VERDICTUM.IN

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on : 15.09.2026

Orders pronounced on : **15.10.2026**

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

O.A.No.890 of 2026
in E.L.P.No.46 of 2026

K.Sivakumar .. Applicant

Versus

1. Rajendran.R
2. S.Sadasivam
3. M.Gunaseela
4. S.Mohanraj
5. R.S.Jothilakshmi
6. Raja
7. D.Sabareesan
8. S.Rajasekar
9. Rajendiran.A
10. K.Mahabub John
11. G.Pravina
12. S.Manivannan
13. Palanisamy

14. The Returning Officer,
    89. Salem North Assembly Constituency,
    Salem, Tamil Nadu. .. Respondents

VERDICTUM.IN

Prayer : Original Application filed under Order XIV Rule 8 of High Court O.S. Rules read with Section 86(1), Section 81 of the Representation of Peoples Act and read with Order VII Rule 11 and Section 151 of the Code of Civil Procedure, 1908, to reject the Election Petition No.46 of 2026 on the file of this Court.

For Applicant : Mr.G.Murugendran

For Respondents : N.R.Elango, Senior Counsel,
for Mr.A.S.Aswin Prasanna, for R1

: Mr.Niranjan Rajagopalan, for R14

: RR-2, 5, 6, 11, 12 – set *ex parte*

ORDER

A. The Petitions:

O.A.No.890 of 2026 is filed praying for rejection of the Election Petition in E.L.P.No.46 of 2026 on the file of this Court.

1.1. E.L.P.No.46 of 2026 is filed by the petitioner, *K.Sivakumar*, praying to declare the election of the first respondent, *Rajendran.R,* as the Member of the Legislative Assembly from the Salem North Assembly Constituency in the Tamil Nadu Assembly General Elections, 2026, as null and void under Section 100(1)(b) read with Section 123(2), 100(1)(d)(ii)

VERDICTUM.IN

read with Section 123(2), and 100(1)(d)(iv) of the Representation of the People Act, 1951 (hereinafter referred to as 'Act'), and consequently, to declare the petitioner as the duly elected candidate for the said constituency.

1.2. In this order, the parties are referred to as the 'election petitioner' and the 'returned candidate'.

B. Facts in Brief:

2. The brief factual background in which the Election Petition is filed is that the Election Commission of India issued a press notice dated 15.03.2026 for conducting elections to the XVII Tamil Nadu Legislative Assembly for the State of Tamil Nadu. The schedule was as follows: the Gazette Notification was issued on 30.03.2026; the last date for filing nominations was 06.04.2026; scrutiny of nominations was on 07.04.2026; the last date for withdrawal of candidatures was 09.04.2026; the date of poll was 23.04.2026; counting was on 04.05.2026; and the results should be declared and the elections should be completed on or before 06.05.2026.

VERDICTUM.IN

2.1. The election petitioner contested as a candidate of the political party, namely, *Dravida Munnetra Kazhagam (DMK)*, and was allotted the Rising Sun symbol. The returned candidate contested as a candidate of the political party, namely, *Tamizhaga Vetri Kazhagam (TVK)*, and was allotted the Whistle symbol. After counting, the returned candidate was declared elected, having secured 85,710 votes, while the election petitioner came second with 71,676 votes. Under these circumstances, the Election Petition is filed.

2.2. The Election Petition is filed primarily on two grounds. The first ground is pleaded in detail in paragraph No.10 of the Election Petition. It is stated that on 11.04.2026, one *M.Karthikeyan* of the DMK Legal Wing lodged a complaint that children had been used for campaigning on behalf of the returned candidate. The complaint was forwarded to the Returning Officer. Two videos showing children taking part in the rallies were enclosed. The complaint and the videos are also produced as documents, with the due certificate under Section 63(4)(c) of the Bharatiya Sakshya Adhiniyam, 2023 (hereinafter referred to as 'BSA'),

VERDICTUM.IN

along with the Election Petition. Such conduct materially affects the election.

2.3. It is further stated that one *Manikandan*, who was in charge of the Video Surveillance Team, had also found that members of the political party, TVK, were indulging in acts constituting offences under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. They were using children for election campaigning activities. Therefore, the said *Manikandan* lodged a complaint before the Inspector of Police, Salem Police Station, in Crime No. 84 of 2026. Along with the complaint, the said *Manikandan* enclosed a pen drive containing the video recordings. The use of children clearly indicates that the same was carried out with the knowledge and consent of the returned candidate. Therefore, it is pleaded that the same vitiates the election, inasmuch as it violates the circular dated 05.02.2024 issued by the Election Commission of India in the form of binding guidelines.

2.4. The second ground pleaded is of corrupt practice. The details are set out in paragraph Nos.12 and 13 of the Election Petition. It is

VERDICTUM.IN

stated that in a speech delivered on 21.04.2026 at YMCA Grounds, Nandanam, *Mr.Joseph Vijay*, the President of the political party of the returned candidate, made a direct appeal to children, urging them to influence their parents and other family members to cast their votes in favour of the TVK and its Whistle symbol. He drew an analogy with children persistently demanding chocolates such as Kinder Joy and encouraged them to similarly pester their parents to vote for TVK, asking them directly to do it for *Vijay Mama* (Vijay Uncle). The aforesaid appeal was intended to exploit familial relationships and exert emotional influence by encouraging minors to pressure eligible voters to cast their votes in favour of the returned candidate and his political party.

2.5. Pursuant to the speech, in the days preceding the election, various items of social media content, including Instagram Reels and similar digital media, were circulated depicting children and young adults urging, pressuring, and, in certain instances, threatening their parents and other family members to vote for the returned candidate. Such content reinforced and amplified the campaign message of *Mr.Joseph Vijay*, the President of the returned candidate's political party.

VERDICTUM.IN

2.6. The instances are as follows. A minor boy threatened to fling cow dung on his parent unless the parent voted for the TVK's Whistle symbol. A young woman threatened to poison her father's food/rice unless he voted for *Vijay*/TVK. A minor child threatened to commit suicide if the grandparents did not agree to vote for TVK. A minor child physically hit and slapped an adult family member while demanding a vote for TVK. A minor child threatened to break an adult's phone and spectacles unless the adult voted for TVK. Multiple minor children were generally shouting 'shut up' at elderly family members who expressed an intent to vote for other political parties. Videos of elders stating that they voted for the Whistle symbol only because of their children's tantrums were taken. The videos are also annexed as documents along with the due certificate under Section 63 of BSA. Even after the victory in the election, *Mr.Joseph Vijay* specifically thanked the children for campaigning on his behalf and for his political party. A video recording of the same is also filed as a document along with the Election Petition.

VERDICTUM.IN

2.7. It is pleaded that, because of the said campaign, voters were subjected to emotional and familial pressure exerted through their children, through which the returned candidate derived substantial benefit. The acts materially affected the election insofar as it concerns the returned candidate. Thus, the same amounted to an act of undue influence, a corrupt practice as enumerated under Section 123(2) of the Act.

2.8. It is further the case that the said corrupt practice should be deemed to have been committed by the candidate, authorised agent, or any other person with the consent of the candidate, inasmuch as it is the President of the political party who executes the relevant form to the returned candidate to contest on behalf of the party. Accordingly, it should be deemed to be a corrupt practice under Section 100(b) of the Act and, per *se*, should be treated as a ground to invalidate the election. In any event, it is a corrupt practice committed in the interest of the returned candidate which materially affected the outcome of the election, and as such, the election is declared void under Section 100(1)(d)(ii) of the Act.

VERDICTUM.IN

C. The Rejection Petition:

3. After the notice was issued, a written statement was also filed on 04.08.2026 by the returned candidate. The above application to reject the Election Petition was also filed on 18.08.2026. The petition contends that both grounds raised in the Election Petition, corrupt practice and violation of the circular, are unsustainable, even if the averments in the petition are taken as correct. According to the rejection petition, first, the appeal made by the President of the party cannot be deemed to be a corrupt practice committed by the returned candidate or his agent, and cannot be a ground under Section 100(1)(b) or 100(1)(d)(ii) of the Act. In any event, the action complained of does not amount to undue influence, as adults exercise the franchise of their own free will, and persuasion by children will not restrain their free will in exercising their franchise.

3.1. As far as the second ground raised for declaring the election null and void under Section 100(1)(d)(iv) of the Act, the first contention is that the circular of the Election Commission of India cannot be deemed to be a law or an order, as at best it is only a guideline, along with the Model Code of Conduct, and thus, violation of the circular, per *se*, does not

VERDICTUM.IN

amount to violation of any order or law issued by the Election Commission. Secondly, there is no proper pleading or ground to ascertain that it has materially affected the election. Thus, even taking the averments in the Election Petition as true and correct, the prayer to declare the election of the returned candidate as null and void cannot be granted. As such, the Election Petition is liable to be rejected.

3.2. The same is resisted by a counter-affidavit filed on behalf of the election petitioner. It is stated that all directions issued by the Election Commission have the force of law, as they are issued in exercise of the power entrusted under Article 324 of the Constitution of India. Therefore, when a direction/law is violated and the Election Petition contains pleadings showing that it has materially affected the election, there is a ground for trial of the Election Petition under Section 100(1)(d)(iv) of the Act. Further, it is contended that the speeches of *Mr.Joseph Vijay*, before and after the election, significantly affected the election's outcome. The speech amounts to undue influence, as it is an improper use of power or trust that deprives a person of free will or substitutes another's objective. The definition under Section 123(2) of the Act also includes both direct

VERDICTUM.IN

and indirect interference or an attempt to interfere.

3.3. With reference to undue influence, a ground is also made under Section 100(1)(b) of the Act, and therefore, per *se*, it is sufficient to declare the election null and void. The petitioner has made sufficient pleadings and set out the material facts (the *facta probanda)* to establish a corrupt practice. When there is ample proof, including video evidence, of persons categorically stating that they voted only because of their children's tantrums, that amounts to a categorical admission that they did not exercise the franchise of their own free will and that their free choice was interfered with. Thus, it is pleaded that the election petitioner should be granted an opportunity to lead evidence and prove the undue influence as pleaded, and that the application for rejection of the plaint has no merit.

D. The Arguments:

4. *Mr.G.Murugendran*, learned Counsel for the returned candidate, would submit that the circular of the Election Commission of India dated 05.02.2024 cannot be treated as a Rule or an Order made under the Act, inasmuch as it is not a particular direction that is gazetted. Under

VERDICTUM.IN

Section 2(3) of the Act, it cannot be treated as a Rule, Order, or Direction. The learned Counsel would rely on the judgment of the Madhya Pradesh High Court in ***Kantilal Bhuriya Vs. Guman Singh Damor***[1] in support of the said proposition. The learned Counsel would point out Section 169 of the Act, under which the Central Government has the power to make rules, though after consultation with the Election Commission.

4.1. He would submit that although Article 324 of the Constitution of India confers power on the Election Commission of India, the directives can be nothing but the Model Code of Conduct. In that regard, learned Counsel would rely on the judgment of the Bombay High Court in ***Chetan Ramlal Bhutada v. State of Maharashtra,*** in ***PIL No.127 of 2012***. The learned Counsel would also rely on the judgment of the High Court of Karnataka in ***Bashiruddin Halhipparga Vs. Rajashekhar Basavaraj Patil***[2] to contend that every violation of the Model Code of Conduct by a political party will not automatically constitute a ground under Section 100 of the Act to nullify the election.

1 ILR 2023 MP 1159
2 2004 SCC OnLine Kar 332

VERDICTUM.IN

4.2. The learned Counsel would then rely upon the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986 to contend that the Act contains consequences for the offences contained therein which relate to child labour. He would submit that, in any event, the circular is enforceable only against political parties, and would rely upon paragraph No.11 of the judgment of the Hon'ble Supreme Court of India in ***Mangani Lal Mandal Vs. Bishnu Deo Bhandari***[3] to contend that every violation would not amount to invalidating the election of a returned candidate under Section 100(1)(d)(iv) of the Act. In the absence of any pleading or data on the number of children involved in the campaign and the number of persons influenced, the statutory expression 'materially affected' is not satisfied, especially when the returned candidate's margin is 14,034 votes. It is his contention that, when the election petitioner has secured 71,676 votes, he cannot contend that the election was influenced solely by the campaign/persuasion by the children, merely because he lost by the margin stated above.

4.3. With reference to corrupt practices, the learned Counsel would submit that the alleged corrupt practice should fall under either

3 (2012) 3 SCC 314

VERDICTUM.IN

Section 100(1)(b) or Section 100(1)(d)(ii) of the Act. The alleged corrupt practice was not committed by the candidate, the agent, or any person with the candidate's consent. As such, it will not fall within the definition of 'corrupt practice' as contained in Section 100(1)(b) or Section 100(1)(d)(ii) of the Act. Further, the question is whether the pleaded facts disclose direct or indirect interference with the free exercise of electoral rights.

4.4. The learned Counsel would rely on the judgment of the Hon'ble Supreme Court of India in ***Charar Lal Sabu Vs. Giany Zail Singh***[4] to contend that something more than a mere act of canvassing is necessary to satisfy Section 123(2) of the Act. The learned Counsel would rely on paragraph Nos.249 and 254 of the judgment of the Constitution Bench of the Hon'ble Supreme Court of India in ***Shiv Kirpal Singh Vs. V.V.Giri***[5] to contend that undue influence arises only if there is some form of compulsion, and that when the elector is free to do what he desires, merely influencing his desire will not amount to undue influence.

4.5. The learned Counsel would rely upon the judgment of the

4 AIR 1984 SC 309
5 (1970) 2 SCC 567

VERDICTUM.IN

Punjab and Haryana High Court in ***Amir Chand Vs. Sucheta Kriplani***[6] for the very same proposition. The learned Counsel would also rely upon paragraph Nos.19 and 20 of the judgment of the Hon'ble Supreme Court of India in ***Bachan Singh Vs. Prithvi Singh***[7] to contend that, though on first blush undue influence under Section 123 of the Act may seem to include everything, the proviso, though it does not strictly control the main provision, is still indicative of the matters in which the Court can determine undue influence. By referring to various other judgments, the learned Counsel would submit that a mere political request made in the course of election campaigning, without any pleading of threat, force, coercion, intimidation, violence, injury, harm, or any interference at that time, when the free exercise of electoral choice occurred, does not constitute undue influence.

4.6. The learned Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi***[8] to contend that a corrupt practice allegation should be pleaded with clarity and specificity, as if it were a criminal charge, and that

6 1960 SCC OnLine Punj 247
7 (1975) 1 SCC 368
8 1987 Supp SCC 93

VERDICTUM.IN

such an abstract allegation cannot make out a corrupt practice. The learned Counsel would also rely upon the judgment of the Hon'ble Supreme Court of India in ***Ravinder Singh Vs. Janmeja Singh***[9], more specifically paragraph No.11, which requires a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the Election Petition. The learned Counsel would then contend that neither the requirements under Section 100(1)(d)(ii) nor Section 100(1)(d)(iv) of the Act are established. When the Election Petition does not disclose a cause of action and strictly qualifies to proceed for trial, this Court has to reject the Election Petition at the threshold.

4.7. Per *contra*, *Mr.N.R.Elango*, learned Senior Counsel for the election petitioner, would contend that the scope of the rejection petition is already settled and that the principles under Order VII Rule 11 of the Code of Civil Procedure will apply. The judgment of the Hon'ble Supreme Court of India in ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalalu***[10] is relied upon. Once the returned candidate has chosen to file a written

9 (2000) 8 SCC 191
10 (2017) 13 SCC 174

VERDICTUM.IN

statement, filing the petition thereafter, as an afterthought, would amount to an abuse of the Court's process.

4.8. The learned Senior Counsel, by relying upon the judgment of the Hon'ble Supreme Court of India in ***Virendra Nath Gautam Vs. Satpal Singh and Ors.***[11], would submit that all the material facts constituting *factum probandum* have been pleaded in the Election Petition. The Election Petition does not lack any material particulars. The speech made by *Mr.Joseph Vijay*, its effect on children, and its further effects on adults are categorically pleaded. All material particulars, including the video footage, the time, and other particulars, and the First Information Report lodged in the instant case, are categorically pleaded, along with how they materially affect the outcome.

4.9. The learned Senior Counsel would submit that the returned candidate's prayer to conduct a mini-trial in the guise of a rejection petition cannot be entertained by this Court. It must be seen that, independently, the conduct amounted to undue influence under Section 123(2) of the Act, and, as such, a trial should follow. The learned Senior

11 (2007) 3 SCC 617

VERDICTUM.IN

Counsel would rely upon the judgment of the Hon'ble Supreme Court of India in ***Mohinder Singh Gill Vs. Chief Election Commissioner***[12], wherein it holds that the Election Commission's directions issued to fill areas left unoccupied by the legislation operate with statutory force. The learned Senior Counsel would contend that the circular in question is not merely a guideline but a specific prohibition issued by the Election Commission of India in exercise of its constitutional mandate. The order of the Election Commission of India cannot be construed as a mere regulatory requirement falling outside the grounds in Section 100 of the Act, where it is pleaded that it materially affected the result of the election and is subject to proof that would be borne out only in the trial.

4.10. In the present case, it is pleaded that undue influence, as per Section 123(2) of the Act, is present. Direct or indirect interference, or an attempt to interfere, with the exercise of free electoral right by the candidate, his agent, or any person with the candidate's consent, would constitute the corrupt practice of undue influence. In the present case, the Election Petition pleads direct appeals to children to persuade their parents and the manner in which it was systematically carried out, and, as such, it

12 (1978) 1 SCC 405

VERDICTUM.IN

makes out undue influence under Section 123(2) of the Act.

4.11. The Election Petition does not rest solely on unconnected social media material. The campaigning has been videographed by *Manikandan*, who is the official-in-charge of the Video Surveillance Team, and consequently, a case has also been registered in Crime No.84 of 2026. Minor children have no electoral rights. They cannot vote. Using them in a campaign exploits the natural emotional bond between parents and children to create familial and social pressure on adult voters to vote in consonance with the party, which squarely falls within Section 123(2) of the Act.

4.12. When the said *Mr.Joseph Vijay*, a celebrated film star with a devoted following among children, expressly calls upon them at a public meeting to pester their parents, the use of the child-celebrity relationship as an instrument of electoral pressure certainly amounts to undue influence, as the persuasion is carried out in a manner that overpowers free will and aims at exploiting a child's adoration for a film star to generate parental voting pressure. When campaigning is prohibited by law and the same is

VERDICTUM.IN

done, it amounts to undue influence. There is compliance with Section 83(1)(a) of the Act, as the facts have been concisely pleaded, the material particulars are given, and how it impacts the election is also pleaded. The Election Commission of India's circular prohibits any form of election campaign through children; accordingly, the ground under Section 100(1)(d)(iv) of the Act is made out. A proper cause of action is presented; accordingly, the belated application should not be entertained. Read as a whole, the Election Petition sets out concise material facts constituting the corrupt practice of undue influence; accordingly, the petition is liable to be rejected.

E. The Questions:

5. I have considered the rival submissions made on either side and perused the material records of the case and the following questions arise for determination:-

(i) Is the rejection petition not entertainable merely because it is filed after the written statement?

(ii) Would a violation of the Election Commission of India's circular dated 05.02.2024 entitle the election petitioner to relief to set aside

VERDICTUM.IN

the election of the returned candidate as per Section 100(1)(d)(iv) of the Act?

(iii) Would the plea by the leader of the political party (TVK), *Mr.Joseph Vijay*, to the children to pester their parents and elders at home to vote for him be a ground to set aside the election of the returned candidate as per Section 100 (1) (b) and 100 (1)(d)(ii) of the Act?

(iv) Whether the plea and the consequential action of the children, per *se*, disclose a triable issue of undue influence?

F. Question No.(i):

6. In this case, the first objection to the rejection petition is that it is filed a few days after filing of the written statement. If the election petition fails to disclose the foundational and material particulars and a complete cause of action, it is liable to be rejected at the threshold as per Section 83 of the Representation of the People Act, 1951, read with Order VII Rule 11 of the Code of Civil Procedure. A useful reference in this regard is paragraph No.11 of the judgment of the Hon'ble Supreme Court of India in ***Azhar Hussain Vs. Rajiv Gandhi***[13].

13 1986 Supp SCC 315

VERDICTUM.IN

6.1, As far as Election Petitions are concerned, irrespective of the pleadings of the parties, it is also held to be a duty of the Court to consider the fitness of the Election Petition for Trial, irrespective of the pleadings of the parties. It is useful to to refer to paragraph No.24 of the judgment of the Hon'ble Supreme Court of India in ***Hari Shanker Jain Vs. Sonia Gandhi***[14] [2001 8 SCC 233], which reads as under:

> "24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

6.2. Further, the principles must be applied strictly in an election petition, and litigation unlikely to result in relief should be aborted at the threshold, as its pendency is likely to prevent the elected representative from discharging his public duties. (***Ram Sukh Vs. Dinesh Agrawal***[15]). Therefore, this question is answered, holding that the application for rejection of the election petition has to be considered on merits by this Court notwithstanding the fact that it is filed after filing of the written

14 (2001) 8 SCC 233
15 (2009) 10 SCC 541 – paragraph No.18

VERDICTUM.IN

statement.

G. Question No.(ii):

7. Article 326 of the Constitution of India mandates that elections to the House of the People and to the Legislative Assemblies of States be on the basis of adult suffrage, that is, every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf. It is to be noted that originally, the age was 21 years, and by the 61st Amendment Act of the year 1988, it was reduced to 18 years.

7.1. In this context, concern arose over the use of minors in various activities during the election process. The Bombay High Court took up the issue in ***Chetan Ramlal Bhutada***'s case (cited *supra*), which concerned the involvement of minor children in political rallies for campaigning during elections. By the order, dated 04.08.2014, the Division Bench held that the Election Commission of India would have to take steps to modify the Model Code of Conduct for Parliamentary and Legislative elections to ensure that political parties do not allow minor children to participate in any election-related activities. The Court opined

VERDICTUM.IN

that unless the Model Code of Conduct is modified, the participation of minor children in election-related activities cannot be effectively prevented. Therefore, it directed the Election Commission of India to take an appropriate decision and place the same on record.

7.2. Thereafter, on 13.09.2014, the Election Commission of India filed an affidavit, placing a communication, stating that political parties shall not allow participation of minor children in any election-related activities. After recording the affidavit and the communication issued by the Election Commission of India, the Court found that the affidavit tendered by the Election Commission is completely silent on the aspect of what action should be taken against political parties or the concerned candidate in the event of a breach of the directions issued by the Election Commission of India, if political parties allow participation of minor children in any election-related activities.

7.3. On the query, the Election Commission of India sought further time, and on the subsequent date of hearing, 07.10.2014, it submitted that, as far as recognised political parties are concerned,

VERDICTUM.IN

compliance with, or refusal to comply with, the direction issued in relation to children in the election process will be dealt with by the Commission under paragraph No.16A of the Election Symbols (Reservation and Allotment) Order, 1968. As such, the Court recorded the same with reference to recognised political parties and adjourned the matter for consideration of candidates who are not part of recognised political parties.

7.4. Thus, only pursuant to the aforesaid directions and the earlier circular of the Election Commission of India, the present circular dated 05.02.2026 is issued. It contains these directions to the election machinery to refrain from involving child labour in any election-related work or activities, and to political parties, candidates, and their agents and representatives. Paragraph No.b(iii) reads as follows:-

> "**(b) For Political Parties/Candidates and their agents/representatives etc:**
> ..
> (iii) Political parties are directed not to use children in election campaign/rallies/in any form whatsoever including distribution of posters/pamphlets or to participate in slogan shouting, campaign rallies, election meeting etc.
> Note 1: However, mere presence of a child accompanied by his/her mother/father/guardian or a child in arms of his/her mother/father/guardian in proximity of a political leader and "who is not been involved in any activity relating to election campaigning by the political party", will not be construed as violation of the above said

VERDICTUM.IN

> guidelines.
> Note 2: It is clarified to obviate any doubt that all political leaders/candidates should not use children for campaign/canvassing/rallies/yatras etc. in any manner, including holding a child in their arms, carrying a child in their vehicles or making child a part of election campaign/rallies. Further, use of child to create semblance of political campaign either by spoken words/poem/songs, display of insignia of political party/candidate, exhibiting ideology of political party, promoting achievements of a political party or criticising the opponent political parties/candidates shall not be resorted to."
>
> (Emphasis supplied)

7.5. As far as the Election Petition is concerned, it is a specific remedy that is provided by the Statute (the Act) and can be availed strictly on the grounds provided by the Act. Useful reference, in this regard, can be made to the judgment of the Hon'ble Supreme Court of India in ***Kanimozhi Karunanidhi Vs. A.Santhana Kumar and Ors.***[16] and paragraph No.27.4 of the said judgment is extracted hereunder:-

> "**27.4**. In order to get an election declared as void under Section 100(1)(d)(iv) of the RP Act, the election petitioner must aver that on account of non-compliance with the provisions of the Constitution or of the Act or any Rules or Orders made under the Act, the result of the election, insofar as it concerned the returned candidate, was materially affected."

7.6. Thus, it can be seen that non-compliance with the circular

16 (2024) 18 SCC 592

VERDICTUM.IN

has to be brought within non-compliance with (i) the provisions of the Constitution; (ii) the Act; or (iii) Rules or Orders made under the Act. Thus, even if the circular is held to have the force of law, it has its own consequences, as recorded in the Hon'ble Bombay High Court Judgment, but it is not enumerated as a ground under Section 100(1)(d)(iv).

7.7. In this regard, it is relevant to extract paragraph No.39 of the Hon'ble Supreme Court of India's Judgment in ***Jitu Patnaik Vs. Sanatan Mohakud***[17], which reads as follows:-

> "**39.** In view of the above legal position that the Handbook does not have statutory character and there being no non-compliance with the provisions of the Constitution or the 1951 Act or any Rules framed or orders made under the 1951 Act by the Returning Officer insofar as the death of an independent candidate was concerned, the averments made in Para 7(A) of the election petition do not furnish any cause of action for declaring the election of the returned candidate to be void under Section 100(1)(d)(iv). The High Court seriously erred in holding otherwise and ordering trial of the election petition on the pleadings set out in Para 7(A)."
>
> (Emphasis Supplied)

7.8. The only difference in the instant case is that the Circular has a statutory character, having been issued by the Election Commission of India in exercise of its general power of superintendence under Article 324

17 (2012) 4 SCC 194

VERDICTUM.IN

of the Constitution of India, but it cannot be considered an Order under the Act, and the consequences of its non-compliance have been mentioned supra.

7.9. Thus, the question is answered that a violation of the Election Commission of India's circular dated 05.02.2024, in the context of the present case, would not entitle the election petitioner to relief to set aside the election of the returned candidate under Section 100(1)(d)(iv) of the Act.

H. Question No.(iii):

8. In this regard, Section 123 of the Act defines corrupt practices. Undue influence is defined under Section 123(2) of the Act which is extracted hereunder:-

> "**123. Corrupt practices.**—
> ...
> (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

VERDICTUM.IN

> elector, or any person in whom a candidate or an elector is interested, with injury of any kind including social ostracism and ex-communication 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 is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause;
>
> (b) a declaration of public policy, or a promise of public action, or the mere exercise of a legal right without intent to interfere with an electoral right, shall not be deemed to be interference within the meaning of this clause."

8.1. Corrupt practice is a ground to declare the election to be void under Section 100 of the Act, and the relevant provision is in Section 100(1)(d) of the Act, and Section 100(1)(d)(ii) of the Act is extracted hereunder:-

> "**100. Grounds for declaring election to be void.**—(1) Subject to the provisions of sub-section (2), if the High Court is of opinion—
>
> …
>
> (d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—
>
> …
>
> (ii) by any corrupt practice committed in the interests of the <u>returned candidate by an agent other than his election agent,</u> or"

Thus, it can be seen that to qualify as a corrupt practice, the

VERDICTUM.IN

undue influence can be committed by (i) a candidate, (ii) his agent or any other person with the consent of the candidate or his election agent.

8.2. Section 100(1)(d) of the Act also states that the corrupt practice should be committed by a returned candidate or the election agent, or by any other person with the consent of the returned candidate or his election agent. Thus, as far as the appeal made by *Mr.Joseph Vijay*, as the leader of the political party, is concerned, it cannot be said that it was committed by the candidate or his agent, or with the consent of the candidate or his agent. As noted supra, the speech, at best, if it is in violation of the directives of the Election Commission, would involve further action, as undertaken before the Bombay High Court with reference to the Symbols Order by the Election Commission of India. Neither Section 123(2) nor Section 100(d) nor Section 100(1)(d)(ii) include such an act of campaigning by the President of the political party as a ground of 'corrupt practice' under Section 100 of the Act. Therefore, taking the correctness of the fact as pleaded, that such an appeal was made by the President of the political party, unless the same specifically falls under any of the grounds enumerated under Section 100 of the Act, it cannot form the

VERDICTUM.IN

basis for grant of relief, and accordingly this question is answered.

I. Question No.(iv):

9. In this regard, it is clear that there can be no two views on child labour. Directly or indirectly, in any form whatsoever, child labour is prohibited, and children cannot be employed in manual or other labour in relation to any election-related activity, whether by the election machinery, political parties, or candidates. However, the debate concerns the campaign and canvassing. One view is that everything will not suddenly pop up when the bell rings on attaining the age of 18 years, and many great political leaders have addressed political platforms and delivered fiery, powerful speeches even during their high school days. People advocating this view would state that everyone participates in politics from cradle to grave.

9.1. However, the counterpoint is that when political parties do the same, and children are drawn out from their educational institutions to attend political meetings, etc., which spoils their careers and mindset, it is held that minors should not, in any manner, be involved in campaigns,

VERDICTUM.IN

rallies, etc.

9.2. Otherwise, the influence of children on the family, with reference to both purchasing power and political choice, is a matter of great debate all over[18]. Just as parents influence children, children also influence parents and elders at home. This is especially true in India, and even more so in Tamil Nadu. Children are seen as the reincarnation of Deiva, i.e., God. Most of the population regards children as their ancestors and forefathers reborn, and their words carry great weight. Even in worship, most people in Tamil Nadu worship gods in their child form, such as Lord *Muruga* and Lord *Ganesha*. According to popular Hindu mythology, as a child, Lord *Muruga* imparted the *Pranava* (Om) to Lord Shiva and is thus called *Swaminathan*. A famous temple at *Swamimalai* depicts this tradition. Legends of Lord *Muruga* teaching the great Tamil poet Avvai are widely popular.

18 1. Influence of Parent Child Relationship on an Individual's Personal Value and Social Maturity — Jyoti Sharma and Dr. Anjali Sahai Srivastav (2023).

https://ijip.in/wp-content/uploads/2023/08/18.01.172.20231103.pdf

2. A Conceptual Model of Children's Influence in Family Purchase Decisions — Shefali and Prof. Vijita Singh Aggarwal (2018).

https://old.rrjournals.com/wp-content/uploads/2018/07/282-289_RRIJM18030761.pdf

3. From Top-Down to Trickle-Up Influence: Revisiting Assumptions About the Family in Political Socialization — Michael McDevitt and Steven Chaffee (2002).

https://www.researchgate.net/publication/238399210_From_Top-Down_to_Trickle-Up_Influence_Revisiting_Assumptions_About_the_Family_in_Political_Socialization

VERDICTUM.IN

9.3. While it can be contended that, culturally and more so in modern times, children exert a great deal of influence over their parents' choices, the question that arises in the instant case is whether the political party leader's campaigning to the children, in turn requesting them to campaign to their parents on his behalf, would amount to undue influence.

9.4. In this regard, the definition of the term 'Undue Influence' in Section 123 of the Act was extracted supra. It can be seen that the Section is phrased with 'that is to say' and therefore the definition has to be strictly construed. The issue was considered in detail by the Hon'ble Supreme Court of India in ***Shiv Kirpal Singh***'s case (cited *supra*). A careful reading of paragraph Nos.249, 254, 261 and 296 makes it clear that the emphasis is on interference with the '*exercise of the electoral right*' with '*free will and volition*'. While persuasion or canvassing will not amount to interference, if it reaches the point of '*tyranny over the mind overpowering the volition without convincing the judgment*', it would be undue influence. The legal position is concisely elucidated by the Hon'ble Supreme Court of India in ***Krishnamoorthy Vs. Shivakumar and Ors.***[19], in paragraph Nos.58 to 58.12.

19 (2015) 3 SCC 467

VERDICTUM.IN

9.5. In this context, it must be noted that tender children are involved in these videographs. They neither possess mobile phones nor can they make reels. Adults have shown these children the appeal of the leader, made them perform the acts, made reels, and popularised them. Thus, it cannot be seen as the tender children's sole act of committing tyranny over the mind, overpowering volition. At best, it can be seen as convincing adults to vote for the party and the candidate. It is not based on informed consideration of the candidates or the way adults are supposed to make choices in a democracy.

9.6. The entire act of involving tender children is in bad taste, and the tasks they were allowed to perform reflect poor parenting; making reels out of it is cheap and politically motivated. This is a larger debate for the nation and Parliament to consider, including whether to prohibit it or make it grounds to set aside the election.

9.7. But even if the materials presented are true and correct, the familial bond and emotion are exploited to sway the choice and cannot be elevated to a status where adults' free will is overpowered. On the other

VERDICTUM.IN

hand, if the adults in the given situation take umbrage at the children's pestering to give themselves an excuse to make a particular choice, that is again their volition and does not overpower their free will.

9.8. Accordingly, the plea, the children's consequential actions, and the adults' disclosure and behaviour do not disclose a triable issue of undue influence, even assuming that the allegations contained in the Election Petition are uncontroverted and true. I am unable to hold that the Election Petition discloses a cause of action for the grant of relief to the election petitioner.

J. The Result:

10. For the above reasons, O.A.No.890 of 2026 stands allowed, and consequently, E.L.P.No.46 of 2026 stands rejected. There shall be no order as to costs. The security deposit paid by the election petitioner shall be refunded to him.

15.10.2026

Neutral Citation: yes
grs

VERDICTUM.IN

D.BHARATHA CHAKRAVARTHY, J.

grs

To

The Returning Officer,
89. Salem North Assembly Constituency,
Salem, Tamil Nadu.

O.A.No.890 of 2026
in E.L.P.No.46 of 2026

15.10.2026