

In re: General Election to the Legislative Assembly of Tamil Nadu, 2016 – Election from 174-Thanjavur Assembly Constituency – Postponement of date of poll.

ORDER

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 fixing, *inter alia*, 16th May, 2016, as the day on which a poll shall be taken in 174-Thanjavur Assembly Constituency, among others.

2. 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 174-Thanjavur Assembly Constituency 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. By way of illustration, three Static Surveillance Teams, six Flying Squad Teams and two Video Surveillance Teams, headed by senior officers, were deployed in the constituency to keep a constant

vigil on the above mentioned unlawful activities subsequently said teams were doubled from 29th April, 2016 and from 11th May,2016 onwards 58 FSTs were pressed into service.. In addition, a senior officer belonging to Indian Revenue Service was appointed as Expenditure Observer by the Commission under section 20B of the said Act, who was assisted by an Assistant Expenditure Observer in the constituency. The above apart, the Income Tax Investigation Directorate and other enforcement agencies were also involved to keep a close watch on the movement of money and other gift items capable of being used for the inducement of electors.

3. On 13.05.2016, the Commission received report from its Expenditure Observer seeking urgent necessary action and the report is as under-

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 AIDMK party which were 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.1.40Crores were distributed in 13 wards. It indicates that despite of all the possible efforts taken by the election observation machinery, more than Rs.6 crores were distributed by a single candidates 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.

The Collector and the SP have been briefed and have been requested to carry out the thorough investigation.

4. The Commission has very carefully analyzed and examined the whole situation. Now from the facts narrated above, the irresistible conclusion is that all the above seized monies and other items were meant for distribution to electors as illegal inducement to them. It may be worthwhile to mention 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.

6. Apart from the above, the law of the country also frowns on 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 of 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.

7. 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 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* (AIR 1978 SC 851), has also 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'*.

8. 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 said 174-Thanjavur Assembly Constituency 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. In the Commission's considered opinion, allowing the electoral process to proceed and conduct the poll in the constituency on 16th May, 2016, as scheduled, in such vitiated atmosphere would severely jeopardize the conduct of free and fair election in the said 174-Thanjavur Assembly Constituency.

9. Accordingly, the Commission hereby directs, 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 and all other powers enabling it in this behalf, that the poll scheduled to be taken on 16th May, 2016, in the said 174-Thanjavur 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. The Commission further directs that the poll in the constituency shall now be taken on 23rd May, 2016 (Monday), instead of 16th May, 2016, and the counting of votes shall take place at 08.00 a.m. on 25th May, 2016 (Wednesday), instead of 19th May, 2016, as scheduled earlier. The date before which the election in the constituency shall be completed is also extended upto 31st May, 2016 (Tuesday).

ORDERED ACCORDINGLY

Sd/

Sd/

Sd/

(ANCHAL KUMAR JOTI)
ELECTION COMMISSIONER

(Dr. NASIM ZAIDI)
CHIEF ELECTION COMMISSIONER

(O.P. RAWAT)
ELECTION COMMISSIONER

New Delhi the 15th May, 2016

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ELECTION COMMISSION OF INDIA
Nirvachan Sadan, Ashoka Road, New Delhi – 110001.

Dated 15th May, 2016
25 Vaisakha, 1938 (Saka)

NOTIFICATION

Whereas, 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; and

Whereas, on the same date, the Election Commission also issued notification under sections 30 and 56 of the said Act fixing, *inter alia*, 16th May, 2016, as the day on which a poll shall be taken in 174-Thanjavur Assembly Constituency, among others; and

Whereas, the Commission has, for the reasons stated in its order No. 464/TN-LA/2016, dated 15th May, 2016 (copy annexed hereto as Annexure), deferred the date of poll in the said 174-Thanjavur Assembly Constituency, scheduled to be taken on the 16th May, 2016 (Monday), and has directed that the poll in the said constituency shall be taken on 23rd May, 2016 (Monday) ;

Now, therefore, the Election Commission hereby directs, 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 and all other powers enabling it in this behalf, that its notification No. 464/TN-LA/2016, dated 22nd April, 2016, amended further by another notification dated 14th May, 2016, shall be amended to the following effect:-

In paragraph (A), for the existing clauses (d) and (e), the following clauses shall be substituted:-

'(d)(i) the 16th May, 2016 (Monday), as the date on which the poll shall be taken in all Assembly Constituencies in the State of Tamil Nadu, except 134-Aravakurichi Assembly Constituency and 174-Thanjavur A.C;

(d)(ii) the 23rd May, 2016 (Monday), as the date on which the poll shall be taken in 134-Aravakurichi Assembly Constituency and 174-Thanjavur A.C;

(e)(i) 21st May, 2016 (Saturday), as the date before which the elections shall be completed in all Assembly Constituencies in the State of Tamil Nadu, except 134-Aravakurichi Assembly Constituency and 174-Thanjavur A.C;

(e)(ii) 31st May, 2016 (Monday), as the date before which the election shall be completed in 134-Aravakurichi Assembly Constituency and 174-Thanjavur A.C.

By Order,



(MALAY MALICK)
SECRETARY