

**IN THE SUPREME COURT OF INDIA**

**ORDER XXI RULE 3(1) (a)**

**CIVIL APPELLATE JURISDICTION**

**PETITION FOR SPECIAL LEAVE TO APPEAL**

**(Under Article 136 of the Constitution of India)**

**SPECIAL LEAVE PETITION (CIVIL) NO. \_\_\_\_\_ OF 2019**

**(WITH PRAYER FOR INTERIM RELIEF)**

**IN THE MATTER OF:**

T. T. V. DHINAKARAN.

....Petitioner

Versus

THE ELECTION COMMISSION

OF INDIA & ORS.

.....Respondents

**POSITION OF THE PARTIES**

**Between**

**In the High**

**In this Hon'ble**

**Court**

**Court**

T. T. V. Dhinakaran

Petitioner

Petitioner

S/o Sh. T. Vivekanandam

5, Fourth Street,

Venkateshwara Nagar,

Karpagam Gardens, Adayar,

Chennai – 600 020

Tamil Nadu.

## Versus

- |    |   |  |                                       |
|----|---|--|---------------------------------------|
| 1. | Election Commission of India,<br>NirvachanSadan, Ashoka Road,<br>New Delhi – 110001                         | Respondent<br>No. 1                            | Respondent<br>No. 1                   |
| 2. | Through Secretary<br><br>E. Madhusudhanan   |  | Respondent                            |
| 3. | S/o Sh, Shasaiya Naidu,<br>R/o No. 41, Kothanda,<br>Raman Street,<br>Chennai- 600 021                       | Respondent<br>No. 2                            | No. 2                                 |
| 4. | Tamil Nadu.   | Respondent<br>No. 3                            | Respondent<br>No. 3                   |
| 5. | O.Paneerselvam<br>S/o Sh. OttakarThevar<br>R/o No. 31, Thenpennai,<br>Greenways Road,<br>Chennai – 600 028. | Respondent                                     | Respondent<br>No. 4                   |
| 6. | S. Semmalai<br>311, AlaguVinayagar,<br>Alagapuram,<br>Salem – 636 004<br>Tamil Nadu.                        | Respondent<br>No. 4<br><br>Respondent<br>No. 5 | Respondent<br><br>Respondent<br>No. 5 |
|    | Edappadi K. Palaniswami,  |  |                                       |

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S/o Late Shri M. Karuppa Gounder, Residing at No. 9, SevvanthiIllam, Greenways Road, Chennai 600 018  Tamil Nadu  Mrs. V.K. Sasikala  W/o Sh. M. Natrajan,  Permanent resident of 81,  Poes Garden, Chennai –600 086  Presently Lodged at  Parappana Agrahara Jail,  Bengaluru,  Karnataka – 560 100	Respondent  No. 6	Respondent  No. 6
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All are contesting Respondents except Respondent No. 6

To

HON'BLE THE CHIEF JUSTICE AND HIS  
HON'BLE COMPANION JUSTICES OF THE  
HON'BLE SUPREME COURT OF INDIA.

THE HUMBLE APPLICATION OF  
THE PETITIONER ABOVENAMED

**MOST RESPECTFULLY SHOWETH:**

1. That the Petitioner is filing the instant petition seeking Special Leave to Appeal under Article 136 of the Constitution of India against the common impugned final Judgment and order dated 28.02.2019 passed by the Hon'ble High Court of Delhi at New Delhi in W.P. (C) 10728 of 2017, whereby, the Hon'ble High Court has erroneously upheld the final judgment and order of the Respondent No. 1 - Election Commission of India dated 23.11.2015 recognising the group led by the Respondents No. 2 to 4 and Respondent No. 5 as the All India Anna Dravida Munnetra Kazhagam (AIADMK) and granting the 'two leaves' symbol to the said group.
- 1A. That no Writ Appeal or Letter Patent Appeal lies against the final common judgement and order dated 28.02.2019.

2. **QUESTIONS OF LAW:**

The present SLP raises the following substantial questions of law of public importance arise in the present petition:-

- A. Whether mandate of paragraph 15 of the Symbols Order, which requires the Commission to determine based on all available facts and circumstances, as to which faction is "**that** political party" necessarily requires application of test of adherence to the party constitution?
- B. Whether a group or a faction within a political party can stake a claim to be **that party** for the purposes of paragraph 15 of the Symbols Order after having attempted to amend

the basic tenets and structure of the rules and regulations of such party?

- C. Whether the Election Commission while deciding a dispute under paragraph 15 of the Symbols Order is enjoined to first ascertain which group continues to abide by the constitution of the party, and thereafter apply the majority test?
- D. Whether the Election Commission is enjoined to direct parties to first seek recourse to the remedies available within the constitution of a political party?
- E. Whether the judgment of this Hon'ble Court in *Sadiq Ali Vs Election Commission of India*, reported at 1972 (4) SCC 664 restricts application of test of majority at the level of the legislature and organisational wings of a party, even if under the constitution of such party, the relevant majority is that of the primary members?
- F. Whether a petition before the ECI by a set of persons claiming to be the party can be proceeded with, unless such set of persons demonstrate at least prima facie, sizeable support in their favour?
- G. Whether subsequent events which allegedly show change in stance by members of the party and large scale retraction of earlier positions can be taken into consideration while deciding which group enjoys majority support?
- H. Whether any support pledged for a particular group, which has sought to amend the very basic structure of the

constitution of the original political party, can be considered towards applying the test of majority in determining which group represents the real party?

- I. Whether the Election Commission, acting as a quasi judicial tribunal and being bound to follow principles of natural justice can rely upon material, which has prima facie been demonstrated to be tainted by forgery and fabrication, without undertaking an inquiry as to the veracity of the same?
- J. Whether the Election Commission is enjoined to afford an opportunity of cross-examination and leading of evidence, where a group demonstrates prima facie that the other group has resorted to forgery, fabrication, coercion and undue influence to engineer majority support in its favour and also where affidavit of supports of the same persons for both the groups are filed?
- K. Whether without prejudice to the Petitioner's claim that the group led by the Petitioner was the real AIADMK, the ECI and the Hon'ble High Court were enjoined to grant an alternate name and symbol to secure to the Petitioner, his right to carry out political activities as has been the past practice of ECI?

**3. DECLARATION IN TERMS OF RULE 3 (2):**

The Petitioners state that no other such or similar petition leave to appeal has been filed by them against the common impugned final Judgment and order dated 28.02.2019 passed by the Hon'ble High Court of Delhi at New Delhi in W.P. (C) 10728 of 2017.

**4. DECLARATION IN TERMS OF RULE 5:**

The Annexures P - 1 to P 41 produced along with the Special Leave Petition are the copies of the pleading / documents, which formed part of the records in the High Court / Appellate Tribunal/Courts below against whose order the leave is sought for in this petition..

**5. GROUNDS.**

Leave to appeal is sought on the following grounds, amongst others, without prejudice to each other:-

- A. Because the Hon'ble High Court failed to consider that it was admitted case of the parties that any alteration in basic structure of the party constitution would render the party as a new being, which argument was not at all considered by the ECI and the Hon'ble High Court erroneously did not consider the effect of the same.
- B. Because the Hon'ble High Court erred in not taking into account that ECI at different stages selectively applied different tests which had the effect arriving at a particular outcome at all the stages. At the stage of admission of the Petition, and freezing of symbol on 22.03.2017, ECI applied the Test of Constitution,

when overwhelming majority was in support of the petitioner, however, while finally deciding the matter, not even a whisper was made about the Constitution Test and it was held that only test of majority is the relevant test.

- C. Because the unfair action of the respondent no 1 ECI is further evident when it denied a common symbol to the group led by the Petitioner during the pendency of the present proceedings before the Hon'ble High Court and thereby reducing the level playing field and free and fair election. The same was corrected by this Hon'ble Court speaking through Hon'ble Mr Justice A. M. Khanwilkar, vide order dated 07.02.2019 held that for creating a level playing field and for free and fair elections, the group led by the Petitioner is entitled to a common symbol.
- D. Because the Hon'ble High Court erred in coming to the conclusion- that the contentions of the Petitioner regarding Petition under para 15 of the Symbols Order, filed on 16.03.2017, ought to have been summarily rejected because it had no material particulars and supporting documents relating to material facts are misplaced as there is a distinction between material facts and material particulars and in this case material facts have been pleaded. The Hon'ble High Court while coming to this conclusion failed to appreciate that:
- a) The bald averments made by a party cannot be taken as material facts especially when they are controverted with material particulars.

b) In this case the “material facts” pleaded were that the Respondent 2 to 4 had support of rank and file of the party whereas it was their own admission in para 9.38. that they had support of only 11 MLAs out of 134 and support of 12 MPs out of 50 at the same time alongwith the reply filed on 22.3.2017 Petitioners produced affidavit of support of 122 MLAs and 37 MPs and 1912 out of 2040 General Council members. Therefore, at this stage itself the Petition under para 15 should have been dismissed summarily.

c) The other alleged material fact pleaded was relating to “subversion of rules” whereby Mrs. VK Sasikala (**VKS**) was alleged to have usurped the post of General Secretary (**GS**) and the control of the party.

(i) This fact could not have been treated as a material fact as both the Commission as well as the Hon’ble High Court have not found such fact to be relevant to the dispute and expressly refrained from rendering any finding on such fact;

(ii) The Petition and the reply thereto demonstrated that VKS was appointed as GS on the basis of resolution moved and supported by the Respondents. Further, there was precedent in the Party of similar appointment when Late Dr Jayalalitha was appointed in similar fashion.

E. Because the Hon’ble High Court erred in holding that the material particulars could not be produced by Respondents as it was filed

in utter haste due to upcoming bye elections. In this regard, it may be noted that the allegations of subversion of rules related to period of December 2016 which was almost 3 months prior to the date of filing of the petition under para 15 on 16<sup>th</sup> March 2017. Further, The alleged urgency was a mere ruse as in any event, the Respondents did not have any support, which is evident from the fact that:

- (a) The respondents had been expelled from party in February itself, therefore there was no scope for the Respondents to have garnered further support.
- (b) In their petition before the Commission, it is their own admission in para 9.38 that they had support of only 11 MLAs out of 134 and support of 12 MPs out of 50. Whereas, on 22<sup>nd</sup> March 2017 Petitioners produced affidavit of support of 122 MLAs and 37 MPs and 1912 out of 2040 General Council members.

F. Because the Hon'ble High Court erred in noting that "*By the time the matter was first listed on 22.3.2017 the affidavits in support of respondents were already before the Commission*" without appreciating the contention of the Petitioners that on 22.3.2017 the respondents had support of only 11 MLAs out of 134 and support of 12 MPs out of 50 whereas VKS had support of 122 MLAs and 37 MPs and 1912 out of 2040 General Council members demonstrating that they did not have support of majority

and in fact majority supported the Petitioner. This goes to show that deliberate false and bald averments were made in the Petition.

G. Because the Hon'ble High Court erred in holding that there is no internal party mechanism by which the dispute could have been resolved because the party constitution provided that in case of any dispute between members of the party, it was the GS whose decision would be final. If there were to be a dispute with respect to the office of the General Secretary itself, then this could have been decided only by the primary members of the party, and accordingly the dispute could have been resolved by issuing a direction for elections to be held for the post of GS. In fact, one of the prayers of the respondents in the petition before the Commission itself was holding of fresh elections for post of GS, which shows the admitted position as to how such dispute could have been resolved.

H. Because the Hon'ble High Court erred in holding in para 39 that para 15 of the Symbols order which gives Election Commission power to decide as per *all available facts and circumstances of the case*, also gives the Commission discretion to decide as to what are the facts and circumstances which needs to be taken into consideration. It is submitted that this finding is completely erroneous as this will render the decision making arbitrary. The Commission is bound to decide based on all the available facts and circumstances placed before it. It has no discretion to choose

selectively or ignore. Such an unguided unbridled discretion would render the decision making arbitrary and same would be contrary to the principles of rules of law.

- I. Because after agreeing in paras 40 and 41 with the Petitioners that test of majority is not the sole test in all disputes and that the structure of the party has to be analysed to ascertain the relevant and germane test, the Hon'ble High Court erred in holding in para 48 that as the party has a democratic set up and all powers are derived directly or indirectly through elections from its primary members; test of majority as per Sadiq Ali (i.e., majority in the legislative and organizational wings) would be a relevant and germane test. The Hon'ble High Court failed to appreciate and analyse the pivotal aspect of the structure of the AIADMK, which is that the GS would be elected by the primary members notwithstanding the multi-tier structure of the party. Therefore, the relevant and germane test of majority in the context of the structure of the AIADMK, could have only been resolved by testing the majority amongst the primary members, which apparently was not applied either by the Commission or the Hon'ble High Court. It may be relevant to note that the Petitioners produced 7 lakh affidavits of primary members while the Respondents only produced 1.68 lakh affidavits of primary members.
- J. Because the Hon'ble High Court erred in holding in para 41 that the tests were merely recorded and had not been approved by

Supreme Court in *Sadiq Ali*. It is stated that this finding is in contradiction to the finding in the same para that “*we are unable to agree with the proposition that after Sadiq Ali the test of majority is the sole test in all disputes.*” This means that the other tests recorded in Sadiq Ali by this Hon’ble Court could be applied in given circumstances of the case.

K. Because it is wrong for the Hon’ble High Court to have concluded in para 49 based on its observations in para 41 that the applicability of the adherence to the party constitution was never approved by the Supreme Court in *Sadiq Ali*. It is submitted that it was recorded and approved but not applied in Sadiq Ali based on facts and circumstances of that case.

L. Because assuming that the Hon’ble High Court is correct in interpreting the judgment in Sadiq Ali to the effect that the test of Constitution was not *approved* in Sadiq Ali, at the very least this Hon’ble Court had opined that the test of constitution was a relevant test in a given case. The Hon’ble High Court erred in finding in para 49 that the said test was not relevant to the present *lis* having regard to the structure of the party. The Hon’ble High Court failed to appreciate that the test of Constitution has to be applied in the context of the dispute, irrespective of the structure of the party. Where the crux of the dispute both as raised originally in the petition by the respondents, and as arose as a result of subsequent acts of the respondents, was whether the

party constitution had been followed, the Hon'ble High Court erred in holding that the test of constitution was not relevant.

M. Because the Hon'ble High Court erred in holding that the adherence to the party constitution was ineffectual and neutral in the present case as the Petitioners and Respondents both seems to have derogated from the same clauses of the party constitution. In this regard, the Hon'ble High Court failed to appreciate that:

- (i) The Petitioners have not derogated from the constitution of the AIADMK. VKS was appointed as an **interim** General Secretary, **pending** election of the GS by the primary members of the party as per the rules and regulations of the party. Appointment was occasioned given the emergent situation that had arisen, following past precedent. Thus, the Petitioners clearly demonstrated deference to the party constitution. Further, appointment of the Petitioners was by way of resolution moved by the respondents herein and unanimously accepted by the General Council. Thus, it was not an act that can be attributed to the Petitioners and hence no act of the Petitioners could be said to have been in derogation of the party constitution.
- (ii) The validity of appointment of VKS as General Secretary has been admitted, affirmed and acquiesced to, by each of the respondents in various proceedings including before the Hon'ble High Court and therefore, could not have been

treated as a violation of the constitution at the behest of the Respondents, by the Hon'ble Court.

- (iii) The act of the Respondents has not merely derogated from the party constitution but has destroyed the constitution of the party. On 12.09.2017, the Respondents abolished the post of General Secretary who is the backbone of the party, replaced the same with the post of Coordinator and Joint Coordinator and provided for their election through General Council. Thereby, the Respondents effectively abolished the provision of election of the highest functionaries of the party by primary members altogether, which is stipulated to be the basic structure of the party and is stipulated to be unamendable.
- (iv) The Hon'ble High Court itself noted in para 52 that there was merit in the contention of the Petitioners that the Respondents had derogated from the Constitution of the party.
- (v) Given the nature of the two acts, the Hon'ble High Court committed a gross error placing at par, the act attributed to the Petitioners with respect to appointment of an interim General Secretary, with the act of the Respondents which amounted to complete abrogation and abandonment of the constitution of the party, and on the Respondents' own admission would "*render the party an entirely new being*" [Para 9.5 of the petition before the Election Commission

and para 15 of the Counter Affidavit before Hon'ble High Court].

N. Because the Hon'ble High Court erred in finding that though VKS was elected by GC on 29.12.2016 for more than 2 years no elections have been conducted for the said post, without taking note of the fact that EC was seized of the matter since March 2017 and a freeze order was passed on 22.03.2017 and on 23.11.2017 finally decided in favour of the respondents (who have abolished the post of GS) and therefore, the issue of holding of fresh elections to the post of GS did not arise.

O. BECAUSE the Hon'ble High Court erred in holding that the decision as to which test is to be applied is the discretion of the Commission, in as much as the Commission is bound by the mandate in paragraph 15 of the Symbols Order, which requires the Commission to determine based on all available facts and circumstances, as to which faction is "**that** political party". This necessarily means that the Commission is bound to examine which of the groups is adhering to the constitution of the party; and if both groups are adhering to the constitution and aims and objectives of the party, then which group enjoys the majority at the appropriate levels depending upon the structure of the party.

P. BECAUSE the Hon'ble High Court has itself noted the mandate in Sadiq Ali that the structure of the party has to be analysed to ascertain the relevant and germane test. In that case, there is no room for discretion and the Commission is bound to judicially

determine the relevant and germane test, taking into account the mandate of law in paragraph 15 of the Symbols Order and the mandate contained in Sadiq Ali's case.

Q. BECAUSE the Hon'ble High Court erred in para 54 in disregarding the admissions of the Respondents with regard to what constituted the basic structure of the party and as to the test of constitution being the relevant and germane test in the facts of the present case, on the ground that there is no estoppel against law. The positions taken by the Respondents were positions of fact and related to their understanding of the constitution of the party, and did not pertain to issues of law. The fact that both parties were ad idem on what constituted the basic structure of the constitution was relevant, germane and essential for adjudication as to which group was "**that** political party".

R. BECAUSE the Hon'ble High Court has further completely disregarded and omitted to deal with the effect of categorical admissions on the part of the Respondents as regards the validity of appointment of VKS as the General Secretary. The Respondents have, at every stage, right from the time of appointment of VKS as the GS up to the present, i.e., in the proceedings before the Hon'ble High Court, admitted, accepted and acquiesced to the validity of appointment of VKS as the GS. Despite the same, the Hon'ble High Court did not deal with or consider the effect of estoppel against the Respondents.

S. BECAUSE the Hon'ble High Court erred in holding in para 58 that the Petitioners have changed their stand without appreciating that the stand of the Petitioners has been consistent with the principle that subject to adherence to the constitution, the test of majority is the relevant test. On 22.03.2017, the Petitioners urged application of the test of majority, as it is the position of the Petitioners that at that stage, there was no contravention to the constitution of the party. Whereas, the test of constitution (which was urged after 12.9.2017 by the petitioner) became relevant on account of subsequent abrogation of the constitution by the group led by the Respondents on 12.09.2017, as in the face of abandonment of the constitution by one group, the alleged support to such group would be irrelevant and consequently, the test of majority became irrelevant.

T. BECAUSE the Hon'ble High Court has erroneously dismissed the contentions of the Petitioners regarding the test of constitution being admitted to be the relevant test by the Respondents on the ground that there is no estoppel against law, while at the same time holding that the Petitioners were estopped from contending that majority had to be tested qua the primary members of the party. It is submitted that having held that the question as to which test is relevant and germane is a question of law, the Hon'ble High Court ought to have independently analyzed the structure of the party to ascertain the relevant level at which the test of majority was to be applied, irrespective of the contention of the Parties.

U. BECAUSE the Hon'ble High Court has taken irrelevant facts into consideration in para 60 while holding that the relevant and germane test to be applied was majority in the organizational and legislative wings. As noted by the Hon'ble High Court itself, the structure of the party was the only relevant consideration, upon analyzing which, it would have been evident that majority had to be tested qua the primary members. Whereas the Hon'ble High Court justified applying the test at the organizational and legislative levels solely on the basis that there were several members of the AIADMK in the legislative and organizational wings.

V. BECAUSE the ECI and the Hon'be High Court have failed to appreciate that test of Majority at organizational and legislative levels simplicitor could not have been applied due to the distinctions in the present case and in Sadiq Ali Case viz in Sadiq Ali there was- (1) no factual dispute regarding figures of support; (2) there was no alleged change of stand of delegates; (3) under party constitution no one office bearer had absolute power and control; and (4) the party involved was a National Party where almost the entire voting population of the nation was primary member.

In contradistinction, in the present case (1) figures of support are seriously disputed; (2) A claim has been made by the respondent no 2 to 5 regarding change in stand of organizational and

legislative wing members (though disputed); (3) Under the Party Constitution General Secretary has absolute powers and control and is the sole representative of the Party- meaning thereby Petitioner was undisputedly representing the Party; (4) clear departure from the Party Constitution and the Aims by altering the basic and fundamental features of the Party Constitution by the respondents on 12.9.2017 (which even according to the Respondents' Petition would result in a new Party – Para 9.5 of the Petition); and (5) AIADMK is a State Party with 1.5 crore Primary members and ascertaining their wishes by a referendum is a very easy task.

W. BECAUSE the Hon'ble High Court has in paras 62 and 63 erroneously approved selective reliance by the Commission upon subsequent events. While holding that it was incumbent upon the Commission to take into consideration the alleged subsequent change in allegiances to persons, the Hon'ble High Court has not given any reasons to justify the Commission having turned a blind eye to the subsequent abrogation of the constitution of the party by the respondents.

X. BECAUSE the Hon'ble High Court has erroneously noted in para 63 that the shifting of allegiances, post the meeting of 12.09.2017, was brought to the notice of the Commission and it was therefore incumbent upon the Commission to take the same into account. The Hon'ble High Court failed to appreciate that on 21.09.2017,

the Election Commission had suo moto called upon each of the groups to furnish fresh affidavits without any application to such effect having been made by either of the groups. Thus, there was no question of any shifting of allegiances having been brought to the notice of the Commission.

Y. BECAUSE the Hon'ble High Court failed to appreciate the significance of the fact that despite holding itself bound to dispose of the petition expeditiously, the Commission suo moto directed the parties to file fresh affidavits. Even assuming that Commission ought to have taken note of subsequent events in consonance with the judgment in Sadiq Ali, the Hon'ble High Court failed to appreciate the angle of malice involved inasmuch as even though there was no suggestion or communication as to shift in allegiances, the Commission nevertheless decided to invite fresh affidavits and restrict its consideration to only such fresh affidavits.

Z. BECAUSE in para 73, having agreed that it was not open to the Commission to hold that denying right of cross examination would not prejudice the Petitioners, the denial of cross examination was not found fault with by the Hon'ble High Court on the ground that the Commission was required to act with certain promptitude. The said reasoning of the Hon'ble High Court justifying denial of natural justice is devoid of any merit and contrary to established principles of law that a decision can be sustained only if the decision making is an outcome of a fair

hearing, based on procedure known to law, which includes observance of the principles of natural justice.

AA. BECAUSE in para 74, the Hon'ble High Court has completely mis-appreciated the facts while erroneously holding that request for cross examination was belated on the basis that such request was made only on penultimate day, i.e., on 03.10.2017, inasmuch as the affidavits wherein alleged retractions were made leading to seeking of cross examination, were filed before the Commission only three days earlier, i.e., on 29.09.2017. Therefore, the request was made with promptness and at the earliest opportunity and the Hon'ble Court erred in holding that the pleas of the Petitioners were frivolous.

BB. BECAUSE the Hon'ble High Court erred in rejecting the contention that affidavits were fabricated, false and obtained under duress and undue influence as the subsequent affidavits of retraction clearly stated the circumstances for filing the previous affidavits and change in stand and therefore cannot be termed as affidavits of retraction. This is because:

(i) Firstly, there were several members who swore before the Commission that they had never signed the subsequent affidavits/ they had signed such affidavits under coercion and undue influence. However, the Commission did not even call upon such persons to examine them although they were present before the Commission;

(ii) Secondly, when persons made a specific averment, a reasonable doubt as to the correctness of the affidavits showing change of allegiance was made out pointing towards a retraction, necessitating cross examination and no such finding that there was no retraction can be made in the absence of such cross examination.

CC. BECAUSE the Hon'ble High Court failed to appreciate that the issues highlighted by the Petitioners in the application seeking cross examination was not with respect to one single affidavit, rather it related sample of more than 500 affidavits of around 2,000 affidavits, which were disputed on different grounds, i.e., forgery/ fabrication in some cases, and undue influence and duress in other cases. Therefore, the Hon'ble High Court erred in holding that the contentions of the Petitioners in this regard were mutually destructive.

DD. BECAUSE the Hon'ble High Court erroneously presumed that rejection of the opportunity to cross examine had not prejudiced the case of the Petitioners on the ground that it would not have had substantial effect on the position with respect to majority enjoyed by the faction led by the Respondents and it would be useless to remand the matter to the Commission. The Hon'ble High Court has erred in holding that only 325 affidavits were disputed by the Petitioners, whereas, the Petitioners had clearly specified that upon a sample survey, they had found many

infirmities, which was sufficient to throw into doubt, the veracity of all affidavits. The Commission had itself noticed infirmities in 126 affidavits. In any event, the Commission had only examined the signatures in the affidavits giving a go-bye to other serious allegations raised by the Petitioners.

- EE. BECAUSE the the Respondents No. 2 to 5 rendered themselves disentitled from any relief by virtue of their own pleadings, admissions and conduct.
- FF. Because the Hon'ble High Court also erred in not appreciating that the order of ECI was tainted because of acceptance of fabricated and untested material as genuine.
- GG. Because in the present case, the Petitioners have alleged that offences have been committed under Sections 177, 181, 182, 193, 195A, 196 and 471, IPC. As per Section 195(1), no Court can take cognizance of any such offence unless the concerned public servant or Court lodges a complaint in this regard. It is therefore submitted that the Election Commission committed a manifest error in not taking any action on the complaints/ applications of the Petitioners, thereby depriving them of a remedy under the law.
- HH. Neither the Hon'ble High Court nor Election Commission in the impugned judgment, or the counsel for Respondent Nos. 2 to 5, in the course of their arguments before this Hon'ble Court, have dealt with Section 182 IPC at all or addressed why the same is not applicable to the present case. It is respectfully submitted that in the facts of the present case, Section 182 is clearly applicable.

- II. In *Daulat Ram v. State of Punjab*, (1962) Supp 2 SCR 812, the Hon'ble Supreme Court was dealing with a situation where a person wrote a letter to the Tehsildar alleging that he had been beaten up and robbed by two persons which, upon investigation by the police, was found to be false, and hence a prosecution under Section 182 IPC was launched against him. The Court held as follows: "Now the offence under Section 182 of the Penal Code, if any, was undoubtedly complete when the appellant had moved the Tehsildar for action. Section 182 does not require that action must always be taken if the person who moves the public servant knows or believes that action would be taken. In making his report to the Tehsildar therefore, if the appellant believed that some action would be taken (and he had no reason to doubt that it would not) the offence under the section was complete."
- JJ. In the present case, the Election Commission held that the bar under Section 195(1)(b) applies only in relation to a "Court", whereas "It is clear that Symbols Order Para 15 proceedings before the Commission are not "proceedings in a court" [para 54 ECI order]. It is submitted that the above reasoning is completely perverse and a gross oversimplification of the position enjoyed by the Election Commission under law. The Election Commission has been set up in terms of Article 324 of the Constitution and the Representation of Peoples Act, and is vested with certain judicial powers. Its powers, under Section 146(1)(a) and (c) of the Representation of Peoples Act, inter alia include summoning and enforcing the attendance of any person and examining him on

oath, and receiving evidence on affidavits. Under Section 156(3), the Commission is deemed to be a civil court for certain purposes and, as per Section 156(4), “Any proceeding before the Commission shall be deemed to be a judicial proceeding within the meaning of section 193 and section 228 of the Indian Penal Code”.

KK. BECAUSE the focus of the Petition filed by the Respondents No. 2 to 4 before the ECI was the allegedly illegal appointment of the Respondent No. 6 as General Secretary in contravention of the Constitution of the AIADMK. The said stand was diametrically opposite to the conduct of the Respondents No. 2 to 4, inasmuch as they themselves proposed the appointment of Respondent No. 6 as General Secretary in the meeting of the General Council convened on 29.12.2016. This fact was deliberately suppressed in the respondents in Petition before the ECI and not at all considered by both the High Court and ECI.

LL. BECAUSE the Respondents No. 2 to 4 further deliberately suppressed the fact that in a Suit bearing CS No. 958 of 2016 filed before Madras High Court to challenge convening of General Council meeting to elect the Respondent No.6 as General Secretary, Respondent No. 2 had filed an Affidavit defending the eligibility of Respondent No.6 to be appointed as General Secretary.

- MM. BECAUSE the Respondents No. 2 to 4 further deliberately suppressed the fact that they had already been expelled from the AIADMK in terms of the Rules and Regulations of the AIADMK. Thereby, the Respondents No. 2 to 4 had no locus to maintain the Petition before the ECI.
- NN. BECAUSE even subsequently, the Respondents No. 2 to 4 have acknowledged and acquiesced that the appointment of Respondent No. 6 on 29.12.2016 as General Secretary was valid and legal. This is evident from the notice dated 28.08.2017 as well as Resolution No. 8 passed in the illegal meeting of the alleged General Council dated 12.09.2017, where it was unequivocally recorded that the Respondent No. 6 was appointed as the General Secretary on 29.12.2016.
- OO. BECAUSE the Respondent No. 5 had sworn an affidavit in the same proceedings before the ECI affirming that the Respondent No. 6 was validly appointed as the General Secretary and the Petitioner was validly appointed as the Deputy General Secretary. The Respondent No. 5 had further affirmed in the said affidavit that the claims of the Respondent No. 2 who was expelled from the AIADMK are without any merit.
- PP. BECAUSE the Hon'ble High Court failed to appreciate that having themselves admitted to the valid appointment of the Respondent No. 6 as General Secretary, the Petition before the

ECI could not be maintained by the Respondents No. 2 to 4. Further, the Respondent No. 5 having actively opposed the stand of the Respondents No. 2 to 4 could not have been permitted to join the Respondents No. 2 to 4 and urge any matter in their support.

QQ. BECAUSE the entire premise of the Petition filed before the ECI was that the Petitioner and the Respondent No. 6 had violated the Constitution of the AIADMK. The primary contention urged by the Respondents No. 2 to 4 was that the General Secretary is supreme under the Constitution of the AIADMK and that election of the General Secretary by the primary members of the AIADMK is the basic structure of the Constitution of AIADMK and appointment of Respondent No. 6 by members of the General Council was entirely illegal. To this end, the Respondents No. 2 to 4 categorically averred that:

*“Rule 20(ii) of the Bye-laws clearly states that the **General Secretary will be elected by all the Primary Members of the party** and Rule 43 of the Bye-laws lays down that the election procedure as laid down in Rule 20(ii) is sacrosanct and immutable. The General Council oversees the policy decisions of the Kazhgam but the power vested in the General Council as per Rule 19(viii) as “supreme authority to frame policies and programmes of the party” cannot and does not undermine the ultimate authority of Rule 20(ii). Further, Rule 43 upholds the basic structure*

*of the party, the amendment of which will render the party an entirely new being.”*

RR. BECAUSE having acknowledged the basic structure of the Constitution of the AIADMK, amendment to the Constitution of the AIADMK at the behest of the Respondents No. 2 to 4 and Respondent No. 5, by abolishing the post of General Secretary and providing for appointment by the General Council of the Coordinator and Joint Coordinator who would have all the powers of the General Secretary, amounts to an admission that the Respondents No. 2 to 5 had violated the Constitution of the AIADMK.

SS. BECAUSE even in their Counter-Affidavit before the Hon'ble High Court, the Respondents No. 2 to 4 have acknowledged and affirmed that the requirement for election of the General Secretary by the primary members of the party, as envisaged under Rule 20(iii) of the Byelaws of the AIADMK constituted part of the basic structure of the party. The Respondents No. 2 to 4 averred that:

*“Rule 43 upholds the election procedure laid down in Rule 20(ii) as the basic structure of the party, the amendment of which will render the party an entirely new being.”*

TT. BECAUSE if the test of majority in the organizational and legislative wings of the AIADMK were to be applied then the Petition ought to have been dismissed on the very first day as admittedly, in the Petition, the Respondents No. 2 to 4 claimed the support of about 11 MLAs (out of 134) and 12 MPs (out of 50). No material was in any event furnished to demonstrate such support.

UU. BECAUSE not only did the ECI entertain the Petition despite no demonstration of support, it proceeded to pass an interim order on 22.03.2017 freezing the 'two leaves' symbol, primarily on the ground that a deeper examination and closer look at the Constitution of the AIADMK was necessary. However, in the final adjudication, the ECI completely abandoned the test of adherence to the Constitution of the AIADMK by the rival factions and did not even render a finding on the very issues that led the ECI to postpone its final decision.

VV. BECAUSE had the test of majority in the legislative and organizational wings been considered relevant by the ECI, then no such interim order could have been passed by the ECI and the Petition ought to have been dismissed at least on 22.03.2017, as at that stage, the Petitioner and the Respondent No. 6 filed affidavits of support of:

- (a) 122 out 134 Members of Legislative Assembly of Tamil Nadu,

- (b) 27 out of 37 Members of Lok Sabha and 10 out of 13 Members of Rajya Sabha,
- (c) 1912 out of 2141 General Council Members,
- (d) 50 out of 50 District Secretaries.

WW. BECAUSE the Hon'ble High Court failed to appreciate that the ECI having framed the issue as to whether or not the Constitution of the AIADMK had been violated by either of the group ought to have decided the same before proceeding to apply any other test. Since this issue was left completely unanswered, the Hon'ble High Court ought to have, at the very least, remanded the matter for fresh consideration by the ECI.

XX. BECAUSE in the meeting convened on 12.09.2017, the amendments illegally and purportedly made to the Constitution of the AIADMK at the behest of the Respondents No. 2 to 5 destroyed its basic structure and hence the Respondents No. 2 to 5 could never claim to be "that party", i.e., the AIADMK.

YY. BECAUSE under the Constitution of the AIADMK, the General Secretary is the backbone of the party and the most important and plenipotentiary functionary, which is evident from the following:

- (i) The General Secretary is responsible for the entire administration of the party, to implement its policies and programmes, to manage its income and expenditure, take the final decision on disciplinary proceedings, sign the

authorization forms for allotment of symbol to contesting candidates etc. The power of the General Secretary is absolute and cannot be questioned by any member. [Rule 20]

- (ii) The key functionaries are nominated by the General Secretary, such as Deputy General Secretaries, Treasurer and Headquarters Secretaries, [Rule 20(iii)] ], members of the Parliamentary Board, which shall select candidates for all elections [Rule 29] etc.
- (iii) General Secretary also has the power to approve memberships. A member shall cease to be a primary member of the Party if he/she resorts to any Court proceedings against the decision of the Party General Secretary. General Secretary is empowered to represent the Party in any forum. [Rules 20, 43]
- (iv) It is only the General Secretary that has the authority to relax or make exceptions to any of the rules and regulations of the Party.
- (v) Decisions of the General Secretary are final, e.g. decisions of the General Secretary on the disciplinary proceedings shall be final, those who approach the Courts challenging such decision, shall forfeit their membership by virtue of the provisions of Rule 5.

Amendment of the Constitution to abolish the post of the General Secretary would render the party into a completely new being.

ZZ. BECAUSE the Constitution of the AIADMK mandates that the General Secretary shall be elected by the primary members of the AIADMK party. [Rule 20(ii)] It further mandates that the said Rule that the General Secretary should be elected only by all primary members of the party cannot be changed or amended since it forms the basic structure of the Party. [Rule 43] Any attempt at dilution of the said position, which is expressly stated to be the basic structure of the party amounts to abandonment of the AIADMK.

AAA. BECAUSE the resolutions purportedly passed in the alleged meeting of 12.09.2017 at the behest of Respondents No. 2 to 5 completely changed the nature and structure of the AIADMK. In particular, Resolutions No. 10 and 11, whereby not only was the post of General Secretary established to be replaced by the Coordinator and the Joint Coordinator; such office bearers who were purported to be vested with all the powers enjoyed by the General Secretary were stipulated to be appointed by the General Council and not the primary members of the AIADMK. Thus, the basic structure of the Constitution of the AIADMK was destroyed in letter, spirit and substance.

BBB. BECAUSE the ECI and the Hon'ble High Court have failed to note and appreciate other precedents which hold that majority is not the sole test for adjudication of a dispute under paragraph 15

of the Symbols Order. For instance, see Arjun Singh's case [Dispute no 1 of 1996, decided on 11.03.1996, para 14-22 of Mr. T.N. Seshan's decision]; *All Party Hill Leaders' Conference v. Capt. W.A. Sangma*, (1977) 4 SCC 161; *Ramashankar Kaushik v. Election Commission of India*, (1974) 1 SCC 271; *Indira Gandhi Vs. K. Brahmananda Reddy* Civil Appeal 4 of 1978.

CCC. BECAUSE a majority dehors the constitution can never claim itself to be the Party. Moreover, a bare reading of para 14 of Sadiq Ali Judgment demonstrates that apart from Test of Majority, there are two other Tests, namely, Test of Constitution and Test of Aims and Objects to determine as to which group would be entitled to claim as the party under para 15 of the Symbols Order. A party is always known by its ideology and the Constitution, which binds its leaders and supporters equally. If a group of persons, though they may have numerical majority but seeks to follow a different Constitution or alter the basic structure of the Constitution of the Party or follow new aims and objects, they can't be treated as the original party itself. They may be entitled to be called a new party but not the original party.

DDD. BECAUSE the notice issued by the ECI on 21.09.2017 calling upon parties to file fresh affidavits and submissions, yet confining the scope of consideration and application of the majority test to MLAs, MPs, Legislative and Organizational Wing of the Party, effectively called upon the parties to demonstrate majority dehors

the Constitution of the AIADMK. In the context of the Constitution of the AIADMK, the test of majority could not have been restricted in its application to the organizational and legislative wings. The supreme authority in the AIADMK vests with the primary members who are entitled to elect the General Secretary and the test of majority ought to have been applied at the level of the primary members. As for the legislature wing of the party, it is pertinent that the legislators do not play an important role, insofar as party affairs are concerned. The Parliamentary Board, which selects candidates for election consists of the General Secretary and members nominated by the General Secretary. Therefore, the General Secretary is again quintessential even for the purposes of constituting the legislative wing of the party.

EEE. BECAUSE the ECI further erred in applying the test of majority after a lapse of nearly 6 months from the time that the Petition was filed. The ECI and the Hon'ble High Court further failed to appreciate that the alleged strength of support in favour of the Respondents No. 2 to 5 in September, 2017 could only have been attributed to the new party that they represented after having purported to amend the Constitution of the AIADMK, which could not be considered for the purpose of ascertaining if the said group represented the AIADMK.

- FFF. BECAUSE the Hon'ble High Court failed to appreciate that the time frame for testing the majority is not merely an issue of procedure, but is of substantive significance, inasmuch as prolonging the time for demonstrating support encouraged horse-trading and opportunities of coercion. The group led by the Respondents No. 2 to 4 and Respondent No. 5 effectively engineered a false majority taking advantage of the lapse of time and fresh opportunity granted by the ECI.
- GGG. BECAUSE even if the ECI genuinely believed that there were two groups within the AIADMK, the ECI ought to have explored remedies within the framework of the Constitution of the AIADMK.
- HHH. BECAUSE the Respondents No. 2 to 4 had themselves prayed for a direction to conduct elections for the post of General Secretary. Even if there were a serious dispute between the two groups, such an election would have demonstrated which was the real party and would have been consistent with the basic structure of the AIADMK.
- III. BECAUSE the ECI deviated from its own past precedents followed by it while adjudicating disputes under paragraph 15 of the Symbols Order, by failing to pass a suitable order and issue directions to parties to comply with their respective rules and regulations. To cite a few:

- (i) In Re: Himachal Vikas Congress dated 25.09.2000, where there was a dispute between two factions of the party, the ECI directed completion of organisational elections and submit a list of office bearers to the ECI.
- (ii) In the case of Naga People's Front, the ECI categorically held that the groups were necessarily required to exhaust the mechanism provided within the party constitution and settle disputes internally and that the first recourse would be the party constitution.

JJJ. BECAUSE the Hon'ble High Court failed to appreciate that despite serious discrepancies and fabrication having been brought to the notice of the ECI, the ECI acted contrary to all principles of natural justice and laws of procedure, by refusing to inquire into the allegations, and refusing to afford any opportunity of cross examination to the Petitioner. The ECI has treated fabricated and untested material as genuine, these have resulted in hearing being unfair and consequently contrary to the principles of natural justice and, therefore, the proceedings and the Order are void.

KKK. BECAUSE the Respondent Nos 2 to 5 have erroneously been held to have majority support among the organizational and legislative wing of the party (paras 56 to 61 of Impugned order) though it was pointed out during the course of proceeding through production of material, that the affidavits of support produced on

29.9.2017 by the Respondent No.2 to 5 are marred by fabrication fraud and tainted material and therefore, the affidavits filed by the Respondents on 29.09.2017 should be rejected. The Hon'ble High Court failed to appreciate that (1) a large number of affidavits, fabricated led to suspicion regarding the remaining affidavits. Even a sample scrutiny done by the Respondent no 1 revealed that 126 affidavits out of 1877 filed by respondent no 2 to 5 were on face of it not genuine; (2) only a sample scrutiny could be done by the Petitioner by looking at such affidavits of support and verifying from the concerned persons (given the short period of time as affidavits were filed on 29.09.2017 and hearing commenced from 06.10.2017) and therefore, it cannot be assumed that rest of the affidavits are genuine; (3) the genuine affidavits of these persons, supporting the petitioner was filed in March 2017 and had not been retracted by the said persons directly casting doubt on the veracity of such affidavits.

LLL. BECAUSE the ECI ought not to have proceeded to rely upon the affidavits filed by the Respondents No. 2 to 5, when the Petitioner had pointed out that:

- (i) a substantial number of affidavits to be forged and fraudulent.
- (ii) ante-dating of some affidavits wherein stamp papers are purchased on 26.09.2017 while on the said papers by ante-dating affidavits are shown to be sworn on 25.09.2017.

- (iii) producing many of the affiants to state that they have been forced, unduly influenced and on whom fraud was played for obtaining signatures.
- (iv) 78 affidavits where stamp papers were purchased in March/April 2017 and therefore, their validity is susceptible.
- (v) 44 affidavits were found to be not bearing the names of the deponents, when it is an established rule in Tamilnadu that when a stamp paper is purchased, name of the executants is mentioned on the face of the stamp paper.

MMM. BECAUSE there is no clear basis to conclude that the respondents no. 2 to 5 enjoy majority in the party. This is demonstrated from the fact that in March 2017, the Respondent No.6 and the Petitioner demonstrated overwhelming majority in the party. Additional 1218 fresh affidavits of support of new members were also filed in favour of respondent no.6 in September 2017. However, without duly appreciating the claim of the respondent no.6 and the petitioner and without inquiring into the retractions, fabrication, fresh affidavits obtained by coercion and undue influence, the ECI has erroneously concluded that the majority in support of respondent no.2 to 5 is undisputed.

- NNN. BECAUSE despite pointing to a large number of affidavits that were fabricated, the ECI committed a serious and material error in merely excluding such affidavits without examining whether all affidavits were so tainted. Further, the ECI acted contrary to all canons of justice and fair play by refusing permission to the Petitioner to cross-examine the deponents, especially those who had resiled from their stand.
- OOO. BECAUSE as a quasi-judicial authority, the ECI is bound to follow principles of natural justice. Although rules of procedure may not be strictly applicable to a quasi judicial tribunal, cross-examination is an essential facet of the principles of natural justice and was necessary in this case to ensure conducting the proceedings in a fair manner.[ Ref: 2002 (3) SCC 25, 1998 (3) SCC 366, 2013 (4) SCC 465, (1985) 3 SCC 398 Indian Congress (Socialist) Dispute case no 4 of 1995 decided on 19.03.1996, Arjun Singh's case (Dispute no 1 of 1996, decided on 11.03.1996 etc].
- PPP. BECAUSE the ECI showed undue haste in concluding the proceedings and omitting to consider serious and valid objections raised by the Petitioner, thereby sacrificing fair play and justice for expedition. This is even more stark considering that no hearing was fixed between 20.04.2017 and 6.10.2017; thereafter, the ECI itself sought to expand the scope of the proceedings by

granting fresh opportunity to file affidavits and then scuttled the Petitioner's genuine objections to tainted material.

QQQ. BECAUSE that the Commission failed to appreciate that the Petitioner herein fulfills all the test to be entitled to represent the party and the symbol under Para 15 of the Symbol Order viz. (a) they have majority in the Party, (b) even as per Party Constitution, they are entitled to represent the Party, and (c) they fulfill all aims and objects of the Party.

**A. Test of Majority**

Admittedly, the undisputed Affidavits of support are only those Affidavits which were filed in March, 2017. The Respondents No.2 to 5 only have the support of only 12 MLAs, 7 MPs and 68 General Council members and in contradistinction, the Respondent No.6 and the Petitioner have the support of 122 MLAs out of 134, 37 MPs out of 50 and 1912 General Council members out of 2141. Apart from this, about 7 lakh Affidavits of primary members were also filed by the Petitioners. Whereas, 1.68 lakh Affidavits were filed by the Respondents, among which many of the Affidavits were not even of the primary members. This demonstrates that the Petitioners have undisputed majority among the rank and file of the Party.

**B. Test of Constitution**

Undisputedly, Respondent No.6 is the duly appointed General Secretary of the AIADMK on 29.12.2016 and till date her appointment has neither been challenged nor set aside by any court of competent jurisdiction. As per the party Constitution, General Secretary is representative of the entire wish of the party. In this regard rules 20, 35 and 43 of the Bye-Laws be seen.

When Respondent No. 2 to 5 filed the petition on 16.3.2017, their claim was that the split has occurred due to appointment of General Secretary contrary to the bye laws of the Party Constitution. It was alleged that Respondent No.6 had given the Party Constitution a complete go-by and were unconstitutionally occupying posts in the party hierarchy. They also relied on the importance of the primary members of the Party who elects the General Secretary. On the basis of the claim made by Respondent no. 2 to 5 interim order dated 22.3.2017 was passed by Commission indicating that the final decision will be taken after deeper examination of the Party Constitution.

Thereafter on 12.9.2017 the Respondent No. 2 to 5 changed the entire constitution of the Party which they had claimed to be sacrosanct when they filed the Petition. By passing various resolutions they abolished the post of General Secretary altogether; created two new post of Jt. Cor-ordinator and co-ordinator; took away right of the primary member to elect the party head.

Though all these facts were pointed out to the Commission, the Commission has ignored the same while passing the order. The Commission selectively took notice of the 12.9.2017 general council meeting to conclude that there is a subsequent development leading to change in support, however completely overlooked the changes that were brought to the party constitution and how the alleged majority was obtained.

### **C. Test of Aims and Object**

It is submitted that under the Party Constitution of AIADMK, the ground level party cadre, primary member was empowered to elect a person who will lead the party, this aim now is completely given up by the Respondent No. 2 to 5 by replacing the General Secretary by 2 persons who are corrupt and indulge in anti-party affairs and nepotism; instead of a democratic decision making by the head, now it is collusive decision making concentrated in the hands of two persons who are known for their anti-party activities. It is stated Respondent No. 2 voted against Party whip in February 2017 and thereafter for repeatedly 8 months criticized the Party for at public platform. And then through coercion and corrupt means, allured EPS, a nominee of Petitioner to give post of Dy. Chief Ministership, himself engaging in anti-party activities and giving up the aims and objects of the party.

Despite these instances having been pointed out, the same was neither looked into nor considered by the Commission.

RRR. BECAUSE the manner in which the proceedings were conducted by the ECI reek of bias and malafide and vitiate the sanctity of the final order passed by the ECI. The same is evident from the fact that the Respondents No. 2 to 5 squarely benefited from selective application of tests by the ECI for ascertaining the real party. At the time when the Petition was filed before the ECI, the Respondents No. 2 to 4 did not file any Affidavit of support with their Petition. On the contrary, Respondent No.6 and the Petitioner filed overwhelming Affidavits of support at all levels in the Party in March 2017 (122 out of 134 MLAs, 37 out of 50 MPS and 1912 out of 2141 General Council Members). However, at that stage, the ECI disregarded the test of majority altogether. Thereafter, the ECI granted fresh opportunity to file affidavits, despite the absence of any plea made by any of the parties to such effect, enabling the Respondent No.2 to 5, to file fabricated Affidavits and Affidavits of support obtained by force, coercion and undue influence of persons. At that stage, the ECI abandoned the test of the Constitution, which the ECI had itself considered relevant and applied the test of majority. By delaying the proceedings, permitting a change in the Constitution and thereafter testing the majority, opportunity has been afforded to engineer a majority in this case.

- SSS. BECAUSE the ECI has selectively relied upon subsequent events. While fabricated and non-genuine affidavits filed in September 2017 were taken into consideration, the ECI completely ignored the subsequent resolutions passed on 12.9.2017, whereby the Respondents No. 2 to 5 have completely changed the constitution and aims of the party and therefore, disentitled themselves from claiming to be the AIADMK.
- TTT. BECAUSE the denial of opportunity to the Petitioner to cross-examine and test the genuineness of the affidavits filed by the Respondents No. 2 to 5 despite glaring evidence of fabrication makes the bias in the approach of the ECI writ large.
- UUU. BECAUSE the final order of the ECI was first made known to the media and Respondents No.2 to 5, as is evident from the various tweets and media reports. On the contrary, when Counsel for the Petitioners wrote and emailed to the Commission, no response was given. Their calls were not even answered and when the counsel went in person to the Commission, he was told the Order was still being corrected.
- VVV. BECAUSE the haste with which the election of the R.K. Nagar Constituency was announced on the very next morning, further shows the bias as the final order was handed over and election was announced thereby preventing and precluding the Petitioner from approaching the Court immediately. It appears to have been done with a motive to allow the Respondents No. 2 to 5 to field

their candidate on the said Symbol without giving any opportunity to the Petitioners to seek relief.

WWW. BECAUSE the bias of the ECI is evident from the fact that despite the interim arrangement having continued from 22.3.2017 and despite knowing that election would be announced immediately after the pronouncement of its Order, the ECI did not make any arrangement to grant an interim symbol.

XXX. Because the bias and unfair action of the respondent no 1 ECI is further evident when it denied a common symbol to the group led by the Petitioner during the pendency of the present proceedings before the Hon'ble High Court and thereby reducing the level playing field and free and fair election. The same was corrected by this Hon'ble Court speaking through Hon'ble Mr Justice A. M. Khanwilkar, vide order dated 07.02.2019 held that for creating a level playing field and for free and fair elections, the group led by the Petitioner is entitled to a common symbol.

YYY. BECAUSE it was brought to the notice of the ECI that the serving Ministers of the Tamil Nadu Government openly claimed undue influence the ECI and therefore, an appropriate action should be taken against such Ministers. However, despite noticing this in the impugned Order, the ECI failed to pass any ruling on the same. This inaction shows the partisan behavior because the said Ministers belong to the Group led by Respondents No.2 to 4.

- ZZZ. BECAUSE the bias and unfairness on the part of the ECI is further apparent when new submissions were raised in the Rejoinder and when fresh arguments were filed by way of Written Submissions, a request of three days time to file a rebuttal made on behalf of the Petitioner was again left unanswered.
- AAAA. BECAUSE the Respondent No. 5 was freely enabled to change his stand as per convenience. In the month of June, 2017, Respondent No.5 filed an Application for Impleadment claiming that he is the Chief Minister of the State and, therefore, he should be heard in the matter. In the said Application of Impleadment, the Respondent No.5 did not support the case of Respondent No.2 to 4 of their being Leader of the Party.
- BBBB. BECAUSE the order of the Madurai Bench of the Madras High Court as well this Hon'ble Court while directing the ECI to decide expeditiously emphasized upon the requirement to follow due procedure and the responsibilities of a constitutional functionary.
- CCCC. BECAUSE despite repeated oral as well as written requests for sample scrutiny of the affidavits the ECI did not take a decision on the same while the matter was pending. The ECI did not deal with the various applications filed by the Petitioner seeking that the entire material filed by the Respondents No. 2 to 5 be excluded being tainted by forgery and fabrication of affidavits, and that criminal prosecution be initiated, although that should have preceded any further consideration of the dispute. However,

Respondent No.1 Commission continued with the hearing and did not decide these issues.

DDDD. BECAUSE despite 10 persons, whose fabricated affidavits, affidavits obtained under fraud, coercion and undue influence, presented themselves before the ECI, they were not even called for examination by the ECI and the Hon'ble High Court held it to be insufficient for taking an action in accordance with law.

EEEE. BECAUSE the Hon'ble High Court failed to appreciate the law laid down by the Hon'ble Supreme Court erred in Ram Sukh V. Dinesh Aggarwal (2009) 10 SCC 541 wherein it is stated that "*material facts*" and "*the particulars*" have to be pleaded in the first instance. [Also see VirenderNathGautam V. Satpal Singh (2007) 3 SCC 617 and Anil VasudevSalgaonkar V. Naresh Kushali Shigaonkar (2009) 9 SCC 310.

FFFF. BECAUSE the ECI failed to consider that the prayers raised in the Dispute No.2 of 2017 filed by the Respondent Nos.2 to 4 are common with the prayers raised by the petitioner in C.S.No.858 of 2017 before the Hon'ble High Court of Madras and the Civil suit ought to have been given precedence.

GGGG. BECAUSE the ECI erred in holding that Section 195 of Cr.P.C. against the Respondent Nos.2 to 5 for commission of offences under the provisions of Sections 177, 181, 182, 191, 192, 193 and

196 read with Section 120B of Indian Penal Code is not applicable in the instant case.

HHHH. BECAUSE without prejudice to the Petitioner's case that it represents the real AIADMK, the Hon'ble High Court has erred in failing to direct the ECI to grant a common symbol to the group headed by the Petitioner and relax the procedural formalities of registration and recognition for the purposes of elections that could take place at any time. The group represented by the Petitioner having polled more than 6% of the votes and having more than two members in the Legislative Assembly squarely meets the requirements of recognition as a State Party under the Symbols Order.

III. BECAUSE the ECI has itself in the past granted such recognition to splinter groups which did not succeed in their stake to be the main party.

JJJJ. BECAUSE the aforesaid principle was applied by this Hon'ble Court in this very case, when on 07.02.2019, this Hon'ble Court upheld the order of the Hon'ble High Court permitting grant of a common symbol pending adjudication of the Writ Petitions, which would become operative if the Petitions were not disposed of within 4 weeks or if there were to be a notification issued by the ECI.

KKKK. BECAUSE by failing to grant any relief as to a symbol in the interregnum, the Petitioner's right to carry out political activities has been seriously jeopardized. Such a narrow and legalistic approach have far-reaching consequences as it would scuttle free and fair dissent within parties and party democracy.

LLLL. BECAUSE the Hon'ble High Court and the ECI failed to appreciate the law laid down by the Hon'ble Supreme Court in the case S.C. Chengalvaraya Naidu Vs. Jagannath 1994 SCC (1) 1 where it is held that fraud vitiates everything. Also see 2007(8) SCC 449; 2010 2 SCC 114; 2010 4 SCC 728, 2013 (9) SCC 92; 2012 (2) SCC 144.

MMMM. Because the Hon'ble High Court and the ECI failed to appreciate the law laid down by the Hon'ble Supreme Court in 2002(3) SCC 25, 1998 (3) SCC 366, 2013 (4) SCC 465 wherein the Court has stated that the evidence unless tested cannot be relied upon by Court to arrive at a decision.

NNNN. BECAUSE the Hon'ble High Court and the ECI failed to appreciate the law laid down by the Hon'ble Supreme Court in 2008 (3) SCC 279, 1971 (2) SCC 617, AIR 1967 SC 29 where it is held that when facts are to be proved and the other party i.e. Petitioner herein should have been given an opportunity to cross-examine even if not provided under the statute, the same being part of natural justice.

OOOO. BECAUSE the ECI and the Hon'ble High Court failed to appreciate the law laid down by the Hon'ble Supreme Court in Union of India Vs. Tulsiram Patel (1985) 3 SCC 398 wherein it has been inter alia held that a person against whom an order to his prejudice may be passed should be informed of the allegations and charges against him, be given an opportunity of submitting his explanation thereto, have the right to know the evidence, both oral or documentary, by which the matter is proposed to be decided against him, and to inspect the documents which are relied upon for the purpose of being used against him, to have the witnesses who are to give evidence against him examined in his presence and have the right to cross-examine them, and to lead his own evidence, both oral and documentary, in his defence. Also see DharampalSatyapal Ltd. Vs. Deputy Commissioner of Central Excise (2015) 8 SCC 519.

PPPP. BECAUSE Hon'ble High Court and the ECI failed to appreciate the law laid down by the Hon'ble Supreme Court the proceedings conducted in violation of natural justice are void ab-initio [Ref.: *Swadeshi Cotton Mills vs Union Of India*, 1981 (1) SCC 664; *RadhyShyam v. State of U.P.*, 2011 (5) SCC 553; *Kesar Enterprises Ltd. v. State of U.P.*, 2011 (13) SCC 733].

QQQQ. BECAUSE Hon'ble High Court and the ECI failed to appreciate the law laid down by the Hon'ble Supreme Court in Bharat

RasiklalAshra Vs. GautamRasiklalAshra, (2012) 2 SC C 144 where it was held that the allegations of fraud, forgery and fabrication are likely to involve recording of evidence or involve some delay in disposal, are not grounds for refusing the same

RRRR. BECAUSE Hon'ble High Court and the ECI failed to appreciate the law laid down by the Hon'ble Supreme Court in Telstar Travels (P) Ltd. Vs. Enforcement Directorate, (2013) 9 SCC 549 where it has been laid down not that only should the opportunity of cross-examination be made available, but it should be one of effective cross-examination, so as to meet the requirement of the principles of natural justice.

SSSS. BECAUSE that the Hon'ble High Court and the ECI failed to appreciate that under para 15 of the Symbol Order it is provided that *the Commission may, after taking into account all the available facts and circumstances of the case*, thereby meaning that Respondent no1 has wide amplitude and the power to cross-examine witnesses vis-à-vis forgery and fabrication.

TTTT. BECAUSE that the Respondent No. 1 commission failed to appreciate the law laid down by the Hon'ble Supreme Court in Ram Phal Kundu v. Kamal Sharma, (2004) 2 SCC 759 where it was held that the document where signature is obtained by threat cannot be considered.

6. **GROUND FOR INTERIM RELIEF: -**

- A. That the petitioners crave leave of this Hon'ble Court to rely upon and refer to the facts, circumstances and grounds mentioned in the main ground of Special Leave Petition, which are not reproduced here for the sake of brevity. The Petitioners submit that they have a strong prima facie case and are likely to succeed in the Appeal.
- B. The Respondents no 2 to 5 having fundamentally altered the party constitution and based on their own admission, they are disentitled to the symbol of 'Two Leaves' as they are no more party AIADMK. Hence, continuance of said symbol in their favour is prejudicial to the interest of the Party and supporting primary members who are aprox 1.5 crore in numbers and therefore, it would in the interest of justice to freeze the symbol of 'Two Leaves' during the pendency of this petition.
- C. That balance of convenience lies in favour of the Petitioners and against the Respondents. Unless the Impugned Orders are stayed and interim orders are not passed in terms of prayers it would lead to serious prejudice and will also render the elections in Tamilnadu & Puducherry as without being fair and free.

7. **MAIN PRAYER**

In view of the aforesaid facts and circumstances of the case and in the interest of justice, the petitioner herein most respectfully pray that this Hon'ble Court may graciously be pleased to:

- (a) Grant Special Leave to appeal against the common Judgment dated 28.02.2019 passed by the Hon'ble High Court of Delhi at New Delhi in W.P. (C) No. 10728 of 2017;
- (b) Pass such other further order or orders as may be deemed fit and proper in the facts and under the circumstances of the present case.

**8. PRAYER FOR INTERIM RELIEF**

It is, therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:

- (a) Pass an ex-parte order staying the operation passed common judgment dated 28.02.2019 in WP (C) No. 10728 of 2017 passed by the Hon'ble High Court of Delhi;
- (b) Pass an ex-parte order staying the operation of the order dated 23.11.2017 passed by the Respondent no 1 allotting the symbol of 'Two Leaves' to the group led by Respondents no 2 to 5;
- (c) Pass an ex-parte order freezing the symbol of 'Two Leaves' during pendency of the present Petition;
- (d) Pass an ex-parte ad interim order directing the Respondent no. 1 ECI to allot a common symbol of pressure cooker and name of "AMMA MAKKAL MUNNETTRA KAZAGAM" to the

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candidates set up by the group led by the petitioner in upcoming elections;

(e) Pass any other order(s) or directions as this Hon'ble Court may deem fit and proper under the facts and circumstances of the case.

**AND FOR THIS ACT OF KINDNESS THE HUMBLE  
PETITIONERS SHALL EVER PRAY AS IS DUTY BOUND.**

DRAWN & FILED BY:

**(VIVEK SINGH)**

ADVOCATE FOR THE PETITIONER

New Delhi

Drawn on: 28.02.2019

Filed on: 01.03.2019

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION  
SPECIAL LEAVE PETITION NO. (C) NO. \_\_\_\_\_ of 2019**

**IN THE MATTER OF:**

T. T. V. DHINAKARAN. ....Petitioner

Versus

THE ELECTION COMMISSION

OF INDIA & ORS. ....Respondents

**CERTIFICATE**

Certified that the Special Leave Petition is confined only to the pleadings before the Court whose order is challenged and the documents relied upon in those proceedings. No additional facts, documents or grounds have been taken or relied upon in the Special Leave Petition. It is further certified that the copies of the documents/annexures attached to the Special Leave Petition are necessary to answer the questions of law raised in the Petition or to make out grounds urged in the Special Leave Petition for the consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the Petitioner authorized by the Petitioner whose affidavit is filed in support of the SLP.

FILED BY

**(VIVEK SINGH)**  
ADVOCATE FOR THE PETITIONER

New Delhi  
Dated: 01.03.2019