shri C.P. Anbunathan is engaged in money lending business and also running a School at Coimbatore. He is also a member of AIADMK party. During the search cash totaling Rs. 4.77 crores was found at his premises and seized. In addition to the cash, bundles containing 200 sarees, dhotis, election materials etc. were also found. The same were placed under prohibitory/restrictive orders of the Income Tax Act 1961. The seized 200 sarees and dhotis were accompanied by notings on paper which reflected that they had been purchased for Rs. 1.3 Crores.

3.B Similarly the Investigation Wing of the Income Tax Department had conducted a search action u/s 132 of the Income Tax Act 1961, in the case of Shri K.C. Palanisamy at Karur and Chennai on 10.05.2016. Shri

125

K.C.Palanisamy is the contesting candidate of a prominent political party in Tamil Nadu. His son K.C.P.Shivaraman is a businessman, who is the managing director of M/s.K.C.P.Packaging Pvt. Ltd. During the search operation, cash totaling Rs.1.98 Crores was found at the residential premises of Shri K.C.Palanisamy in Karur and K.C.P.Shivaraman in Chennai. The cash seized at the Karur residence was Rs.1.25 Crores for which no document indicating that the cash was explained from all angles was found.

4. *In respect of the above cases it was pointed out by the concerned two Dy. Directors of Income Tax(Investigation), who were present for giving an update of the progress made in the cases searched as above, that inquiries into various aspects of the above cases were being made by the Investigation Wing of the Income Tax Department. For example the follow up actions relating to the various banks accounts, seized documents, etc. were continuing. It was also told that the Income Tax Department was in the process of obtaining the cash of Rs. 10.33 lakhs u/s 132A of the Income Tax Act 1961 seized by the police from the office premises of Shri C.P. Anbunathan on 22.04.2016. It is worthwhile to add at this juncture that acting on a tip off the Police authorities had inspected the office premises of Shri C.P.Anbunathan on 22.04.2016 and found Rs.10.33 lakhs as no explanation was forthcoming from the above person. Moreover no proper documentation was also maintained by him.*

In addition to the above cash, 11 cash counting machines, voters' list, cash labels/stickers and a fake Government ambulance parked at the premises of search were also recovered from him. The FIR was duly lodged against the concerned persons. We are informed that further inquiries and investigations are being conducted in the above matter.

5. *The details of the violation of the Model Code of Conduct in the Assembly Constituency were obtained from DEO along with the action taken report. The total number of complaints received pertaining to distribution of money, liquor, gifts was 58 cases. The Police authorities had filed FIR in 4 cases "*

11. The special observers from 134-Aravakurichi constituency concluded their report with the observation that

126

"Coming to the brass tacks now, our prima facie observation on the basis of the above facts is that concrete evidence are on record to underpin the proposition that not only violation of the MCC took place here but use of undisclosed wealth in defiance of the RP Act 1951 was also made to bribe the voters. It is worthy of note that out of the total complaints received numbering 112, the complaints were mostly linked to money, liquor, freebies etc. distribution (58 cases) all of which had to do with corrupt electoral practices. Thus so far as this constituency is concerned the fact remains undisputed that a number of complaints relating to malpractices including distribution of cash and kind were of course received by the control room of Karur in respect of Aravakurichi Assembly Constituency. All such complaints were reported to the respective Flying Squads and Static Surveillance teams of the Constituency concerned who acted briskly upon receipt of incriminating information.

Rest of the cases i.e. 54 (112 complaints – 58 complaints) related to miscellaneous/others which were closed by the authorities. All these complaints upon being investigated were not found to be true. The complaints of money distribution reported by the complainants in the above said number of cases (54) despite having been found baseless by the authorities cannot be disregarded as baseless in toto as the distribution of money etc. is generally accepted as a ritual during elections in Tamil Nadu. Since the complaints were event specific i.e. election related campaigning corrupt practices nothing can be done at this distant point of time for ascertaining the reality prevailing at those points of time. Suffice it to say, that despite such an impossibility of performance now in the above direction it can be safely concluded that distribution of money took place/was about to take place here in the Constituency.

Regarding the status and authenticity of the contents of the cases, where FIRs were registered by the Police on the strength of the prima facie evidence, the investigations are yet to begin in all cases for verification of the allegations. Prima facie there was evidence to draw the conclusion in all such cases that the cash etc. recovered and seized was indeed utilized for bribing the voters. How deeply or remotely the cash and campaign materials had nexus with any party candidate or any party is a subject matter of investigation for which Investigation Officers have been appointed. Ensuring that the investigating officers without any taints, biases and stigma are appointed, the actual facts shrouding the seizure of cash etc. may be ascertained. Regular monitoring of the Investigating officers work may be ensured at the end of the Election Commission of India.....

127

It is intriguing to mention at this stage that even after the postponement of the poll in the constituency, under the scanner now, from 16.05.2016 to 23.05.2016, 11 complaints were made by various people between the 17th and the 18th May, 2016 regarding money distribution etc. A seizure of Rs.5.72 lakhs in cash made on 18th May, 2016 by the FST from a vehicle further bolsters the apprehension that the money distribution has become entrenched in the political culture here.

To the same effect is the representation made by Shri M. Baskaran contesting from Aravakurichi constituency from P.M.K.(Pattali Makkal Katchi), a regional party, to the DEO, Karur on 14th May, 2016 wherein it was asserted by him that one AIADMK candidate, Mr. Balaji, was guilty of distributing Rs.2000 per voter while another candidate, Mr. K.C. Palanisamy, from DMK was involved in distributing Rs.1000/- per voter two days before the 14th of May 2016. It was further claimed by him that both the parties' candidates distributed Rs.3000/- per voter on the 14th instant. He ALLEGEDLY furnished the proofs also several times in respect of which the DEO is yet to take action. However, it was informed upon enquiry in this regard by the DEO that action was also taken based on the report of Mr. Bhaskaran.

It is also pertinent to add here that local enquiries conducted by one of us revealed that the malaise of cash and valuables' distribution during elections is a universally accepted fact here. By interacting with the public in general, it was learnt that in this Assembly Constituency cash distribution amount varies between Rs.1000 and Rs.2000. This premise further gathers support from the fact brought to light by one of the complainants and native of Esnatham in Aravakurichi (TK), Karur (DT), but currently a resident of Massachusetts, USA, that representatives of the AIADMK AND DMK had left money behind at his parent's residence for distribution amongst the voters of sums between Rs. 1000 and Rs. 2000 by force inspite of their opposition. The action of the competent authority is pending which shows the widespread distribution of money."

12. The Special observers of 174-Thanjavur Assembly Constituency have reported on 19.5.2016 that

" On the directions of the ECI the undersigned arrived in the constituency in the evening of 18.05.2016 and since the morning of

128

19.05.2016 have interacted with the District Election Officer, the Superintendent of Police, the Expenditure Observer, the nodal officer of the Income Tax department as well as the Returning Officer for the 174 – Thanjavur Assembly Constituency. The undersigned also visited the Police Station where the FIR relating to the Muthu Lodge case has been filed and interacted with the SHO. Besides, the undersigned also visited the central control room of the district and reviewed the complaints received and action taken thereon, as also some voters around the constituency.

2. So far as the FIR relating to the Muthu Lodge case is concerned, it was reported that the owner of the lodge, one Sri Baskaran and the manager of the lodge, Sri Sarvanan have been arrested. It is also reported that the cash seizure of Rs. 20 lakh, from the terrace as well as one room of the lodge has been claimed by the owner as his money/income. It is also reported that 7 premises belonging to the persons who were named in the documents seized which indicated distribution of cash were searched but nothing incriminating was found, either in form of cash/goods or documents.

3. It appears that the persons involved, who have been interrogated by the investigation, have been trying to convince that the documents relate to 2014 Parliamentary Elections and not the current elections. In fact, the undersigned also got the distinct impression that the investigation is also leaning towards such a point of view.

4. However, having perused the said documents and also having been apprised of the fact and circumstances, it would appear that such a contention is extremely tenuous and does stretch the test of reasonability. Coming to the claim that the cash seized was the personal/business income of Sri Baskaran, it cannot be satisfactorily explained why cash should be lying around on the terrace or be kept in a locked room of the lodge. Had the cash been found in the safe/drawer of the reception or office of the lodge, such an explanation might have been acceptable. However, their location of seizure and also the documents found alongside indicating, at the very least, a plan for distribution of cash, can only lead to a reasonable inference that such cash was intended for illegal election expenditure.

5. So far as the hypothesis being propounded that the seized documents relate to distribution of cash during 2014 General elections, even a cursory appreciation of the evidence in its entirety would lead any rational person to throw it right out of the window. This assertion is being made on the basis of two facts, namely, presence of exact number of

129

votés polled ward wise in 2014 elections, clearly indicating that the lists were made only after the said elections, and secondly, the fact that lists of proposed beneficiaries of the alleged cash largesse appear to have nexus with voter lists prepared as recently as February, 2016.

6. So far as the extent of distribution of cash is concerned, the documents available certainly indicate the intention to distribute approximately Rs. 1.4 crores among the voters of the 13 wards of the constituency. "

"7. Interaction with the voters resulted in responses along expected lines. While the literate voters, government employees, village leaders etc. pleaded ignorance to any knowledge of distribution of cash, the common people affirmed their knowledge about distribution of cash by both the ruling party candidate and to a lesser extent by the main opposition party candidate also, but to voters other than themselves."

13. In spite of the action taken by the Commission in postponing the poll, there was further seizure of an amount¹ of Rs 5.72 lakhs by the Flying Squad on 18-05-16 from a vehicle in Aravakurichi constituency. The total seizure amounted to Rs.712,33,120 of cash, 429.24 Litres of liquor and 33.256 kgs of silver worth Rs. 9,00,000 in 134- Aravakurichi Assembly Constituency , and Rs. 75,20,850 of cash and 2145.12 Litres of liquor in 174-Thanjavur Assembly Constituency upto 15-05-16. It is pertinent to note that in 134-Aravakurichi, there was a seizure of Rs. **5,72,710 even after the order of postponement of poll by the Commission. It only reinforces the commission's earlier apprehension that** election in these constituencies is seriously vitiated on account of unlawful activities of the candidates and political parties and their workers in bribing the electors and unlawfully inducing them by offering money and other gifts of consumable items to woo them in their favour. Further the electoral process in such vitiated atmosphere would severely jeopardize the conduct of free and fair election.

130

14. A writ petition was filed by the DMK party in the High Court of Madras challenging the decision of the Commission to postpone the elections on the grounds that the political parties and the candidates were not consulted while postponing the elections, that the rescheduled date of poll falls in the Ramzan period when the Muslim voters will face difficulty in queuing while on fasting and also that the two members to be elected from the said constituencies will not be able to vote in the current election to Rajya Sabha from the State. The Hon'ble High Court after hearing the parties passed order on 21-05-16 that the Commission will consider the objections filed by the contesting candidates with the Commission and the Commission will decide the same as expeditiously as possible, preferably before 27.5.2016 and intimate the outcome of the same to all the respective candidates forthwith and act thereupon thereafter.

15. Prior to that there were four other writ petitions filed before the Madras High Court seeking cancellation of the election process in the two constituencies or postponement of poll for longer period. These petitions were (i) W.P. No 18156 of 2016- T. Sivagnanasambandan vs Chief Election Commissioner & another, (ii) W.P. No 18201 of 2016- T Dhansekaran Vs Chief election commissioner and others, (iii) W. P. No. of 2016 - M.S. Ramalingam Vs Chief Election Commissioner

13/

and others, and (iv) W.P. No. of 2016- M. Baskaran Vs. Election Commission of India and others. The petitioners in these petitions, referred to the instances of distribution of cash and gifts in the two constituencies and sought cancellation of the elections or postponement of poll for longer period so that the effect of misuse of money is neutralized. These petitions stand adjourned for a date after the vacation.

16. The Commission issued notices to all the contesting candidates of the said constituencies and invited their suggestions/objections by 1.00 p.m of 26.5.2016. In all, 26 candidates from the said constituencies filed their replies with the Commission within the stipulated time.

17. The candidates of DMK and AIADMK and some of the independent candidates have wanted the elections to be completed as soon as possible while candidates of BJP, BSP, PMK , MDMK and Naam Tamilar, Gokulam Makkal Katchi have suggested de novo start of election process. The candidate of DMDK in Thanjavur Constituency has suggested that the election may be conducted after six months. Shri S.Muthuvel, Independent candidate of Thanjavur A.C has stated that "voters' mind will not be changed within minimum six months.... May be postponed to conduct the elections after 6 months." Shri M.Baskaran, PMK candidate of Aravakurichi has stated

"Even before your officials and the officers from Income Tax raided the houses and premises of DMK and ADMK candidates and their associates huge money had already been distributed. DMK had distributed Rs.1,000/- in the first instalment and against Rs.1,000/- totaling

132

Rs.2,000/- per vote. ADMK candidate had distributed Rs.2,000/- in first instalment and Rs.1,000/- in second instalment total in Rs.3,000/- per vote. There are about 1,98,000 votes in the Aravakurichi Constituency. Therefore, about Rs.59.4 Crores had been distributed by the ADMK candidate and Rs.39.6 Crores had been distributed by the DMK candidate (total 100 Crores). The amount of money seized from both the candidates of about Rs.6.75 Crores together is only a tip of the iceberg. Even before the seizure DMK candidate had distributed 1 lakh numbers of dhotis and sarees with Black and Red DMK flag colour. ADMK candidate had also distributed 1 lakh dhotis and 'auspicious green colour saree' to the voters.

Apart from this ADMK candidates had gifted from Rs.5 lakhs to Rs.50 lakhs for each village and small and big residential locality to the local people to renovate temples and to build Mandapams for every temple.

One ingenious method of bribing resorted to by the ADMK candidate is to give tokens to each families. After the polling is over they can get washing machines Fridges etc. from local dealers by producing these tokens.

Altogether about Rs.150 crores had already reached the voters. Therefore it would be mockery and farce to permit the same candidates to continue to contest. The voters are still under the influence of this bribe." Further he has stated that candidates of AIADMK and DMK be disqualified, their party symbols be frozen and wide publicity should be given about the reasons for postponement of elections so that voters should know the reasons. Shri C.S.Prabhu, candidate of Indiya Jananayaga Katchi also wants the Commission to disqualify the candidates of aforesaid constituencies."

123

Thiru M. Rengasamy, Candidate, AIADMK in 174-Thanjavur AC has stated that Commission has no authority to re-schedule the election already called for by the Governor of the State. Sh. Anjugam Boopathy, Candidate, DMK in 174-Thanjavur AC has mentioned that holding poll on 13th June, 2016 will adversely affect Muslim voters because of Ramajan, and announcements by the Government will affect the voters and, the new members will not be able to vote in the coming Rajya Sabha Elections. Sh. Munu Sundararajan, Bahujan Samaj Party Candidate of 174-Thanjavur AC has stated that both AIADMK and DMK Party have resorted to bribing the voters and requested to disqualify them. Other candidate also made similar requests/suggestions."

18. In the meantime, the Commission has received a D.O. Letter dated 26th May, 2016, addressed to the Chief Election Commissioner of India, from the Governor of Tamil Nadu, on two petitions submitted before the Governor by Sh. Senthil Balaji, candidate of AIADMK in 134-Aravakurichi Constituency, and by Shri Rengasamy, candidate of AIADMK in 174-Thanjavur Constituency, requesting for early completion of election in the two constituencies. Based on the request of the two candidates, the Governor has recommended to the Commission that election in the two constituencies may be completed before 1st June, 2016. The said letter refers to two judgments of the Hon'ble Supreme court in *Election Commission of India vs State of Haryana* (AIR 1984 SC 1406) and

Bhim Singh vs Election Commission of India [1996 (4) SCC 188] impliedly suggesting that the Commission should have ideally consulted the State Govt. before taking decision to postpone the poll in the two constituencies. In this connection, it is relevant to point out that in *Bhim Singh's* case (supra), the challenge was mainly against Section 30(d) and Section 153 of the Representation of the People Act, 1951, inasmuch as the said Sections do not prescribe an outer limit for completion of election. The petitioner in that case raised the issue of security of candidates in the State when a longer campaign period is given, and not the issue whether the Commission should consult the government in the matter of fixing the election programme. On the other hand, the Hon'ble Supreme Court has unequivocally and unambiguously laid down in *Special Reference No.1 of 2002* (AIR 2003 SC 87) that "So far as the framing of the schedule or calendar for election of the legislative assembly is concerned, the same is in the exclusive domain of the Election commission, which is not subject to any law framed by the Parliament. The Parliament is empowered to frame law as regards conduct of elections but conducting elections is the sole responsibility of the Election Commission. As a matter of law, the plenary powers of the Election commission cannot be taken away by law framed by Parliament. If Parliament makes any such law, it would be repugnant to Article 324. Holding periodic, free and fair elections by the Election commission are part of the basic structure and the same was reiterated in *Indira Nehru Gandhi v Raj Narain*."

19. So far as the reference by the Governor in the said letter to the *State of Haryana's* case (supra) is concerned, the reliance on that case is also misplaced. The Supreme Court held in that case that "The Government of Haryana is undoubtedly in the best position to assess

135

the situation of law and order in areas within its jurisdiction and under its control. But the ultimate decision as to whether it is possible and expedient to hold the elections at any given point of time must rest with the Election Commission."

20. Moreover, the decision of the Election Commission to postpone the poll in the above mentioned two constituencies is not based on the assessment of any authority about the law and order situation in the two constituencies, but is based on the Commission's assessment about the vitiated atmosphere in the constituencies created by the illegal use of money power to allure the electorates by unethical and unlawful means resorted to by the candidates and the parties.

21. Apart from the above, the observation made by the Governor in his above referred letter suggesting that the Commission should have consulted him before altering the dates of poll in the two constituencies under reference, also seems to have been made overlooking the scheme of election process enacted in the Representation of the People Act, 1951 and as explained by the Supreme Court in *Mohinder Singh Gill Vs. Chief Election Commissioner and Others* (AIR 1978 SC 851), as follows:-

"13. The scheme is this. The President of India (under Sec. 14) ignites the general elections across the nation by calling upon the People, divided into several constituencies and registered in the electoral rolls, to choose their representatives to the Lok Sabha. The constitutionally appointed authority, the Election Commission take over the whole conduct and supervision of the mammoth enterprise involving a plethora of details and variety of activities, and starts off with the notification of the time table for the several stages of the

136

election (Section 30). The assembly line operations then begin."

22. Thus, neither the Representation of the People Act, 1951 nor any other law requires that the Election Commission should consult the Governor before making any changes in the election calendar set by the Election Commission under Section 30.
23. Furthermore, it is not the first occasion when the Commission has decided to postpone the date of poll or to rescind the election altogether in any constituency. The Commission has done so on umpteen occasions. For example, in the biennial election to the Council of States from the State of Jharkhand held in March, 2012, the Commission recommended to the President of India on 30th March, 2012, to rescind the notification calling that biennial election as the Commission found that the election process had been seriously vitiated because of the pernicious role of money power and could not be permitted to proceed, even though the poll had already been conducted for that biennial election as scheduled on the same day (30th March, 2012). Acting on such recommendation of the Election Commission, not only the President was pleased to rescind the election notification relating to that biennial election, but even the Jharkhand High Court before which the matter was agitated upheld the decision of the Election Commission and also hailed it as a necessary step to ensure conduct of free and fair election. (See *Jay Shankar Pathak and Pradeep Kumar Balmuchu Vs. Election Commission of India* (AIR 2012 JHAR 58).
24. In view of the above settled law position, the Commission is, with due respect constrained to observe that the Governor should have avoided writing to the Commission as on 26th May, 2016.

25. The observation of the Governor that the postponement of elections in these two constituencies will deprive the members to be elected from these constituencies to vote in the coming election to the Rajya Sabha is an extraneous consideration inasmuch as the members elected on the basis of an election which is not free and fair would not be true representatives of the electors of these constituencies. Further, there is no requirement under the law that for conducting the elections to the Rajya Sabha, all the seats in the legislative assembly should be filled.

26. The Commission has carefully analyzed and examined the whole situation as prevailing in the said two constituencies.

From the very early stages of the notification of the election, the Commission started receiving complaints in large numbers with regard to the distribution of money and other gifts in the form of consumable items, etc., to the electors of the said 134-Aravakurichi and 174-Thanjavur Assembly Constituencies by the candidates and political parties in the election fray. As a counter move to check these illegal activities of the candidates and political parties, the Commission took several proactive steps to curb these activities. Several Static Surveillance Teams, Flying Squad Teams and Video Surveillance Teams, headed by senior officers, were deployed in both the constituencies to keep a constant vigil on the above mentioned unlawful activities. In addition, senior officers belonging to Indian Revenue Service were appointed as Expenditure Observers by the Commission under section 20B of the said Act, who were assisted by Assistant Expenditure Observers in the constituencies. The above apart, the Income Tax Investigation Directorate and other enforcement

138

agencies were also involved to keep a close watch on the illegal movement of money and other gift items capable of being used for the inducement of electors.

27. These measures resulted in seizure of huge amounts of cash, running into several crores of rupees, and other gift items as is evident from the above reports of the two teams deputed by the Commission to make a thorough probe in the matter of above instances of distribution of money and gift items to the electorate in the said two constituencies. These reports show and lead to an irresistible conclusion that the whole atmosphere in the two constituencies under reference has been totally vitiated by inducement of electors by illegal means. The Commission had hoped and expected that the postponement of poll in the two constituencies would have a sobering effect on the illegal use of money power in the election process, but that hope has been dashed to the ground as the unlawful activities of the candidates and political parties to offer allurements to the electorates continued unabated even after the aforesaid postponement of poll for example, even on 18th May, 2016, an amount of Rs.5.75 lakhs, in cash, was seized by the flying squad from a vehicle in 134-Arvakurichi assembly constituency.

28. It may be noted that 'bribery' at elections to any person with the object of inducing him or any other person to exercise any electoral right or, even inducing or attempting to induce any person to exercise any such right, is an electoral offence under section 171B of the Indian Penal Code, and is punishable with imprisonment of either description for a term extending upto one year or, with fine, or with both. Such 'bribery' at elections is also a corrupt practice under section 123(1) of the Representation of the People Act, 1951 which can result in the election of the returned candidate being declared void

and the candidate found guilty of commission of such corrupt practice can also be disqualified by the President on the recommendation of the Commission for a further period of six years. The above provisions in the law, making 'bribery' an electoral offence and a corrupt practice, have been made with the manifest object of ensuring purity of the election process. It may be worthwhile to point out that the above provisions relating to bribery in the Indian Penal Code were introduced in the year 1920 and the corrupt practice of bribery found its mention in the Representation of the People Act in 1951, when these things were considered as aberrations and exceptions, whereas the facts narrated above and the reports received by the Commission paint a wholly different picture inasmuch as the said aberrations and exceptions have become the main features of the election campaigns in these two constituencies.

29. Apart from the above, the law of the country also aims to eliminate the role and influence of big money in the electoral process. Therefore, the law has prescribed limits of election expenses which the candidates may incur or authorize in their election campaigns. The incurring or authorizing expenditure in excess of the prescribed limits is a corrupt practice under section 123(6) of the Representation of the People Act, 1951, the commission whereof would result in the election of the returned candidate being void and also attracting a disqualification for a period upto six years. The law further requires each contesting candidate to maintain a true and separate account of his election expenses under section 77 of the said Act and the failure to render a true and correct account of the election expenditure may invite disqualification for three years under section 10A of the said Act. The Supreme Court has observed in *Kanwar Lal Gupta v Amar Nath Chawla and Ors* (AIR 1975 SC 308) that the 'object of

limiting expenditure is to eliminate, as far as possible, the influence of big money in the electoral process.' The Supreme Court also observed in that case that the object of the provision limiting the expenditure is that 'it should be open to any individual or any political party, howsoever small, to be able to contest an election on footing of equality with any other individual or political party, howsoever rich and well financed it may be, and no individual or political party should be able to secure an advantage over others by reason of its superior financial strength'. The distribution of money and other gift items to electors by the candidates and political parties as illegal inducement to electors defeats not only the salutary provisions of electoral offence and corrupt practice relating to 'bribery', but also the provisions of corrupt practice under section 123(6) of the said Act relating to the prescription of limits of election expenses and requiring the candidates to maintain true and correct accounts of their election expenses under section 77 and section 10A, as obviously the expenditure on illegal gratification and bribery of electors would be concealed and not shown by the candidates in their accounts of election expenses.

30. As has been observed by the Supreme Court in *TN Seshan Vs. Union of India* [1995(4) SCC 611], "Democracy being the basic feature of our constitutional set up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country. In order to ensure the purity of the election process, it was thought by our Constitutional-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/or executive interference". In *Mohinder Singh Gill Vs. Chief Election*

Commissioner (supra) also, the Supreme Court said that free and fair elections supply the *vis viva* to a democracy.

31. Viewed in the light of the above principles of purity of elections and to save the elections from the pernicious effect of money power so as to maintain the sanctity of elections envisaged under the Constitution and as upheld by the Hon'ble Supreme Court, it becomes imperative on the part of the Commission to ensure that the above principles and the sanctity of the electoral process must be maintained and preserved by the Commission. The very object underlying the constitution of the Election Commission as an independent constitutional authority under Article 324 of the Constitution is to ensure that the elections to Parliament and State Legislatures are conducted in a free and fair manner where the purity of elections receives the highest priority. The Hon'ble Supreme Court, in the case of *Mohinder Singh Gill Vs. Chief Election Commissioner and Others* (*supra*), has laid great stress on the conduct of free and fair elections and has observed that Article 324 of the Constitution is a reservoir of power for the Election Commission to act for the avowed purpose of pushing forward a free and fair election and '*where these (enacted laws) are absent, and yet a situation has to be tackled, the Chief Election Commissioner has not to fold his hands and pray to God for divine inspiration to enable him to exercise his functions and to perform his duties or to look to any external authority for the grant of power to deal with the situation*'.

32. Having regard to the above constitutional and legal position enjoining upon the Commission the duty of conducting free and fair elections and upholding the purity of election and after taking into account all relevant facts and circumstances of the present case, the Commission is satisfied that the current electoral process in the said

134-Aravakurichi and 174-Thanjavur Assembly Constituencies in Tamil Nadu has been seriously vitiated on account of unlawful activities of the candidates and political parties and their workers in bribing the electors and unlawfully inducing them by offering money and other gifts of consumable items to woo them in their favour.

33. As mentioned above, when the Commission postponed the poll in these constituencies, it had held the hope that contesting candidates and the major parties, who are mainly to be blamed for the crisis, will relent and stop further acts of bribing voters but to the utter dismay of the Commission, allurements of voters by unlawful means still continued even after postponement of polls as seen from report received by the Commission about seizure of an amount of Rs.5,72,000 on 18th May, 2016. In the Commission's considered opinion, allowing the electoral process to proceed and conduct the postponed poll in the constituencies on 13th June, 2016, as scheduled, in such vitiated atmosphere would severely jeopardize the conduct of free and fair election in the said constituencies, and would not be reflective of the true choice of the electorate. If the Commission permits the election process to continue in such vitiated level playing field, it would be failing in its constitutional duty of ensuring free and fair elections for which it has been created as a specially empowered constitutional authority. For the above reasons, the Commission is also not able to persuade itself to conduct the poll in the above constituencies before the 1st June, 2016. While the Commission would like to stress that the Commission's attempt has always been to conduct elections in timely manner, the important Constitutional mandate of having to ensure free and fair elections cannot be overlooked. In the present case, for the reasons recorded above, the Commission is satisfied that the election process in the two

143

constituencies cannot be allowed to proceed and ought to be rescinded so that fresh elections may be conducted *de-novo* in these two constituencies when the atmosphere becomes conducive to the holding of free and fair elections after a reasonable lapse of time

34. Accordingly, the Commission hereby recommends, under Article 324 of the Constitution and sections 15, 30 and 153 of the Representation of the People Act, 1951, read with Section 21 of the General Clauses Act, 1897 and all other powers enabling it in this behalf, to the Governor of the State of Tamil Nadu that he may be pleased to partially rescind the notification No.464/TN-LA/2016 dated 22nd March, 2016, insofar as that notification relates to the calling upon the 134-Arvaikurichi and 174-Thanjavur assembly constituencies of Tamil Nadu State to elect a member each to the Legislative Assembly of the State. Revised schedule for the said two Constituencies of 134-Aravakurichi and 174-Thanjavur will be recommended by the Election Commission in due course of time.

Sd/- (A K. JOTI) ELECTION COMMISSIONER	Sd/- (Dr. NASIM ZAIDI) CHIEF ELECTION COMMISSIONER	Sd/- (O.P. RAWAT) ELECTION COMMISSIONER
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New Delhi the 27th May, 2016

No.464/TN-LA/2016

"*1/27/2016*"

ELECTION COMMISSION OF INDIA 149

Nirvachan Sadan, Ashok Road, New Delhi-110 001

No 3/4/ECI/LET/FUNC/JUD/SDR/Vol.I/2016

Dated: 7th September, 2016

To,

The Secretary to the Government of India,
Ministry of Law and Justice,
Legislative Department,
Shastri Bhavan,
New Delhi.

Subject: - Affidavit filed by the Candidate in Form 26 along with the nomination paper-
amendment-regarding.

Sir,

I am directed to state that as per the provisions of Rule 4A of the Conduct of Elections Rules, 1961, the candidate has to file, along with nomination paper, an affidavit in the statutory Form 26, appended to the said Rules, to disclose details of criminal background, if any, assets, liabilities and educational qualification.

2. There have been suggestions that for better appreciation of the financial background of candidates, it is necessary to obtain information about the source(s) of income of candidate and spouse. Having considered the matter, the Commission is of the view that information about source(s) of income will be a step in the direction of enhancing transparency and should form part of the declaration in Col. (9) of Form 26. Accordingly, the Commission recommends that the aforesaid Form 26 may be amended suitably. Further, the Commission also considers that it is necessary to capture details regarding the social media account(s) of the candidates since the social media is also being widely used in electioneering. The Commission desires that the column (3) of Form 26 may be amplified so as to include reference for social media account of the candidate also.

145

3. It is, thus, suggested that the following amendments may be made in column (3) and column (9) of Form 26: -

(i) Column (3) may be amended as follows:

"My contact telephone number(s) is /are..... and my e-mail ID (if any) is and my social media account(s) (if any) is/are (i).....(ii).....(iii).....".

(ii) After column (9) a new column may be added as follows:

"(9A) Details of source(s) of income:

(a) Self.....

(b) Spouse....."

4. You are requested to take necessary action to notify the aforesaid amendments in the Form 26 at the earliest.

Kindly acknowledge receipt.

Yours faithfully,



(K.F. WILFRED)

PRINCIPAL SECRETARY

"11 - 11/11/11"