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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on* *08th February, 2019*
Judgment Pronounced on *28th February, 2019*

\+ **W.P.(C) 10725/2017**

V K SASIKALA … Petitioner

Through : Dr.A.M.Singhvi, Senior Advocate with Mr.Amit Anand Tiwari, Mr.Vivek Singh, Mr.N. Raja Senthoor Pandian, Ms. Mary Mitzy, Ms.Shakun Sharma, Ms.Harshal Gupta and Ms.Devyani Gupta, Advocates

versus

THE ELECTION COMMISSION OF INDIA & ORS … Respondents

Through : Mr.P.R.Chopra, Advocate for respondent no.1/ECI

Mr.C.S. Vaidyanathan, Mr.K.V. Viswanathan and Mr.Guru Krishna Kumar, Senior Advocates with Mr.Balaji Srinivasan, Mr.Siddhant Kohli, Ms.Garima Jain, Ms.Pallavi Sengupta, Ms.Vaishnavi Subrahmanyam, Ms.Lakshmi Rao, Mr.Anirudh Gupta, Mr.Harsh Vaidyanathan Shankar, Mr.Ram Shankar, Ms.Pratiksha Mishra, Mr.Ravi Raghunath, Ms.Srishti Govil, Mr.Arunava Mukherjee, Mr.Mayank Kshirsagar, Mr.Babu Murugavel, Mr.Prakash Kumar Gandhi and Mr.R.Rakesh Sharma, Advocates for respondents no.2 to 4.

Mr.Mukul Rohatgi, Senior Advocates with Mr.Gowtham Kumar, Ms.Diksha Rai and Ms.Palak Mahajan, Advocates for respondent no.5

Mr.Anwesh Madhukar, Mr. Pranjal Shekhar and Ms.Prachi Nirwan, Advocates for intervener/K.C. Palanisamy

+ **W.P.(C) 10728/2017**

T T V DHINAKARAN … Petitioner

Through : Mr. Kapil Sibal, Senior Advocate with Mr.Amit Anand Tiwari, Mr.Vivek Singh, Mr.N. Raja Senthoor Pandian, Ms. Mary Mitzy, Ms.Shakun Sharma, Ms.Harshal Gupta and Ms.Devyani Gupta Advocates

versus

THE ELECTION COMMISSION OF INDIA & ORS … Respondents

Through : Mr.P.R.Chopra, Advocate for respondent no.1/ECI

Mr.C.S. Vaidyanathan, Mr.K.V. Viswanathan and Mr.Guru Krishna Kumar, Senior Advocates with Mr.Balaji Srinivasan, Mr.Siddhant Kohli, Ms.Garima Jain, Ms.Pallavi Sengupta, Ms.Vaishnavi Subrahmanyam, Ms.Lakshmi Rao, Mr.Anirudh Gupta, Mr.Harsh Vaidyanathan Shankar, Mr.Ram Shankar, Ms.Pratiksha Mishra, Mr.Ravi Raghunath, Ms.Srishti Govil, Mr.Arunava Mukherjee, Mr.Mayank Kshirsagar, Mr.Babu Murugavel, Mr.Prakash Kumar Gandhi and Mr.R.Rakesh Sharma, Advocates for respondents no.2 to 4.

Mr.Mukul Rohatgi, Senior Advocates with Mr.Gowtham Kumar, Ms.Diksha Rai and Ms.Palak Mahajan, Advocates for respondent no.5

Dr.A.M.Singhvi, Senior Advocate with Mr.Amit Anand Tiwari, Mr.Vivek Singh, Mr.N. Raja Senthoor Pandian and Ms. Mary Mitzy, Advocates for respondent no.6

Mr.Anwesh Madhukar, Mr. Pranjal Shekhar and Ms.Prachi Nirwan, Advocates for intervener/K.C. Palanisamy

+ **W.P.(C) 10733/2017**

C D NAGSRAJAN & ORS … Petitioner

Through : Mrs. Meenakshi Arora, Senior Advocate with Mr.Swastik Dalai,
Mr. P. Praveen Samadhanam, Ms.Shakun Sharma, Ms.Harshal Gupta and Ms.Devyani Gupta, Advocates

versus

THE ELECTION COMMISSION OF INDIA & ORS … Respondents

Through : Mr.P.R.Chopra, Advocate for respondent no.1/ECI
Mr.C.S. Vaidyanathan, Mr.K.V. Viswanathan and Mr.Guru Krishna Kumar, Senior Advocates with Mr.Balaji Srinivasan, Mr.Siddhant Kohli, Ms.Garima Jain, Ms.Pallavi Sengupta, Ms.Vaishnavi Subrahmanyam, Ms.Lakshmi Rao, Mr.Anirudh Gupta, Mr.Harsh Vaidyanathan Shankar, Mr.Ram Shankar, Ms.Pratiksha Mishra, Mr.Ravi Raghunath, Ms.Srishti Govil, Mr.Arunava Mukherjee, Mr.Mayank Kshirsagar, Mr.Babu Murugavel, Mr.Prakash Kumar Gandhi and Mr.R.Rakesh Sharma, Advocates for respondents no.2 to 4.
Mr.Mukul Rohatgi, Senior Advocates with Mr.Gowtham Kumar, Ms.Diksha Rai and Ms.Palak Mahajan, Advocates for respondent no.5
Mr.Anwesh Madhukar, Mr. Pranjal Shekhar and Ms.Prachi Nirwan, Advocates for intervener/K.C. Palanisamy

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J.

CM 15736/2018 in W.P.(C) 10725/2017 & CM 15735/2018 in W.P. (C) 10728/2018

1. These are applications seeking condonation of delay in filing reply on behalf of the respondent no.5. For the reasons stated in the applications, the same are allowed.

CM 4109/2018 in W.P.(C) 10725/2017, CM 4089/2018 in W.P. (C) 10728/2018 & CM 3747/2018 in W.P.(C) 10733/2017

2. These are applications filed by one Mr.K.C. Palanisamy seeking impleadment in all the matters. The contents of the applications are identical. They merely state that the applicant was party before the Commission and the applicant being a member of the party would be affected by the outcome of the present case. We do not deem it appropriate to implead the applicant in view of the following observations of ***Sadiq Ali* v. *Election Commission of India*, (1972) 4 SCC 664**:

> "*33. Question during the course of hearing of the appeal has also arisen whether the persons who were heard during the course of proceedings under para 15 become parties to those proceedings so as to be entitled to be heard in appeal. In this connection, we are of the opinion that although the Commission may hear during the course of proceedings under para 15 "such representatives of the sections or groups or other persons as desire to be heard" the parties to the dispute necessarily remain rival sections or groups of the recognised political party. Other persons as desire to be heard and who are heard by the Commission do not become parties to the dispute so as to have a right of addressing this Court in appeal. We have consequently not allowed arguments to be addressed in appeal on their behalf.*"
>
> (Emphasis Supplied)

3. Accordingly, the applications are dismissed.

W.P.(C) 10725/2017, W.P. (C) 10728/2018 & W.P.(C) 10733/2017

4. These petitions are filed seeking a writ in the nature of *certiori* challenging the order dated 23.11.2017 ('*impugned order*') passed by the Election Commission of India (hereinafter referred to as the '*Commission*') under paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter referred to as

the '*Symbols Order*') in Dispute Case No.2/2017, whereby the Commission recognised the group led by E.Madhusudhanan, O. Panneerselvam and S. Semmalai as the All India Anna Dravida Munnetra Kazhagam ('*AIADMK*' or the '*party*'). By the said order, the group was also entitled to the use of the reserved symbol 'Two Leaves' for the State of Tamil Nadu and the Union Territory of Puducherry.

5. We may note that during the pendency of the present petition, an application was filed by the petitioner seeking interim use of the name of the party with a new symbol. This application was decided by a Single Judge of this Court on 09.03.2018 whereby the petitioner and his group of persons were allowed to use a common symbol and a name of their choice. This order was assailed before the Supreme Court in SLP (C) 7258/2018, which was disposed of on 28.03.2018 requesting the then Acting Chief Justice of this Court to constitute an appropriate Division Bench and further requesting the so constituted Bench to dispose of the matter expeditiously. In the meantime, the interim order of the Single Judge was kept in abeyance. The matter was, accordingly, marked to us. The parties appeared on 12.04.2018 and requested for an adjournment. The matter was adjourned to 17.04.2018 and then heard regularly on 20.04.2018, 24.04.2018, 01.05.2018, 02.05.2018, 03.05.2018, 09.05.2018, 15.05.2018, 16.05.2018, 21.05.2018, 04.07.2018, 05.07.2018, 11.07.2018, 12.07.2018, 18.07.2018, 19.07.2018, 02.08.2018, 14.08.2018, 30.08.2018, 05.09.2018, 12.09.2018, 13.09.2018, 26.09.2018, 09.10.2018, 02.11.2018, 16.11.2018, 18.01.2019, 31.01.2019 and then ultimately reserved for orders on 08.02.2019. The dates being

convenient to all the counsel who appeared in the matter. Thereafter, both the factions filed lengthy written submissions.

6. For the ease of reference, the parties are being referred to in accordance with their position in W.P. (C) 10728/2017.

7. The AIADMK is recognised as a State Party under the Symbols Order and the symbol 'Two Leaves' has been exclusively reserved for it. The party was formed in the year 1972 by Dr.M.G. Ramachandran, who led the party until his demise in 1987. Subsequent to his death, there was a split in the party, which was resolved and Dr.J. Jayalalithaa took helm of the affairs of the party as its General Secretary. She also became the Chief Minister of the State of Tamil Nadu and continued to hold the positions until her demise on 05.12.2016. The very next day, respondent no.3/O.Paneerselvam was sworn in as the Chief Minister.

8. A notification was issued calling for a meeting of the General Council of the party on 29.12.2016. On the said date, the General Council unanimously appointed the respondent no.6/V.K. Sasikala as the General Secretary of the party. This decision was not accepted by the respondents no.2 to 4, who allege that the appointment was unlawful. On 05.02.2017, the respondent no.3 stepped down from the post of Chief Minister and immediately thereafter, was expelled from the primary membership of the party by respondent no.6. This was followed by an expulsion of respondents no.2 and 4. At this point, both the respondent no.6 and respondent no.3 claimed to have the majority support in the Legislative Assembly of Tamil Nadu and sought appointment as Chief Minister.

9. In the meantime, the Supreme Court found respondent no.6 guilty of corruption in Criminal Appeal 300-303/2017 titled as ***State of***

Karnataka* v. *Selvi J.Jayalalitha dated 14.02.2017. The respondents no.2 to 5 contend that the same disqualified respondent no.6 from holding any office in the party. The divide between the two factions was consolidated with the decision of the respondent no.6 to induct the petitioner/T.T.V. Dhinakaran as a member of the party and appointing him as the Deputy General Secretary. This is alleged to be illegal by the respondents no.2 to 5 stating that the petitioner had been expelled in 2011 by the then General Secretary along with the respondent no.6. Only the respondent no.6 was re-inducted in the party, while the expulsion of the petitioner was never revoked.

10. A trust vote was held on 18.02.2017, which was won by the respondent no.5, who was then supported by the respondent no.6. The respondent no.5 continues to be the Chief Minister of the State of Tamil Nadu till date. In their turn, the respondent no.2/E. Madhusudhanan expelled the respondent no.6 from the party on 17.02.2017. This led to the creation of two competing factions both claiming to be the legitimate AIADMK. One led by the respondent no.6 and the other led by the respondent no.3. At that time, the respondent no.5 was a part of the faction led by the respondent no.6.

11. Post the death of Dr.J. Jayalalitha, a vacancy arose in her assembly constituency, i.e. R.K. Nagar, and the Commission called upon the Assembly Constituency to elect a member. On 16.03.2017, the respondents no.2 to 4 approached the Commission seeking the following reliefs:

> "*a) Allot the AIADMK party symbol of 'two-leaves' to the party led by the Petitioner No.2 herein;*
> *b) Direct the Respondents from refrain from acting as the General Secretary and Deputy General Secretary of the AIADMK Party pending disposal of this Petition;*

c) Refuse to Allot the AIADMK party symbol of 'two leaves' to the usurper Respondents and stop them from using the same in the RK Nagar By-elections [announced by this Hon'ble Commission on 09.03.2017] until the disposal of the present petition;

d) DIRECT the AIADMK party to conduct fresh party elections for the post of General Secretary in accordance with the provisions of its bye-laws in a time bound manner and supervised by an officer appointed by this Hon'ble Commission pending disposal of this Petition, the costs of which shall be borne by the party;

e) Disqualify, disentitle and bar the Respondent No.1 from being office bearer of the AIADMK party immediately and forthwith since the conviction in Civil [sic: Criminal] *Appeal No. 300-303 and 304-207 of 2017 by this Hon'ble Court* [sic: Hon'ble Supreme Court] *on 14.02.2017;*

f) Quash all Acts, Orders, Directions, Commands and any other like Official Communications issued by the Respondent No.1 as General Secretary since 29.12.2016 onwards to be ultra vires, illegal and invalid.

g) Declare the purported proclamation of Respondent No. 2 as the Deputy General Secretary of the AIADMK Party is invalid, non-est and illegal;

h) Disqualify, disentitle and bar Respondent no.2 from being office bearer of the AIADMK party immediately and forthwith since conviction in CMA No.914 of 2000 by this Hon'ble High Court on 06.01.2017 [sic]*;*

i) Quash all Acts, Orders, Directions, Commands and any other like Official Communications issued by the 2nd Respondent as Deputy General Secretary since 06.01.2017 onwards to be ultra vires, illegal and invalid;

j) Pass any other or future order(s) as this Hon'ble Commission deems fit in the facts and circumstances of the present case."

12. The Commission issued notice in the matter and both the sides filed voluminous documents to show majority support in their favour. On 22.03.2017, the Election Commission held that there was in fact a split of the party and passed an interim order for the purpose of the

upcoming bye-elections whereby neither of the splinter groups were allowed to use the symbol 'Two Leaves' and were give liberty to choose any free symbol of their choice. Accordingly, the group led by the petitioner and respondent no.6 were allotted the name "All India Anna Dravida Munnetra Kazagham (Anna)" and the symbol 'Hat'; while the group led by the respondents no.2 to 4 were allotted the name "All India Anna Dravida Munnetra Kazagham (Puratchi Thalaivi Amma)" and the symbol 'Electric Pole'. However, the bye-elections were cancelled by the Commission following incidents of large scale bribery of electors of the constituency.

13. Upon another opportunity being granted by the Commission, both the groups filed several individual affidavits showing support of the majority members of the party in their favour. The petitioner and the respondent no.6 filed about 7,00,000 affidavits, while the respondents no.2 to 4 filed about 3,00,000 affidavits. At this stage, the respondent no.5 filed an application seeking impleadment before the Commission submitting that he was the Head of the Legislative Party and the Chief Minister of the State and that more than 3,09,476 members of the party had filed affidavits showing their allegiance to him. At this point, there seems to have been a shift of allegiances when the respondent no.5 joined the cause of the respondents no.2 to 4. On 28.08.2017, the respondents no.2 to 5 issued a notice calling a general meeting of their united group on 12.09.2017. One P.Vetrivel approached the Madras High Court by filing a suit which was registered as CS 707/2017 challenging the notice dated 28.08.2017 with an interim application seeking injunction against calling of the meeting. The application was dismissed on 11.09.2017 and an *intra* court appeal was preferred. The Division Bench observed that any

order passed in the meeting would be subject to the outcome in the appeal. Accordingly, the meeting dated 12.09.2017 was held by the now united faction of the respondents no.2 to 5 when (1) the post of General Secretary was rescinded; (2) the appointment of respondent no.6 on 29.12.2016 was revoked and all acts done by her declared to be null and void; (3) all powers of the General Secretary were vested with two new posts, i.e.Coordinator and Joint Coordinator, to be elected by the members of the General Council; (4) Respondent No.3 and 5 were made the Coordinator and Joint Coordinator respectively till the holding of elections; and (5) all administrative powers of the General Secretary were vested with the new posts.

14. On 15.09.2017, the Madurai Bench of the Madras High Court passed an order directing the Commission to dispose of the matter before it before 31.10.2017. The Commission, in turn, issued notice dated 21.09.2017, which reads as under:

> " *Reference is invited to the order dated 15-09-2017 of the Hon'ble Madras High Court, Madurai Bench, in Writ Petition (MD) No.15818 of 2017 (Ramkumar Adityan Vs. Chief Election Commissioner and others).*
> *2. Take notice that if you wish to make any fresh submissions in the above Dispute Case, you made file the same latest by* ***29th September, 2017****. The submissions that may be filed should be supported by duly sworn affidavit, and should be filed with six spare copies thereof. Copy of the submissions should be served in advance directly by the parties on the other group, and proof of such service should be submitted to the Commission.*
> *3. If any individual affidavits of support are being filed, such affidavits should be confined to the members of the Legislative Wing (Members of Parliament and Legislative Assembly) and the apex level representative bodies in the Organisational Wing of the Party, i.e. the General Council and Central Executive Committee. Affidavits should be filed in original along with a soft copy (in pen drive), with*

*separate sets for different categories of members. The affidavits shall also be filed latest by **29th September, 2017**. An index of the affidavits shall also be filed. Copies of all affidavits duly indexed shall also be served on the other group, either in soft or hard form.*

4. You are also directed to submit the list of General Council Members and Central Executive Committee Members of the party as on 5th December, 2016. Copy of the lists should also be served on the other group."

(Emphasis Supplied)

15. This notice was objected to by the petitioner's group alleging that the notice altered the character of the dispute between the parties and the dispute should be decided on the basis of the documents already on record. The objections were rejected by the Commission vide letter dated 28.09.2017 stating that the information sought was in terms of the judgment of the Supreme Court in ***Sadiq Ali* (Supra)** and that "*the Commission needs to look in to the position as existing at present, and the support base of the two groups at the present stage*." This led to the filing of the fresh submissions and affidavits before the Commission. In the meantime, the order of the Madras High Court was carried before the Supreme Court in SLP (C) 26811-26812/2017, which disposed of the petitioner by the following order:

" *How the affidavits are to be dealt with or adverted to, need not be entered into in these special leave petitions. The Election Commission has the authority under the Representation of People's Act, 1952 and Election Symbols (Reservation and Allotment) Order, 1968 to decide who is entitled to retain the symbol in case of dispute.*

We will be failing in our duty, I we do not say that because of the direction issued by the High Court, the Election Commission of India is likely to perceive that the guillotine must come within the time fixed. We do not so perceive. Be that as it may.

Regard being had to the facts and circumstances of the case we request that the Election Commission of India may commence hearing today at 4.00 p.m.. The Election Commission shall dispose of the proceedings expeditiously and preferably by 10th November, 2017. We repeat at the cost of repetition that the Election Commission is a constitutional functionary and we are absolutely certain that it shall be guided by the procedure known to law."

(Emphasis Supplied)

16. The matter was then heard by the Commission. Both sides challenged the veracity of the affidavits filed by the opposite faction. The dispute was ultimately disposed of vide the impugned order as stated in paragraph 4 aforegoing. The Commission held that the test of numerical superiority had to be applied in the matter as applied consistently by it since 1971. The Commission verified the affidavits and then held that the group led by the petitioners before it (respondents no.2 to 4 herein) enjoyed the majority in the organizational and legislative wings of the party and recognised it as the legitimate AIADMK. This order has been impugned before us.

17. Mr.Kapil Sibal, learned senior counsel for the respondent no.6 [petitioner in W.P.(C) 10725/2017], made the following submissions:

17.1. Learned senior counsel submitted that the decisions taken by the group of the respondent in the meeting dated 12.09.2017 had in fact, subverted the integrity of the constitution of the party and thus, the group was not entitled to continue under the banner of AIADMK. Drawing our attention to rules 5 vii), 18, 19, 20, 21, 29, 30, 34 and 35 xii) of the Rules and Regulations of the party (hereinafter the '*constitution*'), Mr.Sibal submitted that the General Secretary was in-charge of the entire functioning of the party. He also submitted that as per rule 43, the General Secretary can be elected only by all the

primary members of the party and the said rule could not be amended as having been expressly declared as the basic structure of the party.

17.2. It was submitted that the effect of the resolutions was that the post of the General Secretary, which is to be elected by the primary members of AIADMK, was abolished and replaced by the Coordinator and Joint Coordinator, who were appointed by the members of the General Council and not elected by the primary members. The structure of this new entity is thus completely at variance with the basic structure of AIADMK and hence, such alleged party cannot claim to be AIADMK. Mr.Sibal contended that this had been accepted by the respondents no.2 to 4 in paragraph 15 of their counter affidavit filed in this Court.

17.3. Mr.Sibal further submitted that paragraph 15 of the Symbols Order clearly states that there must be rival sections or groups claiming to be a particular party and the Commission must decide as to which group is "*that recognised political party*". According to Mr.Sibal, the adherence to the constitution and its aims and objects of the party is one of the tests to be satisfied under paragraph 15 of the Symbols Order. Reliance was placed on ***Sadiq Ali*** **(Supra)** (paragraph 14); ***Ramashankar Kaushik*** **v.** ***Election Commission of India,*** **(1974) 1 SCC 271** (paragraph 18); and the decision of the Commission in ***Arjun Singh*** **v.** ***The President Indian National Congress,*** **Dispute Case 1/1996** dated 11.03.1996 (paragraphs 17-22 of T.N.Seshan's opinion). It was submitted that the test of majority can only apply when both the factions are abiding with the constitution and the faction led by respondents no.2 to 4 having discarded the party constitution, could not be allowed to claim to be AIADMK.

17.4. It was next contended that the respondents no.2 to 4 were not entitled to the relief before the Commission in view of the constitution of the party and their own conduct. Mr.Sibal submitted that the appointment of the respondent no.6 as the General Secretary was subject to confirmation. She was only appointed in emergent circumstances. Learned senior counsel contended that such an interpretation was consistent with the constitution and had to be impliedly read into it. It was submitted that the said resolution was proposed by none other than respondent no.2 and seconded by the respondents no.3 and 5 herein. Mr.Sibal submitted that the appointment was consistent with past practice as Dr.J. Jayalalitha was also appointed previously in such manner. It was further submitted that in terms of the constitution of the party, it was not open to the respondents no.2 to 4 to defy the authority of the General Secretary and stake their claims as being the party.

17.5. Mr.Sibal submitted that having regard to the structure of the party, the majority test in the legislature and organizational wings of the party as laid down in ***Sadiq Ali* (Supra)** would not be relevant. Relying upon the decision in ***All India Hill Leaders' Conference* v. *Captain W.A. Sangma*, (1977) 4 SCC 161** (paragraph 54), it was submitted that the decision of the general body of members was necessary. As regards the majority, learned senior counsel contended that the faction led by the petitioner and the respondent no.6 had filed about 7 lakh affidavits in March, 2017 showing allegiance of all wings of the party. Subsequently, the opposite faction only filed about 1.6 lakh affidavits. Coupled with the fact that large number of affidavits were shown to be fabricated, it would

have been appropriate for the Commission to have called a meeting of the primary members of the party.

17.6. It was further contended that procedure adopted by the Commission would show malice in law. When the petition was filed before the Commission, the faction led by the respondents no.2 to 4 enjoyed negligible support. The petition should have been dismissed at that point of time. However, the Commission had given repeated opportunities to the opposite faction without any justifiable reason. Attention was drawn to the order dated 22.03.2017 wherein the Commission had granted final opportunity to both the parties to file documents in their support latest by 17.04.2017. Despite the order, the Commission extended time upto 16.06.2017 and then to 12.09.2017. In the meantime, the faction led by the petitioner and the respondent no.6 had already filed 7 lakh affidavits. There was no occasion of the Commission to allow extensions. It was submitted that the Commission erred in proceeding summarily in the matter. It should have framed issues and allowed parties to lead evidence and consequent cross-examination.

18. Thereafter, Dr.Singhvi appearing for the petitioner argued on similar lines as Mr.Sibal and further submitted as under:

18.1. Dr.Singhvi submitted that the triple test has to be applied while determining a matter under paragraph 15 of the Symbols Order being (1) aims and objects test, (2) test of adherence to party constitution and (3) majority test. The faction led by the respondents no.2 to 4 had completely failed in the constitution test inasmuch as they had altered the basic structure. Having done so, it was contended that the group could no longer claim to be the AIADMK as a completely new entity had been created. In such circumstances, the holding of

majority was irrelevant. Further, it was contended that the majority test should have been applied to the primary members. Reliance was placed on the orders of the Commission in ***In re: Naga People's Front,*** **Dispute Case 3/2017** (paragraphs 6-7); ***In re: Save Goa Front*** dated 09.02.2012 (paragraphs 31, 33 and 35); ***In re: Indian Congress (Socialist),*** **Dispute Case 4/1995** (paragraphs 38 and 40); and of the Supreme Court in ***Ramashankar Kaushik*** **(Supra)** (paragraph 18).

18.2. It was submitted that the contesting respondents had completely changed their stand, which should not have been permitted. Attention was drawn to the affidavit of the respondent no.2 filed in a civil suit being CS 958/2016 before the Madras High Court wherein the respondent no.2 had himself stated that respondent no.6 did not suffer from any disqualification as her removal was revoked by the then general secretary. The respondents had taken a contrary stand in the present proceedings before the Commission. Before the Commission, it was stated that through her expulsion was terminated the blemish on her record was not removed and thus, she could not contest for any post as per rule 30(v).

18.3. It was submitted that admittedly the respondent no.6 did not suffer any disqualification and was proposed by 23 persons including the contesting respondents for the post of general secretary. However, a completely contrary stand was taken in the petition before the Commission where at paragraph 9.4, it was contended that general council members were forced to sign blank papers of during the meeting and subsequently informed that the respondent no.6 had usurped the position of the general secretary. The respondent no.5 has also in his reply before this Court admitted the appointment of

respondent no.6 in emergent circumstances. Accordingly, it was submitted that in view of the misstatements made, the Commission should have dismissed the petition. Such stand of the contesting respondents would also act as *estoppel* against them.

18.4. It was also contended that the triple test should have been applied at the time of the filing of the petition. The petition before the Commission was filed in March, 2017 and was completely silent in material particulars. Reliance was placed upon ***Ram Sukh* v. *Dinesh Aggarwal*, (2009) 10 SCC 541** (paragraphs 13, 15 and 16) and ***Virender Nath Gautam* v. *Satpal Singh and Ors.*, (2007) 3 SCC 617** (paragraphs 35 and 36). Even thereafter, in the said cases, only the majority test was satisfied. Reliance was also placed on a decision of the Commission in Dispute Case 5/2017 titled ***Shri Chhotubhai Amarsang Vasava* v. *Shri Nitish Kumar*** (paragraph 8) and a communication bearing No.56/Dispute/4/2017/PPS-II/695 in respect of Janata Dal (United) wherein the Commission had dismissed a petition at a preliminary stage in the absence of documentary evidence.

18.5. Dr.Singhvi next contended that the parties should have been allowed to cross-examine atleast some of the persons who had filed affidavits of support of the factions. Attention of this court was drawn to samples of fabricated documents and Dr.Singhvi submitted that though there were 325 such dubious affidavits, the Commission admitted only 126. Such verification was carried out at the back of the factions and the Commission should have allowed atleast one person of each side to remain present at the time of verification. It is submitted that the procedure adopted by the Commission was in violation of the principles of natural justice and was a jurisdictional

issue. The respondent no.6 had also filed an application in this regard. In support of this submission, Dr.Singhvi had relied upon the decisions in ***Ayaaubkhan Noorkhan Pathan*** **v.** ***State of Maharashtra & Ors.,*** **(2013) 4 SCC 465** (paragraphs 24-28, 32, 33, 34 and 36); ***Dharampal Satyapal Limited*** **v.** ***Deputy Commissioner of Central Excise,*** **(2015) 8 SCC 519** (paragraphs 19-42). Learned senior counsel also drew our attention to the order of the Commission in the case of ***Dr.Shankar Dayal Sharma & Anr.*** **v.** ***Shri Sadiq Ali & Ors.*** to show that cross-examination has been previously allowed by the Commission.

19. The submissions of Ms.Arora, learned senior counsel for the petitioners in W.P.(C) 10733/2017 are on the following lines:

19.1. Learned senior counsel was submitted that it was in the month of October, 2017 that the petitioners learnt that affidavits had been filed on their behalf before the Commission by the respondents no.2 to 5 with their forged signatures. Accordingly, they filed an application seeking the lodging of a complaint under Section 195 of the Code of Criminal Procedure, 1973 ('CrPC'). It is submitted that the same was wrongly rejected by the Commission. Ms.Arora submitted that the Commission was a 'public servant' and accordingly, filing of false affidavits constituted an offence under the Indian Penal Code, 1860. Reliance was placed on ***Daulat Ram*** **v.** ***State of Punjab,*** **1962 Supp (2) SCR 812** (paragraphs 1-4).

19.2. It was contended that the affidavits before the Commission were not evidence and could not have been relied upon. The Commission did not properly determine as to which affidavits were forged or fabricated and limited itself to a *prima facie* finding.

20. *Per contra*, Mr.Rohatgi appearing on behalf of the respondent no.5/E.K.Palaniswami contended that:

20.1. While exercising jurisdiction under paragraph 15 of the Symbols Order, though the Commission exercises quasi-judicial power, it is not a court. It is submitted that the same is a high constitutional authority. Therefore, the claim filed before it is only to be adjudicated with respect to the position on the day of decision and not of filing. As regards the contention of malice in law, Mr.Rohatgi submitted that the Commission being a high constitutional authority is presumed to have acted fairly and the decision may only be interfered when wrong principles of law are applied. Reliance was placed on ***Sadiq Ali* (Supra)** (paragraphs 16, 17 and 40); ***Mohinder Singh Gill* v. *The Chief Election Commissioner*, (1978) 1 SCC 405** [paragraphs 92(2) and 93]; ***CST* v. *Radhakrishan*, (1979) 2 SCC 249** (paragraph 14); ***A.C. Jose* v. *Sivan Pillai and Ors.*, (1984) 2 SCC 656** (paragraph 15); ***R.S.Dass* v. *Union of India*, 1986 Supp SCC 617** (paragraph 28); ***Bikas Chatterjee* v. *Union of India*, (2004) 7 SCC 634** (paragraph 10); and ***Accountant General* v. *S.Doraiswamy*, (1981) 4 SCC 93** (paragraph 10).

20.2. It was next contended that the present proceedings invoked the jurisdiction of this Court under Article 227 and accordingly, the proceedings are not akin to an appeal but limited in their scope to ensure that the tribunal has not exceeded its jurisdiction. Therefore, the enquiry is limited to gross violation of the principles of natural justice or application of wrong principles of law. Reliance was placed on ***Shalini Shyam Shetty* v. *Rajendra Shankar Patil*, (2010) 8 SCC 329** (paragraphs 26, 46 and 47). It is submitted that under Article 227, the courts should not interfere lightly with the decisions

of high constitutional authorities, especially where there are expert bodies.

20.3. Learned senior counsel submitted that paragraph 15 of the Symbols Order does not stipulate any procedure. The same is left for the Commission to decide. Mr.Rohatgi submitted while it would be ideal to have an election of the 1.5 crore primary members said that the Commission took into account their representatives. The legislature and organisational wings of the party fairly represent the wishes of the primary members. Our attention was also drawn to sample affidavits filed before the Commission in March and September, 2017 to show that the members had withdrawn their previous affidavits by giving proper reasons.

20.4. In response to the procedure adopted and the allegation of haste shown by the Commission, it was submitted that the Madras High Court had directed the timely disposal of the matter on 15.09.2017 and the Commission and thereafter, the Supreme Court had also directed expeditious disposal of the matter. Thus, the Commission had started hearing the matter on 06.10.2017, i.e. the very date of the order of the Supreme Court.

20.5. As to the relevant test to be applied, learned senior counsel submitted that the Commission had rightly applied the majority test and that the members of the general council represented the wishes of the primary members. Reliance was placed on ***Sadiq Ali*** **(Supra)** (paragraphs 3, 13, 16, 20, 21, 24, 28, 31 and 37). Even the case of the petitioner before the Commission was that the majority test should apply. Attention was also drawn to the reply filed by the respondent no.6 before the Commission wherein it had been admitted that the general council represents the wishes of the entire party.

20.6. It was contended that the Commission is an expert body and the holding of cross-examination would only be an empty formality and nothing more. It was finally submitted that none of the precedents of the Commission cited by the petitioners would be binding on the present court.

21. Mr.C.S.Vaidyanathan, learned senior counsel, appeared on behalf of the respondent no.3 and submitted as under:

21.1. Learned senior counsel argued on similar lines as Mr.Rohatgi and further submitted that under the Symbols Order, the Commission has to adjudicate in respect of the symbol and no other disputes. To counter the submission of the petitioner that the election of the general secretary is the basic structure of the constitution of the party, which was flouted, it was submitted that the faction of the petitioner has till date not held elections for the post of general secretary.

21.2. Mr.Vaidyanathan relied upon the decision in ***Samyukta Socialist Party* v. *Election Commission of India & Anr.*, (1967) 1 SCR 643** (paragraphs 3-5, 8, 9, 10 and 11) to show that even prior to the Symbols Order, the numerical strength was being taken into consideration. As regards the subsequent shift of majority, learned senior counsel submitted that even in ***Sadiq Ali* (Supra)**, the subsequent events were taken into account. Further it was submitted that the Commission is only to look into the numerical strength and cannot look into the constitution.

21.3. It was reiterated that the very purpose of vesting of power of adjudication of such disputes with such an high authority is to provide a guarantee that the power would not be misused, but would be exercised in a reasonable and fair manner. Reliance was placed

on ***Kanhiya Lal Omar*** **v.** ***R.K.Trivedi,*** **(1985) 4 SCC 628** (paragraphs 9, 10, 12 and 14).

21.4. Learned senior counsel submitted that the reliance of the petitioners on the judgment in ***All Party Hill Leaders' Conference*** **(Supra)** was misplaced as the case pertained to the death of a party. Even in ***Arjun Singh*** **(Supra)** (paragraphs 15, 21 and 22), the majority view accepted the test of majority.

21.5. It was next submitted that the opposite faction is claiming the symbol despite the fact that the respondent no.6 is herself disqualified to contest in elections. Even the petitioner, who was removed by Dr.Jayalalithaa, has now been made the deputy general secretary. Reliance was placed on ***K.Prabhakaran*** **v.** ***P.Jayarajan,*** **(2005) 1 SCC 754** (paragraph 54).

21.6. It was submitted that the Commission had granted full opportunity of hearing and come to a factual finding that the faction of the respondents no.2 to 4 enjoyed the majority. In the present proceedings under Article 226, this court cannot not look into factual contentions. To this end, Mr.Vaidyanathan relied upon ***T.C.Basappa*** **v.** ***T.Nagappa,*** **(1955) 1 SCR 250** (paragraphs 11 and 24); ***Hari Vishnu Kamath*** **v.** ***Syed Ahmad Ishaque,*** **(1955) 1 SCR 1104** (paragraph 21); ***Nagendra Nath Bora*** **v.** ***The Commissioner of Hills Division and Appeals,*** **1958 SCR 1240** (paragraphs 35-38); and ***Satyanarayan Laxminarayan Hegde*** **v.** ***Millikarjun Bhavanappa Tirumale,*** **(1960) 1 SCR 890** (paragraph 17).

22. Mr.K.V.Vishwanathan, learned senior counsel, appeared for the respondent no.4 and submitted as under:

22.1. In response to the contention that the Commission ought to have dismissed the petition at a preliminary stage, it was submitted that

the Commission exercises jurisdiction upon being satisfied that two rival sections of a recognised political party claim to be that party and in the present case, the Commission had vide its order dated 22.03.2017 held that the matter required determination in terms of paragraph 15 of the Symbols Order. Mr.Vishwanathan contends that this order has not been assailed before this Court.

22.2. Learned senior counsel submitted that the Commission being an expert body, is the best judge of the test to be applied. Placing reliance upon ***Union of India*** **v.** ***Shah Goverdhan L. Kabra Teachers' College,*** **(2002) 8 SCC 228** (paragraph 11) and ***Sitaram Sugar Co. Ltd.*** **v.** ***Union of India,*** **(1990) 3 SCC 223** (paragraph 49), it was contended that the courts should defer such decisions to expert bodies.

22.3. According to Mr.Vishwanathan, the Commission has correctly applied the majority test. It was submitted that the respondent no.6 had herself in her replies before the Commission admitted the applicability of the majority test. Reliance was again placed on ***Sadiq Ali*** **(Supra)** (paragraphs 14 and 31). As regards the issues relating to the amendment of the party constitution, it was submitted that the same are pending before the Madras High Court in CS 858/2017.

22.4. It was further contended that the Commission had rightly applied the majority test to the legislative and organisational wings of the party. Again attention was drawn to the replies of the faction before the Commission where they had themselves sought the test to the applicable to the legislative and organisational wings. In was next contended that the opposite faction was, in fact, seeking a referendum, the practical difficulties of which have been highlighted

in ***Sadiq Ali*** **(Supra)** (paragraph 28). Learned senior counsel submitted that subsequent events could have been taken into account by the Commission. Reliance was placed on ***Amarjit Singh*** **v.** ***Smt.Khatoon Quamarain,*** **(1986) 4 SCC 736** (paragraphs 11-12); ***Jai Mangal Oraon*** **v.** ***Meera Nayak,*** **(2000) 5 SCC 141** (paragraph 12); and ***PRP Exports*** **v.** ***Chief Secretary, Govt. of Tamil Nadu,*** **(2014) 13 SCC 692** (paragraph 8).

22.5. In response to the submission that when the election petition was filed without material particulars, it was submitted that the requirement is only applicable in an election petition filed before the High Court under Section 80 read with 80-A, 81 and 83 of the Representation of Peoples Act, 1951 and not to the Symbols Order. Mr.Vishwanathan contended that, in any case, there were sufficient pleadings in the petition filed before the Commission.

22.6. Learned senior counsel contended that the request seeking cross-examination is also misplaced as no application was ever filed before the Commission with a specific prayer in this regard. It was also submitted that the subsequent affidavits were not 'affidavits of retraction' as they clearly spelt out the circumstances in which the earlier affidavits were tendered. Reliance was placed on ***Nagubai Ammal*** **v.** ***B.Shama Rao,*** **AIR 1956 SC 593** (paragraph 16). Relying upon ***Jagjit Singh*** **v.** ***State of Haryana,*** **(2006) 11 SCC 1** (paragraph 26); ***State of J&K*** **v.** ***Bakshi Gulam Mohd.,*** **1966 Supp SCR 401** (paragraph 20); and ***Hira Nath Mishra*** **v.** ***Principal, Rajendra Medical College,*** **(1973) 1 SCC 805** (paragraphs 12-13), it was submitted that the denial of cross-examination does not automatically entail violation of principles of natural justice. Learned senior counsel also submitted that the allegations of forgery

and fabrication and force and coercion were vague and mutually inconsistent.

22.7. It was finally contended that the applications under Section 195 of CrPC were not maintainable as the essentials of Sections 177 and 181 of the Indian Penal Code were not fulfilled. Further the bar under clause (b) of sub-section (1) of section 195 was not attracted as the Commission does not constitute a 'court' in terms of the provision. Similarly, section 195(1)(b)(2) is also only applicable when the offence is committed in *custodia legis*. It was also contended that the court is not bound to make a complaint unless the same is expedient in the interests of justice. Reliance was placed on ***Iqbal Singh Marwah* v. *Meenakshi Marwah*, (2005) 4 SCC 370** (paragraphs 10, 25, 28 and 33-34); ***K.Vengadachalam* v. *K.C.Palanisamy*, (2005) 7 SCC 352** (paragraph 3); and ***Kishorbhai Gandubhai Pethani* v. *State of Gujarat*, (2014) 13 SCC 539** (paragraphs 10 and 12-15). Even otherwise, any such inquiry would have bogged the Commission down into a quagmire.

23. Learned senior counsel for the respondent no.2, further supplemented the submission by contending that the majority test has been correctly relied upon and applied upon the legislative and organisational wings of the party. Reliance was placed on the order of the Commission in Dispute Case 1/2017 titled ***In re: Samajwadi Party***. Mr.Guru Krishna Kumar also contended that the Commission had never recognised the claim of the respondent no.6.

24. In rejoinder arguments, Dr.Singhvi primarily repeated his contentions and submitted that no clear response is forthcoming from the opposite faction regarding the constitution test and the only explanation is that the rank and file is with them. Attention was

drawn to paragraph 15 of the Symbols Order to highlight that the same referred to "*that party*" and it was submitted that before adjudicating any dispute under the said provision, the Commission ought to be satisfied that both the factions were "*that party.*" The respondents had by abolishing the post of General Secretary had changed the party beyond recognition and could not continue to claim to be "*that party*." Mr.Sibal drew our attention to the provisions of the Representation of the People Act, 1951, more particularly Section 29-A, to contend that any change in the office bearers of a registered political party had to be communicated to the Commission. The Commission had recognised the claim of the respondent no.6 and thus, the respondents no.2 to 4 had no *locus* to approach the Commission. It was submitted that the Commission failed to appreciate that the respondents no.2 to 4 could not represent the party in the absence of the General Secretary. Mr.Sibal also drew our attention to paragraph 9.5 of the petition filed before the Commission to show that the respondents had admitted that the appointment of General Secretary by the primary members of the party was the basic structure of the party and the amendment of which will render the party an entirely new being. It was submitted that Prayer d) before the Commission seeking holding of fresh party elections for the post of General Secretary and thus, the respondents were seeking exhaustion of the internal mechanism. Placing reliance on ***In re: Naga People's Front*** **(Supra)** and ***In re: Save Goa Front*** **(Supra)**, it was reiterated that the Commission ought not to have entertained the petition.

25. Ms.Arora reiterated her arguments and submitted that the Commission failed to notice Section 182 of the Indian Penal Code.

She further submitted that the decision of the Commission would encourage parties to file false affidavits in judicial proceedings.

26. After conclusion of arguments and reserving of matter for orders, all parties sought time to file written submissions. In the written submissions, the contentions were reiterated. It was submitted on behalf of the petitioner that the issuance of the notice dated 28.08.2017 defied Rule 19 of the constitution as a 15 days' notice was not given. A distinction was sought to be drawn between the decision in ***Sadiq Ali*** **(Supra)** with the facts of the present case. It was submitted that in ***Sadiq Ali*** **(Supra)** there was no change in the stand of persons. The decision in ***Sadiq Ali*** **(Supra)** related to a split of the Congress party where the volume of members was much more than in the present scenario where there are about 1.5 crore members. The constitution of Congress party did not confer primacy on one person or the election of such a person from the primary members. It was finally contended that the taking into account the subsequent events was not in accordance with ***Sadiq Ali*** **(Supra)**. On behalf of the respondent no.6, it was contended that the Commission despite noticing subsequent events failed to take into account the impact of the resolutions passed in the meeting of 12.09.2017. It was contended that the Supreme Court in its judgment dated 07.02.2019 had found force in the submissions of the petitioner and respondent no.6. On behalf of the petitioners in W.P.(C) 10733/2017, it was submitted that the Commission was a 'Court' under Section 195(1)(b) as having been vested with quasi-judicial powers.

27. The respondents no.2 to 5 handed consolidated written submission wherein they reiterated their arguments and further submitted that the Commission had no jurisdiction to adjudicate upon the amendment

of the constitution of the party. The issue regarding the same is pending before the Madras High Court in CS 858/2017. In response to the applicability of the 'basic structure' doctrine, it was submitted that the rules and regulations of AIADMK cannot be termed as a constitution and could not be equated with the Constitution of India. It was also contended that there is an intrinsic contradiction between the position taken by the petitioner as the respondent no.6 has not been elected by the primary members, but by the General Council. In respect to the tests in ***Sadiq Ali*** **(Supra)**, it was submitted that the Supreme Court has merely recorded the three tests, it had not approved the same. On the contrary, it had only accepted the majority test. In response to W.P.(C) 10733/2017, it was submitted that the affidavits were filed along with identification documents and were duly notarized. The petitioners in W.P.(C) 10733/2017 had also failed to approach any other authority regarding the threats, undue influence and forgery.

28. We have heard the learned senior counsel for the parties and examined the record before us. We refer to the petitioner and the respondent no.6 collectively as 'petitioners' and the respondents no.2 to 4 as the 'respondents'.

29. As the learned senior counsel have led varied arguments, we deem it appropriate to concretise the issues before us *in seriatim* below:

(i) Whether the Commission ought to have dismissed the petition at a preliminary stage?

(ii) Whether the Commission applied the relevant and germane tests to the dispute?

(iii) Whether the Commission erred in applying the majority tests in the legislative and organisational wings of the party?

(iv) Whether subsequent events could have been noticed while applying the tests?

(v) Whether the procedure adopted by the Commission amounted to malice in law?

(vi) Whether the order of the Commission is vitiated due to violation of the principles of natural justice?

(vii) Whether the Commission erred in rejecting the applications under section 195 of the Code of Criminal Procedure?

30. We have not deemed it appropriate to look into the expulsions and counter expulsion of the parties by the opposite faction as it is beyond the scope of paragraph 15 of the Symbols Order [See ***Sadiq Ali*** **(Supra)** (paragraph 21)]. We also do not find force in the contention that the Supreme Court has by its judgment dated 07.02.2019 found force in the submissions of the petitioners before us. The issue before the Supreme Court and also before the Single Judge being whether a splinter group having lost before the Commission ought to be first compelled to first register itself as a political party and then seek a reserved symbol from the Commission (See paragraph 44 of the order dated 09.03.2018 of Single Judge and paragraph 13 of the judgment dated 07.02.2019 of the Supreme Court). It was clearly only an interim arrangement during the pendency of the present petitions and cannot be said to be a final finding.

31. Accordingly, we proceed to deal with the issues under separate heads below.

Issue (i): Dismissal in limine

32. The petitioners have sought to impress upon us that when the petition was filed before the Commission, the same was silent of material particulars as well as shorn of supporting documents and on this count, the petition ought to have been dismissed at a preliminary stage. As far as the contention relating to material facts is concerned, we find the same to be premised upon a misconception of law. It is settled law that all material facts, which constitute the cause of action have to be pleaded. Material particulars are not required to be pleaded. An exception to this rule is contained in section 83 of the Representations of the People Act, 1951 prescribing "*full particulars*". However, the rigorous mandate of the provision is not applicable to petitions under paragraph 15 of the Symbols Order. Under the Symbols Order, there is no provision prescribing the need to plead material particulars.

33. Be that as it may, we gone through the petition filed before the Commission and it is clear to us that the same cannot be said to be devoid of material facts. Paragraph 7 gives detailed factual account from the founding of the party till the filing of the petition. The grounds are given in paragraph 9 and include the subversion of the rules, the usurping of the control party by the petitioners and the support of the rank and file of the party supported the cause of the respondents. None of the judgments relied upon by the learned senior counsel for the petitioners come to their aid. Both ***Ram Sukh* (Supra)** and ***Virender Nath Gautam* (Supra)** turned on Section 83.

34. The petition also states that the affidavits showing support of the respondents had been sworn by members of the party and the same could not be produced due to paucity of time (paragraph 9.13). It

must be kept in mind that the petition was filed in utter haste owing to the upcoming bye-elections. The respondents then moved an application dated 20.03.2017 and produced the affidavits in support. By the time the matter was first listed on 22.03.2017, the affidavits in support of the respondents were already before the Commission. Thus, it cannot be said that when the matter was first listed before the Commission, there were no documents on record. The communication bearing No.56/Dispute/4/2017/PPS-II/695 in respect of Janata Dal (United) dated 12.09.2017 and decision in ***Shri Chhotubhai Amarsang Vasava*** **(Supra)** cannot be relied upon as therein the petitioner had not collected evidence to buttress his claim and the application was not even signed. This is not the case before us. Even otherwise, we do not think much turns on the same as the respondents would be allowed to file a fresh petition with requisite documents.

35. It was also contended that the Commission ought to have directed the petitioners before it (respondents no.2 to 4) to exhaust the internal mechanism of the constitution providing for such disputes. In this regard, reliance was placed on the order of the Commission ***In re: Naga People's Front*** **(Supra)**. In the said case, the Commission held that where the constitution of the party provides for an internal dispute mechanism in case of splits, the same should be exhausted before approaching the Commission under paragraph 15. The relevant clause therein read as under:

> "*ARTICLE XV:*
> *Split or Merger*
> *ln case of any dispute arising in the Party following a Split or Merger with any other party, 2/3rd (twothird) majority of*

the Active Members present and voting in the General Convention of the Central Office shall determine the issue.
Provided that proper notice for the General Convention, making specific mention of the issue at hand, has been sent out for information of all Active Members of the Party and such a notice has been published in at least one local newspaper at least 30 (thirty) days in advance.
Provided further that Active Members seeking to vote at such a General Convention have all been enrolled as such members before the dispute has been originated."

36. We find no analogous provision in the constitution of AIADMK. What was sought to be impressed upon us was that the prayer of the respondents before the Commission seeking the holding of fresh party elections for the post of General Secretary to be a request to exhaust the internal party mechanism. We do not find force in the argument. Firstly, as the provision in ***In re: Naga People's Front*** **(Supra)** dealt with a specific scenario of splits in the party, which is not so for the constitution of AIADMK and secondly, the other reliefs sought cannot be ignored altogether. Prayers a) and c) (reproduced by us in paragraph 11) categorically dealt with the allotment of symbol "Two Leaves". Thus, the decision is inapplicable.

37. Thus, the contention must be rejected.

Issues (ii), (iii) and (iv): Germane and Relevant Tests

38. It cannot be gainsaid that in a parliamentary democracy like India, with a large number of illiterate electors, election symbols play a crucial role and have become the identifying beacons of the parties they are associated with [See ***Samyukta Socialist Party*** **(Supra)** (paragraphs 4 and 11) and ***Sadiq Ali*** **(Supra)** (paragraph 21)]. To this end, the Commission, having been given the constitutional

mandate to regulate elections, has also been vested with the power to adjudicate disputes between two rival factions under paragraph 15, which reads as under:

> "***15. Power of Commission in relation to splinter groups or rival sections of a recognised political party.—*** *When the Commission is satisfied on information in its possession that there are rival sections or groups of a recognised political party each of whom claims to be that party the Commission may, after taking into account all the available facts and circumstances of the case and hearing such representatives of the sections or groups and other persons as desire to be heard decide that one such rival section or group or none of such rival sections or groups is that recognised political party and the decision of the Commission shall be binding on all such rival sections or groups.*"
>
> (Emphasis Supplied)

39. The provision nowhere states the parameters to be applied by the Commission. It merely states that the Commission has to take into account "*all the available facts and circumstances of the case.*" As to what are the facts and circumstances to be taken into consideration is left to the discretion of the Commission.

40. The learned senior counsel for some of the respondents had tried to impress upon us that pursuant to the decision in ***Sadiq Ali*** **(Supra)**, the Commission is to apply the test of majority to all disputes under paragraph 15. Undoubtedly, the Supreme Court has held that the "*test of majority and numerical strength in our opinion, was a very valuable and relevant test*", however, it cannot be read as declaring the test of majority to be the only test to be applied. The Supreme Court had analysed the structure of the party to ascertain the relevant and germane test. The test of majority was found to be relevant as the party had a democratic set-up. We may also note that in the said

judgment, the Commission had found the 'aims and objects as incorporated in the constitution' test and the 'test based on the provisions of the constitution' to be neutral. The relevant portion reads as under:

> "*13. ...The Commission on March 7, 1970 framed and settled the following four points for discussion:—*
>
> *"...*
>
> *4. Whether, on the facts and circumstances available to the Election Commission, any of the alleged rival sections of the said Indian National Congress is that Congress for the purposes of the Election Symbols (Reservation and Allotment) Order, 1968; if so, which is that rival section or, whether on the facts and circumstances referred to above, none of the rival sections of the said Indian National Congress is that Congress?"*
>
> *14. ... As regards Point 4, the Commission observed that the majority test was a valuable and relevant test in a democratic organisation. The test based upon the provisions of the Constitution of the Congress canvassed on behalf of the Congress 'O' was held to be hardly of any assistance in view of the removals from membership and expulsions from the Committees of the Congress of the members belonging to one group by those belonging to the opposite group. Reference was also made in this context to the rejection of the requisition sent by some members of Congress 'J' for convening a meeting of the All-India Congress Committee. The Commission then considered another test, namely, that based upon the aims and objects as incorporated in the constitution of the Congress. It was observed that none of the two groups had challenged in any manner or openly repudiated those aims and objects. The test based upon the aims and objects was consequently held to be ineffective and neutral. Applying the test of majority, the Commission observed that Congress 'J' had the majority out of the total number of members returned on Congress tickets to the Houses of Parliament as well as the majority out of the sum total of the members of all the Legislatures returned on*

Congress tickets although in some States, like Gujarat and Mysore, Congress 'O' had majority in the Legislatures. As regards the organisational wing of the Congress, the Commission are to the conclusion that Congress 'J' enjoyed majority in the All-India Congress Committee as well as amongst the delegates of the undivided Congress. Decision was accordingly given that for the purpose of para 15 of the Symbols Order, Congress 'J' was the Congress for which the symbol "Two Bullocks with Yoke on" had been reserved."

(Emphasis Supplied)

41. At the same time, it cannot be ignored that the Supreme Court had merely recorded the tests applied by the Commission and had not approved the same. Be that as it may, the judgment cannot be read as limiting all cases under paragraph 15 to be decided on the test of majority. Accordingly, we are unable to agree with the proposition that after ***Sadiq Ali*** **(Supra)** the test of majority is the sole test in all disputes. We proceed to analyse the other orders and judgments relied before us.

42. Mr.Vaidyanathan had relied upon the decision in ***Samyukta Socialist Party*** **(Supra)**, but the same cannot come to his aid. In the case, two parties had merged and the symbol of one of the parties was allotted to the new entity. The parties subsequently separated and the issue arose as to whether the symbol could be reverted back from the new entity. Similarly, the decision in ***Ramashankar Kaushik*** **(Supra)** pertained to a merger of two parties to form Socialist Party and then some dissidents reneging on the merger. The case was under paragraph 16 of the Symbols Order and does not have a bearing on the present *lis*.

43. The Commission had rendered a split order in the case of ***Arjun Singh*** **(Supra)**. The case pertained to a split in the Indian National

Congress, with one of the groups alleging the violation of the constitution by the other and claiming itself to be the legitimate successor entity. In the majority opinion, the Commission relied upon ***Sadiq Ali*** **(Supra)** and held that the test of majority was the only criteria to be taken into account. Be that as it may, it proceeded to decide that both organisations were equally guilty of the violation of the constitution and being so, the petitioner was estopped from alleging to the contrary (see paragraphs 27 and 28). This was in stark contrast to the minority opinion of the then Chief Election Commissioner, who held that the majority test cannot be the sole and decisive test to be applied. He observed that any party having repudiated its constitution could not be regarded as the party. He proceeded to hold that both the factions were guilty of not abiding with the provisions of the constitution and neither could claim to be the party. We are unable to subscribe to either of the extreme views. It must also be kept in mind that the case pertained to the same political party as in ***Sadiq Ali*** **(Supra)**.

44. In ***In re: Samajwadi Party*** **(Supra)**, it was also contended before the Commission that prior to the application of the majority test, the Commission had to first judge the relative claims of the rival sections of their functioning as per the provisions of the party constitution. Finding both parties guilty of not working in accordance with the Constitution, the Commission proceeded to adjudicate the matter applying the majority test. The relevant portion reads as under:

> "*27. Now, coming to the question as to what test has to be applied by the Commission or what parameters have to be kept in view by the Commission while deciding matters under para 15 of the Symbols Order, Shri Kapil Sibal, as mentioned above, has taken the stand that the Commission*

is required only to apply the test of majority or numerical strength of the rival groups or sections in the legislative and organizational wings of the party. Shri Mohan Parasaran has taken the contrary view that the Commission has first to judge the relative claims of the rival sections or groups on the touchstone of their functioning as per the provisions of the party constitution.

28. In the context of the above rival submissions and contentions of Shri Kapil Sibal and Shri Mohan Parasaran, it is relevant to take note of the Commission's order dated 11th January, 1971 in the matter of first split in the Indian National Congress which arose in 1969 after the promulgation of the Symbols Order in 1968. In that order, the Commission observed that the test based on the provisions of the constitution of the party was hardly of any assistance in view of the removals from membership and expulsions from the committees of the party of the members belonging to one group by those belonging to the opposition group. Here also, both the groups claim to have removed or expelled certain important leaders (including the Chief Minister of the State) by one group and counter removals and expulsions of important leaders (including the Uttar Pradesh State President of the party) by the other. On the basis of whatever little documentary evidence has been brought on record in the present proceedings by both the groups, it can hardly be said that either of the groups has been functioning in accordance with the party constitution in the matter of aforesaid expulsions and counter expulsions. For example, Section 30 of the constitution of Samajwadi Party provides that for the purpose of taking disciplinary action against any member for anti-party activity, a three member committee would be formed and it will be on the basis of the report of the three member disciplinary committee that the President will take decision. There is nothing on record to show that any such committee was constituted by either of the groups for taking any disciplinary action against the members and leaders who are said to be removed from their party posts or expelled from the party. It is also alleged that no meeting of the National Executive was held after the last National Convention of the party held on 8th - 10th October, 2014,

though Section 15(10) of the party constitution mandates that the National Executive will meet at least once in every two months. Further, Shri Mulayam Singh Yadav group claims that the resolutions passed at the so-called National Convention on 1st January, 2017, were annulled by the central parliamentary board of the party. However, it is observed that the function of the central parliamentary board, as per Section 20 of the party constitution, is to select party candidates for elections to parliament, state legislatures and other local bodies and authorities. It is not empowered to ratify the actions taken by the National President in other matters like disciplinary action taken by him. That is the function of the National Executive under Section 15 of the party constitution and not of the central parliamentary board, but National Executive has allegedly not met since 8th - 10th October, 2014. In view of the above, the insistence by Shri Mohan Parasaran that the Commission should decide the matter on the test of functionality of the rival groups on the touchstone of the party constitution is hardly of any assistance to him and the Commission cannot go into validity or otherwise of the removals and expulsions and counter removals and counter expulsions of members or leaders by one group or the other. For the same reasons, it is not necessary for the Commission to for into the question whether the convention held by Shri Akhilesh Yadav on l" January, 2017 at Lucknow was convened in accordance with the provisions of the party constitution or not, as here also, there are contentious issues relating to the interpretation and application of various provisions of the party constitution. Pertinent here to take note of the submission made by Shri Kapil Sibal that if a substantial number of members of the party feel disappointed with the functioning of the party managers and those managers obstruct the redressal of their grievances under the party constitution, the political functioning of the political party cannot be frustrated by their inaction or their failure to act in accordance with the party constitution. In any democratic institution, which the political parties are, the will of majority should prevail in the internal functioning of the party and if the majority will is suppressed or not allowed to have a proper expression, it

will amount to 'tyranny of the minority'. According to the submission of Shri Kapil Sibal, the holding of the convention on 1st January, 2017 was manifestation of expression of the majority will which was not being allowed to have its say by the National President. However, as observed above, the Commission would not like to go into the question of constitutionality or otherwise of the said convention dated 1st January, 2017.

29. Having thus come to the conclusion that the present dispute cannot be decided on the touchstone of the functioning of the rival groups as per the party constitution, the Commission has to necessarily apply the test of majority, i.e., numerical strength of the rival groups, both in the legislative and organizational wings of the party. ..."

(Emphasis Supplied)

45. That from the aforegoing decisions, it is clear that the Commission has been consistently applying the test of majority while adjudging disputes under paragraph 15 of the Symbols Order. At the same time, we do not agree with the contention of the respondents that the Supreme Court in ***Sadiq Ali*** **(Supra)** had declared the majority test to be the sole determinative test in such disputes. Paragraph 15 of the Symbols Order merely obligates the Commission to take "*all the available facts and circumstances of the case*" into consideration. The relevant and germane tests for a particular tests are left to its discretion.

46. In the present case, the Commission has applied the test of majority on the organisational and legislative wings of the party thereby repelling the contention of the petitioners to apply the constitution test and the aims and objectives test. Before us, the learned senior counsel for the petitioners have argued that the Commission was to test the claims of the rival factions first on the basis of their functioning as per the constitution and only then the test of majority

could have been applied. Dr.Singhvi has laboured to dissect the tests mentioned in ***Sadiq Ali* (Supra)** into three, i.e. (1) aims and objects test, (2) adherence to party constitution and (3) majority test. We are unable to accept the same. The other tests mentioned in ***Sadiq Ali* (Supra)** being "*the aims and objects as incorporated in the Constitution of the Congress*" and "*test based upon the provisions of the Constitution*" (See paragraph 14) were only recorded as having been applied by the Commission, but were not approved by the Supreme Court.

47. In case, the 'aims and objects as incorporated in the Constitution' test is applied, the same is ineffectual. The aims and objects of the party are given in rules 2 and 3. Rule 2 prescribes the policy of the party to be to (1) create equality among all classes and to establish a democratic socialist society; (2) to promote the language and culture of Dravidians and (3) to strive for more autonomy for the states. Rule 3 provides for the objects of the party as being to unify the diverse cultures, civilizations, traditions and languages of India; to obtain equal opportunities for development of political, economic and social environs among various states; and to strive for amendment of the Constitution of India to declare the regional languages as the official language of respective states and to provide for continuation of English as *lingua franca*. Neither of the groups has renounced the said objectives nor has it been so contended and thus, the test remains ineffectual.

48. On going through the rules and regulations of the party, it is clear that the party has a democratic set-up. Units at all levels provide for local elections to elect their office bearers. All power is derived directly or indirectly through elections from its primary members. In

such a scenario, the *ratio* of ***Sadiq Ali*** **(Supra)** is clearly applicable and the test of majority would be a relevant and germane test. Hence, we do not find any fault with the decision of the Commission to apply the majority test.

49. As far as the applicability of the adherence to the constitution is concerned, we have already held that such a test was never approved by the Supreme Court in ***Sadiq Ali*** **(Supra)**. Even otherwise, we do not find the same to be relevant to the present *lis* having regard to the structure of the party.

50. Even assuming the same to be applicable, we find the test to be ineffectual and neutral. The crux of the allegation of the petitioners is that the post of the General Secretary was the heart and soul of the party including his appointment by the primary members of the party. Much reliance was placed on rule 43, which reads as under:

> "*Rule-43: AMENDMENTS*
> *The General Council will have the powers to frame, amend or delete any of the Rules of the Party Constitution. But the Rule that the General Secretary should be elected only by the Primary members of the Party cannot be changed or amended since it forms the basic structure of the Party.*"
>
> (Emphasis Supplied)

51. Undoubtedly, the General Secretary is a very important position of the party. Under rule 20, the General Secretary is entrusted with the entire administration of the party. Sub-rule vi) empowers the General Secretary to convene executive and general council meetings, implement policies, conduct elections and bye-elections for the party, managing the finances, properties and the legal proceedings by the party. The General Secretary is further the final authority in all disciplinary proceedings against the party units or

office bearers. Under sub-rule xii) all authorisation forms to the Commission for the allotment of the party symbol to any candidate are to be under the signature of the General Secretary. The General Secretary may appoint additional office bearers at any constituent units of the party. Under rule 29, the board constituted for selecting candidates for elections is also constituted by the General Secretary. The General Secretary is also the final authority on election dispute amongst the constituent units. Rule 34 provides for the appeals of any office bearer removed after a no confidence motion to appeal to the General Secretary. The General Secretary is empowered to remove or suspend any primary members when immediate disciplinary action is necessary and also to drop such disciplinary proceedings (rule 35). The rule goes to the extent to declaring the decision of the General Secretary to be final and any approach to courts against his decision as being a ground of forfeiture of membership.

52. The respondents have amended the rules and regulations during their General Council meeting on 12.09.2017. The sum and substance of the amendment is the abolition of the post of General Secretary and declaration of Dr.J.Jayalalithaa as the eternal General Secretary of the party and the conferring of the powers of the General Secretary to the newly created posts of Coordinator and Joint-Coordinator to be elected by the General Council. Similarly, rule 43 has been amended to remove the portion (underlined hereinbefore) declaring the elections of the General Secretary by the primary members to be unamendable. The allegation of the petitioners is that the post of the General Secretary, or the new equivalent posts, are no longer elected by the primary members, but by the General Council. There is some

merit in the contention. The change in nomenclature of the posts may not amount to much, but the change of electors definitely disturbs the constitution of the party. At the same time, we find that the respondent no.6 was also elected by the petitioners at the meeting of the General Council on 29.12.2016 and till date, no elections have been conducted for the said post. Thus, the petitioners have also derogated from the very same clauses of the party constitution. The only explanation forthcoming is that the same was occasioned owing to emergent circumstances and was consistent with past practice. The contention that Dr.J. Jayalalitha was previously elected in a similar manner stands denied by the respondents no. 2 to 4. We find that rule 20 v) provides for such 'emergent' circumstance, with the office bearers appointed by the previous General Secretary to continue until the election of the new General Secretary. However, the same was not resorted to. Be that as it may, the appointment of the General Secretary by the General Council and continuance of such a General Secretary for more than 2 years would inevitably constitute a serious derogation of the rule, expressly declared to be the basic structure of the party. Accordingly, both side are to be held equally guilty of not adhering to the provisions of the constitution. We clarify that the said observation is only *prima facie* having already held the test to be inapplicable.

53. We also find merit in the contentions of the learned senior counsel for the respondent no.5 that the decision as to the test to be applied is best left to the discretion of the Commission being an expert body of the field [See ***Shah Goverdhan L. Kabra Teachers' College*** **(Supra)** (paragraph 11); and ***Sitaram Sugar Co. Ltd.*** **(Supra)** (paragraph 49)].

54. It was also contended that before the Commission that the parties had taken contradictory stands as the petitioners, who previously relied on the test of majority, now started contending the applicability of the test related to the provisions of the constitution. On the other hand, the respondents had initially alleged that the appointment of respondent no.6 as General Secretary had been in violation of the provisions of the constitution and thus, rendered the opposite faction a completely new entity. This contention was subsequently dropped. Be that as it may, it is settled law that there cannot be any *estoppel* against the law.

55. Hence, we hold that the majority test applied by the Commission was germane and relevant. The test of adherence to the party constitution and the aims and objectives test were not relevant; and even otherwise, neutral.

56. The next contention raised by the petitioners is that the Commission had erred in applying the majority test to the organisational and legislative wings of the party. According to them, the Commission ought to have applied the same to the primary members of the party. We find that the petitioners had before the Commission themselves alleged that the organisational and legislative wings best represented the wishes of the primary members and subsequently, changed their stand when the members of such wings changed their allegiance. The relevant portion of the reply of the respondent no.6 before the commission reads as under:

> "*9.3 …The General Council represents the wishes of the entire party primary members in as much as the Branch Secretary in each unit is elected by the party primary members and the Branch Secretary elects the Union Secretary and the Town Secretaries in villages and Towns*

respectively. It is further pertinent to mention that the General Council of members are elected from each district. It is therefore submitted that the General Council Meeting is a meeting comprising of members who are the representative of the entire primary members of the party and is not a decision of a chosen few. Under the Rules and Regulations of the party the General Council is the Supreme body of the party with all powers of the Kazhagam.

…

10. It is further submitted that even in cases relating to a split in a State registered recognised political party, that needs determination by the Commission under para 15 of the Symbols Order, the Hon'ble Commission has always decided such disputes in accordance with the test of majority approved by the Hon'ble Supreme Supreme Court in the case of Sadiq Ali and another Vs. Election Commission of India and others (1972) Vol 4 SCC 664. … The Commission guided by the aforementioned decision of the Apex Court has further applied the test of majority in any democratic institution, such as political parties, the will of majority should prevail in the interal functioning of the party. The Commission has therefore applied the test of majority by taking into account the numerical strengths of the rival groups, both in the Legislative and Organizational wings of the party. Applying the said time tested precedent to the facts of the present case it can be seen that majority of the AIADMK political party has backed and continues to back this Respondent."

57. Even while opposing the application of the petitioners (respondents herein) for producing additional documents, the respondent no.6 had pleaded as under:

"*3. …Therefore, the Petitioners ought to produce Affidavits only from the members of the organizational wing of the AIADMK party and from the members of the legislative wing of the party to prove their numerical strength as required by law as enunciated by the Hon'ble Supreme Court of India in the case of Sadiq Ali Vs. The Hon'ble Election Commission and another (reported in AIR 1972 SC*

187) and in terms of the recent decision of the Hon'ble Commission in the Samajwadi party case."

58. In view of the aforegoing stand taken by the petitioners, we do not think it lies in the mouth of the petitioners to now turn around and contend to the contrary. Even otherwise, the complete answer to the contention of the petitioners lies in the following observations in ***Sadiq Ali*** **(Supra)**:

"*28. It is no doubt true that the mass of Congress members are its primary members. There were obvious difficulties in ascertaining who were the primary members because there would in that event have been allegations of fictitious and bogus members and it would have been difficult for the Commission to go into those allegations and find the truth within a short span of time. The Commission in deciding that matter under para 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire. This apart, there was practical difficulty in ascertaining the wishes of those members. The Commission for this purpose could obviously be not expected to take referendum in all the towns and villages in the country in which there were the primary members of the Congress. It can, in our opinion, be legitimately considered that the members of AICC and the delegates reflected by and large the views of the primary members.*

29. It is urged by Mr Shanti Bhushan on behalf of the appellants that 11 members of the Congress Working Committee were with Congress 'O' while 10 members were with Congress 'J'. The matter, according to the learned counsel, should have been decided in accordance with the majority in the Working Committee. So far as this aspect is concerned, we find that as it is not always convenient to convene general session of the Congress or a meeting of the AICC, the Congress has its Working Committee which represents the Congress for administrative purposes and for taking decision on political and other matters. Some of the members of the Working Committee are elected by the AICC while others are nominated by the President. The Working Committee has not been shown to possess any power of

vetoing the decision of the AICC. On the contrary, major decisions taken by the Working Committee at the time of AICC meetings are placed before the AICC for ratification. In view of the fact that the wishes of the majority of the members of AICC as well as the delegates have been ascertained, we find it difficult to accede to the contention that the majority enjoyed by Congress 'O' against Congress 'J' in the Working Committee should carry so much weight as to outweigh the majority support obtained by Congress 'J' among delegates and the members of AICC. In any case, we find that as against the slender majority enjoyed by Congress 'O' in the Working Committee, Congress 'J' had substantial majority among the members of AICC and the delegates as well as the Congress members of two Houses of Parliament as also the sum total of members of the State Legislatures."

(Emphasis Supplied)

Thus, where the General Council is representative of the entire party, a referendum is neither called for nor preferable. In the written submissions, a distinction was sought to be drawn between ***Sadiq Ali* (Supra)** and the present case as there being fewer primary members of AIADMK. We are unable to appreciate the contention as even 1.5 crore members is not a small number and as held in ***Sadiq Ali* (Supra)**, the Commission is expected to act with a certain measure of promptitude.

59. The reliance placed on ***All India Hill Leaders' Conference* (Supra)** is misplaced as the decision pertained to the merger of a political party with another. In the said case, the merger of All India Hill Leaders' Conference with Indian National Congress was challenged as not having been ratified by the general membership (see paragraphs 36, 37, 48 and 50). If the merger was upheld, the same would have sounded a death note for the party and such an action, was held by the Supreme Court, to have been beyond the scope of

powers of the conference. Similarly, the decision in ***In re: Save Goa Front*** **(Supra)** pertains to the merger of the Save Goa Front with the Indian National Congress and has no bearing to a dispute under paragraph 15.

60. Reliance was also placed on the decision of the Commission in ***In re: Indian Congress (Socialist)*** **(Supra)** to contend that the test of majority ought to have been applied to the primary members. We are unable to agree with the same. The decision must be read in its peculiar facts. The party had been split into two factions, one led by S.C.Sinha and the other by K.P. Unnikrishnan, with both claiming to be Indian Congress (Socialist). While applying the test of majority, the Commission observed that the same could not be applied to the legislative and organisational wings of the party as the legislative wing comprised of only one member and thus, could not be said to be representative of the party. Further, there was no agreed list of members of the party at the various organisational levels and thus, the Commission could not apply the test on them. In such circumstances, the Commission held that the burden of proof was on the petitioner and having failed to discharge the same, dismissed the petition. This is not the case before us. The AIADMK is an active party with many members in its legislative and organization wings. Further, the Commission has applied the test on the admitted list of members on 05.12.2016, i.e. prior to the split in the party.

61. Hence, we find no infirmity in the decision of the Commission applying the test of majority to the organisational and legislative wings of the party.

62. The final bone of contention between the parties regarding the test to be applied pertains to the propriety of the decision of the

Commission to take into account the majority as on the date of its decision as opposed to the date of filing. We find no infirmity in the same. The Supreme Court has in ***Amarjit Singh*** **(Supra)** held that it would be open for the courts to "*take cautious cognizance of events and developments subsequent to the institution of the proceedings, provided rules of fairness to both the sides were scrupulously obeyed*" [also see ***Jai Mangal Oraon*** **(Supra)** (paragraph 12) and ***PRP Exports*** **(Supra)** (paragraph 8)]. We may also notice that in ***Sadiq Ali*** **(Supra)** (paragraph 24), though the Commission took cognizance of the dispute on 15.01.1970, the test of majority has been applied to the position on 22.01.1970 and in the latter half of 1970. In the impugned order before us, Commission has also noted that in case of a previous dispute pertaining to AIADMK itself, the Commission had applied the test as on the date of decision (see paragraph 51). Thus, there cannot be said to be any hard and fast rule that the *lis* has to be decided as on the date of its presentment and subsequent events have to be ignored.

63. While deciding the present dispute, the Commission was to apply the test of majority inasmuch as which of the two rival factions enjoyed the support of the rank and file of the party. In case there was any major shift in allegiances, it would be absurd not to take cognizance of the same. Majority support, by its nature, is a very fickle thing. In the present case, after the filing of the petition, the respondents no.2 to 4 reconciled with the respondent no.5 and called a general meeting of their united group on 12.09.2017. This led to the majority support in the legislative and organization wings of the party shifting in favour of the respondents. Having brought to the notice of the Commission, it was incumbent of the Commission to

take the same into account and no infirmity can be found in its decision on this count.

Issue (v): Malice in Law

64. The petitioners had next contended that the procedure adopted by the Commission amounted to malice in law. The contention is premised against the numerous extensions granted by the Commission, albeit to both the factions, to produce further documents. In our opinion, the argument is linked to issues (i) and (iv). Be that as it may, we proceed to decide it on merits.

65. According to the petitioners, the repeated opportunities granted by the Commission to the respondents to file additional documents was without any justifiable cause. To appreciate the contention, we deem it appropriate to detail the timeline of the proceedings in a tabular manner below:

Date	**Event**
16.03.2017	The petition was filed before the Commission specifically stating that the affidavits in support could not be filed due to paucity of time.
16.03.2017	On the very same date, the Commission addressed a letter to the petitioners directing them to file their reply by 20.03.2017
17.03.2017	The Commission accepted the request of the petitioners and granted extension of time to file reply till 5 PM on 21.03.2017
20.03.2017	The petitioners filed their reply before the Commission. The respondents filed an application seeking

Date	Event
	permission to file additional documents in the form of affidavits of support.
22.03.2017	The Commission passed an interim order wherein it acknowledged the existence of two separate factions of AIADMK and the need for determination under paragraph 15 of the Symbols Order. However, owing to the paucity of time, the Commission passed an interim order as stated in the paragraph 12 aforegoing. The Commission also considered the request of the respondents and granted time to both the factions to produce documents and affidavits by 17.04.2017.
13.04.2017 and 17.04.2017	Both parties requested the Commission to grant an extension of time to file documents and affidavits
20.04.2017	The Commission considering the submissions of both the factions granted time to submit documents till 16.06.2017
12.06.2017	The respondent no.5 filed an application seeking impleadment before the Commission claiming substantial interest in the affairs of the party and that several members of the organisational and legislative wings of the party had sworn affidavits in support of the group being led by the respondent no.5
June, 2017	Both factions filed several affidavits showing the support of the rank and file of the party.
28.08.2017	The respondent no.5 started supporting the claim of

Date	Event
	the respondents, the unified group called a meeting of the executive and general council of the party on 12.09.2017.
08.09.2017	One Mr.P.Vetrivel filed a suit before the Madras High Court, being CS 707/2017, claiming himself to be an MLA and member impugning the notice dated 28.08.2017 and further seeking an injunction against the calling of the meeting on 12.09.2017
11.09.2017	The interim application seeking restraint of the meeting was dismissed by a single judge of the Madras High Court On the very same day, an *intra* court appeal was preferred and the Division Bench made any decision at the meeting subject to the outcome of the suit.
12.09.2017	The meeting was held and the groups led by the respondents and the respondent no.5 united.
	A writ petition [WP (MD) 15818/2017] was filed before the Madurai Bench of Madras High Court seeking a direction to the Commission to conduct an election of the members of the party to ascertain the support enjoyed by the rival factions.
15.09.2017	The petition was disposed of by the Madras High Court directing the Commission to decide the petition on or before 31.10.2017. We may add that both the factions were represented before the court through their counsel. The relevant portions of the order are

Date	Event
	extracted below: "*12. The learned counsel for the petitioner, during the course of his submissions, made it clear that the petitioner in not pressing the relief of appointment of a former High Court Judge to oversee the process of counting the majority and it would suffice, in case direction is given for an early disposal of the proceedings.* *…* *14. We have heard the learned counsel for the petitioner, learned Senior Counsel appearing on behalf of the respondents 3 to 5, learned counsel for the respondents 6 and 7 and the learned counsel for the eighth respondent. We have also heard the learned Standing Counsel for Election Commission of India.* *15. The learned Standing Counsel, on instructions, submitted that the Election Commission is willing to take up the matter for final hearing and for an early disposal. According to the learned Standing Counsel, the parties have taken time for filing documents and that is the reason for the delay.* *…* *20. The Election Commission, by its order dated 20 April, 2017, extended time for production of affidavits and documents finally by 16 June, 2017. According to the learned Standing Counsel for Election Commission, even three months after the expiry of the deadline, the parties have not submitted their documents and they have been taking time.* *…* *24. In the subject case, the proceedings commenced on 16 March, 2017. It is true that the rival groups of AIADMK were responsible for the delay in the matter. However, that cannot be a reason for keeping the*

Date	Event
	proceedings indefinitely. The Election Commission must fix a deadline for completion of pleadings and production of documents for the purpose of taking up the matter for final disposal. *...* *27. The learned Standing Counsel for the Election Commission submitted that the Election Commission would dispose of the proceedings as expeditiously as possible, in case the parties extend their co-operation for such early disposal. We are, therefore, of the view that outer time should be fixed for disposal of the proceedings, so as to enable the Election Commission to direct the parties before it to submit their documents and affidavits within a stipulated period.* *28. We, therefore, issue a Writ in the nature of a Writ of Mandamus, directing the Election Commission of India to dispose of the proceedings in Dispute Case No.2 of 2017 on merits and as per law, after hearing all the parties to the dispute, as expeditiously as possible and in any case, on or before 31 October, 2017.*" (Emphasis Supplied)
21.09.2017	The Commission issued notice to the parties giving liberty to parties to make fresh submissions by 29.09.2017. The Commission further directed that affidavits would be limited to the legislative and organizational wings of the party. The parties were also directed to submit a list of members of the General Council and Central Executive Committee Members of the party as on 05.12.2016. The hearing was fixed on 05.10.2017.

Date	Event
26.09.2017	The petitioner/Dhinakaran objected to the granting of time of filing fresh documents alleging that the same amounted to enlarging the dispute and the matter should be decided on the documents already on record. It was also alleged that no time has been granted to rebut the documents and thus, the principles of natural justice were violated. Interestingly, the petitioner also stated that in case the same is allowed, the Commission should await the decision of the various legal proceedings pending between the parties.
28.09.2017	The Commission rejected the request of the petitioner stating that the same were required in view of ***Sadiq Ali*** **(Supra)** and the Commission was required to look into the position at the present stage. At the same time, the Commission acceded to the request to rebut the submissions/documents and allowed time till 04.10.2017 for the same.
29.09.2017	Both factions filed affidavits showing support of the majority with them.
03.10.2017	The petitioner sent a letter to the Commission stating that as affidavits of retraction had been filed, the Commission should allow leading of evidence and permit cross-examination.
05.10.2017	The petitioner filed an application before the Madras High Court seeking extension of time for the

Date	Event
	Commission to decide the matter. The said application was dismissed.
06.10.2018	The petitioner approached the Supreme Court, which clarified that the order of the Madras High Court was not mandatory and the Commission was to dispose the proceedings expeditiously and preferably by 10.11.2017. The relevant portion of the order has been extracted in paragraph 15 aforegoing.
	It is in these circumstances that the Commission proceeded to hear the parties and decided the matter by the order impugned before us.

66. The aforegoing facts would show that both the parties had repeatedly sought extension of time for producing documents and affidavits to show majority support in their favour. The bye-elections for the R.K.Nagar Assembly Constituency had been cancelled and accordingly, there no longer was any urgency in the matter. Thus, the Commission had acceded to the repeated requests to grant further extension made by both the factions. It was only because of the order passed by the Madurai Bench of the Madras High Court that the Commission undertook expeditiously hearing in the matter. While fixing the matter for hearing, the Commission directed the parties to file affidavits in terms of the *dicta* of ***Sadiq* Ali (Supra)**. We have already held that there was no infirmity in the Commission taking the subsequent events into consideration and thus, there cannot be any grievance with the Commission trying to ascertain the scenario on the date of the decision.

67. Mr.Sibal strenuously urged before us that the granting extensions despite final opportunity having been granted vide order dated 22.03.2017 clearly shows that the Commission was favouring the faction of the respondents. The order dated 20.04.2017 granting further time was passed at the instance of both the factions and today, the petitioners cannot be permitted to turn around and allege that the same was done to favour the respondents. The relevant portion of the order reads as under:

> "*4. The Commission's Notification 100/TN-LA/1/2017, dated 16th March 2017, calling upon the 11-Dr. Radhakrishnan Nagar assembly constituency to elect a member to the Tamil Nadu Legislative Assembly has been rescinded vide the Commission's order dated 9th April, 2017. The conduct of the bye election from 11 – Dr. Radhakrishnan Nagar assembly constituency is now likely to take some time.*
> *5. The respondents have vide their letter dated 13th April, 2017 sought further time of eight weeks from 17.04.2017 to file the documents and affidavits by which they propose to prove their numerical strength in the organizational wing of the party. The petitioners vide their letter dated 17th April, 2017 have also sought four weeks of additional time to file supporting affidavits.*
> *6. The Commission has considered the requests of both the groups and has decided to given extension of time to them for submitting of all such documents and affidavits on which they propose to rely on their respective claims till 16th June, 2017 (Friday).*"
>
> (Emphasis Supplied)

68. In such a scenario, it cannot be held that the Commission erred in granting further extension.

69. To constitute 'legal malice' or 'malice in law', something must be done without lawful excuse, i.e. without reasonable or probable cause. The act is done with an indirect or oblique motive. [See

***Kalabharati Advertising* v. *Hemant Vimalnath Narichania*, (2010) 9 SCC 437** (paragraphs 25-26) and ***Ravi Yashwant Bhoir* v. *District Collector, Raigad*, (2012) 4 SCC 407** (paragraphs 47-48)]. It has been described as incident or 'dimension' of fair play in action. [See ***Mahabir Auto Stores* v. *Indian Oil Corpn.*, (1990) 3 SCC 752** (paragraph 13) and ***RDS Projects Ltd.* v. *Ratangiri Gas And Power Pvt. Ltd.*, 2012 (1) ILR Del 490** (paragraphs 33-33.2)]. Simply put, it is the exercise of power for an ulterior motive targeted to prejudice someone. The initial urgency in the matter was occasioned owing to the upcoming bye-elections, which were subsequently cancelled, vitiating any urgency. In such circumstances, it was open to the Commission to grant extensions, which were granted at the request of both the factions. The fact that both the parties were guilty of delaying the matter was even noted by the Madras High Court. Thereafter, the Commission proceeded with speed owing to the direction of the Madras High Court in its order dated 15.09.2017. The same had to be ultimately clarified by the Supreme Court. However, the Supreme Court also directed expeditious disposal, if not time bound disposal. In such circumstances, the expediting the matter in view of the direction of the Madras High Court and subsequently the Supreme Court cannot be said to be targeted to detriment either of the parties.

70. We also find merit in the submission of Mr.Rohatgi that when power is vested in a very high authority, like the Commission before us, it can be presumed that the power is exercised fairly [See ***Sadiq Ali* (Supra)** (paragraph 40); ***Kanhiya Lal Omar* (Supra)** (paragraphs 9, 10 and 12); ***Mohinder Singh Gill* (Supra)** (paragraph 61); ***R.S.Dass* (Supra)** (paragraph 28); ***Bikas Chatterjee* (Supra)** (paragraph 10);

and ***S.Doraiswamy*** **(Supra)** (paragraph 10)]. The petitioners have failed to rebut the presumption.

71. Hence, we do not find that the Commission had unfavourably preferred one faction to the detriment of the other constituting 'malice in law'.

Issue (vi): Violation of Principles of Natural Justice

72. The contention of the petitioners in this regard is twofold: (1) the Commission ought to have allowed cross-examination of the persons filing affidavits; and (2) the verification of the affidavits should not have been carried at the back of the parties. The contention had been rejected by the Commission holding as under:

> "*43. Violation of Principles of Natural Justice: Connected with the above contention, the learned senior counsels for the respondents further contented that the denial of right of cross-examination of the deponents of the affidavits also amounted to violation of the principles of natural justice. They placed heavy reliance on the observations of the Supreme Court in a catena of its decisions in Union of India and Another Vs. Tulsiram Patel, etc., (1985) 3 SCC 398, Telstar Travels Pvt. Ltd. and Others Vs. Enforcement Directorate (2013) 9 SCC 549, Dharampal Satyapal Ltd. Vs. Deputy Commissioner of Central Excise, Gauhati and Others (2015) 8 SCC 519, etc. They contended that the principles of natural justice have to be followed even by tribunals and quasi-judicial authorities. Attention of the Commission was invited, in particular, to the following observation of the Constitution Bench of the Supreme Court in Union of India and Another Vs. Tulsiram Patel, etc.,(Supra)*
>
> > *'95. The principles of natural justice have thus come to be recognized as being a part of the guarantee contained in Article 14 because of the new and dynamic interpretation given by this Court to the concept of equality which is the subject-matter of that Article. Shortly put, the syllogism runs thus violation of a rule of natural justice results in*

arbitrariness which is the same as discrimination; where discrimination is the result of state action, it is a violation of Article 14: therefore, a violation of a principle of natural justice by a State action is a violation of Article 14. Article 14, however, is not the sole repository of the principles of natural justice. What it does is to guarantee that any law or State action violating them will be struck down. The principles of natural justice, however, apply not only to legislation and State action but also where any tribunal, authority or body men, not coming within the definition of "State" in Article 12, is charged with the duty of deciding a matter. In such a case, the principles of natural justice require that it must decide such matter fairly and impartially.'

They further submitted that the Constitution Bench of the Supreme Court has specifically observed in the case of Mohinder Singh Gill and Another Vs. Chief Election Commissioner AIR 1978 SC 851 that:

'91.(2) (b) Secondly, the Commission shall be responsible to the rule of law, act bonafide and be amenable to the norms of natural justice in so far as conformance to such canons can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order, viz. elections. '

In reply to the above contentions of the learned senior counsels for the respondents, the learned senior counsels for the petitioners submitted that the principles of natural justice are flexible and must not be put into a straitjacket. They further contented that refusal of the Commission to allow cross-examination of hundreds of deponents' who filed affidavits on behalf of the petitioners, would not amount to violation of the principles of natural justice, as the right to cross-examination is not always an indispensable concomitant of natural justice in all cases. They invited attention to the observations of the Supreme Court in the cases of State of Jammu and Kashmir and Ors. Vs. Bakshi Ghulam Mohd. and another AIR 1967 SC 122, Hiranath Mishra and Ors Vs. Principal Rajendra Medical College, Ranchi and Anr. (1973) 1 SCC 805, Jagjit Singh Vs. State of Haryana and Ors(2006) 11 SCC 1, Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Others

(2013) 4 SCC 465. Referring to the observations of the Supreme Court in the case of Telstar Travels (supra) on which the respondents have relied, they pointed out that the learned senior counsels for the respondents have only read out a portion of paragraph 25 of that judgment, whereas, the full paragraph 25 of that judgment of the Supreme Court reads as under:-

> *'25 That does not, however, mean that in a given situation, cross-examination may not be permitted to test the veracity of a deposition sought to be issued against a party against whom action is proposed to be taken. It is only when a deposition goes through the fire of cross-examination that a court or statutory authority may be able to determine and assess its probative value. Using a deposition that is not so tested, may therefore amount to using evidence, which the party concerned has had no opportunity to question. Such refusal may in turn amount to violation of the rule of a fair hearing and opportunity implicit in any adjudicatory process, affecting the right of the citizen. The question, however, is whether failure to permit the party to cross-examine has resulted in any prejudice so as to call for reversal of the orders and a de novo enquiry into the matter. The answer to that question would depend upon the facts and circumstances of each case. For instance, a similar plea raised in Surjeet Singh Chhabra v. Union of India before this Court did not cut much ice, as this Court felt that cross-examination of the witness would make no material difference in the facts and circumstances of that case..... At any rate, the disclosure of the documents to the appellants and the opportunity given to them to rebut and explain the same was a substantial compliance with the principles of natural justice. That being so, there was and could be no prejudice to the appellants nor was any demonstrated by the appellants before us or before the courts below. The third limb of the case of the appellants also in that view fails and is rejected. '*

44. The learned senior counsels for the petitioners submitted that the learned senior counsels for the respondents have not pointed out what prejudice would be caused to the respondents if the Commission does not go

into the exercise of the cross-examination of the deponents of the affidavits filed on behalf of the petitioners. They contended that mere allegation of a few applicants whom the respondents want to cross-examine, does not vitiate the huge mass of affidavits filed on behalf of the petitioners. Constitution Bench of the Supreme Court was quoted in Mohinder Singh Gill (Supra) to argue that the principles of natural justice have to be applied by the Commission:

> *'in so far as conformance to such canons can reasonably and realistically be required of it as fair play-in-action in a most important area of the constitutional order, viz, elections. '*

The Supreme Court also observed in that case that:

> *....the rule of audi alteram partem, which is in itself a fluid rule, cannot beplaced in a strait-jacketfor purposes of the instant case... '.*

The Commission agrees with the above submissions of the learned senior counsels for the petitioners on the application of the principles of natural justice in the instant case. As has been held by the Supreme Court in the case of Sadiq Ali (supra):

> *'The Commission in deciding that matter under paragraph 15 has to act with a certain measure of promptitude and it has to see that the inquiry does not get bogged down in a quagmire. '*

Any cross-examination of even a few of the deponents referred to above, I will undoubtedly lead the present enquiry into a quagmire. The cross examination of the said applicants will not be an end in itself; the petitioners may also then wish to lead evidence against the persons making allegations of coercion, intimation, allurements, inducements, etc. The result will be an interminable enquiry in contradiction of the Supreme Court's dictum in Sadiq Ali's case act with promptitude in such matters. The Commission has already held in preceding paragraphs above that the affidavits of hundreds of Members of Parliament, State Legislatures and General Council of the party cannot be ignored or discarded merely because of some allegations of the said seven applicants.

Therefore, the second preliminary issue raised by the learned senior counsels for the respondents, that the

Commission should not give credence to affidavits filed in support of the petitioners, without granting opportunity of cross examination to the respondents, in order to uphold principles of natural justice, does not merit acceptance and is accordingly hereby rejected."

(Emphasis Supplied)

73. The Commission observed that the allowing of cross-examination would inevitably bog down the enquiry into a quagmire and no prejudice would occur to the petitioner by denying their right to cross-examine. Though we find that it was not open to the Commission to itself hold that denying the right of cross-examination would not prejudice the petitioners [See ***Dharampal Satyapal Ltd.*** **(Supra)** (paragraph 42)], we are not inclined to interfere on this count. We agree with the reasoning of the Commission that while deciding a dispute under paragraph 15 it is expected to act with a certain degree of promptitude and ensure that the enquiry does not get bogged down in a quagmire [see ***Sadiq Ali*** **(Supra)** (paragraph 28)]. The Commission is allowed to follow such procedure which would achieve expeditious decision in the dispute.

74. What is being argued before us that the right of cross-examination is a necessary corollary of natural justice. We do not think so. The principles of natural justice are fluid and cannot be put in a straitjacket, which are to be judged in view of the nature of the enquiry and the attendant circumstances thereto. The proceedings before the Commission commenced in the month of March, 2017 and both side repeatedly filed affidavits and documents to show majority support in their favour. The petitioners never sought for an opportunity to lead evidence or cross-examine any witness. Even when the tables had turned and the Commission asked for fresh

affidavits on 21.09.2017, only the petitioners sought time for responding to such new material. This request was acceded to by the Commission and time was granted to file objections/rejoinder to the submissions and documents till 04.10.2017. The affidavits were filed on 29.09.2017. In was in such circumstances that the petitioners, on the very penultimate day, alleged that the affidavits were one of retraction and sought opportunity to cross-examine the deponents. It was also alleged that evidence was required to show that the affidavits were "*fabricated false documents and obtained under duress and undue influence*." Both the contentions do not impress us. The subsequent affidavits filed clearly state the circumstances in which the previous affidavits were filed and that they were being filed after the uniting of the factions of the respondents no.2 to 4 and the respondent no.5. They cannot be termed as affidavits of retraction. Even the second allegation is mutually destructive. A document cannot be 'fabricated' and obtained under duress and undue influence at the same time. This clearly shows that after the petitioners sat on the fence till the last moment and, even after their request for rebuttal was acceded, started taking frivolous pleas after learning that they had lost majority support. Under such circumstances, the denial of cross-examination would not *ipso facto* amount to a violation of the principles of natural justice [see ***Jagjit Singh*** **(Supra)** (paragraph 26)].

75. Even otherwise, the petitioners have failed to show as to how the rejection of opportunity to cross-examine has prejudiced their case. In ***Dharampal Satyapal Limited*** **(Supra)**, it was agitated before the Supreme Court that recovery proceedings could not be initiated without a proper show cause notice. Dr.A.K.Sikri, J., giving the

opinion for the bench, elaborately dealt with the facets of natural justice and held that where no prejudice is suffered, it would an empty formality to set-aside the order and remand the matter back to the tribunal (paragraphs 39-48). This was termed as the "*useless formality theory*" and is an exception to violation of principles of natural justice inasmuch as, even where courts find violation of principles of natural justice, they may refuse to interfere where such compliance would have been useless.

76. In the present case, owing to the allegations of discrepancies in the affidavits, the Commission had called officials from the office of the Chief Electoral Officer of Tamil Nadu and independently verified the affidavits. After doing so, the Commission tested the majority amongst the members of the General Council on 05.12.2016 (the date on which the party was united) and came to the following figures:

S.No.	*Faction*	*Number of Affidavits*	*Affidavits Rejected*	*Final tally of Supporters*
1.	Respondents	1867	126	1741
2.	Petitioners	174	16	145
	Total			**2128**

77. It has been alleged before us that, in fact, 325 affidavits in support of the respondents were fabricated. Even assuming the same to be true, the respondents would still enjoy a majority in the organizational wing of the party. As far as the legislative wing is concerned, the admitted figures showing the support of the rival factions was as under:

S.No.	*Name of House*	*Faction*	
		Respondents	*Petitioners*
1.	Lok Sabha	34	3
2.	Rajya Sabha	8	3

3.	MLAs (Tamil Nadu)	111	20*
4.	MLAs (Puducherry)	4	-
	Total	**157**	**26**

* includes 18 who stand disqualified.

78. The aforegoing figures show a clear majority enjoyed by the faction led by the respondents and even assuming the contentions of the petitioners to be true, would not be sufficient to affect the numbers in their favours. Thus, at this juncture, it would be useless to remand the matter back to the Commission. Accordingly, the contention must be rejected.

79. We clarify that we did not deem it necessary to decide whether the Commission in an appropriate case should allow leading of evidence or not. The issue would have to be decided in an appropriate case.

Issue (vii): Section 195 CrPC

80. The final issue pertains to the dismissal of the applications of the petitioners in W.P.(C) 10733/2017. Ms.Arora had contended that the Commission had erred in dismissing the applications of the petitioners seeking lodging of a complaint as per section 195 of CrPC.

81. The petitioners in W.P.(C) 10733/2017 had filed an application before the Commission under section 195(1) CrPC seeking the following relief:

> "*In view of the above, it is most humbly prayed before this Hon'ble Commission that this Hon'ble Commission may:*
> *a) Lodge a complaint as per section 195 of the Criminal Procedure Code, 1973 against the petitioner Thiru E. Madhusudhanan, Thiru O. Paneerselvam and Thiru S. Semmalai and impleading party Mr E K Palanisami; and*
> *b) Pass any other order(s) as this Hon'ble Commission deems fit in the facts and circumstances of the present case.*"

82. The Commission found that the provisions were not applicable and dismissed the application filed by the petitioners. The relevant portion of the order is extract below:

> "*54. ...*
> *Section 195 of the Criminal Procedure Code states that no court shall take cognizance of any offence punishable under section 172 to 188 of the Indian Penal Code(hereinafter, "IPC") except on the complaint in writing of the public servant concerned. It further says that no court shall take cognizance of offences punishable under sections 193 to 196, 199, 200, 205 to 211 and 22, except on the complaint in writing of that Court or officer of that court, when such offence is alleged to have been committed in relation to any proceeding in any court. Similarly, offences described in section 463 or punishable under section 471, 475, 476 of the IPC, when such offence is alleged to have been committed in respect of a document produced or given in evidence in a proceeding in any court, shall not be taken cognizance of, except on the written complaint of that court or any officer of the court.*
> *The Commission is not convinced with the submissions of the counsel for the Complainants. An offence under section 177 is not made out, since there is no legal obligation here, to furnish information on affidavit to the Commission, on any subject. Section 43 of the IPC makes it clear that a ' person is "legally bound to do" anything which it is illegal in him to omit. There is no illegality that arises from non-furnishing of affidavits of support to the Commission. Reliance on section 181 is also misplaced since the Petitioners and Impleading Applicant are not legally bound by an oath or affirmation to state the truth on any subject to the Commission. Furthermore, ' the bar to cognizance of offences under section 193 to 196, contained in section 195(1)(b)(i) applies in relation to offences alleged to have been committed in relation any proceeding in a court, and the bar to cognizance in 195(1)(b)(ii), applies to offences committed in respect of a document produced or given in evidence in a proceeding in any court. The term 'court' is defined by section 195(3) for the purpose of section*

195(b)(i) as a civil revenue or criminal court and includes a tribunal constituted by or under Central, provincial or state act, if declared by that Act to be a court for the purposes of the instant section. It is clear that Symbols Order Para 15 proceedings before the Commission are not "proceedings in a court". The decision in Iqbal Singh Marwah v. Meenakshi Marwah, does not assist the case of Shri Mathur as it holds that the bar in s. 195(1)(b)(ii) is attracted only when offences enumerated in that section have been committed with respect to a document after it has been produced or given in evidence in a proceeding in any court, or in other words when it is in the custody of that court. Furthermore, it was held that the offence referred to in s. 195(1)(b) was to be made by the court concerned only if it was expedient in the interests of justice, and not in every case. Therefore, the applications under reference moved by Shri Mathur are hereby rejected."

(Emphasis Supplied)

83. We agree with the reasoning adopted by the Commission. We do not find the provisions invoked to be applicable to the proceedings before the Commission. We may also add that the Supreme Court in ***Iqbal Singh Marwah*** **(Supra)** (paragraph 23) has held that the court may refuse to make a complaint in case it is not expedient in the interest of justice. The relevant paragraph reads as under:

"*23. In view of the language used in Section 340 CrPC the court is not bound to make a complaint regarding commission of an offence referred to in Section 195(1)(b), as the section is conditioned by the words "court is of opinion that it is expedient in the interests of justice". This shows that such a course will be adopted only if the interest of justice requires and not in every case. Before filing of the complaint, the court may hold a preliminary enquiry and record a finding to the effect that it is expedient in the interests of justice that enquiry should be made into any of the offences referred to in Section 195(1)(b). This expediency will normally be judged by the court by weighing not the magnitude of injury suffered by the person*

affected by such forgery or forged document, but having regard to the effect or impact, such commission of offence has upon administration of justice. It is possible that such forged document or forgery may cause a very serious or substantial injury to a person in the sense that it may deprive him of a very valuable property or status or the like, but such document may be just a piece of evidence produced or given in evidence in court, where voluminous evidence may have been adduced and the effect of such piece of evidence on the broad concept of administration of justice may be minimal. In such circumstances, the court may not consider it expedient in the interest of justice to make a complaint. ..."

(Emphasis Supplied)

84. Applying the aforegoing principles to the present case, we find that the effect of the affidavits was, at best, minimal to the decision of the Commission. From the figures given by us in paragraph 76 and 77, it is clear that the filing of 10 false affidavits would not have affected the final outcome or administration of justice.

85. Hence, we do not find any infirmity on this count as well.

86. Consequently, none of the grounds urged by the petitioners are made out. We find no infirmity in the order of the Commission warranting interference by this Court. All petitions are, accordingly, dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

FEBRUARY 28th, 2019
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