



भारत निर्वाचन आयोग
Election Commission of India

BEFORE THE ELECTION COMMISSION OF INDIA

निर्वाचन सदन
NIRVACHAN SADAN

अशोक रोड, नई दिल्ली - 110 001
ASHOKA ROAD, NEW DELHI - 110 001

CORAM:

HON'BLE SHRI SUNIL ARORA
ELECTION COMMISSIONER

HON'BLE SHRI A.K. JOTI
CHIEF ELECTION COMMISSIONER

HON'BLE SHRI O.P. RAWAT
ELECTION COMMISSIONER

Dispute Case No.2 of 2017

In re: Dispute Case No. 2 of 2017 - Dispute in All India Anna Dravida Munnetra Kazhagam – application under paragraph 15 of the Election Symbols (Reservation & Allotment) Order, 1968.

Shri E. Madhusudhanan and two others Petitioners


Vs.

Smt. V.K. Sasikala and another Respondents

Present:-

1. Shri C.S. Vaidyanathan, Senior Advocate
2. Shri S. Guru Krishna Kumar, Senior Advocate
3. Shri K.V. Vishwanathan, Senior Advocate
4. Shri P. H. Manoj Pandian, Senior Advocate
5. Shri K. Venkatramani, Sr. Advocate
6. Shri Balaji Srinivasan, Advocate
7. Ms. Vaishnavi Subrahmanyam, Advocate
8. Ms. Shrishti Govil, Advocate
9. Shri R. Bala Ramesh, Advocate
10. Shri Kasi Rajan, Advocate
11. Shri Harish V. Shanker, Advocate
12. Shri K.T. Devandran, Advocate
13. Shri Tickraj, Advocate
14. Shri R.V. Babu, Advocate
15. Shri P. Mohanrangan, Advocate
16. Shri C. Thirumaran, Advocate
17. Shri G. Prakash Kumar, Advocate

1

C.T.C

प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

Tel : 011-23052205-18 Fax: 011-23052223-25, Website : www.eci.nic.in

“मजबूत लोकतंत्र - सबकी भागीदारी”

Greater participation for a stronger democracy

18. Shri K. Thyagarajan, Advocate
19. Shri R.M. Babu Murugavel, Advocate
20. Shri Ram Shankar, Advocate
21. Shri A.T. Nagendran, Advocate
22. Shri S. Diwakar, Advocate
23. Shri P.V. Selvakumar, Advocate
24. Shri E. Neelakandan, Advocate
25. Shri Abhishek Bharti,, Advocate
26. Shri V.S. Sethuraman, Advocate
27. Shri R. Rakesh Sharma, Advocate
28. Shri V. Mowli, Advocate
29. Shri Anand Satyaseelan, Advocate
30. Shri Ravi Raghunath, Advocate
31. Shri R.V. Babu, Advocate
32. Shri M.B. Srinivasan Babu, Advocate
33. Shri S. Ambigaidan, Advocate
34. Shri E. Kotteswaran, Advocate
35. Shri S. Gomathinayagam, Advocate
36. Shri A. Rajaram, Advocate
37. Shri P. Thangamrajaram, Advocate
38. Shri E. Balamurugan, Advocate
39. Shri V. Prabhu, Advocate
40. Shri P.V. Yogeswaran, Advocate
41. Shri Mayilsamy.K, Advocate
42. Shri R. Krishnamoorthy, Advocate
43. Shri P. Mohan Arangal, Advocate
44. Shri Rama Ganesh, Advocate

For Respondents:

1. Shri Hansaria Vijay, Sr. Advocate
2. Shri Abhishek Manu Singhvi, Sr. Advocate
3. Shri N. Raja Senthoo Pandian, Advocate
4. Shri Vivek Singh, Advocate
5. Shri Mohit Paul, Advocate
6. Shri Amit Bhandari, Advocate
7. Shri Puneeth K.G., Advocate
8. Shri Avishkar Singhvi, Advocate
9. Shri S.V.R. Subramanian, Advocate
10. Shri P. Raj Kumar, Advocate
11. Shri Avinash Pandey, Advocate

12. Shri Swastik Dalai, Advocate
13. Shri Anugrah Niraj Ekka, Advocate
14. Shri Bruce Milton, Advocate
15. Shri P. Praveen Samathanam, Advocate
16. Shri K. Hari Dass, Advocate
17. Shri Vinay Tripathi, Advocate
18. Dr. Ashwani Kumar, Sr. Advocate
19. Shri Rekha Bakshi, Advocate
20. Shri Chirantani Chatterjee, Advocate
21. Shri V. Subramanian, Advocate
22. Shri Abhishek Pratap Singh, Advocate
23. Shri P. Athiveera Rama Pandian, Advocate
24. Shri A.N. Padmanabhan, Advocate
25. Shri M. J. Balasubrammani, Advocate

For applicant seeking impleadment, Shri E.K. Palaniswamy

1. Shri Mukul Rohatgi, Senior Advocate
2. Shri Sameer Rohatgi, Advocate
3. Shri K. Gowtham Kumar, Advocate

For intervener Shri K.C. Palanisami

Shri Anwesh Madhukar, Advocate.

For intervener Ms. J. Deepa

1. Shri S. Pasum Pon Pandian, Advocate
2. Shri Sami Chinnappillai, Advocate
3. Shri S. Venkatachalapathy, Advocate

For intervener Sh. Pughazhendi

Shri Guru Muruganandhan, Advocate

For intervener Shri P. A. Joseph

Shri R. Barnabas, Advocate

For other Interveners

1. Shri Mohit Mathur, Sr. Advocate
2. Dr. Ashwani Kumar, Sr. Advocate
3. Shri D.C. Mathur, Sr. Advocate
4. Shri Kirti Uppal, Sr. Advocate
5. Shri Amit Sibal, Sr. Advocate

6. Shri Samir Singh Vasisht, Advocate
7. Shri Sidharth Chopra, Advocate
8. Shri Pranvir Sethi, Advocate
9. Shri Ashutosh Jha, Advocate
10. Shri Karthik Rajasekhar, Advocate
11. Shri Amit Kumar, Advocate
12. Ms. Shakun Sharma, Advocate
13. Shri Sashwat Singh, Advocate
14. Ms. Raushantara Jaswal, Advocate
15. Ms. Vishaka, Advocate
16. Ms. Ritu Rajkumari, Advocate
17. Mrs. Smita Madhu, Advocate
18. Shri Ashish Kr. Upadhyay, Advocate
19. Shri Bhuwan Jayant, Advocate
20. Shri Karthick Subramaniam, Advocate
21. Shri Abhinav Jaganathan, Advocate
22. Shri P. Prabhakaran, Advocate

ORDER


1. This order is passed in the matter of an internal dispute in the All India Anna Dravida Munnetra Kazhagam (hereinafter, “**AIADMK**”), a State recognized political party in the state of Tamil Nadu and Union Territory of Puducherry. The AIADMK party has been allotted the symbol ‘Two Leaves’ as its reserved symbol in the said State and Union Territory under the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 (hereinafter, ‘**Symbols Order**’). The dispute in question arises out of a petition filed under Paragraph 15 of the Symbols Order by Shri E. Madhusudhanan (hereinafter “**Petitioner No. 1**”), Shri O. Paneerselvam (hereinafter, “**Petitioner No. 2**”) and Shri Semmalai (hereinafter “**Petitioner**

No. 3”) on 16th March 2017 challenging the appointment of Smt. V.K. Sasikala (hereinafter, “**Respondent No. 1**”) as the General Secretary of the AIADMK on 29 December, 2016, and seeking a direction to allot the reserved symbol ‘Two Leaves’ of the AIADMK, to them (hereinafter “**Petitioners’ group**”). The petitioners contended that the appointment of Smt. V.K. Sasikala as General Secretary was in gross violation of the provisions of the AIADMK constitution inasmuch as she did not fulfil the requirement of continuous/uninterrupted membership of the party for five years before one could be appointed to the post of General Secretary as expressly provided in the AIADMK constitution. The reliefs sought by the petitioners in their Application are quoted below-:

- (a) Allot the AIADMK party symbol of ‘two-leaves’ to the party led by Petitioner No. 2 herein;
- (b) Direct respondents to 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 R.K. Nagar By-election [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 for 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 Appeal No. 300-303 and 304-207 of 2017 by this Hon'ble Court (sic.) 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 as invalid, nonest 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;
- (i) Quash all Acts, Orders, Directions, Commands and any other like Official Communications issued by the 2nd Respondent as Deputy

CTC


प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

General Secretary since 06-01-2017 onwards to be ultra vires, illegal and invalid;

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

2. On 22.03.17, after hearing the two groups, the Commission passed an interim order, for the purpose of the bye-election from 11-Dr. Radhakrishnan Nagar assembly constituency in Tamil Nadu, then in progress, pending the final determination of the dispute. In the interim order, the Commission observed that it was satisfied based on the documents filed and the oral submissions made by the Senior Counsels of both parties, that there were two rival groups in the AIADMK, led by Petitioner No 1 and Respondent No 1, respectively, with each group claiming to be the AIADMK party. The matter, therefore, needed determination in terms of paragraph 15 of the Symbols Order. In the interim order of 22.03.17 it was directed as follows:-

"12. Having regard to the above facts and circumstances and the practical difficulties in evaluating and adjudicating upon the huge

evidence running into more than 20,000 pages adduced by both the parties- that too filed late in the evening yesterday (21st March, 2017)- and the oral submissions made by their learned senior counsels, the Commission is not in a position to give any final decision at the present juncture in the short time available mentioned above. Consequently, the Commission is left with no other option in these compelling circumstances but to make an interim order which may be fair to both the contending groups. In order to place both the rival groups on even keel to protect their rights and interests, and going by the past precedents in such cases, the Commission hereby makes the following interim order, purely for the purposes of the current bye-election from 11-Dr. Radhakrishnan Nagar Assembly constituency in Tamil Nadu, pending the final determination of the dispute raised by the petitioners in their petition dated 16th March, 2017 in terms of para 15 of the Symbols Order:-

- (a) Neither of the two groups led by the petitioners (Sh. E. Madhusudhanan, Sh. O. Panneerselvam and Sh. S. Semmalai) and the respondents (Smt. V.K. Sasikala and Sh. T.T.V*

*Dhinakaran) shall be permitted to use the name of the party
'All India Dravida Munnetra Kazhagam' simplicitor;*

*(b) Neither of the aforesaid two groups shall also be permitted to
use the symbol 'Two Leaves', reserved for 'All India Dravida
Munnetra Kazhagam';*

*(c) Both the groups shall be known by such names as they may
choose for their respective groups, showing, if they so desire,
linkage with their parent party 'All India Dravida Munnetra
Kazhagam'; and*

*(d) Both the groups shall also be allotted such different symbols as
they may choose from the list of free symbols notified by the
Election Commission for the purposes of the current bye-
election from 11-Dr. Radhakrishnan Nagar Assembly
Constituency in Tamil Nadu.*

Accordingly, both the groups are hereby directed to furnish, latest by
10.00 A.M. tomorrow (23rd March, 2017):

- (i) The names of their groups by which they may be recognised by
Commission; and
- (ii) The symbols which may be allotted to the candidates set up, if
any, by the respective groups. They may indicate the names of

C.T.C.


three free symbols, in the order of their preference, anyone of which may be allotted to their candidates by the Commission.”

3. On 23.03.2017, as per the request made by the two groups, they were allotted the following names and symbols:-

- (i) The faction led by Mr. O. Paneerselvam, Petitioner No. 2 was allotted the name ‘All India Anna Dravida Munnetra Kazhagam (Puratchi Thalaivi Amma)’ and the election symbol ‘Electric Pole’,
- (ii) The faction led by Smt. V.K. Sasikala, Respondent No. 1 was allotted the name ‘All India Anna Dravida Munnetra Kazhagam (Amma)’, and the symbol ‘Hat’.

Consequently, pending final determination of the matter, neither of the two groups was permitted to use the name of the party “AIADMK” simpliciter or the ‘Two Leaves’ symbol reserved for the AIADMK party. The two groups were also permitted to file further documents and affidavits in support of their respective claims, by 17.04.17 and this deadline was extended to 16.06.17, vide Commission’s order dated 20.04.2017, at the request of the two groups.

C.T.C.


प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

4. The Commission meanwhile cancelled the bye-election from R.K. Nagar Assembly Constituency on 09.04.2017 following incidents of large-scale bribery of electors of the Constituency. Subsequently, the two groups filed hundreds of thousands of individual affidavits from office bearers at village and other levels, in support of their respective claims, which were received in the Commission on various dates up to 16.06.2017. The petitioners' faction claimed to have submitted individual affidavits exceeding 3,00,000 in number and the respondents' faction claimed to have submitted individual affidavits numbering roughly 6,80,000.
5. An application dated 15.06.2017 was received from Shri. E.K. Palaniswami (the present Chief Minister of Tamil Nadu) seeking to be impleaded in the present matter. Shri E.K. Palaniswami (hereinafter "**Impleading Applicant No. 1**") submitted that as Head of the Legislature Party and Chief Minister of Tamil Nadu and on account of his substantial interest in the affairs of the AIADMK, and further on the ground that as of 12.06.17, more than 3,09,476 members of the party had sworn affidavits supporting him, he was a proper and necessary party to the proceedings.

6. Smt. Deepa Jayakumar, (hereinafter “**Impleading Applicant No. 2**”) niece of Ms. J. Jayalalithaa also submitted a representation dated 15.06.2017 seeking to be impleaded in the dispute as the sole ‘legal heir’ of Ms. J. Jayalalithaa. She submitted about 20,000 individual affidavits from individuals claiming to be members of the AIADMK party in her support and requested to be included in the dispute as a separate faction.
7. As disclosed by the Petitioners’ written submissions dated 27.09.2017, efforts at unification were underway, in August 2017, between the factions led by the petitioners and the Impleading Applicant No. 1. In pursuance thereof, a notice dated 28.08.2017 was issued to all General Council members by petitioners informing of a General Council meeting to be held on 12.09.2017. The General Council meeting was held on 12.09.2017, as scheduled and several resolutions were reportedly passed at this meeting, including the appointment of Ms. J. Jayalalithaa as ‘permanent’ General Secretary of the Party and Petitioner No. 2 and the Impleading applicant No.1 as Coordinator and Joint Coordinator respectively, to manage the day-to-day affairs and general administration of the party.

8. A suit C.S. No.707 of 2017 (*P. Vetrivel Vs. E. Madhusudhananand others*) was filed before the Madras High Court seeking injunction against the convening of the General Council Meeting fixed for 12.09.2017. The prayer for injunction was dismissed by the Single Judge Bench on 11.09.2017 in O.A. No. 884 of 2017 in the said Suit, following which the petitioner approached the Division Bench in O.S.A SR No 71943 of 2017. The Division Bench, on 11-09-2017, passed an order, *inter alia*, to the following effect:-

“ Therefore, for the foregoing reasons we agree with the conclusion reached by the learned single judge which is not to injunct the holding of the impugned meeting, it is made clear enough that any decision taken at the impugned meeting will be subject to the final outcome in the appeal. Needless to say that the observations made by us would in no manner impact the decision that the ECI will take in the dispute pending before it, which is subject matter of dispute No. 2 of 2017. Consequently, the prayer made for injuncting the impugned meeting or for staying the impugned order of the learned single judge dated 11-09-2017 is rejected.”

9. In the meanwhile, a Writ Petition (MD) No.15818 of 2017 (*Ramkumar Adityan v. Chief Election Commissioner and others*) was filed before the Madurai Bench of the Madras High Court. On 15.09.2017, the High Court passed an order directing the Election Commission to dispose of the proceedings in the present Dispute No 2 of 2017, on merits and as per law, after hearing all parties to the dispute, as expeditiously as possible, and in any case, on or before October 31, 2017 in view of local bodies elections in the State scheduled for 17.11.2017. Subsequently, this matter was taken to the Supreme Court in SLP (C) No. 26811-26812/ 2017 (*T.T.V. Dhinakaran vs. B Ramkumar Adityan & Ors*) and on 06.10.17, the Hon'ble Supreme Court disposed of the matter. It was, *inter alia*, held in the order dated 06.10.17, passed by the Hon'ble Supreme Court:-

"We will be failing in our duty, if 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."

10. In the meanwhile, the Commission had decided to hear the parties and, accordingly, issued notice dated 21.09.17, fixing a hearing on 05.10.17. The two parties were also informed that if they had any fresh submissions to make in the matter, they could submit the same by 29.09.17. It was also made clear to the parties that if affidavits affirming support to them were being filed, the same should be confined to the members of the Legislature Wing of the party (Members of Parliament and Legislative Assembly elected on AIADMK ticket) and members of the organisational wing at the Apex level (General Council and Central Executive Committee). The two groups were also directed to file copy of the list of the General Council Members as on 05.12.2016. Subsequently, vide order dated 22.09.2017, the Commission rescheduled the date of hearing to 06.10.2017.
11. Respondent No 2 submitted a letter dated 26.09.2017 in response to the Commission's abovementioned notice of 21.09.2017 contending that inviting fresh Affidavits and submissions amounted to enlarging the scope of the dispute. The Commission replied to the said letter on 28.09.2017 intimating Respondent No. 2 that the Commission had to look at the position

as existing at the latest point of time, and it was necessary to provide opportunity to the two groups to file fresh documents, if any. The Commission took this decision keeping in view the past practice in such cases.

12. On 27.09.2017, the Petitioners made written submissions to the Commission, giving their version of recent events and development and laying out their legal arguments. They reiterated their submissions that the appointment of Respondent No. 1 as General Secretary in the meeting of General Council on 29.12.2016, and the subsequent appointment by her of Shri. T.T.V. Dhinakaran (hereinafter, **Respondent No.2**") as the Dy. General Secretary of the AIADMK Party after her conviction by the Supreme Court on 14.02.2017, was illegal and contrary to the provisions in the Party's constitution. The Petitioners further submitted that they and the Impleading applicant No.1 undertook consultations with the rank and file of the party from which it emerged that the party cadre wished the party to unite under the joint leadership of Petitioners and the Impleading Applicant No.1. Petitioner No.1 issued a notice dated 28.08.2017 to all General Council members informing of a General Council meeting to be held on 12.09.2017. The General Council meeting was held on 12.09.2017, as scheduled and 1829 members attended the said meeting. The members who attended this

meeting signed in the Attendance Register, copy of which the Petitioners have produced before the Commission; video recordings of the proceedings were also produced. Several resolutions were reportedly passed at this meeting. At the said meeting, it was stated that Ms. J. Jayalalithaa was appointed 'permanent' General Secretary and Petitioner No. 2 and the Impleading Applicant No. 1 were appointed Coordinator and Co-Coordinator respectively, to manage the day-to-day affairs and general administration of the party. The Petitioners also made the following legal submissions:

- (i) Respondent No 1 was disqualified from holding Party office as per Rule 30(v) of the AIADMK party constitution;
- (ii) Action of Respondent No 1, in readmitting Respondent No 2 into the party and appointing him Deputy General Secretary, was also *non est* in law, as Respondent No. 1 was without authority to carry out the same and Respondent No 2 was not even a primary member of the party as per the requirements in the AIADMK Party constitution;
- (iii) A dispute exists under Para 15 of the Symbols Order and the main issue for consideration by the Commission is which of the two groups of the Party truly represents the AIADMK Party and will be accorded recognition under the Symbols Order. In support of their claim for

recognition as the Party, the Petitioners cited the decision of the Supreme Court in *Sadiq Ali v. Election Commission of India* [(1972) 4 SCC 664]. They also contended that persons with criminal background should not enter politics or hold party office. Accordingly, the Petitioners prayed that they, together with the Impleading Applicant No. 1 be declared the AIADMK Party and be allotted the name and 'Two Leaves' symbol of the Party as they enjoy support of a clear majority in the organisational and legislature wings of the Party.

13. Impleading Applicant No. 1 also filed a written submission before the Commission on 27.09.2017 broadly on the lines of the submissions made by the Petitioners in their written submission of 27.09.2017. He stated that as per the wishes of the party members, differences between the two rival groups had been resolved and that Petitioner No 2 and himself represented the true and actual leadership of the AIADMK Party and the majority of the Legislature wing members and the highest decision-making body of the party (General Council) support them. On this basis, he sought declaration that the Petitioners and himself and the members supporting them be declared as the AIADMK Party and the 'Two Leaves' symbol be allotted to them.

14. Sh. K.C. Palaniswamy, (hereinafter, “**Impleading Applicant No. 3**”) who is a former MP of the Party and who was represented at the hearing held on 22.03.17 as per his request, filed written submission on 27.09.2017, requesting that the name “All India Anna Dravida Munnetra Kazhagam” and ‘Two Leaves’ party symbol be allotted to the faction led by the Petitioners as they enjoyed the support of 1.5 crore primary members. He also sought direction from the Commission to office-bearers to conduct elections to the post of General Secretary as per the constitution of the AIADMK Party.
15. On 29.09.2017, the Petitioners and Impleading Applicant No. 1 together filed 63 volumes of individual affidavits of support of the Members of the Legislature Wing (Members of Parliament and the State Legislative Assembly) and the members of General Council, the apex level representative body in the party Organizational side. This also included the members of the Central Executive Committee of the party.
16. Respondent No. 2 on 29.09.2017 filed 54 volumes of supporting affidavits filed earlier and 27 volumes of fresh Affidavits of District Heads as on date in the organization, together with copies of earlier Affidavits of support. He further requested 3 more days to file affidavits of District Heads. On

03.10.2017, the Respondents filed fresh affidavits in his support, from the remaining 28 district heads and of members of the state of Karnataka and Members of the Legislative Assemblies of Tamil Nadu and Puducherry.

17. On 03.10.2017, Respondent No 2 submitted a representation to the Commission contending that the volumes of affidavits of the Petitioner and Impleading Applicant No. 1 contained affidavits of 'retraction', of persons who had retracted from their earlier position of support to the Respondents. He also alleged that the said volumes contained affidavits that were: (i) false and fabricated (ii) obtained under duress, coercion and undue influence. Accordingly, Respondent No 2 sought permission to adduce evidence and cross-examine the persons who had filed affidavits of 'retraction' and also for appropriate time to respond to these Affidavits for ascertaining the genuineness of the same.
18. In the first, hearing before the Commission on 06.10.2017, the Commission heard submissions of learned senior counsels on behalf of Petitioners No. 1, 2 and 3 and the Impleading Applicant No. 1. The learned senior counsel for the Respondent No. 2 prayed that the question of cross-examination of deponents of the affidavits be decided as a preliminary issue, before any adjudication on merits. The next hearing was fixed for 13.10.2017. On

10.10.2017, the Commission received a letter from the counsel for the Respondents seeking postponement of the hearing to 16.10.2017, and the next hearing was accordingly rescheduled.

19. On 13.10.2017, 5 Members of Parliament (Gokulakrishnan N, P. Nagarajan, Vijila Sathyananth, M. Udaya Kumar and B. Senguttuvan) and 18 Members of the Legislative Assembly (P Vetrivel; TA Elumalai; Ethirkottai SG Subramanian; R. Sundarraj; C. Jayanthi Padmanaban; S. Mariyappan Kennedy; R. Balasubramani; K. Uma Maheshwari; RR Murugan; Dr. S. Muttiah; M. Kotthandapani; R. Thangadurai; NG Parthiban; V. SenthilBalaji; Dr. K. Kathirkamu; P. Palaniappan; T. Thanga Tamil Selvan; M. Rengasamy) moved impleadment applications under Paragraph 15 of the Symbols Order, stating that they had been long-time members of the AIADMK and had substantial interest in the affairs and well-being of the AIADMK. They affirmed support for the leadership of Respondent No. 1 as the rightful leader of the Party and pleaded that it was just and necessary that they be impleaded as Respondents in the instant dispute. Similar applications for impleadment were filed by two incumbent MLAs, EA Rathina Sabapathy and VT Kalaiselvan. Furthermore, 5 General Council members also filed

similar applications for impleadment: S/Shri K. Annamalai, P. Kumarasamy, R. Sami, VP Kalairajan and Valarmathi Jebaraj.

20. Subsequently, on 16.10.2017, Respondent No 2 filed an Interlocutory Application praying for rejection of the Affidavits filed by Petitioners and the Impleading Applicant No. 1 on 29.09.2017 and praying for appropriate direction. Respondent No. 2 sought rejection of the affidavits of Petitioner and Impleading Applicant No. 1 on the grounds that they were not genuine, and are forged, fabricated, procured by undue influence, coercion and pressure. He also prayed that action under section 195, Criminal Procedure Code be initiated against the petitioners for commission of offences under sections 177, 181, 182, 191, 192, 193 and 196 read with section 120B of the Indian Penal Code. Finally, he prayed that the affidavits filed by the Respondents on 20.03.2017, expressed 'unequivocal support' for the Respondents in the legislature and organizational wings of the party.
21. The matter was taken up for further hearing before the Commission on 16.10.2017. Arguments were heard from learned senior counsel for Respondent No. 1 and learned senior counsel for Respondent No. 2.

Dr. Ashwani Kumar, learned senior counsel for Impleading Applicants (five MPs and 20 MLAs) made extensive arguments on right to

cross-examination and natural justice. Learned counsel for Impleading Applicant No. 2 was also heard.

22. On 20.10.2017, Impleading Applicant No. 1 replied to Respondent No. 1's Interlocutory Application of 16.10.2017 reiterating majority support of the organizational and legislature wings to himself and the Petitioners, and arguing that Para 15 adjudication was in the nature of an expeditious enquiry to ascertain numerical support. The affidavits of support submitted for this purpose were not in the nature of affidavits of evidence in trial of a civil suit, to be tested by cross-examination. He further submitted that no material particulars or specific allegations were offered by the Respondents in respect of their claim of forgery, fabrication, undue influence, etc. He also submitted that the plea of the Respondents for cross-examination was made with ulterior motive to delay the proceeding and that the Respondents' application amounted to abuse of process of the Commission. The Petitioners also filed reply on 22.10.2017 to the Interlocutory Application dated 16.10.2017 filed by Respondent No. 2 praying for the dismissal of the said application on the grounds that the Applicants have no *locus standi* to file the said application and no right in law to seek cross-examination.

23. Respondent No. 1 submitted another Interlocutory Application dated 23.10.2017 for appropriate directions in the issue relating to affidavits filed on behalf of Petitioners and Impleading Applicant No. 1, praying for the framing of a preliminary issue on the grounds that since the genuineness of the Petitioner's affidavits were questioned as forged and fabricated, ante-dated, obtained by fraud and undue influence, etc. the Commission should treat testing of affidavits as a preliminary issue and address the same at the threshold. The following legal submissions were also made:

- (i) The Commission acts as a Tribunal in deciding a dispute under the Symbols Order and accordingly, has to adhere to the principles of natural justice, while following the norms of the law of evidence.
- (ii) Hearing cannot be treated as fair unless parties are given the right to test the correctness of the material produced, by way of cross examination, which is an integral part of natural justice and fair hearing
- (iii) Power vested in the Commission is to be exercised in a fair and reasonable manner, and by procedure known to law.
- (iv) Fountain of justice cannot be approached with soiled hands. Where signature is obtained by fraud or threat, the document would be void and a nullity in the eye of law.

24. The Petitioners replied to the above Interlocutory Application dated 23.10.2017, vide reply dated 28.10.2017, praying for dismissal of the said application on the following grounds:

- (i) Respondent No 1 has no locus standi pursuant to her conviction by the Supreme Court which rendered her disqualified from contesting elections. Respondent No. 2 also lacks locus, not being a primary member of the Party and not being recognized as office-bearer of the Party, by the Commission.
- (ii) Applicants have made legal submissions for cross-examination, but failed to seek cross-examination as a relief in the I.A. The application is thus merely an attempt to protract proceedings.
- (iii) Proceedings under Para 15 of the Symbols Order being *sui generis*, and summary in nature, such pleas are not maintainable.
- (iv) The Petitioners had in June 2017, questioned the affidavits filed in support of the Respondents and therefore the Respondents' affidavits were not unchallenged. The plea for cross-examination was not a jurisdictional issue and therefore, not maintainable as a preliminary issue.
- (v) Alleged defects in the petitioners' group affidavits were addressed as follows: signatures being in different languages (English and Tamil)

were not be treated as forged signatures; no question of impersonation or fabrication as affidavits filed on 29.09.2017, as the same were filed with membership and government ID cards; 10 persons alleging forgery and fabrication of affidavits, and 3 persons alleging exertion of force, undue influence, had attended the 12.09.2017 General Council meeting and signed on the attendance register; anti-dating of affidavits do not affect the content of the affidavits; 78 affidavits on stamp paper purchased in March/April 2017 and 44 affidavits not bearing the name of the deponent on the stamp paper, does not impugn the affidavits themselves or the contents thereof, in any way. Furthermore, the petitioners pointed out that none of the deponents have approached the Commission, withdrawing their affidavits.

- (vi) 1280 affidavits were filed by the Respondents in September 2017 before the Commission. Only 168 of these deponents were members of the General Council as of 05.12.2016 and 23 persons from this 168, also allegedly gave affidavits in support of the petitioners and Impleading Applicant No. 1 in September 2017. 12 of these 23 persons have sworn affidavits stating that they never gave any affidavits in favour of the respondents in September 2017.

25. Impleading Applicant No.1also replied on 28.10.2017 to the interlocutory application filed on 23.10.2017 by Respondent No. 1, submitting that the said application was an attempt to protract the proceedings. He submitted that preliminary issues can only be in relation to jurisdiction of an authority hearing a matter. He further denied the allegations relating to 325 of the affidavits filed by the Petitioners, which were contested by the Respondents on grounds of forgery, fabrication, undue influence etc and responded to the alleged defects in those affidavits, in similar terms as the Petitioners in their reply dated 29.10.2017, as laid out in the preceding paragraph.
26. Respondent No. 1 filed a rejoinder on 01.11.2017 to the reply dated 28.10.2017 of the Petitioner, to the Interlocutory Application filed by Respondent No 1 on 23.10.2017. In this rejoinder, Respondent No. 1 submitted that the refusal of the Commission to decide the issue of genuineness of affidavits as a preliminary issue violated the principles of natural justice and resulted in a procedure unknown to law. Failure to decide the preliminary issue would lead to nullification of the proceedings, as the issue of forged and fabricated affidavits went to the root of the matter. Respondent No. 1 submitted that at least 10 of the persons whose signatures were allegedly obtained by threat, coercion, inducement, etc. had approached the Commission in person and petitioned the Commission to

take appropriate action against the petitioners. The list of 325 deponents who filed affidavits in support of the Petitioner group, and which the respondents claimed had been forged and fabricated and suffered from some defect, was appended with the submission of 01.11.2017.

27. In the meanwhile, complaints dated 23.10.2017 were filed by 7 General Council members (Kingsly Jerald, Sankara Pandian, C Nagarajan, S. Kala Soundarrajan, M. Rejiya Begum, S. Singaravelu, R. Bashkar, Tamilselvi) requesting the Commission to lodge complaint under section 195 of the Cr.PC against the Petitioners and Impleading Applicant No 1 for alleged forgery and fabrication, inducement and fraud in order to obtain affidavits supporting them. Offences were alleged to have been committed by the Petitioner and the Impleading Applicant No. 1 in terms of section 177, 181, 182, 191, 192, 193, 195A, 196 and 471 read with section 120B of the Indian Penal Code. Separate complaints dated 30.10.2017 by G. Annapoorni and K. Rajeshwari, for initiating action against petitioner and impleading petitioners for forging signatures. They have alleged in their complaint that affidavits dated 24.09.2017, in support of the Petitioners and Impleading Applicant No. 1, bearing their signatures was not filed by them. They alleged that their signatures were forged on the said affidavits and prayed that the

Commission take strict action against the Petitioners and Impleading Applicant.

28. An application dated 23.10.2017 was also received from Respondent No 2 for initiating appropriate action against Shri KT Rajenthra Bhalaji, Minister for Milk and Dairy Development in the Tamil Nadu Government, for attempting to bring undue influence to bear upon the Commission.
29. The Impleading Applicant No. 1 filed an affidavit on 31.10.2017 responding to the abovementioned complaints of 23.10.2017 and 30.10.2017, filed by 10 individuals who claim to be members of the General Council. Impleading Applicant No. 1 stated that the contents of affidavits filed by the said persons (Kingsly Jerald, Sankara Pandian, C Nagarajan, S. Kala Soundarrajan, M. Rejiya Begum, S. Singaravelu, R. Bashkar, Tamilselvi, R. Rajeshwari and G. Annapoorni) stating that their signatures had been forged, or obtained through fraud and coercion were false and denied by him. On 01.11.17, reply affidavits were filed by the abovementioned persons, to the affidavit of the Impleading Applicant No. 1, reiterating their complaints and denying as false the contentions of the affidavit dated 31.10.2017 of Impleading Applicant No. 1.

30. Hearings continued on 01.11.2017 and learned senior counsel for Respondent No. 2 made his submissions on the merits of the case. The matter was further heard on 06.11.2017, in which learned senior counsel for Respondent No. 1 made detailed submissions on the merits of the case. The final hearing was held on 08.11.2017, in which the learned senior counsels for the petitioners and the Impleading Applicant No. 1 argued in rejoinder. Thus, the Commission, after hearing the matter at length on 06.10.2017, 16.10.2017, 23.10.2017, 30.10.2017, 01.11.2017, and 06.11.2017, concluded the hearings on 08.11.2017, reserved its order and directed that all parties may submit written synopses of their submissions by 13.11.2017.

31. It is pertinent to note that earlier, on 06.11.2017, the Respondents filed an application making the following submissions:

(i) The General Council meeting called on 21.08.2017 was allegedly by way of an unsigned notice and on a letterhead which purported to indicate that it was issued on behalf of both the factions. Furthermore, General Council meetings can only be called by a validly appointed General Secretary, as per the party constitution; and

(ii) The petitioners at the aforementioned impugned General Council meeting illegally carried out certain amendments in the party constitution,

including removal of the post of General Secretary which is not permissible under the party constitution.

32. On 13.11.2017, the Petitioners and Impleading Applicant No. 1 submitted a joint compilation summarizing their individual submissions and the Respondents submitted a joint compilation of their written submissions. In addition, one Shri Pugazhendi, Secretary for the State of Karnataka (hereinafter, “**Impleading Applicant No. 4**”) submitted written arguments, on various grounds relating to the alleged violation of the party constitution by the petitioners group, rebutting the arguments made by the petitioners group, challenging the General Council meeting of 12.09.2017 and the resolutions passed therein, and thus praying that the Respondents were entitled to be recognized as the AIADMK party and be allotted the ‘Two Leaves’ symbol as such.

Analysis of submissions and counter submissions of rival groups

33. The Commission has carefully considered and analyzed the written as well as oral submissions made by the learned Senior Counsels and learned counsels on behalf of the petitioners (Shri E. Madhusudhanan, O. Panneerselvam and S. Semmalai) and the respondents (Smt. V.K. Sasikala and Shri TTV Dhinakaran). The Commission has also taken due note of the

submissions made by the learned Senior Counsels and other counsels on behalf of the applicants seeking impleadment/hearing (Shri E.K. Palaniswami, Shri K.C. Palanisamy, Smt. J. Deepa, and Shri Pugazhendi and Shri P.A. Joseph) in the present matter.

34. The main plea advanced by the petitioners in support of their claim and prayer in this case is that the group led by them enjoys support of majority of members in the organizational and legislature wings of the party and that it may be recognized by the Commission as the All India Anna Dravida Munnetra Kazhagam in terms of para 15 of the Symbols Order. For the above purpose, the petitioners pray that the Commission should apply the test of majority in the organizational and legislature wings of the party as was applied by it in the case of split in the Indian National Congress in 1969 and which was upheld by the Supreme Court in *Sadiq Ali and Another Vs. Election Commission of India and Others* [AIR 1972 SC 187, 1972 (4) SCC 664]. In support of their above plea, they have relied on the affidavits of 42 Members of Parliament (34 Lok Sabha and 8 Rajya Sabha), 115 Members of Legislative Assemblies (111 MLAs of Tamil Nadu and 4 of Puducherry) and 1877 persons who are claimed to be Members of the General Council, which affidavits have been filed by them in the month of September 2017, after the

meeting of the General Council convened by them on 12.09.2017 at Chennai.

35. The respondent have not rejected the applicability of test of majority as adopted by the Commission and upheld by the Hon'ble Supreme Court in the above referred case of *Sadiq Ali* (Supra). However, they have contended that the test of majority is to be applied by the Commission on the basis of only those documents which have been validly produced by the parties before the Commission in accordance with the law. The learned senior counsels alleged that many of the affidavits filed by the petitioners before the Commission in September 2017, have been procured from the deponents by exerting coercion or intimidation or by offering allurements and inducements to them. They further alleged that many of the affidavits are also forged which could be verified by mere comparison with naked eye of signatures of the deponents on the affidavits filed by them earlier in March, 2017 in support of the respondents and their subsequent affidavits filed in September 2017, purportedly supporting the claim of petitioners. For this proposition, Shri Kirti Uppal, senior learned counsel for the impleading applicants, referred to the provisions of section 73 of the Evidence Act, 1872.

Preliminary issues raised by the respondents

36. Before considering the plea of the petitioners that the Commission should solely apply the test of majority in the Legislature and Organizational Wings of the party for determination of the present dispute, it may be appropriate to first deal with the pleas of the respondents which they argued as preliminary objections, and urged the Commission to decide. The preliminary objections raised by the respondents are as follows:-

- (i) That the petitioners have not approached the Commission with clean hands and are thus not entitled to any of the reliefs they have sought from the Commission. The respondents have alleged that the petitioners have procured affidavits in support of their claim, from some members of the Organizational Wing by exerting coercion or intimidation or by offering allurements and inducements to them. On the basis of this allegation, they have contended that any person who approaches a Court or Tribunal by playing deceit and/or fraud on the Court needs to be stopped at the threshold, rendering him ineligible for any relief from the Court or Tribunal.
- (ii) That the affidavits submitted in support of the claim of the petitioners cannot be considered 'evidence' within the meaning of section 3 of the Evidence Act, 1872, unless the deponents are put to cross

examination by the respondents to ascertain the veracity or otherwise of the averments made by the deponents in those affidavits.

- (iii) That the Election Commission in the case of *Sadiq Ali* (Supra) did not only apply the test of majority in the Legislature and Organizational Wings of the party as the sole test for determining the dispute in terms of para 15 of the Symbols Order. The Commission, in that case, applied two other tests as well based on the provisions of the party constitution, namely, (a) which group was following the provisions of the party constitution; and (b) which group was functioning to achieve the aims and objects of the party.
- (iv) That even applying the test of majority in the present case, the Commission has to decide the matter on the basis of the original petition filed by the petitioners on 16th March, 2017, the prayers made therein seeking relief from the Commission and the affidavits filed by the respondents (in opposition to the petitioners' original petition) claiming majority support, both in the Legislature and Organizational Wings of the party, in favour of respondents No.1 and 2. In other words, they contended that the Commission should decide the matter by taking into account the position of the Legislature and Organizational Wings of the party as obtaining on the date of filing of

the petition of 16.03.17 by the petitioners and that any subsequent developments should not be of any relevance for determination of the present dispute.

Examination of Preliminary Objections

37. Let us first examine the above preliminary objections as strenuously urged by the respondents. Shri Abhishek Manu Singhvi, learned senior counsel for respondent No. 1, heavily relied upon the observation of the Supreme Court in the case of *Ujjam Bai Vs. Tata Engineering and Locomotive Company and Others* (AIR 1962 SC 1621) and *Mitsubishi France Vs. Neyveli Lignite Corporation Limited and Another* (AIR 1985 Mad 300). In the above case of *Ujjam Bai*, the Hon'ble Supreme Court observed that:

'the question whether a Tribunal has jurisdiction depends not on the truth or falsehood of the facts into which it has to enquire or upon the correctness of its finding on these facts, but upon their nature, and it is determinable "at the commencement, not at the conclusion of the enquiry'.

A glance at the above judgment will show that the said observation was made by the Supreme Court in the context of determining whether a tribunal or a quasi judicial authority has jurisdiction to deal with a matter or not. The present case falls for determination of the Commission under paragraph 15

on the Symbols Order; not only squarely within the jurisdiction of the Commission, but within the sole and exclusive jurisdiction of the Commission as was categorically held by the Supreme Court in the case of *All Party Hill Leaders Conference Vs. Captain M.A. Sangma & Ors* AIR 1977 2155, 1978 SCR (1) 393:

'Thus the position that emerges from the above discussion is that the Commission is created under the Constitution and is invested under the law with not only administrative powers but also with certain judicial power of the State, however fractional it may be. The Commission exclusively resolves disputes, inter alia, between rival parties with regard to claims for being a recognised political party for the purpose of the electoral symbol.'

Nevertheless, the Commission proposes to consider and decide the preliminary objections as follows:

38. Allegation against petitioners approaching the Commission with unclean hands: The first objection by the learned senior counsels for respondents is that the petitioners have not approached the Commission with clean hands and are thus not entitled to any relief prayer for from the Commission. The respondents have alleged that petitioners have produced affidavits of some of the members of the Organizational Wing purportedly supporting their

claim, which were obtained by exerting coercion and intimidation or by offering allurements and inducements to them. In support of this allegation, the respondents also prayed for the permission of the Commission, to produce six persons to testify that they had been subjected to pressures by some ministers and other important leaders of the petitioners' group to give affidavits in support of the petitioners' group. At first, the respondents were not inclined to disclose the names of these persons stating that they feared for their security; but subsequently the respondents group filed complaints and affidavits from these persons on 23.10.2017 and 30.10.2017. On the basis of these allegations, the respondents contended that any person who approaches a Court or Tribunal by playing deceit and/or fraud on the Court needs to be stopped at the threshold, thus rendering him ineligible for any relief by the Court or Tribunal. In support of their above contention, the learned senior counsels for the respondents have relied upon the cases of *Prestige Lights Ltd. Vs. State Bank of India* (2007) 8 SCC 449, *K.D. Sharma Vs. Steel Authority of India Ltd. And Others* (2008) 12 SCC 481 and, *Dalip Singh Vs. State of U.P. and Others* (2010) 2 SCC 114. Stressing the importance of coming to the courts with clean hands, the Supreme Court observed in the case of *Dalip Singh (Supra)* that:

'In last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.'

In the other cases also relied upon by the learned senior counsels for the respondents, the Supreme Court has made observations to similar effect that the litigants must come to the courts with clean hands and must disclose all material facts without any reservation, even if they are against them.

39. The learned senior counsels for the petitioners denied that they have come with unclean hands before the Commission. They aver and assert that all affidavits showing support for them have been given by the deponents willingly and without any coercion or intimidation or allurement or inducement. Their identity has also been properly verified by production of all their relevant identity documents. They have also stated that all persons who have given their affidavits in support of the petitioners group

participated on their own free will in the meeting of the General Council convened by the petitioners' group on the 12.09.2017 at Chennai and that the fact of their participation in the said General Council meeting on their own free volition can be verified by the Commission by seeing the video recording of that meeting which has already been produced by them before the Commission on 27.09.2017, together with the affidavits of support. They added that the respondents have not questioned the authenticity of the video recording or the correctness of the events recorded therein, though a copy of the video recording has been duly served on them alongwith all other documents.

40. On consideration of the above allegations of the respondents and the replies thereto of petitioners, the Commission is not convinced that the petitioners have come with unclean hands and that the Commission should reject their petition at the threshold. As mentioned above, the petitioners have filed more than 2,000 affidavits from Members of Parliament, Members of State Legislatures and Members of the General Council of the party. It cannot follow that merely on the allegation of a few persons (about 10 in all), the petition and the set of nearly 2,000 affidavits should be rejected in toto, at the threshold, without even going into them. It is pertinent to point out here

that the respondents have not questioned the veracity or correctness of the affidavits filed by the 42 Members of Parliament and 115 Members of State Legislatures in support of the petitioners group and the same cannot be discarded on the mere allegation of the aforesaid handful of ten persons who claim to be members of the General Council. It is true that the respondents have prayed for the production of the aforesaid persons before the Commission, but the Commission cannot resort to such course of action for reasons which will be explained in succeeding paragraphs.

41. *Allegation of lack of material particulars*: The respondents have also alleged that the original petition dated 16.03.2017 does not disclose all material facts and particulars and that the petitioners have suppressed the fact that they themselves were parties to the appointment of Respondent No.1 as General Secretary of the party at the General Council meeting of the party held on 29.12.2016. They contended that on the basis of such non-disclosure and suppression of material facts by the petitioners in their said petition, the same should be rejected by the Commission summarily. They relied on the provisions of section 83 of the Representation of the People Act, 1951, and the decisions of the Supreme Court in *Ram Sukh Vs. Dinesh Aggarwal* (2009) 10 SCC 541, and *Virender Nath Gautam Vs. Satpal Singh and Others* (2007) 3 SCC 617, in support of their above contention.

This plea of the respondents can also not be accepted by the Commission. Firstly, provisions of section 83 of the Representation of the People Act, 1951, apply to the election petitions filed before the High Courts under the provisions of the said Act and not to the matters brought for determination before the Commission by rival factions of a recognized political party in terms of Paragraph 15 of the Symbols Order. It is relevant to note that even an election petition cannot be dismissed summarily on the ground of non-compliance with provisions of section 83 of the said Act, and the High Court trying an election petition can seek further particulars from the petitioners where they consider so necessary [see, for example, *Udhav Singh Vs. Madhav Rao Scindia* AIR 1976 SC 744, *Virender Nath Gautam Vs. Satpal Singh* AIR 2007 SC 581, etc.]. Otherwise also, the Commission is not satisfied that the petitioners have suppressed any material facts which may merit summary dismissal of the petition dated 16.03.2017. As already held by the Commission in its interim order dated 22.03.2017, the Commission was satisfied on the basis of the facts and information in its possession that there are two rival groups of the AIADMK party and that the matter needed determination in terms of para 15 of the Symbols Order.

In view of the above, the first preliminary objection and the prayer of the respondents seeking summary dismissal of the petition dated 16th March,

2017 of the petitioners is not accepted and is hereby rejected. It may also be added that the observations of the Supreme Court in the cases of *Prestige Lights Ltd. Vs. State Bank of India* (2007) 8 SCC 449, *K.D. Sharma Vs. Steel Authority of India Ltd. And Others* (2008) 12 SCC 481 and, *Dalip Singh Vs. State of U.P. and Others* (2010) 2 SCC 114, relied upon by the respondents, have been made in the context of the private disputes affecting individual rights of the parties and not in the matter of disputes of public nature pertaining to political parties.

42. Cross examination of witnesses and principles of natural justice: The second objection by the learned senior counsels for the respondents is that the Commission should not give credence to the affidavits filed on behalf of the petitioners unless the deponents of those affidavits are permitted to be cross examined by the respondents. It is contended by them that an affidavit is not 'evidence' within the meaning of section 3 of the Indian Evidence Act, 1872, unless the veracity of statements made therein are tested by cross examination of the deponents of those affidavits. They pointed out that the deponents of almost all the affidavits filed by the petitioner group, had first given affidavits of support to respondents Nos. 1 and 2 in March 2017, which they later retracted, when they filed their affidavits filed in September 2017. The respondents alleged that such retraction had been obtained

through false and fabricated signatures and that they should be allowed to produce and cross examine all those deponents, or at least a reasonable percentage of them. In support of this contention, they relied upon the observations of the Supreme Court in *Range Forest Officer Vs. S.T. Hadimani* (2002) 3 SCC 25, *Ram Phal Kundu Vs. Kamal Sharma* (2004) 2 SCC 759, *Ayaaubkhan Noorkhan Pathan Vs. State of Maharashtra and Others* (2013) 4 SCC 465 and, *Telstar Travels Pvt. Ltd. and Others Vs. Enforcement Directorate* (2013) 9 SCC 549. Learned senior counsel Dr. Ashwani Kumar, particularly relied upon the following observation of the Supreme Court in the case of *Telstar Travels* (supra):

'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.'

43. Violation of Principles of Natural Justice: Connected with the above contention, the learned senior counsels for the respondents further contended 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 bona fide 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

C. T. C.



राजेश कुमार शर्मा
RAJESH KUMAR SHARMA
सी.टी.सी./Secretary
भारत निर्वाचन आयोग
Election Commission of India
अटल बिहारी वाजपेयी मार्ग, नई दिल्ली-110001

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 be placed in a strait-jacket for 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, 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.

45. Test to be applied for determination of present dispute: During the oral submissions made by the learned senior counsels for the petitioners and the respondents, there was a difference of opinion as to the test which may be applied by the Commission for deciding the present dispute. Shri Singhvi, learned senior counsel for the respondent No.1, submitted that the Commission cannot decide the present matter by ignoring the party constitution altogether and relying solely on the majority test. He stated that even in the case of *Sadiq Ali* (Supra), the Commission applied the 'triple test', namely:

- (i) which of the rival groups was following the provisions of the party constitution of the Indian National Congress (INC);
- (ii) which of the groups was functioning to achieve the aims and objectives of the INC; and

(iii) which of the rival sections was enjoying majority support in the organizational and legislature groups of the party.

In this context, he referred to para 13 of the order of the Supreme Court in the case of *Sadiq Ali* (Supra) and submitted that the judgment of the Supreme Court in *Sadiq Ali* (Supra) case had been misunderstood as exclusively supporting the numerical majority test. He contended that the test based on the provisions of the party constitution is highly relevant as the party constitution is binding on all members. He further submitted that the numerical majority of the rival groups should be judged in accordance with the party constitution and that it should be a true majority and not just brute, asserted or claimed majority. He stated that in the case of *Arjun Singh vs. Indian National Congress* decided by the Commission in 1996, the Commission had observed that the party Constitution cannot be ignored in the application of the majority test and the test of majority was not the sole, exclusive test to be applied to the exclusion of other tests. He also pointed out that the Supreme Court in the case of *APHLC* (Supra) had observed that '*any group that repudiates the party constitution cannot claim to represent it*'. To buttress this argument, Shri Singhvi asserted that respondent No.1 was duly elected as General Secretary of the party in accordance with the provisions of rule 20 of the party constitution in the emergent situation that

arose on the unfortunate demise of Ms. Jayalalithaa. He added that this was not the first occasion when a General Secretary had to be appointed by the General Council in an extraordinary situation and that a similar course of action was adopted by the General Council to elect Ms. Jayalalithaa as General Secretary of the party on the death of then General Secretary, Shri M.G. Ramachandran in 1987. Ms. Jayalalithaa at that time, continued to function as General Secretary of the party till the next organizational election held in 1994. He also contended that the so-called General Council meeting of the party stated to have been held on 12.09.2017 was not held in accordance with the party constitution and that, in fact that meeting was convened by certain persons in contravention of the Commission's interim order dated 22.03.2017, prohibiting both the groups from using the name of AIADMK simplicitor. He also asserted that the post of the General Secretary stands on the highest pedestal as per rule 43 of the party constitution and that the said provision categorically provides that the manner of election of the General Secretary by primary members of the party cannot be amended, being part of the 'basic structure' of the party constitution. On the other hand, he submitted, the rival group had abolished the post of General Secretary altogether in violation of the express provisions of the party constitution. According to Shri Singhvi, these were the distinguishing

features from facts in *Sadiq Ali* case (Supra) and, thus, the test of majority alone was not the exclusive test to be applied to decide the present dispute. The learned senior counsels for the other respondents also endorsed the submissions made by Shri Singhvi.

46. In reply, the learned senior counsels, Shri Rohatgi, Shri Vaidyanathan, Shri Vishwanathan, Shri Guru Krishna Kumar and Shri Pandian, for all the petitioners and impleading applicant (Shri E.K. Palaniswami) submitted that the Commission had itself observed in the case of *Indian National Congress* referred to in *Sadiq Ali* (supra) that the test based on the provisions of the party constitution was hardly of any assistance in view of the removals and counter-removals of members and leaders by the rival groups and that the test based on the aims and objects of the party was also not helpful as neither of the two groups had in any manner repudiated those aims and objectives. They stated that in the present case also, both the groups have made certain expulsions and counter-expulsions of important members and leaders of rival groups and these were matters for the civil courts and not for the Commission to decide, in the present proceedings. In fact, the resolutions passed at the General Council meeting on 12.09.2017 have been challenged by the respondents in the Civil Suit before the Madras High Court and are

thus subject matter of those proceedings before the High Court. Furthermore, both groups still acknowledge their adherence to the same party constitution, as in the dispute in *Sadiq Ali* (supra). Counsels for the petitioners vehemently stressed that the test of majority of the rival factions in the organizational and legislature wings of the party was the most valuable and relevant test in a democratic organization, as applied by the Commission and upheld by the Supreme Court in *Sadiq Ali's* case (supra). They also pointed out that the observation of the Commission in *Arjun Singh's* case (supra) on which Shri Singhvi had relied, was made in the minority order of the Commission recorded by the then Chief Election Commissioner and over-ruled by the majority view of the then two Election Commissioners, who applied the numerical test to ultimately decide the dispute.

47. Having considered the submissions of the learned senior counsels of both the groups, the Commission is also of the view that the present dispute has to be decided on the touchstone of numerical superiority between the rival groups in the organizational and legislature wings of the party. While upholding the test of majority as applied by the Commission in the case of *Sadiq Ali* (supra), the Supreme Court observed and held as follows:-

“23. The figures found by the Commission of the members of the two Houses of Parliament and of the State Legislatures as well as those of AICC members and delegates who supported Congress 'J' have not been shown to us to be incorrect. In view of those figures, it can hardly, be disputed that substantial majority of the members of the Congress in both its legislative wing as well as the organisational wing supported Congress 'J'. As Congress is democratic organisation the test of majority and numerical strength, in our opinion, was a very valuable and relevant test. Whatever might be the position in another system of Government or organisation, numbers have a relevance and importance in a democratic system of Government or political set up and it is neither possible nor permissible to loss sight of them. Indeed it is the view of the majority which in the final analysis proves decisive in a democratic set up.

24. It may be mentioned that according to Paragraph 6 of the Symbols Order, one of the factors which may be taken into account in treating a political party as a recognised political party is the number of seats secured by that party in the House of People or the State Legislative Assembly or the number of votes polled by the contesting candidates set up by such party. If the number of seats secured by a

political party or the number of votes cast in favour of the candidates of a political party can be a relevant consideration for the recognition of a political party, one is at a loss to understand as to how the number of seats in the Parliament and State Legislatures held by the supporters of a group of the political party can be considered to be irrelevant. We can consequently discover no error in the approach of the Commission in applying the rule of majority and numerical strength for determining as to which of the two groups, Congress 'J' and Congress 'O' was the Congress party for the purpose of paragraph 15 of Symbols order."

It is also relevant in this context to take note of the fact that the Commission has consistently followed and applied similar test of majority in the organizational and legislature wings of the parties whenever a dispute has arisen since 1971 for determination in terms of para 15 of the Symbols Order. The latest in a catena of such decisions, was rendered by the Commission in the cases of Samajwadi Party, a recognized State party in the State of Uttar Pradesh, and the Janata Dal (United), a recognized State party in the State of Bihar [see Commission's order dated 16th January, 2017 in the case of Samajwadi Party and the decision dated 17th November, 2017 in the case of Janata Dal (United)].

Accordingly, the Commission hereby holds that the present case will also be decided by applying the test of majority in the organizational and legislature wings of the party based on their relative strength in the said wings.

48. Events Subsequent to filing of the petition on 16th March, 2017 – whether relevant: Having decided that the test of majority as upheld in *Sadiq Ali's* case (supra) will be applied by the Commission in adjudicating the present dispute, the next question which arises for consideration of the Commission is the relevant period with reference to which the said test of majority should be applied; that is to say, whether the developments which took place in the organizational and legislature hierarchy of the party subsequent to the filing of the current petition on 16.03.2017, are relevant for deciding the present dispute. The learned senior counsels for the respondents, Shri Singhvi and Shri Hansaria, contended that the case should be decided by taking into account the position of the two groups in the organizational and legislature wings of the party, at the time of filing of the petition by the petitioners, that is, 16.03.2017. According to them, the later developments, both in the organizational and legislature hierarchy in the party should be of no relevance to the Commission for the determination of the instant dispute. They asserted that when the present proceedings were initiated by the petitioners on 16.03.2017, the respondents enjoyed overwhelming support in

the legislature wing of the party, as was evident from the individual affidavits filed by 37 Members of Parliament and 122 Members of State Legislative Assemblies, acknowledging their support to the respondents, and the lakhs of affidavits from members of the party at various levels of its administrative units including the affidavits of 1912 Members of the General Council of the party. They also contended that respondent No.1 had been validly elected as General Secretary of the party at the General Council meeting held at Chennai on 29.12.2016 and that in her capacity as the General Secretary, she had validly appointed respondent No.2 as Deputy General Secretary under the provisions of rule 20 (iii) of the party constitution on 15.02.2017. The deponents of all the above affidavits which were filed by the respondent group from March 2017 onwards, had acknowledged their allegiance and support to the respondents and the support so extended by the aforesaid members of the organizational and legislature wings of the party should receive the sole consideration of the Commission for the purpose of the present dispute. They also contended that the matters relating to election of respondent No.1 as General Secretary, appointment of respondent No.2 as Deputy General Secretary, and the expulsions and counter-expulsions of other members and leaders of the party subsequent to the raising of the dispute by the petitioners on 16.03.2017 are

matters to be decided by the Civil Courts and thus are of no relevance to the Commission.

49. On the contrary, the case of the petitioners is that the Commission has to take note of the later developments affecting the organizational and legislature structure of the party and the Commission has to decide the dispute by taking into account the position as obtaining on the date of its decision. In support of their above submission and contention, Shri Rohatigi, Shri Vaidyanathan, and Shri Vishwanathan, learned senior counsels have relied upon the decisions of the Supreme Court in *Amarjit Singh Vs. Smt. Khatoon Quamarain* (1986) 4 SCC 736, *Jai Mangal Oraon Vs. Meera Nayak (Smt.) and Others* (2000) 5 SCC 141, and *PRP Exports and Others Vs. Chief Secretary, Government of Tamil Nadu and Others* (2014) 13 SCC 692. In the case of *Amarjit Singh* (supra), Supreme Court directed that the court should take cognizance of events taking place subsequent to filing of suits or applications in fairness to the parties. In the case of *Jai Mangal Oraon* (supra), the Supreme Court held that when subsequent events are relevant, genuine and vitally important in effectively deciding issues involved, they ought to be taken into consideration even at

appellate stage by the courts. In the case of *PRP Exports* (supra), the petitioners relied upon the following observation of the Supreme Court:

8.....In our view, the Division Bench of the High Court is right in examining the subsequent events as well in a case where larger public interest is involved. This Court in All India Railway Recruitment Board v. K. Shyam Kumar 2010 6 SCC 614 distinguished Mohinder Singh Gill case, stating when a larger public interest is involved, the Court can always look into the subsequent events. Relevant paragraph of the judgment is extracted herein below: (K. Shyam Kumar case, SCC p. 631, para 45)

“45. We are of the view that the decision-maker can always rely upon subsequent materials to support the decision already taken when larger public interest is involved. This Court in Madhyamic Shiksha Mandal, M.P v. Abhilash Shiksha Prasar Samiti 1998 9 SCC 236 found no irregularity in placing reliance on a subsequent report to sustain the cancellation of the examination conducted where there were serious allegations of mass copying. The principle laid down in Mohinder Singh Gill case is not applicable where larger public interest is involved and in such situations, additional grounds can be looked into to examine the validity of an order. The finding recorded

by the High Court that the report of CBI cannot be looked into to examine the validity of the order dated 4-6-2004, cannot be sustained."

50. In view of the law so settled by the Apex Court, the Commission has to take into account the subsequent developments in the present matter, and the larger public interest would be served by looking into the developments in the organizational and legislature hierarchy of the party, subsequent to the filing of the petition dated 16.03.2017. These subsequent developments have a material bearing on the ultimate decision which the Commission may take in this case, as the Commission has to decide under para 15 of the Symbols Order that "*one such rival section or group or none of such rival sections or groups is that recognized political party*". Even if it be assumed in favour of respondents that respondent No.1 was validly elected as General Secretary of the party on 29.12.2016, it is an undisputed fact that she was convicted by the Supreme Court on 12.02.2017, in a criminal matter and sentenced to imprisonment for 4 years. Before she was taken into custody, she appointed respondent No.2 as the Deputy General Secretary on 15.02.2017; Petitioner No.2 (Shri O. Paneerselvam) had to step down as Chief Minister of Tamil Nadu; and Shri E.K. Palaniswami (Impleading

Applicant No.1, and now supporting the petitioners), became the Chief Minister of Tamil Nadu. According to the petitioners, these developments led to serious disturbance in the rank and file of the party and they were not reconciled to the resultant political situation which had earlier divided the party into two factions led by the petitioners and the respondents, respectively. As a result of the unification efforts undertaken by both the rival factions, excluding Respondents No.1 and 2, a meeting of the leaders of both the factions (minus respondents Nos.1 and 2) is stated to have been held at Chennai on 10.8.2017, and they decided that respondent No. 1 could not look after the day-to-day affairs of the party being confined to prison. They further decided to hold a meeting of the General Council on 12.09.2017, at Chennai for which a notice was issued on 21.8.2017 jointly by the leaders of both the factions. At the General Council meeting of the party held on 12.09.2017, the General Council is stated to have passed certain resolutions to the effect, inter alia, that the two groups had merged and that respondents Nos.1 and 2 stood removed from their party positions. Certain other political developments also took place as a result of the deliberations of the General Council; the Impleading Applicant (Shri E.K. Palaniswami) became the Joint Coordinator and Petitioner No.2 became the Coordinator as well as Deputy Chief Minister of Tamil Nadu. The Commission wonders

C.F.C.
23/11/17
प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

how the subsequent developments in the organizational and legislature wings of the party can be altogether be ignored in our adjudication, when the same have vital bearing in the determination of the present dispute.

51. In the context of the above meeting of the General Council held on 12.09.2017, the respondents group raised another objection that the said meeting was held in violation of the Commission's interim order dated 22.03.2017, whereby the Commission had directed both the groups not to use the name of the party 'All India Anna Dravida Kazhagam' until further order of the Commission. They alleged that the notice issued by the petitioners group on 28.08.2017 for the General Council meeting to be held on 12.09.2017 was in violation of the Commission's interim order dated 22.03.2017 and thus the proceedings of that meeting were a nullity, apart from rendering the petitioners group guilty of committing contempt of the Commission. In support of the above submission, they relied on the decisions of the Supreme Court in the cases of *Union of India and Another Vs. Ashok Kumar Aggarwal* (2013) SCC 147, *Manohar Lal (dead) by LRS Vs. Ugrasen (dead) by LRS and Others* (2010) 11 SCC 557, *All Bengal Excise Licensees' Association Vs. Raghavendra Singh and Others* (2007) 11 SCC 374, *BPL Limited and Others Vs. R. Sudhakar and Others* (2004) 7

SCC 219, *Surjit Singh and Others Vs. Harbans Singh and Others* (1995) 6 SCC 50, and, *Ravi S Naik Vs. Union of India and Others* (1994) Supp. 2 SCC 641.

The Commission does not see any merit in the above submissions of the respondents group. A glance at the impugned notice dated 28.08.2017 will show that it has been jointly issued in the name of 'All India Anna Dravida Munnetra Kazhagam (Ammam)' and 'All India Anna Dravida Munnetra Kazhagam (Puratchi Thalivi Ammam)' and not in the name of 'All India Anna Dravida Munnetra Kazhagam' simpliciter. Thus, Commission sees no violation of its aforesaid interim order dated 22.03.2017 in the present proceedings. The Commission had not prohibited by the aforesaid interim order, any merger between the rival groups for the purpose of their unification. Even the Madras High Court, in its order dated 11.09.2017 in C.M.P. No.15757 of 2017 in O.S.A. No. 71943 of 2017 has observed that they see "*no impediment in law if rival factions of the original party choose to get together and jointly convene a meeting*".

Thus, the Commission has to take the final view in the matter, by taking into account the subsequent developments in the party. It is pertinent to note that in the past also, in the matter of a dispute which arose in this very party in 1987 after the death of Shri MG Ramchandran, then Chief

Minister of Tamil Nadu and General Secretary of the party, the Commission took into account the subsequent developments in the party which led to the merger and unification of both the rival factions. The ultimate decision was given based on the facts and circumstances as obtaining on the date of its decision, i.e., 11th February, 1989. Even the table given at para 24 of the judgment of the Supreme Court in the case of *Sadiq Ali* (supra) shows that the Commission had seen the position of the two rival groups as on 22.01.1970 as well as in the latter half of 1970, thereby taking into account the subsequent developments after the initiation of the proceedings in that matter under para 15 of the Symbols Order.

52. Decisions on preliminary objections of respondents: In view of the above discussion on the preliminary issues raised by the respondents and enumerated in paras 33 – 45 above, the decisions of the Commission on those preliminary issues are summarized as below:-

- (i) The objections of the respondents that the petitioners have not approached the Commission with clean hands is rejected.
- (ii) The prayer of the respondents and some of the impleading applicants for cross-examination of deponents of the affidavits filed on behalf of the petitioners is also rejected. There is no denial of natural justice to

the respondent by not allowing the cross-examination of the said deponents.

- (iii) The Commission has to apply the test of majority, as upheld by the Supreme Court in the case of *Sadiq Ali* (supra), for deciding the present dispute and the test based on the provisions of the party constitution is not helpful and not relevant.
- (iv) The Commission has to take into account the developments that took place in the organizational and legislature hierarchy of the party subsequent to the filing of the petition dated 16.03.2017 in larger public interest, as ordained by the Supreme Court in a catena of its judgments on the issue.

Disposal of miscellaneous applications

- 53. Before dealing with the question as to how to apply the test of majority in the facts and circumstances of the preset case, it would be apt to dispose of the miscellaneous applications filed by certain persons seeking to be heard either as parties or as witnesses to give evidence in these proceedings.
- 54. Applications were filed on 23.10.2017 and 30.10.2017 by ten persons who claimed to be the members of the General Council and who alleged that their affidavits filed by the petitioners have either been procured by the petitioners

under coercion or duress or have been forged. Shri Mohit Mathur, the learned senior counsel appearing for them, submitted that the Commission should initiate criminal proceedings under the provisions of section 195 of the Criminal Procedure Code. He contended that he could not approach the court straightaway without the sanction of the Election Commission before whom the impugned affidavits have been filed in the present proceedings in view of the provisions of section 195 of the Criminal Procedure Code. He also relied upon the decision of the Supreme Court in *Iqbal Singh Marwah v. Meenakshi Marwah* (2005) 4 SCC 370.

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 a 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.

55. The submissions of Shri K.C. Palanisamy, Shri Pugazhendhi and Ms. J. Deepa and Shri P.A. Joseph, have also been addressed and are covered, as their submissions are on similar lines as those of the main parties. Incidentally, it is relevant to note that Ms. Deepa is not even a primary member of the party.

Application of test of majority to the facts and circumstances of the present case

56. Having disposed of all the preliminary issues raised by the respondents as mentioned above, the crucial question that now remains to be decided by the

Commission is as to how to apply the test of majority in the organizational and legislature wings of the party in view of the present facts and circumstances of the case.

Organizational Wing

As has been approved by the Supreme Court in the case of *Sadiq Ali* (supra), for purposes of determining the relative strength of the organizational wing under para 15 of the Symbols Order, the Commission will confine its scrutiny to representative bodies of the party. Realizing the practical difficulties of ascertaining the primary members of the party, the Apex Court observed as follows:

'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 the matter under Paragraph 15 has to act with a certain measure of promptitude and it has to see that the enquiry does not get bogged down in a quagmire'. 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 members of All India Congress Committee and the delegates reflected by and large the view of the primary members'.

In the present case as well, the AIADMK has millions of primary members in all villages and towns in the State of Tamil Nadu, apart from members in some adjoining States. The Commission cannot be expected to hold a referendum among the primary members of the party, and verify the individual claims of persons claiming to be primary members, in order to ascertain the relative support of the two rival groups among those primary members. Accordingly, the Commission will look into the relative strength of the two groups in the apex representative body, of the organizational structure of the party as provided for in the party constitution, which is fairly representative of the primary members forming rank and file of the party.

The organizational structure of the AIADMK party is prescribed in rules 6 to 26 of the party constitution. It provides for the setting up of party units at Village Panchayat Level, Town Panchayat Level, Municipal Town Level, District Level, Municipal Corporations Level and going up in a pyramidal structure to the General Council Level. As per the provisions of rule 19 of

the party constitution, *'The General Council shall be the Supreme body of the Party with all powers of the Kazhagam'*. This body at the apex level consists of representatives chosen at all levels and is the highest deliberative body. Therefore, the General Council of the party can be taken as the body fairly representative of the views of the primary members forming rank and file of the party in this case, as contemplated in the decision of the Supreme Court in *Sadiq Ali's* case (supra).

57. The connected question is regarding the date of reference according to which the names of members of the General Council should be considered, for ascertaining which group enjoys majority support among those members. In all such cases, the Commission typically looks into the position as of a day which is not in controversy and which may show the undisputed list of members of the relevant organizational wing of the party. In the present case, Ms. J. Jayalalithaa died on 5.12.2016 and the party stood united on that day. Therefore, the Commission asked the party, vide its notice dated 21.09.2017 to furnish the list of members of the General Council as on 05.12.2016 and has thus decided the crucial date of reference, by which the status of persons claiming to be the members of the General Council, is to be verified. It is admitted by both sides that the total strength of the General

Council members, as per the party records, stood at 2141, as on 5.12.2016, and out of these 2141 members, 13 members (including Ms. J. Jayalalithaa had either expired or left the party). Thus, the Commission has considered the relative strength of the two groups among these 2128 members (2141 – 13 = 2128) for applying the majority test in the organizational wing of the party. It appears from the pleadings of the rival groups that out of 2128 members of the General Council, 1829 members attended the General Council meeting held at Chennai on 29.12.2016 at which respondent No.1 was elected as the General Secretary. Of them, 1912 members initially filed their affidavits in support of the respondents in March 2017, after the filing of the present petition. It is relevant to point out that in those affidavits, the deponents had acknowledged their support not only for Respondents No.1 and 2 but also for Shri E.K. Palaniswami, the Impleading Applicant No.1, who is Chief Minister of Tamil Nadu and was part of the respondents group, at the time. As narrated above, Shri Palaniswami is no more with the respondents group and presently supports the petitioners group as Impleading Applicant No. 1. The subsequent developments to which a reference has been made in the preceding paragraphs further show that the support of most of the above mentioned General Council members has totally changed and they are now affirming loyalty to the group led by the

petitioners and Impleading Applicant No. 1. It is now claimed by the petitioner group that out of the said 2128 General Council members, 1877 members have filed affidavits in support of their group in September, 2017. The petitioners also claim that all these members attended the General Council meeting of the party on 12.09.2017, held at Chennai and unanimously voted for the resolutions which were passed at that meeting.

58. The learned senior counsels for the respondents raised doubts and suspicions with regard to authenticity and correctness of many of the affidavits of the petitioner's group, as described in the preceding paragraphs. They urged the Commission not to take into account these affidavits in support of the petitioners group. Reliance has been placed by them on the decisions of the Supreme Court in *Smt. Savithramma vs. Cecil Naronha and Another* (1988) (Suppl) SCC 655, *Umesh Kumar Vs. State of Andhra Pradesh and Another* (2013) 10 SCC 591, *Amar Singh Vs. Union of India and Others* (2011) 7 SCC 69, and they have contended that the courts have been asked by the Supreme Court not to look into the contents of those affidavits as evidence. Their prayer for sample cross-examination of some of the deponents in order to verify the authenticity of those affidavits, has been considered and rejected by the Commission for the reasons stated in the

foregoing paragraphs. Apart from the above prayer, the learned senior counsels for the respondents also submitted a list of about 325 persons whose affidavits they alleged to be suffering from various defects, such as signatures not matching on the two sets of affidavits (one filed earlier in March, 2017 and the second set filed in September, 2017), verification clause not being in accordance with the provisions of the Civil Procedure Code, difference in the dates of their signing the affidavit and the verification by the Notary or discrepancy in the dates of purchase of stamp papers for those affidavits, etc. On the ground of these alleged deficiencies, the prayer of the respondent group is that the affidavits of all 1877 members of the General Council in support of the petitioners group should be discarded and not taken into consideration. It is pertinent to note that officials of the Commission expended effort in verifying the claims of the deponents of affidavits filed in support of the petitioners, as against the existing list of General Council members on 5.12.2016, as specified in the Commission's notice dated 21.09.2017. Officials from the office of the Chief Electoral Officer of Tamil Nadu, were also brought to the Commission to assist in the translation of names and signatures of deponents, some of which were in Tamil. The Commission's verification of affidavits of deponents as against the list of General Council members as existing on

5.12.2016, and the attendance registers submitted to the Commission for the General Council meetings of 29.12.2016 and 12.09.2017, yielded the following results:

- (i) total number of affidavits submitted by the Petitioners group, as seen and verified by the Commission's officials, was 1867
- (ii) Total number of affidavits in which there were variations in language of signature (Tamil and English) between the attendance register for the General Council meetings of 29.12.2016 and 12.09.2017 and in the affidavits submitted, was 50;
- (iii) total number of affidavits in which signatures did not prima facie match, was 76 affidavits. Thus, the total number of affidavits without any apparent defect, as per the foregoing analysis was 1741 affidavits, in support of the petitioner group.

The Commission also carried out a verification in respect of the affidavits submitted by the Respondents, in which it emerged that:

- (i) the total number of affidavits in support of the Respondents, filed by persons who were General Council members on 05.12.2016, was seen to be 174;
- (ii) Total number of affidavits in which there were variations in language of signature (Tamil and English) between the attendance

register for the General Council meetings of 29.12.2016 and 12.09.2017 and the affidavits submitted, was 13 and

(iii) total number of affidavits in which signatures did not prima facie match, was 16 affidavits. Thus, the total number of apparently defect-free affidavits, as per the foregoing analysis was 145 affidavits, in support of the respondent group. According to the petitioners, of the 1280 affidavits filed by the Respondents in September 2017 before the Commission, only 168 were members of the General Council as of 5.12.2016 and 23 persons from this 168, also gave affidavits in support of the petitioners and impleading applicant No. 1 in September 2017. 12 of these 23 persons have, according to the Petitioners sworn affidavits stating that they never gave any affidavits in favour of the respondents in September 2017.

59. While disputing the allegations of the respondents with regard to the aforesaid affidavits of the members of the General Council, the learned senior counsels for the petitioners contend that the Commission is a quasi-judicial authority and not a court and, therefore, the provisions of the Civil Procedure Code and the Evidence Act do not strictly apply to the present proceedings before the Commission under para 15 of the Symbols Order. While addressing the discrepancies in the 325 affidavits regarding which the

respondent groups has made specific allegations, learned senior counsels for the petitioners say that the list submitted by the Respondents contained multiple entries of the same names at different places, and the actual names amounted to only about 150. They also submitted that the affidavits which are under specific challenge may not be taken into account by the Commission and the majority support of the two groups may be adjudged on the basis of the remaining affidavits which have not been challenged. In support of their contention that the Commission is a quasi-judicial authority and not a court bound by the provisions of Civil Procedure and Evidence Act, they have relied upon the decision of the Supreme Court in *Jaswant Sugar Mills v. Laxmichand and Ors*, 1963 Supp 1 SCR 242. In that case the court discussed the meaning of investiture of “trappings of a court”, such as sitting in public, power to compel attendance of witnesses and examine them on oath, provision for imposing sanctions by way of imprisonment, fine, damages etc. On that standard, the Commission is not a court for the purposes of proceedings under Paragraph 15 of the Symbols Order, not being invested with any of the aforementioned ‘trappings of a court’.

60. The Commission is also of the view that for the purposes of Paragraph 15 adjudication under the Symbols Order, it is a quasi-judicial authority and a tribunal within the meaning of Article 136 of the Constitution, as held by the

Supreme Court in the case of *APHLC* (supra). Thus, the provisions of Civil Procedure Code and Evidence Act do not apply with the same rigor as they apply in judicial proceedings before the courts of law. The affidavits under reference have been filed in this case only to show that the deponents of those affidavits support a particular group and not by way of evidence in a judicial proceeding, in the strict sense in which it is understood under the provisions of the Evidence Act and the Civil Procedure Code. It is pertinent to point out here that the respondents have not questioned the veracity of the statements made by the deponents of those affidavits and have merely pointed out certain technical defects therein. They have not claimed that the deponents of those affidavits are in fact supporting their cause. The respondent group has also contended that the second set of affidavits amounts to retraction of the earlier affidavits by the deponents. The Commission is not convinced with this contention. The perusal of the second set of affidavits shows that they have narrated the whole sequence of facts and circumstances which have led to their change in stance with regard to support for the petitioners group and their present stand vis-à-vis the previous stand reflected in earlier affidavits filed in March, 2017. Accordingly, the Commission is not convinced to accept the stand of the respondents that all the affidavits filed by the petitioners group in September

2017, should be discarded. For the purposes of the determination of the present dispute under para 15 of the Symbols Order, the statements of the deponents showing their support for the petitioners group are sufficient to take account of their support for the petitioners group. Even if it be assumed in favour of the respondents group that the affidavits of all persons in the list 325 affidavits, suffer from such serious defects that they cannot be taken into account, they can be ignored for assessing the relative strength of the two groups in the General Council, as has been done by the Commission in the past also wherever there was any disputed affidavit or common affidavit for both the groups (see para 24 of *Sadiq Ali's* case itself). The petitioners group has demonstrated overwhelming support among the members of the General Council and, consequently, the Commission hereby holds that the petitioners' group enjoys the majority support among the members of the General Council and, thus, in the organizational wing of the party.

Legislature Wing

Insofar as the application of test of majority in the legislature group of the party is concerned, the matter admits of no dispute. The two rival group have filed affidavits of the following Members of Parliament and State

C.F.C.
प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001

Legislatures in support of their respective claims of numerical strength in the relevant Houses-:

Name of the House	Members Supporting	
	Petitioner's group	Respondent's group
Lok Sabha	34	3
Rajya Sabha	8	3
MLAs (Tamil Nadu)	111	20 (including 18 MLAs who stand disqualified under the Tenth Schedule to the Constitution of India)
MLAs (Puducherry)	4	-

The above table leaves no manner of doubt that the petitioner group enjoys overwhelming majority support in the legislature wing of the party. Incidentally, the claims of support for the respective groups in the legislature wing (as shown in the table above) have not been disputed by either of the rival groups and the above table shows the undisputed position of the two groups in the legislature wing.

61. Having regard to the findings of the Commission in the foregoing paragraphs, the Commission is of the considered opinion that the petitioners group led by Shri E. Madhusudhanan, O. Panneerselvam and S. Semmalai, and also supported presently by the impleading applicant Shri E.K. Palaniswami, the present Chief Minister of Tamil Nadu, enjoys support of

majority of members, both in the organizational and legislature wings of the All India Anna Dravida Munnetra Kazhagam. Accordingly, the said group led by Shri E. Madhusudhanan and others is hereby recognized, in terms of para 15 of the Election Symbols (Reservation and Allotment) Order, 1968, as the All India Anna Dravida Munnetra Kazhagam, which is a recognized State Party in the State of Tamil Nadu and in the Union Territory of Puducherry, for whom the symbol 'Two Leaves' is reserved in the said State and Union Territory.

62. Consequently, the said group led by Shri E. Madhusudhanan will be entitled to use the name of the party 'All India Anna Dravida Munnetra Kazhagam' and its reserved symbol 'Two Leaves'. Further, the interim order dated 22nd March, 2017, passed by the Election Commission, in the present proceedings, is hereby withdrawn and rescinded and that order shall no longer be operative for any purposes under the Election Symbols (Reservation and Allotment) Order, 1968.

ORDERED ACCORDINGLY

Sd/-

(SUNIL ARORA)

ELECTION COMMISSIONER

Sd/-

(A.K. JOTI)

CHIEF ELECTION COMMISSIONER

Sd/-

(O.P. RAWAT)

ELECTION COMMISSIONER

Place : New Delhi.

Dated: 23rd November, 2017

C.T.C.
23/11/17
प्रमोद कुमार शर्मा
PRAMOD KUMAR SHARMA
सचिव/Secretary
भारत निर्वाचन आयोग
Election Commission of India
नई दिल्ली-110001/New Delhi-110001