



C.R.P.(MD) No.125 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on	09.06.2023
Pronounced on	30.06.2023

CORAM

THE HONOURABLE **MR.JUSTICE C.SARAVANAN**

C.R.P.(MD) No.125 of 2023
and **C.M.P.(MD) No.369 of 2023**

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... Petitioner

Vs.

1.B.Bharanitharan

2.The District Election Officer /
District Collector, Karur.

3.Assistant Returning Officer/
Block Development Officer,
Karur Panchayat Union.

... Respondents

Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 19.10.2022 in Election O.P.No.20 of 2020 on the file of the Principal District Judge, Karur.

For Petitioner : Mr.P.M.Vishnu Vardhan
for Mr.R.Mathiyalagan

For R2 & R3 : Mr.S.Kameswaran
Government Advocate

R1 : Party-in-person



C.R.P.(MD) No.125 of 2023

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ORDER

The petitioner is aggrieved by the impugned order dated 19.10.2022, passed by the learned Principal District Judge, Karur, in Election O.P.No.20 of 2020. Election O.P.No.20 of 2020 was filed by the first respondent herein as voter seeking to countermand and declare the election of the petitioner as null and void.

2. By the impugned order dated 19.10.2022 the learned Principal District Judge, Karur has allowed Election O.P.No.20 of 2020, filed by the first respondent seeking to declare the election of the petitioner as null and void with the following observations:-

*“ The contention raised by the 1st respondent that the failure to disclose her assets in the nomination form is not a willful one and it was happened accidentally and negligently. The above said contention cannot be accepted in view of the law declined by the Honourable Supreme Court in **Union of India Vs. Association for Democratic Reforms and another**. Therefore, the petitioner has established that the petitioner being a voter in ward No.5 of Thirukattuthurai Village Panchayat of Karur Union is entitled to know about the assets of the 1st respondent. Therefore, this Court is of firm opinion that the failure to disclose the assets of the 1st respondent is amounts to undue influence and consequently to corrupt practice.*



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C.R.P.(MD) No.125 of 2023

Therefore, in fine, the petitioner has established the case against the 1st respondent. Hence, the point No.1 is answered accordingly.”

3. The petitioner herein had contested to the post of 5th Ward Councilor of Thirukattuthurai Village Panchayat of Karur Union. The petitioner had filed her nomination on 14.12.2019. No other nominations were received. Therefore, the petitioner was elected unopposed and the results were declared on 02.01.2020.

4. After the petitioner was declared as the 5th Ward Councilor of Thirukattuthurai Village Panchayat, Karur Union, the first respondent herein filed Election O.P.No.20 of 2020 stating that the petitioner had resorted to corrupt practices. Specifically, it was averred that the petitioner had made incorrect declaration in the nomination filed on 14.12.2019.

5. Specifically, it was stated that the petitioner had failed to give the particulars of the property purchased by her on 26.02.2014, which attracted Section 259(b) and (d) (i) and (iv) of the Tamil Nadu Panchayats Act, 1994.



C.R.P.(MD) No.125 of 2023

WEB COPY

6. It is the specific case of the petitioner that in the impugned order, the learned Principal District Judge, Karur, has failed to note that the petitioner has not resorted to any corrupt practices within the meaning of Section 260 of the Tamil Nadu Panchayats Act, 1994.

7. That apart, it is submitted that the failure to declare the details of the property purchased by the petitioner on 26.02.2014 was inadvertent and did not amount to any corrupt practice.

8. It is therefore submitted that the impugned order passed by the learned Principal District Judge, Karur, was liable to be interfered with in this Civil Revision Petition filed under Article 227 of the Constitution of India.

9. Per contra, the first respondent election petitioner, party-in-person submits that the impugned order was well reasoned. It did not call for any interference. That apart, it is submitted that the failure to declare the correct details and giving improper particulars in the nomination filed on 14.12.2019 goes to the very root of the nomination. Therefore, it is



C.R.P.(MD) No.125 of 2023

submitted that the petitioner had indeed resorted to corrupt practice.

Therefore, the impugned order does not call for any interference.

10. It is further submitted that the petitioner had indulged in corrupt practices as the petitioner had not given the correct particulars of the property acquired in her nomination and therefore, the election of the petitioner was liable to be declared as null and void and hence, the impugned order does not call for any interference.

11. I have considered the arguments advanced by the learned counsel for the petitioner and the first respondent/party -in -person.

12. In this Civil Revision Petition, this court is concerned with the election of the petitioner under the provisions of the Tamilnadu Panchayats Act, 1994. In the facts of the present case, the petitioner admittedly failed to give correct particulars of the assets purchased by the petitioner while filing her nomination.

13. Under Section 258(2) of Tamilnadu Panchayats Act 1994, an election petition calling in question any election may be presented on one



C.R.P.(MD) No.125 of 2023

or more of the grounds specified in section 259 by any candidate at such election, by any elector of the ward concerned or by any member reads as under:-

*“**Section 258(2)** -An election petition calling in question any such election may be presented on one or more of the grounds specified in section 259 by any **candidate** at such election, by any **elector** of the ward concerned or by any **member**.”*

14. Thus, the first respondent was entitled to file an election petition to question the election of the petitioner to the Ward. The test would be whether by not giving all the particulars of the assets acquired, the petitioner is guilty of any ‘corrupt practice’.

15. The learned District Judge, Karur, has placed reliance on the decisions of the Hon’ble Supreme Court rendered in **Union of India Vs. Association for Democratic Reforms and another** 2002 (5) SCC 294 as reiterated in **PUCL Vs. Union of India**, 2003 (4) SCC 399. In **Union of India Vs. Association for Democratic Reforms and another**, 2002 (5) SCC 294 , the Hon’ble Supreme Court in Paragraph No.22 observed as follows:-



WEB COPY



C.R.P.(MD) No.125 of 2023

*“22. For health of democracy and fair election, whether the disclosure of assets by a candidate, his/her qualification and particulars regarding involvement in criminal cases are necessary for informing voters, maybe illiterate, so that they can decide intelligently, whom to vote for. In our opinion, the decision of even an illiterate voter, if properly educated and informed about the contesting candidate, would be based on his own relevant criteria of selecting a candidate. In democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens — voters. In a democratic form of government, voters are of utmost importance. They have right to elect or re-elect on the basis of the antecedents and past performance of the candidate. The voter has the choice of deciding whether holding of educational qualification or holding of property is relevant for electing or re-electing a person to be his representative. Voter has to decide whether he should cast vote in favour of a candidate who is involved in a criminal case. **For maintaining purity of elections and a healthy democracy, voters are required to be educated and well informed about the contesting candidates. Such information would include assets held by the candidate, his qualification including educational qualification and antecedents of his life including whether he was involved in a criminal case and if the case is decided — its result, if pending — whether charge is framed or cognizance is taken by the court. There is no necessity of suppressing the relevant facts from the voters.**”*

16. In Paragraph No.56 of the above decision, the Hon’ble Supreme

Court held as under:-



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C.R.P.(MD) No.125 of 2023

“56. The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:-

- (1) Whether the candidate is convicted/acquitted/ discharged of any criminal offence in the past-if any, whether he is punished with imprisonment or fine?*
- (2) Prior to six months of filing of nomination whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the Court of law. If so, the details thereof.*
- (3) **The assets (immovable, movable, bank balances etc.) of a candidate and of his/her spouse and that of dependants.***
- (4) Liabilities, if any, particularly whether there are any over dues of any public financial institution or Government dues.*
- (5) The educational qualifications of the candidate.”*

17. The Hon’ble Supreme Court in **Krishnamoorthy Vs. Sivakumar**, 2015 (3) SCC 467 while dealing with a Election Petition relating to criminal antecedents of a candidate contesting the elections held as under:-



WEB COPY



C.R.P.(MD) No.125 of 2023

“94. In view of the above, we would like to sum up our conclusions:

94.1. Disclosure of criminal antecedents of a candidate, especially, pertaining to heinous or serious offence or offences relating to corruption or moral turpitude at the time of filing of nomination paper as mandated by law is a categorical imperative.

94.2. When there is non-disclosure of the offences pertaining to the areas mentioned in the preceding clause, it creates an impediment in the free exercise of electoral right.

94.3. Concealment or suppression of this nature deprives the voters to make an informed and advised choice as a consequence of which it would come within the compartment of direct or indirect interference or attempt to interfere with the free exercise of the right to vote by the electorate, on the part of the candidate.

94.4. As the candidate has the special knowledge of the pending cases where cognizance has been taken or charges have been framed and there is a non-disclosure on his part, it would amount to undue influence and, therefore, the election is to be declared null and void by the Election Tribunal under Section 100(1)(b) of the 1951 Act.

94.5. The question whether it materially affects the election or not will not arise in a case of this nature.”

18. The Hon'ble Supreme Court in **Mairembam Prithviraj Vs.**

Pukhrem Sharatchandra Singh, 2017(2) SCC 487, has held that if the



C.R.P.(MD) No.125 of 2023

nomination of a candidate is found to have been improperly accepted, his election would be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.

19. The Hon'ble Supreme Court in **Mairembam Prithviraj Vs. Pukhrem Sharatchandra Singh**, 2017(2) SCC 487, further held that if the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need not be proved further. The court further held that, if the nomination of a returned candidate is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the candidate was materially affected need not be proved further.

20. Relevant portion from the said order reads as under:-

23. It is clear from the above judgment in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] that there is a difference between the improper acceptance of a nomination of a returned candidate and the improper acceptance of nomination of any other candidate. There is also a difference between cases.



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C.R.P.(MD) No.125 of 2023

where there are only two candidates in the fray and a situation where there are more than two candidates contesting the election. If the nomination of a candidate other than the returned candidate is found to have been improperly accepted, it is essential that the election petitioner has to plead and prove that the votes polled in favour of such candidate would have been polled in his favour. On the other hand, if the improper acceptance of nomination is of the returned candidate, there is no necessity of proof that the election has been materially affected as the returned candidate would not have been able to contest the election if his nomination was not accepted. It is not necessary for the respondent to prove that result of the election insofar as it concerns the returned candidate has been materially affected by the improper acceptance of his nomination as there were only two candidates contesting the election and if the appellant's nomination is declared to have been improperly accepted, his election would have to be set aside without any further enquiry and the only candidate left in the fray is entitled to be declared elected.

26. Mere finding that there has been an improper acceptance of the nomination is not sufficient for a declaration that the election is void under Section 100(1)(d). **There has to be further pleading and proof that the result of the election of the returned candidate was materially affected.** But, there would be no necessity of any proof in the event of the nomination of a returned candidate being declared as having been improperly accepted, especially in a case where there are only two candidates in the fray. **If the returned candidate's nomination is declared to have been improperly accepted it would mean that he could not have contested the election and that the result of the election of the returned candidate was materially affected need**



WEB COPY



C.R.P.(MD) No.125 of 2023

not be proved further. *We do not find substance in the submission of Mr Giri that the judgment in Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] is not applicable to the facts of this case. The submission that Durai Muthuswami [Durai Muthuswami v. N. Nachiappan, (1973) 2 SCC 45] is a case of disqualification under Section 9-A of the Act and, so, it is not applicable to the facts of this case is also not correct. As stated supra, the election petition in that case was rejected on the ground of non-compliance with Section 100(1)(d). The said judgment squarely applies to this case on all fours. We also do not find force in the submission that the Act has to be strictly construed and that the election cannot be declared to be void under Section 100(1) (d) without pleading and proof that the result of the election was materially affected. There is no requirement to prove that the result of the election of the returned candidate is materially affected once his nomination is declared to have been improperly accepted."*

21. Cases referred to *supra* arise out of the interpretation of Section 123(2) of the Representation of the People Act, 1951. Section 260 of the Tamil Nadu Panchayats Act, 1994 defines the expression “corrupt practice”.

22. In an identical situation as in this Civil Revision Petition, the Karnataka High Court in **S.Rukmini Madegowda Vs. State Election Commission, rep. by its Commissioner and others**, 2021 SCC Online



C.R.P.(MD) No.125 of 2023

Kar 15761, concluded that non-disclosure of assets and sources of income of the candidate and their associates would constitute a “corrupt practice” falling under heading “undue influence” as defined under Section 123(2) of the Representation of the People Act, 1951.

23. Section 260 of the Tamil Nadu Panchayats Act, 1994 incorporates the definition of “corrupt practice” from Section 123(2) of the Representation of the People Act, 1951. For the sake of clarity, the definitions in the respective provisions are reproduced below:-

<i>Section 123(2) of the Representation of the People Act, 1951.</i>	<i>Section 260 of the Tamil Nadu Panchayats Act,1994.</i>
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123. Corrupt practices.-

1. The following shall be deemed to be corrupt practices for the purposes of this Act:-
.....
2. Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right:

Provided that—

- (a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—
- (i) threatens any candidate or any elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and excommunication or expulsion from any caste or community; or
- (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he

Section 260 - The following shall be deemed to be corrupt practice for the purposes of this Act:-

1. Bribery as defined in clause (1) of Section 123 of the Representation of the People Act, 1951 (Central Act XLIII of 1951).
2. Undue influence as defined in clause (2) of the said section.
3. The systematic appeal by a candidate or his agent or by any other person to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to, religious symbols, or, the use of or appeal to, national symbols such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.
4. The publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidate, or withdrawal from 1 [contest] of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.
5. The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate



C.R.P.(MD) No.125 of 2023

WEB COPY

24. As per Rule 29(5) of the Tamil Nadu Panchayats (Election Rules), 1995, the Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character. Rule 29(5) reads as under:-

“Rule 29(5)- The Returning Officer shall not reject any nomination paper on the ground of any defect which is not of a substantial character.”

25. As per Rule 32(2) of the Tamil Nadu Panchayats (Election Rules), 1995, if there is only one contesting Candidate, the Returning Officer shall cause a copy of the list of contesting Candidates in Form 9 to be affixed in his office and after such affixation, declare such Candidate to be duly elected from such Ward. Rule 32(2) reads as under:-

“Rule 32(2)- In the case of election of member of a Village Panchayat Ward where only one member is to be returned from that Ward- (a) if there is only one contesting Candidate, the Returning Officer shall cause a copy of the list of contesting Candidates in Form 9 to be affixed in his office and after such affixation, declare such Candidate to be duly elected from such Ward; (b) if the number of contesting Candidates exceeds one, a poll shall be taken; and (c) if there is no contesting Candidate, a report shall be sent to the State Election Commission and the District Election Officer for starting the election proceedings afresh in all respects as if for a new election to fill-up



the seat”.

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26. In the recent decision in **Ravi Namboothiri Vs. K.A.Biju**, 2022 SCC Online SC 1550, the Hon'ble Supreme Court has observed and held as under:-

26. Despite the judgment of this Court in PUCL, Section 100 of the Representation of the People Act, 1951 was not amended so as to make the non-disclosure or false disclosure, as one of the grounds for declaring an election as void. Section 100 (1) continues to contain only four grounds for declaring an election void. These four grounds are comparable to clauses (a), (b), (c) and (d) of Section 102 of the Kerala Panchayat Raj Act, 1994. The special feature of the Kerala Act is the insertion of clause (1-A) in Section 52 and the insertion of clause (ca) in sub-section (1) of Section 102.

27. In the Representation of the People Act, 1951 as well as the Tamil Nadu Panchayats Act (out of which the decision in Krishnamoorthy arose) the candidate challenging an election had to rely upon subordinate legislation to seek a declaration that the election was void. Non-disclosure/false disclosure was not made available in those Statutes themselves as one of the grounds for declaring an election void. Therefore, the Court had to fall back upon the Rules and the Orders of the Election Commission and bring those violations within the scope of “undue influence” leading to “corrupt practice” which is available as one of the grounds.



C.R.P.(MD) No.125 of 2023

27. The Honorable Supreme Court also brought crucial difference between Section 102 of the Kerala Panchayats Act, 1995 and Section 259 of the Tamilnadu Panchayats Act, 1994. In Paragraph No.23 the Hon'ble Supreme Court has extracted the difference which reads as under:-

Section 259 of Tamil Nadu Act

Section 102 of Kerala Act



59. Grounds for declaring elections to be void

(1) Subject to the provisions of subsection (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 member 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 insofar 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

102. Grounds for declaring election to be void. -

(1) Subject to the provisions of subsection (2) if the Court is of opinion -

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

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(ca) that the details furnished by the elected candidate under subsection (1A) of section 52 were fake; 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 an agent other than his election agent; or

(iii) by the improper reception, refusal or rejection of any vote or



WEB COPY 28. In Paragraph No.29, the Hon'ble Supreme Court observed as under:-

29. Coming back to Section 102(1)(ca), it enables a Court to declare the election of a returned candidate to be void, if the details furnished by him under Section 52(1A) are found to be “fake”. Interestingly the Statute uses the expression “fake” and not expressions such as “false”, “suppression” etc. The word “fake” is not defined in the Act. Black's Law Dictionary defines the word “fake” to mean “to make or construct”. The Oxford Dictionary defines “fake” as follows:

“fake - ➤ adj. not genuine, ➤ n. a person or thing this is not genuine, ➤ v.1. forge or counterfeit (something). ? pretend to feel or suffer from (an emotion or illness).

2.(fake someone out) N. Amer, informal trick or deceive someone.

-DERIVATIVES faker n. fakery n.”

29. In Paragraph No.24, the Hon'ble Supreme Court observed as under:-

24. The crucial difference between the Tamil Nadu Act and the Kerala Act, is the insertion of clause (ca) in sub-section (1) of Section 102. Sub-section (1A) of Section 52 and clause (ca) of subsection (1) of Section 102 were inserted by Kerala Panchayat Raj (Amendment) Act, 30 of 2005. The decision in Krishnamoorthy arose at a time, place and circumstance (I) when the disclosure regarding



C.R.P.(MD) No.125 of 2023

criminal antecedents was made mandatory only under the Notifications of the State Election Commission; and (ii) the non-disclosure was not yet made a ground in the Statute, for declaring the election as void. Therefore, the Court found (pro-actively), a provision already available in the Statute at that time, namely 'undue influence in the free exercise of electoral right' and held that the non-disclosure had an undue influence on the free exercise of choice of the voter.

30. Sections 35 to 38 of the Tamilnadu Panchayats Act, 1994 deal with disclosure. The headings are as under:-

1. **Section 35** - Disqualification of persons convicted of Election offences
2. **Section 36** - Disqualification of voters
3. **Section 37** - Disqualification of candidates
4. **Section 38** - Disqualification of members
5. **Section 38-A** - Disqualification of president, Vice-President, Chairman, Vice-Chairman and Member

31. Barring Section 37 and 38A of Tamilnadu Panchayats Act, 1994, none of the other provisions are relevant for enquiry in this Civil Revision Petition.

32. Section 37 is not attracted as it deals with past criminal proceedings against a candidate. Section 37 will apply prior to election



C.R.P.(MD) No.125 of 2023

and declaration of the result Section 38A will apply after election of a candidate as a President, Vice-President, Chairman, Vice-Chairman or a Member.

33. In the context of the present dispute, Section 37, 38 & 38A of the Tamil Nadu Panchayats Act, 1994 are relevant. They deal with disqualification of candidates, members, President, Vice President, Chairman, Vice Chairman and Member. Section 37 of the Act will apply before the election, whereas, Sections 38 & 38A of the Act will apply after the election. However, circumstances specified in these provisions do not apply to the facts of the present case.

34. In **Krishnamoorthy** case, the Hon'ble Supreme Court has only dealt with the non-disclosure of criminal antecedents of a candidate in the nomination. The Court there held that “*The requirement of a disclosure, especially the criminal antecedents, enables a voter to have an informed and instructed choice. If a voter is denied of the acquaintance to the information and deprived of the condition to be apprised of the entire gamut of criminal antecedents relating to heinous or serious offences or offence of corruption or moral turpitude, the exercise of electoral right*



C.R.P.(MD) No.125 of 2023

would not be an advised one. He will be exercising his franchisee with the misinformed mind. That apart, his fundamental right to know also gets nullified. The attempt has to be perceived as creating an impediment in the mind of a voter, who is expected to vote to make a free, informed and advised choice.” The said decision arose from the decision of the Madras High Court (Principal Seat of this Court), Chennai in C.R.P.(NPD) No. 3076 of 2008, dated 15.06.2009.

35. The Court also recognized that there is a destination between “disqualification” and “corrupt practise”. Once non-disclosure is proved in the Election Petition, it would amount to “corrupt practise”. The Hon'ble Supreme Court has expanded the scope in the recent decision in **Mairembam Prithviraj** case referred to *supra*, content of which has been extracted above. Since the petitioner failed to correctly declare the details of assets accrued in the nomination, law on the subject is now clear. It has to be construed that in absence of proper declaration by the petitioner, the petitioner resorted to “corrupt practise”.

36. Under the provisions of the Tamil Nadu Panchayats Rules, 1994, the Returning Officer is empowered to condone the minor lapses of



C.R.P.(MD) No.125 of 2023

the candidate in the declaration in the nomination filed and still permit the candidate to participate in the election. Voters actually do not get to peruse or scrutinize the nomination filed by a candidate in the election. The voters merely cast vote in the election in favour of their candidates who clears the first threshold after nomination filed is accepted by the Returning Officer. This aspect appears to have not been considered in the decision of the Hon'ble Supreme Court in **Krishnamoorthy** case referred to *supra*.

37. The Hon'ble Supreme Court in **Ravi Namboothiri** case referred to *supra*, has however re-affirmed the view that non-disclosure/false disclosure although was not made available in those Statutes themselves as one of the grounds for declaring an election void, yet if there is a non-disclosure, it can be construed as a ground for declaring an election void.

38. In the light of the above, I do not find any reasons to interfere with the impugned order. There are no merits in the present Civil Revision Petition. This Civil Revision Petition is therefore liable to be dismissed and is accordingly dismissed. No cost. Consequently, connected Miscellaneous Petition is closed.



C.R.P.(MD) No.125 of 2023

30.06.2023

NCC: Yes / No
Internet: Yes/No
Index: Yes/ No
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To

- 1.The Principal District Judge, Karur.
- 2.The District Collector,
Karur District,
Karur.
- 3.Block Development Officer,
Karur Panchayat Union.



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C.R.P.(MD) No.125 of 2023

C.SARAVANAN, J.

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Pre-Delivery Order made
in
C.R.P.(MD) No.125 of 2023
and C.M.P.(MD) No.369 of 2023

30.06.2023