

**K.Murugeswari Vs. Tamil Nadu State Election Commission and ors.**

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**Court :** Chennai

**Decided On :** Jun-06-2011

**Judge :** P.Jyothimani, J.

**Acts :** Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules, 2006 - Rule 139; Election Rules, 2006 - Rule 139; [Constitution of India](#) - Articles 243-O, 243-ZG, 226; [Madurai City Municipal Corporation Act, 1971](#) - Section 56(2)

**Appeal No. :** W.P.No.286 of 2011

**Appellant :** K.Murugeswari

**Respondent :** Tamil Nadu State Election Commission and ors.

**Advocate for Def. :** Mr.K.Ramasamy, Adv.

**Advocate for Pet/Ap. :** Mr.R.Thiagarajan; Mr.D.Veerasekaran, Adv.

**Judgement :**

1. This writ petition is directed against the order of the first respondent, viz., Tamil Nadu State Election Commission, represented by its Secretary, dated 3.1.2011, by which the first respondent by exercising the suo moto powers conferred under Rule 139 of the Tamil Nadu Town Panchayats, Third Grade Municipalities, Municipalities and Corporations (Elections) Rules, 2006 (for brevity, the Election Rules, 2006) has cancelled the proceedings of the Assistant Returning Officer publishing the list of validly nominated candidates in Form-6 on 30.12.2010 in

respect of election of Councillor for Ward No.45 of Madurai City Municipal Corporation and directed to revise the same in accordance with the rule provisions.

2.1. The petitioner's husband was elected as a Ward Councillor of Ward No.45 of the Madurai Corporation and he died on 2.6.2010. In order to fill up the casual vacancy, the first respondent has issued a notification on 16.12.2010 publishing the programme of election for the said Ward No.45. According to the said notification, the program of election is as follows:

(i)

Date of commencement of receipt of nominated

22.12.2010

(ii)

Last date for making nominations

29.12.2010

(iii)

Date of scrutiny

30.12.2010

(iv)

Withdrawal of nominations

03.01.2011

(v)

Date of poll

10.01.2011

(vi)

Counting of votes

12.01.2011

(vii)

Completion of Election process

13.01.2011

2.2. The petitioner has filed nomination on behalf of DMK party with the Returning Officer after complying with the formalities. It is stated that respondents 5 to 7 have also filed their nominations before the second respondent and there were four nominations at the time of scrutiny on 30.12.2010. It is stated that the nominations of respondents 5 and 6 were rejected by the Returning Officer, viz., the third respondent. It is stated that the seventh respondent, who has filed nomination as a dummy candidate, has informed the third respondent about his desire to withdraw the nomination and after such representation made in writing, as per Form-8, the nomination of the seventh respondent was withdrawn.

2.3. It is stated that, however, while the second respondent has issued the final list of candidates in Form-6 on 3.1.2011, the names of respondents 5 to 7 were also included treating their nominations as valid pursuant to the order of the first respondent. When that was objected to by the petitioner, respondents 2 and 3 furnished the copy of the impugned statutory order of the first respondent dated 3.1.2011. There is no adverse finding about the scrutiny made by the third respondent on 30.12.2010 and therefore, the order of the first respondent in exercising his suo moto power by including respondents 5 to 7 is ultra vires and unconstitutional, especially when the third respondent, who is the Returning Officer, has rejected the nominations of respondents 5 and 6 and the seventh respondent has voluntarily withdrawn his nomination and the second respondent has issued statutory notice in Form-8 according to the Election Rules, 2006.

2.4. The order dated 3.1.2011, impugned in this writ petition, is challenged by the petitioner on various grounds, including that it violates Article 14 of the [Constitution of India](#) and is ultra vires the Constitution; that the first respondent has no power to issue a statutory order when the third respondent, being the authority, has rejected the nominations of respondents 5 and 6 on 30.12.2010; that even if such rejection is not valid, that can only be questioned in an election petition as per the provisions of the Madurai City Municipal Corporation Act and the Election Rules, 2006 and therefore, the suo moto exercise of power by the first respondent in this regard is without jurisdiction; that the seventh respondent having withdrawn the nomination, his name cannot be permitted to be included in the list by the suo moto powers and if the withdrawal is not valid, that can only be the subject matter of an election dispute.

3. When the matter was taken up for admission, this Court, having been prima facie satisfied and also knowing that it is not the intention of the petitioner to stall the election, has passed a detailed order on 6.1.2011 granting interim stay of the impugned order of the first respondent.

4. The first respondent, along with its counter in the writ petition, has filed M.P.No.3 of 2011 to vacate the interim order on 7.1.2011. The fifth respondent in the writ petition has filed M.P.No.4 of 2011 on 18.1.2011 to vacate the interim order of stay and also filed M.P.No.5 of 2011 for an order of injunction against the writ petitioner, who was declared elected, from functioning as a Ward Councillor.

5.1. In the counter affidavit filed by the first respondent in the writ petition, while stating that the impugned order has been passed well within the suo moto powers conferred under the Election Rules, 2006, it has been emphasized that the Articles 243-K and 243-ZA of the [Constitution of India](#) provide for superintendence, direction and control for the preparation of electoral rolls and conduct of elections to local bodies by the State Election Commission.

5.2. It is also stated that the fourth respondent/Assistant Returning Officer has rejected the nominations of respondents 5 and 6 without any valid reason prescribed in the Election Rules, 2006. It is further stated that the seventh respondent has withdrawn his nomination on 3.1.2011, viz., the last date for

withdrawal of candidature, as per the report of the Assistant Returning Officer.

5.3. It is stated that as per Rule 27(5) of the Election Rules, 2006, the Returning Officer cannot reject any nomination paper on the ground of any defect which is not substantial in nature and the mistake committed by the fourth respondent has been corrected by the first respondent and the impugned order is only to correct the mistake.

5.4. It is stated that the Observer in his report dated 1.1.2011 has clearly stated that the rejection of nominations of respondent 5 (candidate of CPI(M)) and respondent 6 (independent candidate), was not attracted under the grounds for rejection as per the Election Rules, 2006. Therefore, according to the first respondent, the further proceedings issued under Form-6 by the fourth respondent, based on the impugned order of the first respondent, is valid in law and the impugned order, which is a statutory order, is within its powers.

5.5. The remedy of filing of election petition is only after declaration of results of election as per Rule 118 of the Election Rules, 2006 and the discrepancies can always be set right by the Election Commission and that has been done under the impugned order and therefore, the petitioner cannot presume that her nomination alone should be considered, even if the rejection of nominations of respondents 5 and 6 is not valid. It is stated that claiming a right to be declared as unopposed is not a right vested with the petitioner in an election process.

5.6. It is stated that the State Election Commission is a constitutional authority to conduct election to the local bodies and the Returning Officer and the Assistant Returning Officer are under the disciplinary control of the State Election Commission. It is also stated that under Articles 243-O and 243-ZG of the [Constitution of India](#) there is no bar for the Court to interfere. It is further stated that the petitioner has not exhausted the remedy of filing an appeal against the impugned order.

6.1. In the affidavit filed by the fifth respondent, it is stated that there are 72 wards in Madurai Corporation and the elected Ward Councillor for Ward No.45, one Ganesan, died in June, 2010 and by-election was announced and the election was

scheduled to 10.1.2011. The fifth respondent belonging to CPI(M) has decided to contest the election and filed the documents and asked for allotment of party symbol, viz., hammer, sickle and star. The nomination of the fifth respondent was proposed by one Rajkumar of Ward No.45 and he is one of the voters.

6.2. It is stated that in the valid list of nominations published by the third respondent on 28.12.2010, the name of the fifth respondent was in the first place and the fifth respondent himself was an eligible voter in Ward No.39 and the Voter identity card number and the number stated in the voter's list is one and the same.

6.3. It is stated that, on 30.12.2010, the nominations were scrutinized by the Assistant Returning Officer and according to the fifth respondent, he has rejected his nomination and other nominations only to favour the writ petitioner. It is stated that the fifth respondent is fully eligible to contest the election and he is not suffering from any disqualification listed under Section 56(2) of the [Madurai City Municipal Corporation Act, 1971](#) and was not affected by any penal laws or corrupt practices.

6.4. It is stated that it was in those circumstances, the fifth respondent has filed W.P.(MD) No.4 of 2011 before the Madurai Bench of this Court for a direction against the Election Commission to conduct the by-election on 10.1.2011 for Ward No.45 by accepting his nomination. When the writ petition was taken up for hearing on 3.1.2011 by the Madurai Bench, during the hearing, the impugned communication of the first respondent dated 3.1.2011 was received, by which the first respondent has directed to include the names of the rejected candidates also and therefore, the writ petition was disposed of.

6.5. It is stated that on the basis of the impugned order, the Assistant Returning Officer has revised the nominations and declared the names of the contesting candidates. It is stated that suppressing the same the petitioner has filed the present writ petition challenging the impugned order and obtained an order of stay on 6.1.2011 and taking advantage of the order passed by this Court, the writ petitioner was declared to be elected unopposed on 7.1.2011. It is stated that the order of stay granted by this Court on 6.1.2011 does not enable to declare the writ petitioner elected unopposed and the election result is subject to the writ petition

and therefore, declaring the writ petitioner as elected unopposed on 7.1.2011 has to be set aside.

7.1. The seventh respondent has filed counter affidavit stating that he has decided to withdraw his nomination on 30.12.2010 and Form-8 was also issued declaring that his nomination was withdrawn, but to his shock and surprise the third respondent has chosen to issue a notice on 3.1.2011 in Form-6 announcing as if his nomination is a valid nomination and that was passed because of the impugned order passed by the first respondent.

7.2. It is also stated that the order of the first respondent is unlawful inasmuch as the seventh respondent is concerned, since he has withdrawn his nomination and the first respondent has no power to declare the rejected or withdrawn nominations as valid nominations and any person who is aggrieved can only approach the election tribunal.

8.1. The main contention of Mr.R.Thiagarajan, learned Senior Counsel appearing for the petitioner is that, in the present writ petition, the writ petitioner has only challenged the statutory order passed by the first respondent, whereas the fifth respondent has moved the Madurai Bench of this Court against the order of the fourth respondent in rejecting his nomination and by that time, the present impugned order has not been passed by the first respondent and therefore, there is no deliberate suppression of any material fact. In effect, his contention is that the case filed by the fifth respondent before the Madurai Bench is totally different from the writ petition which relates to the suo moto exercise of powers by the first respondent.

8.2. He would submit that by virtue of the detailed order passed by this Court on 6.1.2011 staying the impugned statutory order passed by the first respondent, following the election schedule, the writ petitioner was declared elected unopposed, which is only consequential. Therefore, according to the learned Senior Counsel, the declaration of election of the petitioner unopposed is valid in law and it is still open to the fifth respondent or any other respondents, whose nominations have been rejected, to question the validity of such election. In the absence of such bar on the fifth respondent, the fifth respondent cannot raise the

issue of res judicata.

8.3. It is his submission that, in the present circumstance, the validity or otherwise of the order of the first respondent need not be gone into, since the writ petition itself has become infructuous as the writ petitioner has been declared elected and the other rights of the respondents are left open.

9.1. On the other hand, Mr.R.Subramani, learned Senior Counsel appearing for the fifth respondent would submit that the filing of the writ petition by the petitioner is a fraudulent suppression. It is submitted that the rejection of the nomination of the fifth respondent was never communicated to the fifth respondent by the fourth respondent till 3.1.2011, which is the last date for withdrawal and therefore, on 3.1.2011, the fifth respondent has moved the Madurai Bench and when the matter was moved as lunch motion, the impugned order was brought to the notice of the Court and hence, the writ petition was closed. The learned Senior Counsel would submit that the writ petitioner herein, who was the fifth respondent in the said writ petition before the Madurai Bench, was represented by a counsel and after recording the impugned order, the Madurai Bench has held that no further order is necessary and closed the writ petition.

9.2. It is submitted that deliberately suppressing the same the writ petitioner, who was represented by the counsel in the Madurai Bench, has moved the present writ petition and obtained an order of interim stay and therefore, according to the learned Senior Counsel, by virtue of such stay if the petitioner was declared unopposed, the same has to be set aside for the reason of fraudulent misrepresentation made and suppression of material facts.

9.3. He has also referred to the Election Rules, 2006 and also the constitutional powers of the High Court under Article 226 of the [Constitution of India](#), by referring to the decisions in K.Venkatachalam v. A.Swamickan and another, [1999] 4 SCC 526, and Manda Jaganath v. K.S.Rathnam and others, [2004] 7 SCC 492. He would rely upon the decision in Prestige Lights Limited v. State Bank of India, [2007] 8 SCC 449 to substantiate his contention that suppression of material facts would entail dismissal of the writ petition.

10. I have heard Mr.R.Thiagarajan, learned Senior Counsel for the petitioner, Mr.K.Ramasamy, learned Additional Advocate General appearing for the first respondent, Mr.K.Balasubramanian, learned Special Government Pleader appearing for the second respondent, Mr.R.Subramani, learned Senior Counsel for the fifth respondent and Mr.R.Srinivas, learned counsel for the seventh respondent.

11. On fact, it is not in dispute that the writ petitioner has been declared elected as unopposed as a Councillor of Ward No.45 of the Madurai City Corporation. But the question to be decided is as to whether the prayer in the writ petition becomes infructuous by virtue of the declaration of election.

12. The impugned order passed by the first respondent is by virtue of the powers conferred on him under Rule 139 of the Election Rules, 2006. The said rule, which has been captioned as removal of difficulties, is as follows:

Rule 139. Removal of difficulties.-

(1) The State Election Commission may issue such general or special directions as may in its opinion be necessary, for the purpose of giving due effect to these rules, or for holding any election under the Act.

(2) If any difficulty arises in giving effect to the provisions of these rules or in holding any election, the State Election Commission as occasion may require, may, by order do anything which appears to it necessary for the purpose of removing the difficulty.

13. In exercise of the powers conferred under the Tamil Nadu District Municipalities Act, Chennai City Municipal Corporation Act, Madurai City Municipal Corporation Act, Coimbatore City Municipal Corporation Act, Tiruchirapalli City Municipal Corporation Act, Tirunelveli City Municipal Corporation Act, Salem City Municipal Corporation Act, the Governor of Tamil Nadu in consultation with the Tamil Nadu State Election Commission has framed the Election Rules, 2006 in supersession of the Tamil Nadu Third Grade Municipalities and Municipal and Corporation Councils (Elections) Rules, 1996.

14. Part IV of the Election Rules, 2006 enables notification of election and nomination of candidates. It is by exercise of the power conferred under Rule 22 of the Election Rules, 2006, the first respondent has issued a notification for election to various corporations in respect of various wards on 16.12.2010, which includes Ward No.45 of the Madurai Corporation. The programme of election was notified by the first respondent as follows: 1

Publication of notice of election and commencement of receipt of nominations

:

22.12.2010

11.00 A.M. to 3.00 P.M.

2

Last date for making nominations

:

29.12.2010

3

Scrutiny of nominations

:

30.12.2010

11.00 A.M.

4

Withdrawal of nominations

:

03.01.2011

Up to 3.00 P.M.

5

Date of Poll

:

10.01.2011

7.00 A.M. to 5.00 PM

6

Date of commencement of counting of votes

:

12.01.2011

7

Date before which the election shall be completed

:

13.01.2011

15. The nomination papers were presented by the petitioner as well as respondents 5 to 7. Rule 27 of the Election Rules, 2006 enables the Returning Officer to scrutinize the nominations. The Rule contains the procedure to be followed for scrutiny, including the rejection of nominations. Under Rule 27(3) of the Election Rules, 2006, the grounds for rejection of nomination by the Returning Officer are mentioned and under Rule 27(5) of the Election Rules, 2006 it is stated that the rejection of nomination shall not be on the ground of any defect, which is not of substantial character. For proper appreciation of the powers of the Returning Officer regarding scrutiny, which includes the power of rejection of

nominations, it is relevant to extract Rule 27 of the Election Rules, 2006, which is as follows: Rule 27. Scrutiny of nomination.-

(1) On the date and hour notified, the Returning Officer shall take up the scrutiny of nominations at such place fixed for scrutiny. The candidate, one of his proposers and one other person duly authorised by him, but no other person, may attend the scrutiny. The Returning Officer shall give them all reasonable facilities for examining the nomination papers of all the candidates which have been entered in the list in Form 5.

(2) If any person objects to any nomination, he shall do so in writing.

(3) The Returning Officer shall then examine the nomination papers and decide ward by ward all objections which may be raised to any nomination and may either on such objection, or on his own motion, after such summary inquiry, as he thinks necessary, reject any nomination on any of the following grounds:-

(a) that on the date of filing of nomination papers, the candidate either was not qualified or was disqualified for being elected to fill the vacancy under any of the provisions of the Act; or

(b) that there has been a failure to comply with any of the provisions in rule 24 or 25; or

(c) that the signature of the candidate or the proposer on the nomination paper is not genuine; or

(d) that, where the election is solely for a seat or seats reserved for Scheduled Castes or Scheduled Tribes and/or women, the candidate does not belong to such category.

(4) Nothing contained in clause (b) or (c) of sub-rule (3) shall be deemed to authorise the rejection of the nomination of any candidate on the ground of any defect in respect of a nomination paper, if the candidate has been duly nominated by means of another nomination paper in respect of which no defect has been noticed.

(5) The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.

Explanation.- For the purpose of this sub-rule, failure to complete or any defect in completing the declaration as to symbols in a nomination paper shall not be a defect of a substantial character.

(6) Where a person has signed as proposer more than one nomination paper in respect of an election only that nomination paper which has been first received shall be accepted if it is otherwise valid.

(7) The Returning Officer shall hold the scrutiny on the date and time notified in this behalf in the election notice and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by riot or open violence or by causes beyond his control: Provided if an objection is raised by the Returning Officer or is made by any other person, the candidate concerned may be allowed time to rebut it not later than 11.00 a.m. on the next day but one following the date fixed for scrutiny. The Returning Officer shall record his decision on that nomination on the adjourned date.

(8) The Returning Officer shall endorse on each nomination paper his decision accepting or rejecting the same. If the nomination paper is rejected, he shall record in writing a brief statement of his reasons for such rejection. A copy of the same may be furnished to the candidate concerned, if any application in this behalf has been made to him.

(9) Immediately after all the nomination papers have been scrutinised and decisions accepting or rejecting the same have been recorded, the Returning Officer shall prepare a list of validly nominated candidates in Form-6 and publish a copy thereof at the place notified for receipt of nominations. The list of candidates should be drawn up in the order of Tamil alphabet.

16. Rule 28 of the Election Rules, 2006 relating to the withdrawal of candidature, which is as follows:

Rule 28. Withdrawal of candidature.-

(1) Any candidate may withdraw his candidature by a notice in Form 7 subscribed by him and delivered to the Returning Officer before the time fixed for the purpose. The notice may be delivered either by such candidate in person or by his proposer, who has been authorised in this behalf in writing, by such candidate.

(2) On receipt of such notice, the Returning Officer shall note thereon the date and time at which it was delivered to him.

(3) No person who has given notice of withdrawal of his candidature under sub-rule (1), shall be allowed to cancel the notice.

(4) The Returning Officer shall, on being satisfied as to the genuineness of the notice of withdrawal and the identity of the person delivering it under sub-rule (1), cause a notice showing the list of candidates who have withdrawn their candidature in Form 8 to be affixed in the notice board of his office. makes it clear that when once a candidate withdraws his candidature, a notice has to be submitted to the Returning Officer, and if he is satisfied about the genuineness of the notice of withdrawal, he must issue Form-8 notice showing the names of the candidates who have withdrawn and thereafter cause the preparation of list of contesting candidates.

17. The crux of the issue involved in this case is as to whether the power of the State Election Commission under Rule 139 of the Election Rules, 2006, which is no doubt a suo moto power, can be exercised when the authority contemplated under the Rules specifically exercised its powers like withdrawal of nomination or rejection of nomination, even if such rejection is not under any of the grounds contemplated under Rule 27 of the Election Rules, 2006.

18. While under Rule 118 of the Election Rules, 2006 the election disputes are to be adjudicated by election petition, Rule 120 says that such election petition can be filed on any of the grounds specified in the Act. Rule 120 of the Election Rules, 2006 is as follows: Rule 120. Grounds for presenting an election petition.-

An election petition shall be presented on one or more grounds specified in the Act.

A reference to the word Act under Rule 120 of the Election Rules, 2006, in the present context, is the [Madurai City Municipal Corporation Act, 1971](#). As per Rule 118 of the Election Rules, 2006, the Principal Judge, City Civil Court, Chennai or the District Judge of the District concerned, is the court having jurisdiction to decide about the election petition.

19. Under Rule 123 of the Election Rules, 2006, which is as follows:

Rule 123. Relief that may be claimed by the petitioner.-

A petitioner may, in addition to claiming a declaration that the election of all or any of the returned candidates is void, claim a further declaration that he himself or any other candidate has been duly elected. the person approaching the election tribunal can not only seek direction to set aside the election of an elected candidate, but also seek declaration that he himself be declared elected.

20. The election petition to be presented as per Rule 120 of the Election Rules, 2006 is in accordance with Section 60-A of the [Madurai City Municipal Corporation Act, 1971](#). While Section 60-A of the [Madurai City Municipal Corporation Act, 1971](#) deals about the election petition, the grounds for declaring the election void are stated under Section 60-B of the [Madurai City Municipal Corporation Act, 1971](#), which is as follows: Section 60-B. Grounds for declaring elections to be void.

(1) Subject to the provisions of sub-section (2) if the District Judge is of opinion

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a councillor under this Act , or

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or (c) that any nomination paper has been improperly rejected, or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected-

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or (iii) by the improper acceptance or refusal of any vote or reception of any vote which is void, or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder,

the court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the court, a returned candidate has been guilty by an agent of any corrupt practice, but the court is satisfied

(a) that no such corrupt practice was committed at the election by the candidate, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practices at the election; and

(c) that in all other respect the election was free from any corrupt practice on the part of the candidate or any of his agents, then, the court may decide that the election of the returned candidate is not void. Of course, for the purpose of deciding the election as void on the ground of corrupt practices, the corrupt practices are narrated under Section 60-C of the [Madurai City Municipal Corporation Act, 1971](#).

21. One of the reasons for declaring the election void as per Section 60-B of the [Madurai City Municipal Corporation Act, 1971](#) is improper acceptance of any nomination or improper rejection of any nomination. Therefore, the rejection of nomination of respondents 5 and 6 by the Returning Officer is well within the jurisdiction of the election petition. While so, by exercising the suo moto power under Rule 139 of the Election Rules, 2006, I am of the considered view, the Election Commission cannot interfere with the decision of the Returning Officer in rejecting the nominations of respondents 5 and 6. It is strange that when the seventh respondent has voluntarily withdrawn his candidature and Form-8 has

also been issued (to which effect he has also filed an affidavit before this Court), the first respondent, exercising the suo moto power under Rule 139 of the Election Rules, 2006, has included the name of seventh respondent also in the list of candidates.

22. When once specific powers are given to the Returning Officer under the Election Rules, 2006 and when that power has been exercised by the Returning Officer, it is not for the Election Commission by exercising its suo moto power under Rule 139 of the Election Rules, 2006 to pass any orders, since the remedy available is under the Parent Act and in the present case it is Section 60-A of the [Madurai City Municipal Corporation Act, 1971](#). The suo moto power under Rule 139 of the Election Rules, 2006 is only for the purpose of effective conducting of the election by the State Election Commission and that will not enable the State Election Commission to interfere with the powers of the statutory authorities like the Returning Officers, etc., especially in respect of rejection of nomination, for which a remedy is available under the [Madurai City Municipal Corporation Act, 1971](#).

23. By following the earliest judgment on this issue, viz., N.P.Ponnuswami v. Returning Officer, AIR 1952 SC 64, it was held by the Supreme Court in Ramphal Kundu v. Kamal Sharma, [2004] 2 SCC 759 that in cases of rejection of nomination papers, the remedy is only by election petition after the election is over. It is relevant to extract paragraph [24] of the said judgment, which is as follows: 24. It may be noticed that the petition by Kamal Sharma was filed on 6-2-2000 and the same was allowed by the Election Commission the very next day i.e. on 7-2-2000 by which a direction was issued to the Returning Officer to hold a fresh scrutiny. There is nothing on record to indicate nor it appears probable that before passing the order, the Election Commission issued any notice to Bachan Singh. Apparently, the order was passed behind his back. The order of the Election Commission to the effect that the Returning Officer shall take further consequential steps as may become necessary, by treating all earlier proceedings in relation to the said candidates, as void ab initio and redraw the list of validly nominated candidates, could not have been passed without giving an opportunity of hearing to Bachan Singh. That apart, it has been held by a catena of decisions of this

Court that once the nomination paper of a candidate is rejected, the Act provides for only one remedy, that remedy being by an election petition to be presented after the election is over, and there is no remedy provided at any intermediate stage. (See N.P. Ponnuswami v. Returning Officer, AIR1952 SC 64, Mohinder Singh Gill v. Chief Election Commr., [1978] 1 SCC 405 and Election Commission of India v. Shivaji, [1988] 1 SCC 277.) Therefore, the order passed by the Election Commission on 7-2-2000 was not only illegal but was also without jurisdiction and the respondent Kamal Sharma can get no advantage from the same. The inference drawn and the findings recorded by the High Court on the basis of the order of the Election Commission, therefore, cannot be sustained. Therefore, the contention of the learned Senior Counsel for the petitioner as if by virtue of the interim order the petitioner's election has been declared unopposed and nothing survives in the writ petition, is not maintainable. Similarly, the contention of the learned Senior Counsel for the fifth respondent that, by exercising the suo moto powers under Rule 139 of the Election Rules, 2006, the State Election Commission can interfere with the powers of the Returning Officers, who are statutorily empowered to perform certain functions, and therefore, the impugned order of the first respondent is valid in law, is also untenable.

24. The effective contention made by the learned Senior Counsel for the fifth respondent that by virtue of suppression of material facts committed by the petitioner in not bringing to the notice of this Court about the decision of the Madurai Bench, the fifth respondent is entitled to declaration that the election of the petitioner unopposed is void, is not sustainable. As correctly submitted by the learned Senior Counsel for the petitioner, it is no doubt true that the powers of this Court under Article 226 of the [Constitution of India](#) are enormous, especially when a party before the Court is guilty of suppression of material fact, as it was held in Prestige Lights Limited v. State Bank of India, [2007] 8 SCC 449, which was relating to certain proceedings under Section 13(2) of the Securitization, Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, wherein by referring to the powers of this Court under Article 226 of the [Constitution of India](#), the Supreme Court has observed as follows: 32. It is thus clear that though the appellant Company had approached the High Court under Article 226 of the Constitution, it had not candidly stated all the facts to the Court.

The High Court is exercising discretionary and extraordinary jurisdiction under Article 226 of the Constitution. Over and above, a court of law is also a court of equity. It is, therefore, of utmost necessity that when a party approaches a High Court, he must place all the facts before the Court without any reservation. If there is suppression of material facts on the part of the applicant or twisted facts have been placed before the Court, the writ court may refuse to entertain the petition and dismiss it without entering into merits of the matter.

33. The object underlying the above principle has been succinctly stated by Scrutton, L.J., in *R. v. Kensington Income Tax Commissioners*, [1917] 1 KB 486, in the following words: [I]t has been for many years the rule of the court, and one which it is of the greatest importance to maintain, that when an applicant comes to the court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts facts, not law. He must not misstate the law if he can help it the court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts, and the penalty by which the court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it, the court will set aside, any action which it has taken on the faith of the imperfect statement.

34. It is well settled that a prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a writ court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. If the applicant does not disclose full facts or suppresses relevant materials or is otherwise guilty of misleading the court, the court may dismiss the action without adjudicating the matter. The rule has been evolved in larger public interest to deter unscrupulous litigants from abusing the process of court by deceiving it. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ courts would become impossible. But, I am of the view that such power cannot be exercised in the present context to set aside an election declared by the competent authority, viz., the first respondent. If the election of the petitioner declared by the first respondent as unopposed is invalid due to the unlawful rejection of the nomination of respondents 5 and 6, it is for the competent

forum constituted under the [Madurai City Municipal Corporation Act, 1971](#) to declare the same and not for this Court. This view is fortified by the decision of the Supreme Court in Manda Jaganath v. K.S.Rathnam and others, [2004] 7 SCC 492, wherein, while considering a case where the Returning Officer has rejected the form and treated a candidate as an independent candidate, it was held that such rejection cannot be challenged in the High Court under Article 226 of the [Constitution of India](#) and that can be agitated only before a duly constituted election tribunal.

25. That apart, what was decided by the Madurai Bench was only relating to the plea raised by the fifth respondent for accepting his nomination and that has nothing to do with the present impugned order by which the first respondent, in my considered view, has illegally trespassed into the powers of the authority constituted under the Election Rules, 2006 and therefore, there is no question of any suppression of the said proceeding before this Court.

26. It is not as if the fifth respondent has no remedy available in law and this is not an extraordinary case where this Court should exercise its jurisdiction under Article 226 of the [Constitution of India](#) to set aside the election declared by the first respondent in respect of the petitioner. It is always open to the fifth respondent to move the appropriate tribunal to set aside the election of the petitioner, if the same is permissible in accordance with the [Madurai City Municipal Corporation Act, 1971](#).

In the result, the writ petition stands allowed and the impugned order of the first respondent stands set aside, however with liberty to the fifth respondent to work out his remedy in the manner known to law regarding the declaration of the election of the petitioner as unopposed. No costs. Consequently, M.P.Nos.2 to 5 of 2011 are closed.

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