

# **ELECTION COMMISSION OF INDIA**

**Nirvachan Sadan, Ashoka Road, New Delhi – 110001.**

*In re* : Bye-Election to Tamil Nadu Legislative Assembly from 11-Dr. Radhakrishnan Nagar Assembly Constituency.

## **ORDER**

A vacancy arose in the Legislative Assembly of the state of Tamil Nadu with effect from the 5<sup>th</sup> December, 2016, due to demise of the member of the house, Ms. J. Jayalalithaa elected from 11-Dr. Radhakrishnan Nagar Assembly Constituency and in order to fill the said vacancy, the Election Commission of India, vide its Notification No. 100/TN-LA/1/2017 dated 16<sup>th</sup> March, 2017, in pursuance of Section 150 of the Representation of the People Act, 1951 (R.P.Act), called upon said Assembly Constituency in the State of Tamil Nadu to elect a member. Under Sections 30 and 56 of the Representation of the People Act, 1951, the Commission fixed different dates for various stages of elections and hours of poll, as under:-

- (a) the 23<sup>rd</sup> March, 2017(Thursday), as the last date for making nominations;
- (b) the 24<sup>th</sup> March, 2017(Friday), as the date for the scrutiny of nominations;
- (c) the 27<sup>th</sup> March, 2017(Monday),as the last date for the withdrawal of candidatures;

- (d) the 12<sup>th</sup> April, 2017(Wednesday),as the date on which a poll shall, if necessary, be taken; and
- (e) the 17<sup>th</sup> April, 2017(Monday), as the date before which the election shall be completed.

2. The Commission made elaborate arrangements for conduct of free and fair poll in the constituency and in this regard issued extensive guidelines for monitoring of expenditure of the candidates and political parties, enforcement of model code of conduct (M.C.C), maintenance of law and order etc. Immediately on announcement of the bye- election, on 10<sup>th</sup> March, 2017, the enforcement of MCC was commenced by putting in place 9 Flying Squad Teams (FSTs), 9 Static Surveillance Teams (SSTs) and 2 Video Surveillance Teams (VSTs). Subsequently, the number of teams were increased in a phased manner considering complaints by the candidates, political parties and inputs from the observers and electoral machinery as shown in the table below to 30 FSTs, 21 SSTs and 10 VSTs per day as on 5th April,2017 and the same have been continuing to operate round the clock.

Sl. No	Team	As on 10/3/2017	As on 28/3/2017	As on 2/4/2017	As on 5/4/2017
1	FST	9	25	30	30
2	SST	9	17	17	21
3	VST	2	10	10	10
	Total	20	52	57	61

3. Generally in an assembly constituency, only 3 FSTs and 3 SSTs team are deployed during any election, but for the Dr. Radhakrishnan Nagar Assembly Constituency Bye election, the deployment of these squads was increased manifold and total of 61 teams were deployed keeping in view the sensitiveness of the constituency and past experience. Each FST/SST included 7 member Team with one Executive Magistrate, 4 CAPF personnel, one person from the state police and one videographer. VST is a 3 member team with one employee of the state government and one from state police. Thus, a total of 277 persons in 61 teams operating round the clock were put on job for enforcing the provisions of MCC, particularly, stopping distribution of cash or gifts in any form.

4. Furthermore, one Central Government Employee was included in each Flying Squad Team from 7<sup>th</sup> April onwards. Similarly, all Flying Squads / Static Surveillance Teams had a CAPF personnel attached with it. Their vehicles were GPS enabled in order to ensure that their position and movement could be monitored from a central control room. An SMS based complaint monitoring system wherein the FST/SST received a complaint through SMS for gift and cash distribution was also used. SMS and GPS based monitoring was to ensure that there is no delay in movement of these teams to attend to the complaints, a camera was also fixed on the top of vehicles so as to monitor how the

complaints were handled by the teams after reaching the spot, which was monitored from the DEO's control room.

5. Considering a large number of complaints, apart from deployment of these teams, as a first time measure, 70 Mobile parties on two wheelers were also additionally deployed from 6.4.2017 onwards. Each team consisted of one Micro Observer along with one police personnel. The total 70 teams comprising 140 members, were deployed (21 Teams in Morning Shift, 21 Teams in Afternoon Shift and 28 Teams in Night Shift) from 6th April onwards.

6. Further, 10 Companies of the Central Armed Police Force (CAPF) were deployed for area domination and confidence building among the voters to ensure free, fair and inducement -free election. The deployment of CAPF was also doubled as compared to the deployment in bye election of the assembly constituency. These companies got placed in the constituency from 2<sup>st</sup> April,2017 itself and were deployed at check posts and FST, SST to prevent any violence before and during the polls, doubtful licensed arms were deposited. 195 persons were bound under Cr. PC and 94 NBWs were executed.

7. Furthermore, the Commission deployed 3 senior observers additionally exclusively for this assembly constituency. Further, to strengthen the supervision, the Commission deployed 3 more special observers to this assembly constituency taking the number of observers to six. This again is the highest

deployment of central observers to any assembly constituency. The ECI was thus not leaving any stone unturned to ensure free and fair election. A team of senior officer of the Commission also visited the State to have feedback of the political parties, candidates and general public and based on their report the Commission made following additional arrangements:-

- a. CCTV/Surveillance Cameras were deployed in major streets and junctions in the Constituency to record the movement of vehicles and undesirable elements.
- b. Highly visible SVEEP campaign was launched to popularise the toll free number of the control room and to make people aware about the penal provisions on bribing of voters throughout the constituency.
- c. Web casting was ordered to be done in all the 256 polling stations.
- d. Micro observers were deployed in all the 256 booths. Micro Observes were to be appointed from employees of Central Govt, who were to supervise the voting procedure in the booths and report to the Commission through the Observers.
- e. The Central Government / PSU employees were to be deployed as Presiding Officer or Polling Officer and at least one member of the team was drawn from the PSU / Central Government employee.

- f. More than a dozen Income Tax officials were assigned duty to attend to the complaints of storage / distribution of money, both inside and outside the Constituency. Surveillance was also stepped up at important places like Railway Stations, Airport, bus stands, taxi and auto stands.
- g. All the IT applications like SWC ( single window clearance), vehicle bill payments, and SMS complaint monitoring system used during general elections 2016 etc were also deployed for this election .
- h. A special team of two IAS and two IPS officers was put in the night duty rounds till the completion of election.
- i. For attending complaints of distribution of money outside the constituency, Special Flying Squads were assigned to check them. A separate set of 5 FSTs were deployed for this purpose. These FSTs visit any area in the Chennai and neighbouring districts.

8. Based on the complaints of political parties, the Election Commission transferred, totally 22 Police officials and 18 officers of the revenue side. Further, one Assistant Commissioner, two Executive Engineers, four Assistant Executive Engineers and four Assistant Engineers were transferred.

9. The Election Commission issued special instructions to the effect that no Government vehicle belonging to any department, political leader, Minister

should be allowed to move in the constituency and vehicles should be subjected to check without any hesitation.

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

- A. The transaction of bank accounts were monitored by surveillance team.
- B. The mobile phone top up of postpaid plans, news paper agents, Milk vendors were monitored electronically or otherwise to prevent misuse of such channels
- C. Teams of Sales Tax (commercial tax) department were pressed into service to immediately verify sale of goods through tokens.

11. Detailed enquiries were conducted on various complaints received relating to inducement/bribing of voters. On the complaints of distribution of money, gift articles and violation of MCC, till 7.4.2017 an amount of Rs. 18,80,700/- was seized and 35 FIRs were registered. Apart from cash, various items such as lamps, T-Shirts, silver plates, Mobile phones and Sarees, which

were used for distribution to workers were also seized. Action taken on some of the complaints are as under:-

- a. A complaint was received on 5.4.2017 that money and other gift items were being distributed in various places in 11- Dr. Radhakrishnan Nagar Assembly Constituency. The Commissioner of Police was requested to inquire into the complaints and he reported that cases were registered vide Cr. Nos 608/17 and 526/17 under section 171(B) r/w 171(E) IPC. Further he stated that 26 cases were registered for distribution of money, articles and violation of MCC;
- b. On another complaint dated 5.4.2017, it was reported that there were incidents of money distribution in many wards of the constituency, the COP, Chennai was requested to enquire into the complaints and he reported that nine cases were registered for violation of MCC and MCC violators are being booked appropriately, then and there. As of 4.4.2017, 13 cases under MCC and 42 cases of TNOPPD Act 1959 were registered and 2 cases under MCC and 13 cases under TNOPPD (Tamil Nadu Open space Defacement Act);
- c. On one more complaint that that large number of hats/caps/scarfs were being distributed by AIADMK(Amma) party at various places in RK Nagar Constituency, the Expenditure Observer enquired on the complaint



and reported that though the representatives of Shri TTV Dinakaran, Contesting Candidate, AIADMK (Amma) informed that they had made a one time investment of Rs. 30,000/- (for 1000 hats), however, on enquiry it was found that the shopkeeper whose address is mentioned in the bill informed that he had supplied 10,000 hats per day to the party. Hence, the cost of 10,000 hats i.e., Rs 3 lakhs as added as suppressed expenditure in the shadow observation register;

- d. There were some complaints of distribution of goods, like, sarees, lamps popularly known as kuthu villaku, household articles, etc. All cases were enquired and as many as 12 FIRs were registered;
- e. The elaborate system of monitoring operationalised by the ECI resulted in registering of many FIRs and arrest. A total of 35 FIRs were registered on complaints of Cash or Gift distribution. Some of the incidents are elaborated below:-

- i. Flying Squad on duty on 1.4.2017 at 10.30 pm. On getting information that some persons were distributing sarees in Bharathi Nagar, 2<sup>nd</sup> Street in the constituency inspected the place and found that one Thiru Narayanan of Pudukottai district was distributing sarees to electors. Eleven sarees were seized from him and a case was registered vide Cr. No. 531/17 under section 171 (B) r/w 171

(E) IPC. Similarly, two persons distributed Kamatchi Kutthu Villakku (traditional lamps) (6-Numbers) to voters at Thiruvalluvar Nagar. Based on the complaint, a case was registered under Cr. No. 609/17 and accused was arrested. Another person distributed Kamatchi Kutthu Villakku (8-Numbers) to voters at Thiruvalluvar Nagar. Based on the complaint, a case was registered under Cr. No. 610/17 and accused was arrested. **On 2.4.2017** on complaints that in Ward 42 of the RK Nagar AC, some persons were distributing traditional lamps, the FST inspected the spot and a case was registered vide Cr. No. 378/17 under section 171 (B) r/w 171 (E) IPC. One person used a four wheeler vehicle Reg.No. TN 18 C 1818 for canvassing at T.H. Road- A.E.Koil Junction and 70 T-Shirts with party symbol were found in said vehicle. Based on the complaint, a case was registered under Cr. No. 623/17 and said T-shirts were seized. **On 4.4.2017 on complaint that** one Thiru Mani was distributing T-shirts with AIADMK(PTA) party emblem to the voters, a case was registered vide Cr. No. 667/17 under Section 171(B) r/w 171 (E) IPC and 120 T-Shirts were seized and accused was arrested.

- ii. In another incident on the same day on getting information from Control Room that some persons were distributing cash and gifts at Singaravelar Nagar, Thiru Pallam inspected the spot and noticed distribution of Kamatchi Vilakku – 2, Plate-2, Hot Bag set-1 to the voters. The accused ran away leaving behind the gifts on seeing the FST. Based on the complaint of the FST official, a case was registered vide Cr. No.726/17 under Section 171(B) r/w 171 (E) IPC. One person distributed cash to the voters near Cross Road, Periyar Road, New Washermenpet. Based on the complaint, a case was registered under Cr. No. 637/17 and Cash Rs.22,000/- was seized from the accused and they were arrested.
- iii. On 5.4.2017, four persons distributed cash to the voters at Poondi Thangammal St., New Washermenpet and violated the Model Code of Conduct. Based on the complaint, a case was registered under Cr. No. 638/17 and Cash Rs.24,000/, Cell Phone – 4 Nos., Voter ID –2 Nos. and Ration Card – 1 No. were seized from the accused and they were arrested. In another incident at Kasipuram D Block 2nd Street, the FST inspected the spot and found five persons distributing cash. Based on the complaint, a case was registered vide Cr. No. 732/17 under Section 171(B) r/w 171 (E) IPC and

Cash Rs.1,28,080/- was seized from the accused and they were arrested. In another incident,two persons were found distributing cash to the voters at Aaranirangan Street and a case was registered under Cr. No. 383/17 under Section 171(B) r/w 171 (E) IPC and an amount of Rs.31,700/- was seized from the accused and they were arrested. In another incident in Ward No 47, Thiyagappa Street, one person ran away leaving behind a bag containing 35 Eversilver plates.. A complaint was lodged and a case was registered under Cr. No. 385/17 under Section 171(B) r/w 171 (E) IPC. On intercepting a Scorpio vehicle bearing registration number TN-21BB-4455, 100 numbers of new 500 rupee notes were found from the occupant of the car Thiru Gopal. Based on the complaint, a case was registered vide Cr. No. 388/17 under Section 171(B) r/w 171 (E) IPC and the accused was arrested. In Netaji Nagar 2<sup>nd</sup> Street FST visited the spot. One person Thiru Prabhu of Madurai District was caught distributing cash and a case was registered vide Cr. No. 584/17 vide Sections 171(B) r/w 171 (E) and Cash Rs.46,000/- was seized from the accused was arrested.

- iv. On 4.4.2017, in Satyamoorthy Street at around 11.30 pm, three persons were apprehended by the Public while distributing cash to

the voters. A case was registered vide Cr. No. 585/17 vide Sections 171(B) r/w 171 (E) and cash Rs.78,000/- was seized from the accused and he was arrested. FST-2 on 5.4.2017 at Ennore High Road intercepted a person who was moving around suspiciously and found that he was carrying Rs. 26,000/- Based on the complaint, a case was registered vide Cr. No. 589/17 vide Sections 171(B) r/w 171 (E) and Cash Rs.26,000/- was seized from the accused and he was arrested.

- v. On 5.4.2017, Thiru Vasudevan, FST-9 was on duty at Nehru Nagar Main Road when the Public caught one Thiru Dilli of AIADMK (Amma) party distributing cash to voters. On enquiry, Rs. 30,000 was found with him. Based on the complaint, a case was registered under Cr. No. 590/17 vide Sections 171(B) r/w 171 (E) and Cash Rs.30,000/- was seized from the accused and he was arrested.
- vi. On 5.4.2017 at around 5.30 am on information that some people were distributing money in Bharathi Nagar 6<sup>th</sup> Street, Sikarantpalayam, Thiru Munusamy and five others were found distributing cash to the voters ,a case was registered vide Cr. No. 591/17 under Sections 171(B) r/w 171 (E) and Cash Rs.40,000/- was seized from the accused and they were arrested. On 5.4.2017 at

6.00 am in another complaint that some persons were distributing cash to voters at 1 and 6th Street, Vinoba Nagar Thiru Tamizhmaran and five others were found distributing cash. Based on the complaint, a case was registered vide Cr. No. 592/17 under Sections 171(B) r/w 171 (E) and Cash Rs.89,000/- was seized from the accused and they were arrested. FST-9 who was on duty on 5.4.2017 at around 6 am in RK Nagar AC, received information that some persons were distributing money at 10<sup>th</sup> Street of Vinobha Nagar. When the FST reached the spot, people had apprehended two persons, viz. Thiru Sargunam and Thiru Muthupandi along with 24 numbers of 2000 rupee notes. Based on the complaint, a case was registered vide Cr. No. 593/17 under Sections 171(B) r/w 171 (E) and Cash Rs.48,000/- was seized from the accused and they were arrested.

- vii. Flying Squad Officer -6 received one complaint on 5.4.2017 that persons were distributing money in Door No.2/75, 3<sup>rd</sup> Street, Ajis Nagar, Korukkupet. The officer inspected the place and found that 12 persons (1. Srinivasan, 2. Muniyappan, 3. Jayaprakash, 4.Magesh, 5. Eswaramurthy, 6. Yuvaraja, 7. Panneerselvam, 8. Hari, 9. Kumar, 10. Marimuthu, 11. Davasiyappan, 12. Jayaraman)

were distributing money and a seizure of Rs 9.9 lakh was made. A case was registered vide Cr.No. **594/2017** under section 171(B), r/w 171(E), IPC in H6, R.K.Nagar Police Station. Similarly, Flying Squad Officer -2 was on duty on 05.04.2017 and a complaint of cash distribution in ward No.38, 2<sup>nd</sup> Street, Nethaji Nagar in the constituency, was received. The officer inspected the place and found that 2 persons (1. Murugan, 2. Fakruthen) were distributing money and seized a sum of Rs.48,000/- from them and a case was registered vide Cr.No. **595/2017** under section 171(B), r/w 171(E), IPC in H6, R.K.Nagar Police Station. In another incident Flying Squad Officer -2 on duty on 05.04.2017 about a complaint of money distribution in ward No.38, 6<sup>th</sup> Street, Vinoba Nagar in the constituency, inspected the place and found that Thiru Velumurugan was distributing money and seized a sum of Rs.7,500/- from him and a case was registered vide Cr.No. **596/2017** under section 171(B), r/w 171(E), IPC in H6, R.K.Nagar Police Station. The same squad on 05.04.2017 inspected No.38, 3<sup>rd</sup> Street, Nethaji Nagar in the constituency, and found that Tvl.Senniaya and Ranjith were distributing money and seized a sum of Rs.32,000/- from them and a case was registered vide

Cr.No. **597/2017** under section 171(B), r/w 171(E), IPC in H6, R.K.Nagar Police Station.

- viii. SST (7) Team Leader on 05.04.2017 on information about money distribution at 2nd Street, Nethaji Nagar in the constituency, inspected the place and found that Thiru Rajagopal was distributing money. A sum of Rs.14,000/- was seized from him and a case was registered vide Cr.No. **598/2017** under section 171(B), r/w 171(E), IPC in H6, R.K.Nagar Police Station. FST-2 05.04.2017 at Chinna Samy Street in Anna Nagar found Kanniappan distributing cash. A case was registered under Cr. No. 599/17 and Cash amounting to Rs.86,000/- was seized from the accused who was arrested. The same squad visited at 1st Street, Sastri Nagar, Tondairpet and found one person distributing money to the voters from a car having No. TN18 AF 5853 and case was registered under Cr. No. 600/17 under Section 171 (B) r/w 171 (E) IPC and Cash to amounting Rs.32,000/- was seized from the accused and he was arrested. Subsequently at 11.30 a.m at 10th Street, Vinoba Nagar found two persons, namely, Mahendran and Mariappan distributing sarees to the voters. Based on the



complaint, 12 sarees were seized and a case was registered vide Cr. No. 601/17 under 171 (B) r/w 171 (E) IPC.

- ix. FST-10 on 5.4.2017 found that Thiru Krishnamoorthy had distributed cash to the voters at Veeraraghavan Street, New Washermenpet. A case was registered under Cr. No. 641/17 vide sections 171(B) and 171(E) IPC and Cash Rs.6,420/- was seized from him and he was arrested.

12. In a report dated the 8<sup>th</sup> April, 2017 received from Income tax department, it has been informed to the Commission that on the basis of information on tax evasion and distribution of cash during bye election at Dr. Radhakrishnan Nagar Assembly Constituency (Tamil Nadu), search and seizure action under section 132 of Income Tax Act 1961, were conducted at 21 places in Chennai and 11 outside Chennai in Tamil Nadu belonging to Dr. C. Vijaya Baskar, Minister for Health, Government of Tamil Nadu and his associates. Prominent among his associates who were searched are Shri Sarath Kumar, film actor and President, Samathuva Makkal Katchi, Shri Rajendran, AIADMK leader and former MP(2009) and Dr. S. Geetha Lakshmi, Director of Health Services (TN) and Vice Chancellor of Dr. MGR Medical University. The Income Tax authorities have also informed that several complaints were received recently indicating that Dr. C. Vijaya Baskar is the main person

involved in bribing the voters in R.K. Nagar Assembly constituency which is going to bye polls on 12th April, 2017. Some loose sheets were found with his accountant Mr. Srinivasan indicating distribution of Rs. 89 crores to a number of politicians for further distribution among the voters. The premises of Shri Rajendran were also searched on receiving the input from a central agency that a huge amount of cash was brought there yesterday by particular vehicle, for distribution in R.K. Nagar constituency.

**Preliminary results of Income Tax search and seizure action:-**

- i. Cash of Rs. 5 crores was seized from the confidantes of Dr C. Vijaya baskar and from his native place.
- ii. Incriminating documents in the form of overall money distribution chart to several leading political executives and functionaries totaling to Rs. 89 Crores were found from the premises of Dr C. Vijaya Baskar.
- iii. Further distribution charts, ward-wise and voter-wise, entrusted to each of these politician totaling to Rs. 89 crores were found and seized from the room allotted to Dr. Vijaya Baskar in the MLAs' hostel.
- iv. Further, a lot of incriminating material including voters list marking against each voter either DMK or AIADMK and amount to be paid and paid in some cases, were also found and seized.

13. The above mentioned search and seizure action by the Income tax authorities has resulted in unraveling a huge and systematic design to distribute money to voters in order to induce/bribe them to influence their voting behavior.

14. The election machinery was always on the state of alert and on receipt of the complaint over phone/whatsapp the Teams FST /SST were alerted and they reached the area mentioned by the complainant . The Teams have seized cash totaling approximately Rs 31.91 lakhs while being distributed. Thirty two FIRs were registered and 74 persons were arrested. Similarly, 8 FIRs were registered for distribution of gifts and 8 persons were arrested.

15. The general observer to 11- Dr. Radhakrishnan Nagar Assembly Constituency has reported that "... The Bye elections in Dr R.K Nagar AC has proved to be very sensitive and challenging for the election machinery from the point of view of use of money and material inducement to voters, violation of MCC and law and order. Large number of allegations and counter allegations of money and material distribution to induce the voters keep pouring in."

16. The special observer- 2 expenditure has reported that "Large number of complaints was received by control room that senior party including some of the ministers of ruling party and other dominant party leaders were distributing cash to voters. The information was also shared with the senior officers of Income tax"

17. The Commission has carefully analyzed and examined the whole situation as prevailing in the said constituency. From the very early stages of the notification of the bye-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 11-Dr.Radhakrishnan Nagar 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. As many as 21 Static Surveillance Teams, 30 Flying Squad Teams and 10 Video Surveillance Teams, headed by senior officers, were deployed in the constituency to keep a constant vigil on the above mentioned unlawful activities of the candidates, political parties and their agents. In addition, as another extraordinary step, three 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 constituency. Despite the above special measures adopted by the Commission, it is apparent from the facts narrated above that inducement and allurements to electors by the candidates, political parties and their agents by distribution of money and other gift items on a large scale went on in clandestine manner vitiating the purity of electoral process and disturbing the level playing field.

18. It may be noted that the election law seriously frowns upon the acts of 'bribery' at elections and those indulging in such acts are visited with severe penalties under the law. The '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. Any conviction for the offence of 'bribery', even if resulting in the imposition of a very nominal fine, will automatically disqualify the convicted person for a minimum period of six years under section 8(1) of Representation of the People Act, 1951. Further, such 'bribery' at elections is also a corrupt practice under section 123(1) of the Representation of the People Act, 1951 which can result in the election of the returned candidate being declared void and the candidate found guilty of commission of such corrupt practice can also be disqualified by the President on the recommendation of the Commission for a further period of six years. The above provisions in the law, making 'bribery' an electoral offence and also a corrupt practice, have been made with the manifest object of ensuring purity of the election process. Purity of electoral process has been placed at higher pedestal than even the secrecy of ballot which is considered to be sacrosanct in democratic elections. It is worthwhile to point out that in order to maintain

purity of election process, even the voting system at elections to the Rajya Sabha has been amended in 2003 to provide for 'open voting' where allegations were often made that the electors at those elections were being offered various forms of allurements and inducements to obtain their votes. The Supreme Court, before whom the above amendment to the law to provide for open voting at elections to Rajya Sabha was questioned, observed in *Kuldip Nayar v Union of India and Ors* (AIR 2006 SC 3127) that though the secrecy of ballot and purity of elections should normally co-exist, the principle of secrecy of vote must yield to the purity of election to further the object of a free and fair election. Observations to the same effect were made earlier also by the Supreme Court in the case of *Ragbir Singh Gill Vs. Gurcharan Singh Tohra* (AIR 1980 SC 1362) to sub-serve the larger public interest, namely, purity of election for ensuring free and fair election.

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

20. 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, political parties and their agents, as illegal inducements 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.

21. 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 Constitution-makers that the responsibility to hold free and fair election in the country should be entrusted to an independent body which would be insulated from political and/or executive interference*". In *Mohinder Singh Gill Vs. Chief Election Commissioner* (supra) also, the Supreme Court said that free and fair elections supply the *vis viva* to democracy.



22. Viewed in the light of the above principles of purity of elections and to save the elections from the pernicious effect of money power so as to maintain the sanctity of elections envisaged under the Constitution and as upheld by the Hon'ble Supreme Court, it becomes imperative on the part of the Commission to ensure that the above principles and the sanctity of the electoral process must be maintained and preserved by the Commission at all costs. The very object underlying the constitution of the Election Commission as an independent constitutional authority under Article 324 of the Constitution is to ensure that the elections to Parliament and State Legislatures are conducted in a free and fair manner where the purity of elections receives the highest priority. The Hon'ble Supreme Court, in the case of *Mohinder Singh Gill 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'*.

23. Having regard to the above constitutional and legal position enjoining upon the Commission the duty of conducting free and fair elections and upholding the purity of election and after taking into account all relevant facts and circumstances of the present case, the Commission is fully satisfied that the current electoral process in the said 11-Dr.Radhakrishnan Nagar Assembly Constituency in Tamil Nadu has been seriously vitiated on account of unlawful activities of the candidates and political parties and their workers by bribing the electors and unlawfully inducing them by offering money and other gifts of consumable items to woo them in their favour.

24. In the Commission's considered opinion, allowing the current electoral process to proceed and conduct the poll in the constituency on 12<sup>th</sup> April, 2016, as scheduled, in such vitiated atmosphere would severely jeopardize the conduct of free and fair election in the said 11-Dr.Radhakrishnan Nagar Assembly Constituency. Earlier also, in similar circumstances, the Commission was constrained to rescind the elections from 134-Aravakurichi and 174-Thanjavur Assembly Constituencies, in Tamil Nadu at the general election to the Tamil Nadu Legislative Assembly in May, 2016. Prior to that, the biennial election to the Council of States by members of the Jharkhand legislative assembly in March 2012 was rescinded on the complaints received by the Commission that certain candidates were indulging in bribery of voters. A huge amount of about

Rs. 2 crores was seized by the enforcement agencies on the day of poll which was suspected to be used for bribery in that election. The Jharkhand High Court, before which the matter was agitated in *Jay Shankar Pathak and Pradeep Kumar Balmuchu v Election Commission of India* [AIR 2012 (JHAR) 58], not only upheld the decision of the Election Commission but also hailed it as a necessary step to ensure conduct of free and fair elections.

25. Before parting with the case, the Commission cannot help expressing its anguish over the sordid state of affairs as revealed in the reports of the Election Expenditure Observers, Election Expenditure Monitoring Teams, i.e., Static Surveillance Teams, Flying Squad Teams, Video Surveillance Teams, as well as the reports of the Income Tax Authorities. The innovative ways which the political parties and their leaders at the top echelons have devised to bypass the law enforcing authorities entrusted with the task of keeping an eye on the unauthorized and illegal expenses incurred in the conduct of election campaigns of their party candidates need to be dealt with heavy hand. Some of the States have particularly excelled in innovating more and more subtle ways to circumvent the statutory provisions enacted by Parliament to curb the menace of money power in elections. The top leaderships of the parties cannot feign ignorance about such illegal activities being indulged in by the candidates set by their parties, and also the managers appointed by their parties to oversee the

election campaigns of their candidates. If not their express consent, their tacit approval to the resort to such undesirable activities on the part of their candidates and electoral managers cannot be wished away. It is high time that they exert their moral influence and legal authority to reign in their erring candidates and electoral managers without loss of time, if democracy is to flourish and deepen its roots in our country.

26. Accordingly, the Commission hereby directs, under Article 324 of the Constitution read with sections 150, 30 and 56 of the Representation of the People Act, 1951, and further read with Section 21 of the General Clauses Act, 1897 and all other powers enabling it in this behalf, that the Commission's Notification 100/TN-LA/1/2017, dated 16<sup>th</sup> March 2017, calling upon the said 11-Dr.Radhakrishnan Nagar Assembly Constituency to elect a member to the Tamil Nadu Legislative Assembly shall stand **rescinded** forthwith. Consequently, all actions and steps taken by the Returning Officer of the said 11-Dr.Radhakrishnan Nagar Assembly Constituency, District Election Officer, Chennai District and all other electoral authorities concerned are hereby declared as null and void.

27. The bye-election to fill the above vacancy in the Tamil Nadu Legislative Assembly from 11-Dr. Radhakrishnan Nagar Assembly

Constituency shall be held by the Commission in due course when the vitiating effect created by the distribution of money and gift items to allure the electors, as mentioned above, gets removed with the passage of time and the atmosphere in the constituency becomes conducive to the holding of free and fair election.

ORDERED ACCORDINGLY

Sd/-

(O.P. RAWAT)  
ELECTION COMMISSIONER

Sd/-

(Dr. NASIM ZAIDI)  
CHIEF ELECTION COMMISSIONER

Sd/-

(A.K. JOTI)  
ELECTION COMMISSIONER

New Delhi the 9<sup>th</sup> April, 2017

No.100/TN-LA/1/2017