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WP No. 19287 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

**Orders Reserved on : 11.05.2026**

**Pronounced on : 12.05.2026**

CORAM

**THE HON'BLE MRS. JUSTICE L. VICTORIA GOWRI**

**AND**

**THE HON'BLE MR. JUSTICE N. SENTHILKUMAR**

**WP No. 19287 of 2026**

**and**

**WMP Nos. 20543 & 20544 of 2026**

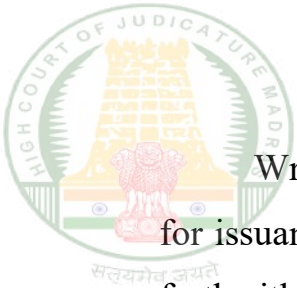
KR.Periakaruppan  
S/o.AL.Karuthan  
Door No.252,Aralikottai Village  
Singampunari Taluk, Sivagangai District-630 566

..Petitioner(s)

Vs

1. The Chief Election Officer,  
Election commission of India,  
Nirvachan Sadan, Ashoka Road, New Delhi-110 001.
2. The Chief Electoral Officer and  
The Principal Secretary to Government  
Public (Elections) Department,  
Secretariat, Fort St.George, Chennai-600 009.
3. The District Election officer-cum-The Collector  
Collectorate, Sivagangai District.
4. The Returning Officer,  
No.185, Tirupattur Assembly constituency,  
Sivagangai District-630 502.
5. The Returning Officer,  
No.50,Tirupattur Assembly Constituency,  
Tirupattur District.
6. R.Seenivasa Sethupathi

..Respondent(s)



Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, to direct the Official Respondents herein to forthwith secure the postal votes belonging to No.185 Tiruppattur Assembly constituency which was wrongly sent to No.50, Tiruppattur Assembly constituency and account the same to No.185, Tiruppattur Assembly constituency, for the elections conducted for the 17th Tamilnadu Legislative Assembly held on 23.4.2026.

- For Petitioner : Mr. Mukul Rohatgi, Senior Counsel,  
and Mr. N.R. Elango, Senior Counsel,  
Assisted by Mr. Aswin Prasanna and  
Mr. S. Agilesh Kumar.
- For R1 to R5 : Mr. G. Rajagopalan,  
for Mr. Tarun Rao Kallakuru
- For R6 : Dr. Abhishek Manu Singhvi, Senior Counsel,  
: Mr. V. Raghavachari, Senior Counsel,  
Assisted by Mr. K.P.Anantha Krishnan, and  
Mr. Pranjal Agarwal

### **ORDER**

**(Order of the Court was made by L.Victoria Gowri J.)**

Heard the learned Senior Counsel Mr.Mukul Rohatgi representing learned Senior Counsel Mr.N.R.Elango for the petitioner, the learned Senior Counsels Mr.Abishek Manu Singhvi and Mr.Ragavachari for the 6<sup>th</sup> respondent, the learned Senior Counsel Mr. G. Rajagopalan for learned Counsel Mr.Tarun Rao Kallakuru for the 1<sup>st</sup> to 5<sup>th</sup> official respondents at length and carefully perused the materials available on record.



2. Democracy breathes through the ballot. The Court, while exercising jurisdiction under Article 226 of the Constitution of India in matters touching elections, is required to walk with constitutional caution. It cannot, under the guise of interim protection, trench upon the forbidden field reserved for an election petition. At the same time, where a narrow and exceptional plea is made for preservation of vital electoral material, so that the truth is not lost by efflux of time, constitutional courts are not rendered helpless spectators.

3. Democracy is not sustained merely by the mechanical declaration of results. It is sustained by the living faith of the citizen that every vote lawfully cast is received, preserved, counted and accounted for in accordance with law.

4. These Writ Miscellaneous Petitions have been filed seeking interim protection in aid of the main writ petition, wherein the petitioner has questioned certain alleged irregularities in the counting and accounting of votes in respect of No.185 Tiruppattur Assembly Constituency in the General Elections to the 17<sup>th</sup> Tamil Nadu Legislative Assembly held on 23.04.2026.



5. In *Election Commission of India Vs Ashok Kumar and others* (2000)8 SCC 216, the Honourable Supreme Court held that if an election is

called in question in a manner which interrupts, obstructs or protracts the election proceedings, judicial remedy must ordinarily be postponed until completion of the election. However, the Hon'ble Apex Court further held that judicial intervention is available where it merely corrects or smoothens the progress of the election, removes obstacles, or preserves vital evidence which may otherwise be lost.

6. The Hon' ble Supreme Court clarified that actions of the Election Commission are open to judicial review on grounds of *mala fides*, arbitrariness or breach of law, but the Court must act with great circumspection and only upon a clear and strong case.

7. In *Mohinder Singh Gill and another Vs The Chief Election Commissioner, New Delhi and others* (1978) 1 SCC 405, the Honourable Supreme Court emphasised that free and fair election is the heart of democracy and that the election process must be protected from arbitrariness, illegality and procedural unfairness.



8.

In *All India Anna Dravida Munnetra Kazhagam v. State Election*

*Commissioner, 2007 (1) CTC 705*, this Court, reiterated that constitutional

courts must be cautious in election matters, but are not powerless where the complaint is one of arbitrariness, breach of law or necessity to preserve the integrity of the electoral process.

9. This Court is conscious of the constitutional limitation engrafted under Article 329(b) of the Constitution of India and the statutory mandate contained under Sections 80 and 100 of the Representation of the People Act, 1951, which ordinarily require all election disputes to be adjudicated only by way of an election petition. Equally, this Court is mindful of the consistent judicial pronouncements of the Honourable Supreme Court cautioning constitutional Courts against interdiction of the electoral process in exercise of jurisdiction under Article 226 of the Constitution.

10. However, the present case stands on an altogether exceptional and unprecedented factual footing, which, in the considered view of this Court, was never within the legislative contemplation while enacting Section 100 of the Representation of the People Act, 1951. The grievance projected before this Court is not a routine challenge to counting, recounting, acceptance or rejection of votes simpliciter.



11. The case on hand discloses a peculiar constitutional anomaly where a postal ballot admittedly relatable to a live and concluded election in one constituency was allegedly diverted to another constituency bearing a similar nomenclature and came to be rejected there, not on the ground of invalidity of vote, impersonation, defective marking or statutory disqualification, but solely because it was found in a different constituency.

12. Such a situation, where an identifiable vote belonging to one constituency enters the electoral stream of another constituency and is extinguished without any corrective restorative mechanism being invoked by the election authorities, is not one expressly contemplated under the grounds enumerated in Section 100 of the Act.

13. The statutory scheme under Section 100 principally contemplates adjudication of disputes relating to improper acceptance or rejection of votes, corrupt practices, non-compliance with statutory provisions, or material effect on the result of the election. However, the present controversy arises from an antecedent administrative failure in preserving the integrity of the electoral chain itself, namely, the failure of constitutional authorities to restore an admittedly misdirected postal ballot to its proper constituency before culmination of the counting process. The absence of any immediate statutory mechanism for correction of such an inadvertent but potentially decisive



constitutional error places the present case within a narrow and exceptional constitutional space warranting limited judicial intervention.

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14. This Court is therefore of the considered view that the writ petition, insofar as it seeks preservation of the disputed ballot, preservation of videographic evidence and protection against irreversible constitutional consequences pending recourse to the election remedy, cannot be treated as an ordinary election dispute simpliciter. The maintainability of the present writ petition rests not upon any dilution of the embargo under Article 329(b), but upon the extraordinary factual situation which has emerged in the present case and the constitutional necessity to ensure that the remedy of election petition itself does not become illusory by disappearance or destruction of the foundational electoral material.

15. The constitutional power under Article 226, being couched in the widest possible terms, cannot remain wholly eclipsed where the Court is confronted with a manifest administrative aberration capable of undermining the purity of the electoral process itself, particularly in a case where the electoral verdict stands separated by a solitary vote. The maintainability of the present writ petition is therefore sustained not for the purpose of adjudicating upon the validity of the election of the returned candidate, but for the limited and narrowly tailored purpose of preserving electoral integrity and securing the



ends of constitutional justice in a situation which the Legislature itself appears not to have specifically foreseen while enacting Section 100 of the Representation of the People Act, 1951.

16. We are conscious that election disputes stand on a distinct constitutional footing. The mandate of the electorate cannot be lightly interdicted by an interim order. A returned candidate cannot ordinarily be restrained from functioning merely because an unsuccessful candidate has raised a dispute.

17. However, the present case is not one where the petitioner merely alleges general irregularities. The pleaded facts disclose three striking features:

- i. The margin of victory is only one vote;
- ii. There is an alleged discrepancy of 18 EVM votes between two official sources; and
- iii. One postal ballot allegedly belonging to No.185 Tiruppattur Assembly Constituency was rejected in another constituency instead of being transmitted to the competent Returning Officer.

18. In an election decided by thousands of votes, such matters may stand on a different plane. But in an election decided by one vote, every vote is



not merely relevant; it is potentially determinative. The petitioner's grievance regarding the postal ballot is not a mere request for recount. It is a complaint that a vote allegedly belonging to one constituency was dealt with by an authority of another constituency. If this allegation is ultimately found to be correct, the matter would not merely involve an error of counting, but a jurisdictional defect in the handling of a valid electoral record.

19. Similarly, the alleged discrepancy of 18 EVM votes between the consolidated abstract and the official website of the Election Commission cannot be brushed aside at the threshold, particularly when the margin of victory is only one vote. The respondents may ultimately establish that the discrepancy is clerical, technical or explainable. However, until such explanation is placed before this Court on affidavit, the matter cannot be treated as insignificant.

20. We are also conscious of the contention that the proper remedy is an election petition. That contention deserves serious consideration at the final hearing of the writ petition. However, at the interim stage, this Court is required to examine whether an irreversible constitutional consequence is likely to occur before the controversy is judicially examined.



21. The floor test is not an ordinary legislative sitting. Participation in a floor test may determine the survival or fall of a Government. If the sixth respondent participates in such proceedings and his vote becomes decisive, the consequence may travel far beyond the constituency and affect the constitutional governance of the State.

22. We are not, at this stage, declaring the election of the sixth respondent void. Nor is this Court seating the petitioner in his place. We are only considering whether, pending *prima facie* scrutiny of serious electoral anomalies in a one-vote result, the returned candidate should be permitted to participate in a proceeding where his vote may alter the balance of power in the House.

23. The balance of convenience, in the peculiar facts of this case, lies in preserving constitutional neutrality. No prejudice of an irreversible nature would be caused to the sixth respondent if he is temporarily restrained from participating in the floor test, pending production of records and filing of counter affidavits. On the contrary, if he is permitted to participate and his vote becomes decisive, the injury caused to the petitioner and to the purity of the electoral process may be incapable of meaningful correction.



24. The principle that “election disputes must await an election petition” cannot be converted into a principle that, constitutional courts must remain silent, even when the issue is not merely the validity of an election, but the immediate use of a disputed electoral mandate, to decide the fate of a Government.

25. When the matter was taken up for hearing on 10.05.2026, this Court directed the second respondent to file an affidavit, particularly with regard to the action taken, if any, on the e-mail dated 05.05.2026 stated to have been sent by the petitioner. Pursuant thereto, the matter was adjourned to 11.05.2026, on which date an affidavit came to be filed on behalf of respondents 1 to 5 by the first respondent.

26. In paragraph No.11 of the said affidavit, it has been stated that an e-mail dated 05.05.2026 had been addressed by the petitioner to various officials, besides another representation dated 08.05.2026 addressed to the fifth respondent/District Election Officer, Sivagangai District, alleging that one postal ballot belonging to No.185–Tiruppattur Assembly Constituency, Sivagangai District, had been wrongly sent to No.50–Tiruppathur Assembly Constituency, Tiruppathur District. However, according to the respondents, the petitioner had not produced any supporting material or documentary proof



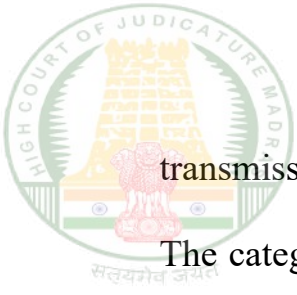
substantiating the said allegation, except filing an affidavit in support of the same.

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27. It has been further averred in the said affidavit that Rule 54A(2) of the Conduct of Election Rules, 1961 contemplates that no cover in Form 13-C relating to postal ballots received by the Returning Officer after expiry of the prescribed time shall be opened and that no vote contained therein shall be counted. It has also been specifically stated that there exists no statutory provision enabling transfer of a postal ballot from one Returning Officer to another, particularly in view of the procedure governing opening and scrutiny of postal ballots only on the date fixed for counting.

28. The affidavit further proceeds to state that transfer of a postal ballot from one Assembly Constituency to another is neither contemplated nor permitted under the existing statutory framework and therefore the request made by the petitioner's election agent seeking such transfer could not be acceded to.

29. The aforesaid stand taken by the official respondents, in the considered opinion of this Court, itself reveals the existence of a procedural vacuum in the electoral framework insofar as situations involving mistaken

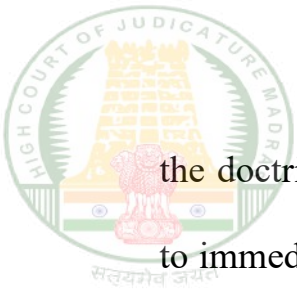


transmission of postal ballots from one constituency to another are concerned.

The categorical stand of the respondents that no statutory mechanism exists for restoration or re-transmission of such a mistakenly diverted postal ballot demonstrates that the present factual situation is one which had not been specifically contemplated under the statutory scheme governing elections.

30. At the same time, the submission made on behalf of the official respondents that such mistaken transfer of a postal ballot from one constituency to another is an unforeseen and improbable occurrence, having regard to the otherwise meticulous checks and balances incorporated in the electoral process, cannot be lightly brushed aside. Nevertheless, the very emergence of such an unprecedented situation, coupled with the admitted absence of any corrective statutory procedure, persuades this Court to hold that the present case travels beyond the contours of an ordinary election dispute simpliciter.

31. This Court is constrained to observe that the conduct of the 5th respondent in the present case reflects a disturbing lapse in the discharge of their statutory and constitutional obligations cast upon election authorities entrusted with preservation of electoral purity. Once the 5th respondent noticed that the disputed postal ballot did not pertain to No.50–Thiruppathur Assembly Constituency, the least that was expected of the said authority, consistent with



the doctrine of institutional fairness embedded in the electoral framework, was to immediately take prompt corrective steps to restore and transmit the ballot to the competent Returning Officer of No.185–Thiruppattur Assembly Constituency, instead of mechanically rejecting the same as one belonging to another constituency.

32. The rejection of a vote admittedly relatable to a live electoral process, without undertaking restorative administrative measures, defeats the very checks and balances consciously incorporated in the well-conceived constitutional and statutory electoral architecture.

33. Election officials are not mere passive custodians of forms and procedures; they are constitutional functionaries obligated to ensure that every valid vote cast by a citizen reaches its lawful destination and receives due consideration in accordance with law. Failure to adopt such elementary corrective measures, particularly in an election decided by a margin of one vote, amounts to a serious dereliction in preserving the sanctity, transparency and reliability of the electoral process, which forms part of the basic democratic structure underlying the Constitution itself.



34. We are fully satisfied that a strong prima facie case has been made out for a limited interim protective order.

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### **Interim Direction**

35. In view of the such discussion, there shall be an order of interim injunction restraining the sixth respondent/returned candidate from voting or otherwise taking part in any floor test, including, confidence motion, no-confidence motion, trust vote or any voting proceeding in the Tamil Nadu Legislative Assembly where the numerical strength of the House is tested, until further orders of this Court.

36. It is made clear that this interim order shall not be construed as setting aside the declaration of election of the sixth respondent, nor shall it be treated as conferring any right upon the petitioner to be declared elected.

37. The official respondents shall forthwith secure and preserve all records relating to counting of votes in No.185 Tiruppattur Assembly Constituency held on 04.05.2026.

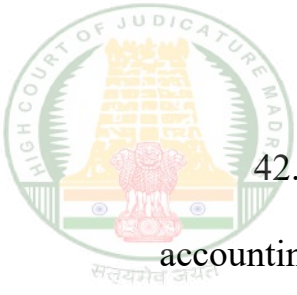


38. The records to be preserved shall include the consolidated counting abstract, statutory forms, round-wise counting sheets, EVM vote account records, postal ballot records, rejected postal ballot covers, rejected postal ballot papers, declarations, envelopes, proceedings relating to reverification of rejected postal ballots, and all connected materials.

39. If any postal ballot alleged to have been received in relation to No.185 Tiruppattur Assembly Constituency was received, handled, retained or rejected at No.50 Tiruppattur Assembly Constituency, the same shall be identified, sealed, secured and preserved separately, without opening or tampering with the same.

40. The videographic footage relating to counting, postal ballot scrutiny, rejection of postal ballots and reverification, if any, shall be preserved in its original electronic form, along with back-up copies.

41. The respondents shall not destroy, overwrite, alter, transfer or part with custody of any such material except in accordance with law and subject to further orders of this Court or the competent election forum.



42. This order shall not be construed as a direction for recounting, re-accounting, reopening of ballot papers, validation of any rejected postal ballot, or interference with the declaration of result already made.

43. The rights and contentions of all parties, including the availability of remedy under the Representation of the People Act, 1951, are left open.

44. The respondents 1 to 5 and 6 shall file their counter affidavits, on or before 19.06.2026. Post the writ petition on 19.06.2026.

(L.V.G.,J.) (N.S.,J.)  
12.05.2026

Neutral Case Citation : Yes  
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To

1. The Chief Election Officer, Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001.
2. The Chief Electoral Officer and The Principal Secretary to Government Public (Elections) Department, Secretariat, Fort St.George, Chennai-09.
3. The District Election officer-cum-The Collector, Collectorate, Sivagangai District.
4. The Returning Officer, No.185, Tirupattur Assembly Constituency, Sivagangai District-630 502.
5. The Returning Officer, No.50, Tirupattur Assembly Constituency, Tirupattur District.



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WP No. 19287 of 2



**L.VICTORIA GOWRI, J.**  
**and**  
**N.SENTHILKUMAR, J.**

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**Pre-Delivery Order in**

**WP No. 19287 of 2026**  
**and**  
**WMP Nos. 20543 & 20544 of 2026**

**12.05.2026**