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BEFORE DR. PANKAJ GARG, SOLE ARBITRATOR,
AT NEW DELHI
COMPLAINT NO. INDRP
CASE NO. 1744/2023

In the Arbitration matter of:

All India Anna Dravida Munnetra Kazhagam

...Complainant

Versus

Mr. K C Palanisamy

....Respondent

AWARD DATED 28.11.2023

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**BEFORE DR. PANKAJ GARG, SOLE ARBITRATOR,
AT NEW DELHI**

COMPLAINT NO. INDRP

CASE NO. 1744/2023

In the Arbitration matter of:

All India Anna Dravida Munnetra Kazhagam,
Rep. by Mr. C.Ve. Shanmugham, M.P.
No. 226, Avvai Shanmugam Salai,
Royapettah, Chennai,
Tamil Nadu – 600 014
All India Anna Dravida Munnetra Kazhagam

....Complainant
Through Mr. K. Gowtham
Kumar, Mr. Balaji Srinivasan
and Ms. Niti Richhariya,
Advocates

Versus

Mr. K C Palanisamy,
322, Thadagam Road,
Coimbatore, Tamil Nadu – 641 002

....Respondent
Through Mr. Aquib Ali, Mr.
Anish Lakhanpal and Ms.
Amreen Khaliq, Advocates.

AWARD DATED 28.11.2023

Disputed Domain Name: <http://aiadmkn.org.in/>

A. CONSTITUTION OF THE ARBITRAL TRIBUNAL:-

The constitution for the present Arbitral Tribunal was initiated by the National Internet Exchange of India (hereinafter referred to as “NIXI”) on 26.08.2023 by way



of a reference addressed to Dr. Pankaj Garg for the adjudication of the disputes and differences between All India Anna Dravida Munnetra Kazhagam (hereinafter referred to as “**AIADMK**”) and Mr. K. C. Palanisamy with regard to the Domain Name <https://www.aiadmkn.org.in> in terms of .IN Domain Name Dispute Resolution Policy (hereinafter referred to as “**INDRP Policy**”) and INDRP Rules of Procedure (hereinafter referred to as “**INDRP Rules**”). In response to the letter dated 26.08.2023, the consent to arbitrate the issue was given by Dr. Pankaj Garg to the NIXI on 28.08.2023 along with a statement of the impartiality. On 28.08.2023, a notice was issued to the parties through email as well as by the speed post with the direction to the Complainant to supply within two days the soft as well as hard copy of the Complaint to the Respondent and the Respondent was also directed to file the objections/reply on the Complaint within seven days. Thus, this Arbitral Tribunal was constituted on 28.08.2023 when the consent was given to the NIXI and also notices were issued to the parties.

In terms of Rule 5(d) of INDRP Rules, the date of commencement of the arbitration proceedings is the date on which the Arbitrator issued notice to the Respondent. Therefore, the present arbitration proceedings commenced on 28.08.2023 when the notice was issued by the Tribunal. In terms of Rule 5(e) of the



INDRP Rules, an Award is mandatorily to be passed within 60 days from the date of commencement of the arbitration proceedings and in exceptional circumstances, this period of 60 days may be further extended by a maximum period of 30 days by the Arbitrator subject to a reasonable justification in writing. This period of 60 days was extended by this Tribunal by a further period of 30 days by way of an order passed on 11.10.2023.

The Award in the present arbitration proceedings in terms of Rule 5(e) of INDRP Rules has to be passed and pronounced necessarily up to 26.11.2023 and thereafter in terms of Rule 5(f) has to be communicated to the parties as well as to NIXI. In the present matter, 26.11.2023 is Sunday and 27.11.2023 is a Public Holiday, therefore, the limitation for passing and pronouncement of Award stands extended up to 28.11.2023 by virtue of Section 10 of the General Clauses Act, 1897.

B. JURISDICTION OF THE ARBITRAL TRIBUNAL:-

Tribunal constituted under the INDR Policy and INDRP Rules exercises the jurisdiction to adjudicate the domain dispute covered under Clause 4 of INDR Policy. After the analysis of the contents of the Complaint,



nature of dispute and issues, this Tribunal with the consent of the parties settled the Standard of Procedure (hereinafter referred to as “**SoP**”) in terms of Rule 13 of INDRP Rules read with Section 19 of the Arbitration and Conciliation Act, 1996 for the present arbitration proceedings in terms of the Order dated 12.09.2023 to adjudicate only the issues covered under Clause 4 of INDR Policy.

The Tribunal constituted under the INDR Policy and Rules exercises the General Powers under Rule 13 of INDRP Rules. Under this Rule, the arbitration proceedings have to be conducted in accordance with the Arbitration and Conciliation Act, 1996 amended as per the Arbitration and Conciliation (Amendment) Act, 2019 read with the Arbitration and Conciliation Rules, Dispute Resolution Policy and its bylaws and guidelines, as amended from time to time. Therefore, the present arbitration proceedings are not only being governed by the INDR Policy and Rules but are also being governed by the provisions of the Arbitration and Conciliation Act, 1996.

C. DESCRIPTION OF THE PARTIES:-

- The Complainant is a recognized State Party and an association of persons registered with the Election Commission of India under Section 29A of



the Representation of People Act, 1951. Complainant is a legal entity capable of suing & being sued in its name, etc. Disputed domain name states that the copyright vests with the Complainant Party.

- The Respondent is an Ex-Member of the Complainant Party and also is an Ex-MP.

D. FACTUAL BACKGROUND:-

The facts submitted by the Complainant in its Complaint are being reproduced as under:-

- The Complainant is a political Party established in the year 1972 by Bharat Ratna Mr. M. G. Ramachandran. It has a pre-eminent presence in regions of Tamil Nadu and Puducherry as well as significant presence in other regions such as Andhra Pradesh, Telangana, Maharashtra, Andaman & Nicobar, etc. and, presently has over one and half crore members. The Complainant is also a recognized state Party with the Election Commission of India under section 29A of the Representation of People Act, 1951. The Complainant is currently the main opposition Party in the Tamil Nadu State Legislative Assembly.



- It is submitted that Mr. Edappadi K. Palanisamy is the present General Secretary of the Complainant Party and as such he has the sole and supreme authority to represent or authorize another person to represent the Complainant. In exercise of the said powers, Mr. C.Ve. Shanmugam a Member of Parliament and the Organizing Secretary of the Party has been authorized vide letter dated 23.07.2023 by the General Secretary of the Complainant to represent the Complainant in the present proceedings.
- It is submitted that the Complainant is popularly referred and is well-known by its acronym – AIADMK / aiadmkn not just in the regions of Tamil Nadu & Puducherry but all around the globe. The name AIADMK / aiadmkn therefore denotes and identifies only the Complainant and nothing or no one else. While this being so, the Complainant came to know that there exists a website <http://aiadmkn.org.in/> in the name & style of the Complainant with specific references to its founder, Mr. M. G. Ramachandran, and the then General Secretary Dr. J. Jayalalitha and by the same breath carries several references to the Respondent, Mr. K.C.Palanisamy, as if he were a



prominent member of the Complainant Party. More so, it is an admitted fact that Mr. K.C.Palanisamy is the Registrant of the disputed domain / website in as much as he has embedded his phone number “+91 7530001234” as the official phone number of the Party and has admitted to registering the disputed domain under his name in his counter affidavit in O.A. 150 of 2023 before the Madras High Court.

- It is submitted that the Respondent was earlier associated with the Complainant Party and had been its member and its representative in elections in the past, however he had been expelled from the Complainant Party by Late Dr. Jayalalitha, the General Secretary of the Complainant Party (as she then was) for misusing and abusing his ties with the Complainant for his personal gains. Thereafter, after the demise of the then General Secretary of the Complainant Dr. J. Jayalalitha on 05.12.2016, when the Complainant Party was managed and administered by the temporary posts of Coordinator and Joint Coordinator, the Respondent was provided a second chance and was re-inducted into the Complainant Party. He was also appointed as one of the Spokespersons of the Complainant by the new interim



administration with the ardent hope that the Respondent has changed his ways and that he would work towards the betterment of the Complainant Party. But the Respondent failed to mend his wrongful activities and continued his earlier conduct and misdeeds which were harmful to and tarnished the reputation of the Complainant Party. Thus, due to the incorrigible behavior of the Respondent, he was once again expelled from the Complainant Party on 16.03.2018 and continues to be expelled until date.

- While so, the Respondent after such expulsions from the Complainant Party, has with malafide intent, attempted to illegally project himself as a member of the Complainant Party. However, such attempts of the Respondent had been rightfully rejected at multiple instances by various Courts. For instance, the Respondent had filed certain cases with the Election Commission of India where there were disputes under Para 15 of the Symbols Order, 1968 claiming to be a part of the Complainant but the same were dismissed vide Order dated 23.11.2017 in Dispute No. 2/2017. Further, the Respondent, through CM 4109/2018, 4089/2018, 3747/2018 sought to implead himself



as in the challenges against the said Order dated 23.11.2017 in W.P.(C) 10725/2017, 10728/2018 & 10733/2017 but the same was rejected by the Delhi High Court on 28.02.2019. In this regard, the Complainant reserves its right to produce the copies of the above said Orders before the Hon'ble Arbitral Tribunal.

- Similarly, the Respondent had initiated a writ proceeding in respect of the internal administration of Complainant before the Hon'ble High Court of Delhi in W.P.(C) No. 1620/2019. The Hon'ble Delhi High Court while rejecting the interim reliefs sought by the Respondent vide Order dated 25.03.2019 has expressed serious remarks against him as extracted below:

*"13. Admittedly, the petitioner was expelled from the Party on 16.03.2018 and has not challenged his expulsion till date. **He is now not a candidate of AIADMK for the upcoming elections.** Strangely enough when the resolution dated 12.09.2017 was passed this petitioner was a member of the Party and he did not come forward to challenge such resolution till after 16.03.2018 when he*



was expelled. This shows he is aggrieved of some other reasons than the issues raised here.

14. Admittedly, the rules were amended wayback on 12.09.2017 and despite various litigations have not been set aside till date. **Similar issue is pending in various litigations before High Court of Judicature at Madras, yet the petitioner is trying his luck here.** Admittedly the Election Commission of India cannot govern/control the matters of internal management of parties or interfere in its internal discipline. Thus considering the facts and circumstances, especially the stand of the Election Commission, no relief can be granted to the petitioner in this application, moreso, when such Forms have already been signed and submitted, as reported. Though territorial issue is raised by the Respondents, the court shall look into it further. The application stands disposed of in terms of above.”



It is further submitted that the 2nd Respondent attempted to secure a transfer of the petition in W.P.(C) No. 1620/2019 from Delhi High Court to Madras High Court through Transfer Petition (Civil) No.750 of 2023 before the Supreme Court. However, the 2nd Respondent had thereafter withdrawn the said writ petition and the said transfer petition on 18.04.2023 and 21.04.2023, respectively.

- Pertinently, the Respondent has chosen to challenge his expulsion from the Complainant Party from 2018 only on 04.12.2021 through a civil suit before the Hon'ble High Court of Madras in C.S. No. 352/2021. As a matter of record, this suit came to be filed immediately after the announcement of the intra-party elections to then interim posts of Coordinator & Joint Coordinator on 02.12.2021. Thus, the malafide conduct of the Respondent is evident from his conduct in the said suit, wherein despite being an outsider & third-party to the organization at Complainant Party, the Respondent had filed an urgent application seeking to stall the internal elections at the Complainant Party. The Hon'ble High Court of Madras refused to grant any reliefs to the Respondent and the election was conducted



without any deterrence in view of the suit in CS No. 352 of 2021. Subsequently, the suit filed by the Respondent was dismissed by the Hon'ble High Court of Madras on 19.09.2022 with specific finding that the Respondent, being a non-member of the Complainant Party lacked the locus standi to maintain the civil suit. It is submitted that this Judgment remains in force despite the pendency of the appeal in OSA 28 of 2023 before the Madras High Court. An extract of the relevant portion of the Judgment dated 19.09.2022 is as follows:

“9. Having not taken any steps to question such removal, I wonder how he can suddenly question the developments in the party. He was not a direct cause of such developments. He can only be a by-stander and hope that if at all the situation becomes better, and either one of the two succeeding parties or both the parties would offer the grace and bring him back with all his past glory back to the party and vest with him whatever position he had. As of now, his very locus is questionable ...



21. Primarily the suit has to fall because the plaintiff has no locus to maintain the suit. He is not a member of the 1 st defendant party. He is an outsider. He could have been, at one point of time, a member of the party, but having been removed as a member of the party, he is like a cat on the wall. ...”

- Admittedly, the Respondent has registered the disputed domain name under his name, and as a matter of fact and record, the respondent is a third ranker to the complainant party, and as such the Respondent can have no legitimate right or interest in the disputed domain name which patently and solely refers to the Complainant Party and nothing else.
- Further, the illegalities perpetrated by the Respondent is evident from a cursory glance at the website having the disputed domain name, which carries several official photographs of the Complainant Party, its historical background, its achievement in the state of Tamil Nadu, its address



and its official twitter account. This apart, the said website also features a profile on the Respondent as if he were an important member of the Complainant Party and falsely features “+91 7530001234” i.e., the contact number of the Respondent as the “official phone number” and carries the facebook page of the Respondent. There is also a reference to a copyright being reserved in 2017 in the name of ‘All India Anna Dravida Munnetra Kazhagam’ i.e., the Complainant herein. It is submitted that the copyright to the name ‘All India Anna Dravida Munnetra Kazhagam’ rests with the Complainant alone and no one else.

- It is submitted that the Respondent by running the said website in name and style of the Complainant is creating huge confusions amidst the general public in whose service the Complainant Party has been established. A simple search of the Complainant’s name on any search engine/browser lists the disputed domain name as the top search results. Thus, any person looking for the Complainant would be confused and misled by the presence of the disputed domain name/website and would be constrained and misled to believe as if the disputed domain name / website were the official website of the



Complainant. While on the other hand, the official website of the Complainant Party [<http://www.aiadmkn.com/>] does not even crop up in any of the search. Further, due to the mischievous and malafide conduct of the Respondent in cybersquatting on the domain name of the Complainant, the Complainant Party has been disabled from registering its website in a .IN or .Bharat registry. It is therefore submitted that the Respondent/Registrant, after having full knowledge of the Complainant has malafide registered the domain name of the Complainant only to create confusion amidst the internet users and the general public as well as to tarnish the name of the Complainant.

- Thus, the Complainant submits that the website having the disputed domain name i.e., www.aiadmkn.org.in, is identical to the name of the Complainant in which the Complainant holds full rights and the Respondent/Registrant has no rights or legitimate interests, including to any variation of name reflecting AIADMK or aiadmkn or All India Anna Dravida Munnetra Kazhagam. It is only the Complainant which has the full rights to the name AIADMK or aiadmkn or any variations thereto in as much as the Election Commission of



India has been recognized and acknowledged the said fact vide its Communication dated 20.04.2023 and has also declared the same through their website for the public.

- The malafide intent and bad faith of the Respondent in registering the disputed name is further evident from the fact that he has been misrepresenting the disputed domain name/website as if it were the official website of the Complainant Party and has been enrolling members, collecting & receiving money from the general public for membership in the name and style of the Complainant, through the website having the disputed domain name i.e., www.aiadmkn.org.in.
- As a matter of fact, the first visual when the website is opened is a pop-up box for membership registration, evidencing that the website is utilized for registering members in the name & style of the Complainant Party. Further, the 'membershipcard' page of the said website portrays as if the proposed member is enrolled into the Complainant Party by referring to and using a flag similar to the Complainant's flag, using and referring to the Complainant's symbol and dignitaries, while



however, the alleged membership card bears the signature of the Respondent.

- In another page 'MGR & AMMA'S GOVERNANCE' of the disputed domain name/ website, apart from references to various programme rolled out under the governance of the Complainant Party, there is an option for registration under a 'join us now' button. Upon clicking the same, a visitor is taken to another registration page which provides an option for registration to new and existing members alike. In the said page, the following statements are presented to be checked by a proposed member for registration :

"I am a strict believer and follower of the Party bylaws framed by our Revolutionary leaders Dr. MGR and Dr. J. Jayalalitha, I appose the amendments made by AIADMK on 12/09/2017 and recognize they violate the Party bylaws, I support Mr. K.C. Palanisamy's movement for election of general secretary for AIADMK by all Party member , I herby register and express my willingness to vote for the general secretary election".



- Further, the homepage of the said website has a quote allegedly made by the “AIADMK AMMA and MGR loyalists” in the support of the Respondent which reads as *“we want general secretary elected by primary members. We support KCP – by AIADMK Amma and MGR Loyalists.”*
- Thus the Respondent vide the said website is running a parallel membership drive in the name and style of the Complainant apart from misrepresenting as if Respondent were an important leader of the Complainant Party. He has also inserted the previous byelaws of the Complainant Party which have since been amended, thereby creating huge confusions on any one who visits the website, misleading them to believe that the same is hosted by the Complainant and its official website, while the official website of the Complainant is <http://www.aiadmk.com/>
- It is thus submitted that the Registrant/Respondent has registered the disputed domain / website in bad faith by preventing the Complainant herein, who holds the sole rights and interests in any variation of the name ‘AIADMK’ or ‘aiadmk’ or ‘All India Anna



Dravida Munnetra Kazhagam', from registering its website/domain in .IN or .Bharat registry, and has intentionally presented, encoded or inserted the name, style, flag of the Complainant Party as well as the details of the original organization, past by-laws, etc of the Complainant Party with a sole intent to mislead and misrepresent the internet users & general public and attract them to the disputed domain name / website. Further, the Registrant/Respondent is also profiteering by such confusion, by engaging in parallel membership drive to the Complainant Party. The bad faith or malafide conduct of the Registrant/Respondent is evident from the facts that he has been engaged in a pattern of such conduct as illustrated in the above paragraphs.

- As a matter of fact, it has been brought to the notice of the Complainant that the Respondent had run a similar website in the past. A criminal complaint came to be registered against him through one of the Party members, Mr. Palanisamy s/o. Kandavel and a FIR bearing no. 45 of 2020 was registered against the Respondent in Sulur Police Station, Coimbatore, Tamil Nadu on account of the fraud committed by the Respondent through such website. The Respondent had since



been enlarged on bail and has now started carrying out his vested interests and illegalities through the disputed domain name / website. Thus, the Respondent has been in the practice of registering domains that rightfully belong to the Complainant and this is apart from misrepresenting offline as if he were a member/representative/leader in Complainant Party. It is submitted that the Respondent/Registrant has registered the disputed domain name with the sole intent to prevent the Complainant from creating a domain/website in its name in the .In or .Bharat registry and to confuse and mislead the followers of the Complainant Party and seek profits and benefits through such misrepresentation and passing off. The Complainant has also caused a legal notice to be issued to certain internet service providers for blocking the disputed domain name and to dehost and stop broadcast of the same.

- It is further submitted that prior to the present complaint, an application under section 9 of the Arbitration & Conciliation Act, 1996 was filed before the Hon'ble High Court of Madras in O.A. Arb. Appln. No. 150 of 2023 against the Respondent herein to restrain him from running the illegal website and disturbing the peaceful



functioning of the Complainant Party pending disposal of the Arbitral Proceedings under INDRP Dispute Resolution Policy. In his counter to the said application, the Respondent has admitted to registration of the disputed domain name under his name but has falsely and maliciously attempted to retain the ownership to the disputed domain name / website. Without prejudice to its rights and interests, the Complainant seeks to withdraw the said application upon registration of the present complaint and reference of the dispute to an arbitrator under the INDRP Dispute Resolution Policy.

E. FRAMING OF ISSUES:-

That after careful perusal of the issues of dispute suggested separately by both Complainant and Respondent, this Tribunal settled the following issues:-

1. Whether or not the disputed domain name is confusingly similar to the name of the Complainant?
2. Whether the Respondent holds any rights in the disputed domain name or whether he holds any legitimate interests in the disputed domain name?



3. Whether or not the disputed domain name has been used in bad faith or whether or not the disputed domain name has been used for illegal/unlawful purpose?
4. Whether the Claimant holds legitimate rights or interests in the disputed domain name?
5. Whether or not the Claimant is entitled for transfer of the disputed domain name to its name?
6. Whether the present complaint has been filed within limitation?
7. Whether the present complaint is maintainable in the absence of the Power of Attorney as required under Rule 3(b) of the INDRP Rules of Procedure?
8. Whether the complaint is maintainable in the absence of a registered trademark which is a mandatory requirement as per Clause 4(v)(b) of the INDRP Policy?
9. Whether the dispute raised before this Hon'ble Forum falls within the four corners of Clause 4 of the INDRP Policy?



10. Whether the Complainant being a political party is legally entitled to invoke the present dispute resolution mechanism?
11. Whether this Hon'ble Tribunal has the jurisdiction to adjudicate the dispute between the parties in view of complicated questions of law and facts involved in the present matter?
12. To what other reliefs?
13. Costs.

F. CONSIDERATION OF ISSUES WITH ANALYSIS:-

While deciding all the issues the common submissions given by the Complainant in its Written Submissions are considered besides the Issue wise Submissions.

COMMON SUBMISSIONS

1. The present proceedings have been initiated under and in accordance with the provisions of the INDRP and INDRP Rules of Procedure, on account of the Respondent registering and managing the disputed domain name which identifies, connotes, reflects and pertain the Complainant and the Complainant alone.



2. The Respondent's contention that the Rules prevail over the Policy is baseless and illogical on account of the fact that the Rules in themselves were framed under the Policy as evident from the language employed in the Policy as well as the principles of interpretation of law.
3. Secondly, this Tribunal vide Order dated 12.09.2023 has framed the Standard of Procedure governing this arbitral proceedings, such rules being framed by this Arbitral Tribunal are the Rules of Arbitration under Section 19 of the Arbitration and Conciliation Act, 1996, and as such, the INDRP Rules of Procedure may no longer apply to the present proceedings.

Indian Evidence Act – not applicable

4. It is submitted that the Respondent has raised certain challenges against the admissibility of contents of certain evidence produced before this Hon'ble Tribunal as photostat copy, electronic evidence, etc. In this regard, it is submitted that it is a settled law that the evidence act is not stricto sensu applicable to arbitral proceedings and only principles of evidence act would be applicable.
5. It is further submitted that according to Standard of Procedure framed vide Order dated 12.09.2023 at 20.30



hours, it has been set out that Principles of Civil Procedure Code and Evidence Act to apply to the present arbitration. Reliance in this context is also placed upon the decision in *P. Gunasekara Senthil v. the Assistant Electricity Engineer*, Order dated 08.01.2019 in WP No. 5 of 2019, para 12 and *Millennium School v Pawan Dawar*, Order of Delhi High Court in OMP (Comm) 590/2020 dated 10.05.2022, paras 43, 44:

“43. It is also relevant to note that by virtue of Section 1 of the Evidence Act, it does not apply to arbitration. Although, the principles of the Evidence Act are usually applied in arbitral proceedings, sensu stricto, the said Act is not applicable. Section 65-B of the Evidence Act is not applicable to arbitral proceedings, yet the Arbitral Tribunal has disregarded the entire evidence led by the petitioner regarding deficiency of service solely on the ground that the certificate under Section 65-B of the Evidence Act was defective.

44. It is material to note that the receipt of several communications relied upon, on behalf of the petitioner, were admitted. Notwithstanding the same, the said communications were rejected as not



admissible on the ground that the certificate under Section 65-B of the Evidence Act was not furnished. In the circumstances, the decision of the Arbitral Tribunal to completely ignore the said e-mails, is manifestly erroneous.”

It is further submitted that nevertheless out of abundant caution, the Complainant has also later filed certificates under section 65B of the Indian Evidence Act out of abundant caution. Reliance is placed upon the decision of the Supreme Court in *State of Karnataka v. T Naseer alias Thandiantavida Naseer alias Umarhazi alias Hazi and others*, 2023 SCC OnLine SC 1447, paras 10 & 11, wherein the Supreme Court has reiterated the position that non-production of a 65B certificate is a curable defect and that 65B certificate could be produced at any stage before the trial gets over. Accordingly, it is submitted that the 65B certificates were also taken on record of the present proceedings vide Order 18.11.2023, and the evidence was marked in this aspect.

ISSUE NO. 1: WHETHER OR NOT THE DISPUTED DOMAIN NAME IS CONFUSINGLY SIMILAR TO THE NAME OF THE COMPLAINANT?



SUBMISSIONS OF THE COMPLAINANT:-

The Complainant submits as under through its written submissions:-

- Complainant is a political party established, and its well-known globally by its name and the acronym-AIADMK. The Complainant is a political Party established in the year 1972 by Bharat Ratna Mr. M. G. Ramachandran. It has a pre-eminent presence in regions of Tamil Nadu and Puducherry as well as significant presence in other regions such as Andhra Pradesh, Telangana, Maharashtra, Andaman & Nicobar, etc. and, presently has over one and half crore members. The name *All India Anna Dravida Munnetra Kazhagam* represents and identifies the Complainant and the Complainant alone and it is the Complainant which has sole rights to its name and any acronyms thereto. The name of the disputed domain is identical to the name of the Complainant. Complainant is an established political party, and its well-known globally by its name and the acronym-AIADMK. By running the disputed domain in this name, the Respondent has created huge confusions amongst the General Public and has mislead them. (Paras 5, 7, 14 & 15 of the Complaint) At the risk of repetition of the complaint, it is reiterated that the Complainant being Political Party



is well known globally by its abbreviation AIADMK and other short forms and is identified, defined, represented etc through its name, abbreviations and other short forms. It may be pertinent to submit that the name of the political Party is a significant factor in a democratic process in the country and its reputation is garnered under reference to its name alone. Being such, the Complainant alone holds the rights to its name and its different variations/abbreviations. Thus, the Respondent who is also a third ranker can claim no legitimate rights or interests in the Complainant Party or its internal issues.

- It is submitted that Clause 4 of the INDRP pertains to the class of disputes that can be subject to arbitration under the INDRP Policy. According to sub-clause (a) of the Clause 4, a complaint can be filed if the Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights.
- As has been explained and established in the preceding paragraphs, the disputed domain name uses an identical and same name and mark of the Complainant being AIADMK. Thus, first ingredient in Clause 4 stands proven by the Complainant.



- Reliance is placed on *Modi-Mundipharma Pvt Ltd. v. Preet International Pvt Ltd & Anr.*, 2009 SCC OnLine Del 3922, paras 74, 76, 80; *Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia*, (2004) 3 SCC 90, paras 5-6; *M/s. Hindustan Pencils Private Limited v. M/s India Stationery Products Co & Anr.*, ILR (1989) I Delhi 115, paras 11.

SUBMISSIONS OF THE RESPONDENT:-

The Respondent submits as under through its written submissions:-

- At the outset, it is submitted that certainly, the disputed domain name is at least not similar to the name of the complainant in as much as the name of the complainant is “All India Anna Dravida Munnetra Kazhagam”. Without prejudice, the disputed domain website is similar to the alleged abbreviation of the name of the complainant. The counsel for the Respondent had put this question to the witness *vide* Question no. 39. At this juncture, it would not be out of place to mention here that this Hon’ble Tribunal had specifically put the question to CW-1 on whether the abbreviation ‘AIADMK’ has been registered with the name of the party to which the witness admitted that the party is not registered with the abbreviation *vide* answer to Question No. 7 of this Hon’ble Tribunal. The relevant portion of the



testimony of CW-1 on this aspect is reproduced herein below:

“Q.39. Is it correct that the complainant's name is 'All India Anna Dravida Munnetra Kazhagam' and 'AIADMK' is only an abbreviation?”

Ans. Yes.

PER TRIBUNAL:

Q.7. Has the abbreviation AIADMK been registered with Election Commission of India (ECI) with the name of the party?”

Ans. The complainant as a party is registered with ECI as in its full name itself. However, popularly known as AIADMK.”

- Be that as it may and without entering into the controversy that the disputed domain name is similar to the complainant's name, it is stated that before claiming its right in the disputed domain name, the complainant has to at least prove the official website of the complainant itself. It is a matter of record that except the self-serving statements made *vide* Para 14 and 20 of the complaint regarding the official website of the



complainant being AIADMK.com, no document in any manner is produced in order to prove the same. It is a matter of record that the Respondent in his reply, denied the said fact *vide* Para 13, 14 and 20 of the para-wise reply. Thus, in the said background, specific questions were put to the CW-1 in connection to the said website *vide* Question No. 28 & 29. In addition thereto, this Hon'ble Tribunal had also put a question to the CW-1 on whether the complainant remembers the registrar of license of .com or not the answer to which could not be provided by the complainant *vide* Question No.4. The relevant paras of the complaint as well as the reply and portion of the cross-examination are reproduced hereinbelow:

Para No. 14 and 20 of the Complaint:

14. It is submitted that the Respondent by running the said website in name and style of the Complainant is creating huge confusions amidst the general public in whose service the Complainant Party has been established. A simple search of the Complainant's name on any search engine/browser lists the disputed domain name as the top search results (Annexure - 6, Colly). Thus, any person looking for the Complainant would be confused and



mislead by the presence of the disputed domain name/website and would be constrained and misled to believe as if the disputed domain name / website were the official website of the Complainant. While on the other hand, the official website of the Complainant Party [http://www.aiadmkn.com/] does not even crop up in any of the search. Further, due to the mischievous and malafide conduct of the Respondent in cybersquatting on the domain name of the Complainant, the Complainant Party has been disabled from registering its website in a .IN or Bharat registry. It is therefore submitted that the Respondent/Registrant, after having full knowledge of the Complainant has malafide registered the domain name of the Complainant only to create confusion amidst the internet users and the general public as well as to tarnish the name of the Complainant.

Para No. 20:

20. Thus the Respondent vide the said website is running a parallel membership drive in the name and style of the Complainant apart from



misrepresenting as if Respondent were an important leader of the Complainant Party. He has also inserted the previous byelaws of the Complainant Party which have since been amended, thereby creating huge confusions on any one who visits the website, misleading them to believe that the same is hosted by the Complainant and its official website, while the official website of the Complainant is <http://www.aladmkn.com/>.

Para wise reply to para no. 13, 14 and 20 of the complaint:

13 & 14. That the contents of Para 13 and 14 of the complaint are wrong, vexatious and strongly denied. It is vehemently denied that the Respondent has made any false portrayal as alleged in the para under reply. It is stated that the Respondent had created the said website in the domain name of "AIADMK.ORG.IN" in the year 2017 when the disputes I regarding the election of General Secretary were ongoing as stated above. As stated earlier, the Respondent has not misrepresented or impersonated the party. On the other hand, the Respondent has clearly



mentioned in the website with distinguished features that the website is merely demanding the election of General Secretary by the primary members and nowhere has stated it is the official website of the Party. The Two Leaves with the portrait of the leaders Puratchi Thalaivar Dr. M.G. Ramachandran and Dr. J. Jayalalithaa on the other leaf are completely different from the two leaves as shown in the official website of the party. The Respondent has not offered membership for the party. On the contrary, the Respondent is calling for the support of the members who are like mind to elect the General Secretary of the party by its primary members. As per the original by-law No.20(1), which clearly stipulates that the General Secretary shall be elected by the primary members of all the Party units in Tamil Nadu and the Members of the Party in the other States of Pondicherry, Andhra Pradesh, Karnataka and Andaman & Nicobar Islands. Mr. Edappadi K. Palanisamy and the Co-ordinator unilaterally amended the original rules for their personal benefits and created a position for Joint Coordinator instead of the General Secretary as explained above. Therefore, the Respondent website is



clearly distinguishable from the official website of the party which calls for the election of General Secretary by the primary members as per the original by-law No. 20 (ii), However, the Complainant and organizing secretary have filed false complaints against the Respondent with a view to stragulate the Respondent's fight against the illegal amendment made in the original bye- law regarding the election of the General Secretary for the AIADMK party. It is denied that the website is causing any confusion in the minds of the internet user. It is further specifically denied that any person looking for the Complainant would be constrained to believe that the website of the Respondent is the official website of the Complainant. It is denied that the website has been registered by the Respondent only to create confusion amidst the internet users. The Respondent is the face of a political movement raising its voice against the political administration of the Complainant and is therefore categorically distinguishable from the Complainant.



Para 20:

20. That the contents of Para 20 of the complaint are wrong and specifically denied. It is denied that the Respondent is running any kind of parallel membership drive in the name of the Complainant. Rather, a bare perusal of the contents of the website suggest that the website, far from the allegations made by the Respondent, is an independent political movement with a certain set of demands as disclosed in the preceding paragraphs.

Relevant question of cross-examination of CW-1:

Q.28. Have you placed any document and /notification and/ communication on record issued by the complainant party which demonstrates that AIADMK.COM is the official website of the complainant party?

Ans. No document has been filed in this regard. However, averments in regard to such factual point have been stated in my evidence affidavit.



Q.29. I put it to you that AIADMK.com is not even an official website. What do you have to say in this regard?

Ans. It is denied.”

“As per the Tribunal:

Q.4. Do you remember the Registrar of license of .com?

Ans. I do not remember.”

- It is further submitted that after the first day of cross-examination carried out by the counsel for the Respondent on 27.10.2022, the complainant, in order to cover up the lacunae in the testimony of CW-1, certain documents were sought to be produced by the complainant in the form of Exhibit C-23-C29. However, no ownership document is placed on record so as to at least show that the complainant is the Registrant of AIADMK.com which could easily prove the ownership of the complainant in its domain name AIADMK.com.

Further, it is a settled principle of law that a party making an affirmative claim has the onus cast upon it to prove the same. **Anil Rishi V/s Gurbaksh Singh, (2006) 5 SCC 558.**



- Be that as it may, upon subsequent cross-examination of CW-1, it is also proved that at least C26-C28 are manipulated documents since the printout of some of the documents of the annexures themselves taken subsequent to the filing of the complaint while CW-1 had stated that the said documents were handed over to the counsel before filing of the present complaint vide answer to question no. 109, 110, 111, 112, 121, 122, 123 and 124. The said questions and answers are reproduced herein below:

“Q.109. (Attention of the witness is drawn to Exhibits C-26, C-27 & C-28) Who has/had taken the screenshots/downloaded the documents?”

Ans. The party's headquarters.

Q.110. What is the name of the person who downloaded the screenshots/documents?”

Ans. I do not know.

Q.111. When were these documents purported to have been downloaded?”



Ans. I do not know.

Q.112. When you had shared all these documents with your Counsel?

Ans. At the time of engaging him for filing the present complaint.

Q.121. (Attention of the witness is drawn to page no. 153 of the additional documents filed along with the application/Exhibit C-26)

Can you please tell us the reason why have you not placed the alleged screenshots of the purported page along with the copy of the complainant or with the rejoinder?

Ans. No comments.

Q.122. Is the internet in your mobile working right now?

Ans. Yes.

Q.123. Can you show the purported webpage from the so-called disputed



domain name right now (page no. 153 of the additional documents filed along with the application/Exhibit C-26)?

Ans. The same is not there.

Q.124. I put it to you that this is a manipulated document (at page no. 153 of the additional documents filed along with the application) filed before this Hon'ble Tribunal to cover up your lacunae and more particularly your answers to question nos. 76 to 78. What do you have to say?

Ans. I deny.”

- Therefore, the complainant has not only desperately failed to clear the first hurdle of proving and disclosing a valid and legal trademark and/or service mark in its name before proceeding further (Rule 4(v) of the Rules and Procedure) but has also failed to prove that the complainant has its official website under the name and style of 'aiadmkn.com'. In view of the same, the said issue has to be decided in favour of the Respondent and against the complainant.



- At this stage, it would also not be out of place to mention here that the Respondent has also specifically denied that the complainant is also known from its acronym *vide* Para 7 of the reply on merits to the complaint. The para is reproduced herein below:

“7. That the contents of Para 7 save the matter of record, are wrong and denied. It is denied that the name AIADMK only denotes the Complainant herein and no one else. No documentary evidence has been placed on record to support this baseless contention.....”

- The complainant would have proved the said fact that the complainant is also known from its abbreviation by placing on record the media coverage/newspaper articles etc, however, no such document has either been placed on record or relied on by the witness in his evidence by way of an affidavit which is evident from question no. 21 and 23 of the cross-examination of CW-1 and the same are reproduced herein below:

“Q.21. Please see para 8 of your evidence affidavit. Is it correct to say in para 8 you have not relied upon any document to demonstrate that



the complainant party is popularly known from its abbreviation?

Ans. It is denied.

Q.23. I put it to you that your statement in para 8 of your evidence affidavit is merely a bold statement having no documentary proof in support thereof. What do you have to say in this regard?

Ans. It is denied. (Vol.) It is a well-known fact that public is aware that the complainant is known from its abbreviation since 1972, which is more than 52 years.”

- The contention of the counsel for the complainant that in some of the Court's orders the complainant has referred through its abbreviation and thus, establishes that the complainant is also known from its abbreviation is also incorrect. The Hon'ble Courts at their convenience mention the party name from their abbreviation and the same does not amount to be an established fact of their brand name. No judgment in any manner whatsoever has been shown to this Hon'ble



Tribunal which shows that the parties will get their special recognition if the same are referred to in the court's order by their abbreviation. The concept of a well-known name or trade mark can only be derived from the section 2(Z)(g) of the trade mark act which is again in the context of the trade and commerce. The said section is reproduced herein below:

“well known trade mark”, in relation to any goods or services, means a mark which has become so to the substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.”

- Thus, the issue is liable to be decided in favour of the Respondent and against the Complainant. At this stage it would not be out of place to mention here that again after realising that the falsehood is exposed and sufficiently proved that the Exhibit C-26 to C-28 are not genuine documents, a Section 65 B certificate was filed by the counsel for the complainant however, from the



cross examination of the counsel ('CW-2') it was again established that serious contradictions had emerged regarding the said documents which were in direct contradiction with the testimony of CW-1 and therefore, the testimony of CW-2 cannot be relied.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

After careful analysis of the submissions of both the parties, this Tribunal is of a view that the submissions of the Complainant carries the strength while contrary to it the submissions advanced by the Respondent do not bear any force. The Disputed Domain Name 'https://www.aiadmkn.org.in' includes an abbreviation 'AIADMKN', the full meaning of 'AIADMKN' is 'All India Anna Dravida Munnetra Kazhagam' which is the name of the Complainant Party. The Respondent is only an individual and is not related/associated in any manner with the Complainant Party. The name of the Respondent is K. C. Palanisamy and even its abbreviation 'KCP' is not related in any manner with the abbreviation 'AIADMKN'. The Tribunal has to consider only the issue of confusion of Disputed Domain Name with the name of the Complainant Party and in no manner is concerned with regards to any dispute other than the dispute of domain between the Complainant and the Respondent. The Complainant Party is a registered party with the Election Commission of India in its own name while the



Respondent is not registered anywhere with the abbreviation 'AIADMK', meaning thereby the Complainant Party is denoted with the abbreviation 'AIADMK' and is commonly known as 'AIADMK'. The Disputed Domain Name 'https://www.aiadmkn.org.in' used by the Respondent carries only the abbreviation 'AIADMK' which is the abbreviation of the Complainant Party. The similarity between the name of the Complainant Party commonly known as AIADMK and of the Disputed Domain Name is creating a confusion in the mind of the public at large. Furthermore, the Respondent has also failed to establish that he is popularly recognised as AIADMK and also failed to prove that the Complainant Party is not popularly recognised as AIADMK.

In view of the above observations, this Issue is decided in favour of the Complainant Party and against the Respondent.

ISSUE NO. 2: WHETHER THE RESPONDENT HOLDS ANY RIGHTS IN THE DISPUTED DOMAIN NAME OR WHETHER HE HOLDS ANY LEGITIMATE INTERESTS IN THE DISPUTED DOMAIN NAME?

SUBMISSIONS OF THE COMPLAINANT:-

The Complainant submits as under through its written submissions:-



The Respondent was earlier associated with the Complainant Party and had been its member and its representative in elections in the past, however he had been expelled from the Complainant Party by Late Dr. Jayalalitha, the General Secretary of the Complainant Party (as she then was) for misusing and abusing his ties with the Complainant for his personal gains. While the Respondent was provided a second chance and was re-inducted into the Complainant Party, the Respondent failed to mend his wrongful activities and continued his earlier conduct and misdeeds which were harmful to and tarnished the reputation of the Complainant Party. Thus, due to the incorrigible behavior of the Respondent, he was once again expelled from the Complainant Party on 16.03.2018 and continues to be expelled until date. The Respondent filed a suit in 2021 challenging his expulsion from the Party but the same was dismissed by the Hon'ble High Court of Madras on 19.09.2022 with specific finding that the Respondent, being a non-member of the Complainant Party lacked the locus standi to maintain the civil suit. This Judgment remains in force despite the pendency of the appeal in OSA 28 of 2023 before the Madras High Court. While so, the Respondent after such expulsions from the Complainant Party, has with malafide intent, attempted to illegally project himself as a member of the Complainant Party. However, such attempts of the Respondent had been rightfully rejected at multiple instances by various Courts.



The illegalities perpetrated by the Respondent is evident from a cursory glance at the website having the disputed domain name, which carries several official photographs of the Complainant Party, its historical background, its achievement in the state of Tamil Nadu, its address and its official twitter account. This apart, the said website also features a profile on the Respondent as if he were an important member of the Complainant Party and falsely features “+91 7530001234” i.e. the contact number of the Respondent as the “official phone number” and carries the facebook page of the Respondent. There is also a reference to a copyright being reserved in 2017 in the name of ‘All India Anna Dravida Munnetra Kazhagam’ i.e., the Complainant herein.

Respondent by running the said website in name and style of the Complainant is creating huge confusions amidst the general public in whose service the Complainant Party has been established. A simple search of the Complainant’s name on any search engine/browser lists the disputed domain name as the top search results.

It is a settled law that Complainant is to establish a prima facie case of lack of rights or legitimate interests in the disputed domain name and upon doing the same, the burden of proof shifts upon the Respondent to establish otherwise.



It is submitted that the disputed domain carries **an exactly identical name/mark of the Complainant and has been published in relation to the Complainant.** It is further submitted that admittedly even according to the disputed domain, the rights to are reserved in the name of the Complainant Party.

Further, it is submitted that the Respondent was expelled from the Complainant Party in the year 2018, and has failed to challenge the same until 2021, as such the Respondent is a third party to the Complainant party and has no legitimate interests or rights to the name and identity of the Complainant Party.

In the interregnum several of his attempts to interfere or meddle with the internal administration of the Complainant Party was defeated before several Courts. (Ex.C-13,14 (Colly)). He has also failed in his challenge against expulsion from the Party [Ex.C-12] on the ground of limitation, and the said Judgment continues to be operative as on date, since no stay has been granted by the High Court although an appeal has been filed against the said judgment.

Thus, it is submitted that prima facie it is established that the Respondent has no right or legitimate interest in the disputed domain name. Therefore, the burden of proof rests



upon the Respondent to establish that he has any rights or legitimate interests in the disputed domain name.

Apart from vague statements, the Respondent has failed to prove that he has any legitimate interests in the disputed domain name as provided under the INDRP. The contention that the legitimate interests cannot be decided without involving complex questions of facts in view of pendency of the CS 106 of 2022 batch and WP(C) 1620/2019 is also unfounded and baseless, since

- (a) the Respondent is admittedly no longer a member of the Complainant Party,
- (b) That even the very first dispute has been raised by the Respondent against the Complainant only after his expulsion from the party. **This is also an evidence of bad faith.**
- (c) relevancy of the said proceedings to the disputed domain name has not been pleaded or established by the Respondent.
- (d) Courts have negated such contentions, for instance, the Hon'ble Supreme Court in *Swiss Timing Limited v. Commonwealth Games 2010 Organising Committee*, (2014) 6 SCC 677- para 30, wherein it was held that



even where criminal proceedings are pending, arbitration proceedings need not be stalled.

Most importantly, the contention that the Respondent holds a legitimate interest in the disputed domain name as it is in respect of an (alleged) independent political movement by the Respondent in respect of the internal administration of the Party is good faith is unfounded as:

- (a) Disputed domain carries **an exactly identical name to that of the Complainant and has been published in relation to the Complainant**
- (b) It is submitted that while Respondent may be entitled to his freedom of speech and expression the same are not absolute rights but are subject to the laws framed under Article 19(2) of the Constitution of India and the laws protecting the rights and interests of name of the Complainant is one such law. Further, by no stretch of imagination can the Respondent be entitled to any right or legitimate interest in expressing his opinions in the disputed domain name which is created under the name of the Complainant Party which is statutorily and legally protected. As such, the reliance placed by the Respondent in a WIPO judgment is inapplicable to the facts and circumstances of the present dispute.



- (c) In such scenario, lack of clear and explicit disclaimer that disputed domain is not the official domain of the complainant elucidates the bad faith behind the disputed domain
- (d) Adding to the confusion, the disputed domain publishes registration page, membership drive, etc, which are basic expected of any political party's website. [Ex.C-15 to C-17].
- (e) Interestingly, the said registration and membership drive is to challenge the internal administration of the Complainant Party i.e., alleged independent political movement - whereby, Complainant's name is conveniently used to mislead the Public into registration for questioning the Complainant.
- (f) This in addition with the fact that a similar driven website is run in the name of the Respondent establishes the fact that disputed domain name is being managed as a ruse to increase the political mileage and vested interest of the Respondent through the alleged independent political movement. [**incident of namejacking**].
- (g) Therefore, through the disputed domain name registered with the Complainant's name, Respondent is



garnering his cause by registering members in the name of the Complainant, against the cause of the Complainant. [**Incident of bad faith**]

- (h) In other words, the Respondent is luring the common person to the disputed domain <http://aiadmkn.org.in/> using the name of the Complainant Party viz. AIADMK, and thereafter trapping the common person to register their alleged objection to the internal administration of the Party by imposing a registration page upon every visitor to the website which carries the pictures that denote and connote only the Complainant such as name United All India Anna Dravida Munnetra Kazhagam which is deceptively similar to the name of the Complainant [Ex.C-15, C-16], using the dignitaries of the Complainant [Ex.C-15, C-16], flag, emblem, colour combination of the Complainant Party [Ex.C-16] and collecting data [Ex.C-17] such as Assembly Constituency, Party District, Voter ID which can be significant only to a political party which in this context is the Complainant alone. – **incident of Clause 7(c) of INDRP evidencing bad faith.**

- (i) It is an established principles of law that in deciding a question of similarity between the two marks, the marks have to be considered as a whole and the issue has to be approached from the point of view of a person of an



average intelligence and with imperfect recollections [Chandrashekharan v. Babu Machine Works, (1996) 1 MLJ 613 – paras 10 to 14]. Therefore, the legitimate interests or lack thereof of the Registrant/Respondent has to be understood from the perspective of a common person whose impressions with the disputed domain name would immediately connote to the Complainant and none else.

SUBMISSIONS OF THE RESPONDENT:-

The Respondent submits as under through its written submissions:-

It is submitted that the complainant has made an allegation that the Respondent is a third ranker to the complainant and therefore has no legitimate rights and/or interest in the disputed domain name and the same solely refers to the complainant and **nothing else** vide Para 12 of the complaint. In reply to the said allegation, the Respondent has stated that he was a primary member in the political party since inception and has also contested elections on behalf of the complainant party while having had an integral role in the growth and stature of the complainant party vide Para 5(ii) of the Reply to the complaint. Further, vide para 5(iii) of the reply, it has been specifically stated that the so-called disputed domain name AIADMK.org has been operated by the



Respondent since the year 2017 in the capacity of being a member of the complainant party when the disputes regarding the election of General Secretary arose between various factions of the complainant party. Moreover, the use of the disputed domain name by the Respondent is bona fide and non-commercial since neither any document has been filed by the complainant to demonstrate as to in what manner and fashion the Respondent has been collecting money from the general public and/or using the domain in a commercial manner *vide* Para 5(iv). The said paras mentioned above are reproduced herein below:

Para 12 of the complaint:

Admittedly, the Respondent has registered the disputed domain name under his name, and as a matter of fact and record, the Respondent is a third ranker to the complainant party, and as such the Respondent can have no legitimate right or interest in the disputed domain name which patently and solely refers to the Complainant Party and nothing else.

Paras of the reply to the complaint

“ 5(ii). Further, without prejudice, it is stated that the Respondent, being a founding member



of the political party since its inception as well as having contested elections on the party ticket has had an integral role in the growth and stature of the Complainant. It is further a matter of record that the Complainant's legal position qua the functioning and control of the political party are itself a matter of dispute and are subjudice vide the disputes bearing CS No. 106 of 2022, CS No.111 of 2022, CS No.118 of 2022, CS No.119 of 2022, CS No.47 of 2023, CS No.55 of 2023, CS No. 56 of 2023, CS No.62 of 2023 pending before the Hon'ble Madras High Court as well as the writ petition bearing W.P.(C). No.1620 of 2019 pending before the Hon'ble Delhi High Court. Therefore, the present dispute which involves adjudication of the Respondent's legitimate interest in the domain cannot be decided without delving into complex questions of law and facts which are outside the purview and jurisdiction of the arbitration proceedings as stated above."

"5(iii). That a bare perusal of the contents of the website in the domain name of "AIADMK.ORG.IN" indicates that the same has been operated by the Respondent since the year 2017 in the capacity of being a member



of the Complainant Party when there were pending disputes regarding the election of General Secretary. The website also contains the quote namely "demanding General Secretary election by K.C. Palaniswamy" which is a part of an independent political movement and operates in a different field of activity. The Respondent is recognised as the face of the movement who demands general secretary elections within the party in consonance with the old rules and procedure of the political party of which the Respondent was a founding member."

"5(iv). The Respondent satisfies the principle of noncommercial use/fair use of the domain since there is an absolute absence of commercial elements in the present dispute as stated above. Neither has any document been filed by the Complainant to demonstrate as to in what manner and fashion the Respondent has been collecting money or making commercial use of the domain name in any manner whatsoever nor has any documentary proof been placed on record showing that the Respondent has collected money from any individual such as bank statements of



individuals etc. In fact, the present domain is being used for registering voices and opinions on political issues having no commercial interests or elements. It has also been held by panels in US-cases that Respondents have legitimate interests in domain names used for the purposes of fair and non-commercial criticism, discussion and dissemination of opinions [Howard Jarvis Taxpayers Association v. Paul McCauley Case No. D20040014; Sermo, Inc. v. CatalystMD, Ld. Counsel for the Claimant Case No. D20080647]. At this juncture, it is not out of place to mention here that the English-translated copy of the membership form has not been placed on record by the Complainant to mislead this Hon'ble Tribunal. The true translated copy of the 15 membership form clearly reflects that the members are being made by the Respondent in 'United All Indian Anna Dravida Munnetra Kazhagam' and not in the name of the Complainant. Further, the Respondent has also nowhere on the website claimed himself to be a member of the Complainant. Therefore, in view of the absence of evidence of elements of trade and



commerce, the Respondent has satisfied the present ingredient as well. ”

It is also an admitted position before this Hon'ble Tribunal that the Respondent became a member of the complainant party at least in the year 1982 as admitted *vide* the answer of the CW-1 to the question number 8 put by this Hon'ble Tribunal (question no.08) and the same is reproduced hereinbelow:

“As per the Tribunal:

Q.8. When did respondent become the member of the complainant party?

Ans. Somewhere in between 1982 or 1983.”

It is similarly an admitted position that the Respondent is not floating any separate political party which would harm the reputation and/or voters of the complainant party in any manner whatsoever. The same is evident from the answers of the CW-1 to the question put forth by this Hon'ble Tribunal (Question no.5- Per Tribunal) and thus the Respondent has legitimate, *bona fide* interest in the so-called disputed domain name *vide* answer to question no 55. The same are reproduced herein below:



“PER TRIBUNAL:

Q.5. Are you aware that the Respondent is floating or has already floated a separate registered political party, to say, which is registered with Election Commission of India?

Ans. As per my knowledge, there is nothing as such”.

“Q.55. I put it to you that the Respondent is / was having a legitimate bonafide interest in the so-called disputed domain name. What do you have to say?

Ans. It is denied.”

At this juncture, it would not be out of place to mention here that this Hon’ble Tribunal had also put various questions to the Respondent *vide* cross examination dated 14.11.2023 as to the status of the Respondent before the death of Dr. MGR as well as reasons for expulsion as evident from Answer to question no. 2,3,4,5,6,7,8 (Per Tribunal) and the same are reproduced hereinbelow:

“Q.2. When you joined the party?

Ans. I was originally in MGR Mandram and then joined the party in the year



1972. Since then I have been in the party continuously.

Q.3. What was your status in the party till the demise of Dr. MGR?

Ans. In 1982, I was appointed by Dr. MGR as Coimbatore District Youth Wing Deputy Secretary. In 1984, I was offered a ticket by Dr. MGR to contest Kangayam Assembly Constituency. I contested and won.

Q.4. What was your status in the party after the demise of Dr. MGR?

Ans. Soon after the demise of Dr. MGR, party got split in two fractions led by (1) Janaki Ramachandaran and (2) Jayalalithaa. The party lost in 1989 Assembly elections because of this split. I was one among with few others instrumental for unification of the party. In appreciation I was offered to contest for the Parliament election by Madam Jayalalithaa in 1989 from Tiruchengode Constituency where I won with the highest difference of votes. The votes



share being no.1 in South India and no. 2 on an All India Basis.

Q.5. Besides your status being the MLA and MP in the party contesting the elections, have you ever been enjoyed with any official post in the management/as officer bearers of the party?

Ans. I was offered by Madam Jayalalithaa few times the District Secretary positions under the Headquarter level position. Because of my wife's ill-health, I could not take up. However, she assigned me the responsibility of In-charge of Western Zone informally and I continued to apprise Madam Jayalalithaa about the developments.

Q.6. Is it correct to say that you were the official spokesperson of the complainant party?

Ans. Yes, I was one of the official spokesperson in the list published by Mr. EPS and Mr. OPS in the year 2018. At the request of Mr. EPS, it is me who initiated



the unification of factions of OPS and EPS in creating unified AIADMK. However, they both behind the back of everyone decided to go against the byelaws of AIADMK which I opposed at that time.

Q.7. What was your reason of your expulsion in 2018 which is termed as illegal by you?

Ans. The expulsion was purely due to my objections before the Election Commission on the amendments contrary to the byelaws enacted by late Dr. MGR and Madam Jayalalithaa.

Q.8. Were you utilising the disputed domain name for the benefit of the party till your expulsion in 2018?

Ans. Always to the benefit of the party to uphold the ideology of Dr. MGR and Madam Jayalalithaa.

Thus, from the aforesaid circumstances, it cannot be concluded that the Respondent does not hold any legitimate right in the disputed domain name. Further, it is established from the record that it is a pure case of a criticism without



any element of monetary gain, and therefore, the element of legitimate interest defined in Clause 6 is established and the complaint is liable to be dismissed on this sole ground alone.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

After considering the submissions of both the parties, it is appreciated that Complainant Party is a registered State Political Party with the Election Commission of India in its own name with its Election Symbol. It is more properly recognised amongst the public as with abbreviation 'AIADMK' besides its full name. The Respondent K.C. Palanisamy is recognised amongst the public as the ex-member of the Complainant Party. Both the Parties and its Members are separate legal entities and even a member of any political party cannot use any identical and confusing domain name with like that of party without the consent of the party and in the present case, the Respondent is not even the member of the Complainant Party. The Respondent is neither a political party nor is a member of any political party which carries with the name/abbreviation 'AIADMK'. The Complainant Party is registered with Election Commission of India and commonly known with the abbreviation 'AIADMK' while contrary to this neither the Respondent nor any related party with him is registered with the Election Commission of India with the name having abbreviation 'AIADMK', thus, in view of these especially when the Respondent carries the political



activities, the Respondent cannot be considered to have any legitimate interest in the Disputed Domain Name especially when it is strongly objected and opposed by the Complainant Party.

In view of the above observations, this Issue is decided in favour of the Complainant Party and against the Respondent.

ISSUE NO. 3: WHETHER OR NOT THE DISPUTED DOMAIN NAME HAS BEEN USED IN BAD FAITH OR WHETHER OR NOT THE DISPUTED DOMAIN NAME HAS BEEN USED FOR ILLEGAL/UNLAWFUL PURPOSE?

SUBMISSIONS OF THE COMPLAINANT:-

The Complainant submits as under through its written submissions:-

The malafide intent and bad faith of the Respondent in registering the disputed name is further evident from the fact that he has been misrepresenting the disputed domain name/website as if it were the official website of the Complainant Party.

As a matter of fact, the first visual when the website is opened is a pop-up box for membership registration, evidencing that the website is utilized for registering members in the name & style of the Complainant Party. Further, the



'membershipcard' page of the said website portrays as if the proposed member is enrolled into the Complainant Party by referring to and using a flag similar to the Complainant's flag, using and referring to the Complainant's symbol and dignitaries, while however, the alleged membership card bears the signature of the Respondent. In another page 'MGR & AMMA'S GOVERNANCE' of the disputed domain name/ website, apart from references to various programme rolled out under the governance of the Complainant Party, there is an option for registration under a 'join us now' button. Upon clicking the same, a visitor is taken to another registration page which provides an option for registration to new and existing members alike. Thus the Respondent vide the said website is running a parallel membership drive in the name and style of the Complainant apart from misrepresenting as if Respondent were an important leader of the Complainant Party.

He has also inserted the previous byelaws of the Complainant Party which have since been amended, thereby creating huge confusions on any one who visits the website, misleading them to believe that the same is hosted by the Complainant and its official website, while the official website of the Complainant is <http://www.aiadm.com/>.

The Respondent who has been expelled from the Party due to his fraudulent track record has created the fake website in



the name of the Complainant only to defraud the general public and, members & fraternity of the Party creating confusion amongst the general public and fraternity of the Party by the use of the name of the Complainant in the website. For instance, the Respondent has used the official address and twitter feed of the Complainant in tandem with his contact numbers to project an image as if the domain is the authorized or official website of the Party and/or that he is a prominent member of the Complainant Party. The same evidences the bad faith in use and illegal/unlawful purpose of the disputed domain name.

The other identical factors in addition to the name which add to the confusion are as follows:

- a. Use of the official address of the Complainant
- b. Embedding of the official twitter and facebook feed of the Complainant
- c. Use of the details of the dignitaries of the Complainant
- d. Publishing of the old bye laws of the Complainant
- e. Provision of a grievance corner to post grievances regarding the Party / Tamil Nadu Government
- f. Use of the Colour combination that signifies and denotes the Complainant Party



- g. Absence of disclaimer that the website is not the official website of the Complainant Party but is in respect of the alleged independent political movement.

In such context apart from alleging that documents evidencing collection of money through website has not been produced, the Respondent has not denied the fact that he is engaged in a parallel membership drive through the disputed domain name, which is yet another factor which causes confusion among the general public. It may not far-fetched to state that the Complainant has been utilizing the name or its abbreviation, variation of the Party as well as the identifiers of the Party to enroll members into his alleged political movement to which he claims to be the face. Therefore, the only logical conclusion would be that said website is being run in the name of the Complainant by the Respondent for his own political and personal mileage, which is nothing but an illegal act. As such the contention that the Respondent has clearly and categorically distinguished the disputed domain name from the Complainant as a political movement is patently false as evident from a mere perusal of the said website. In any event in the absence of a clear and categorical disclaimer that the said domain is not the official website of the Complainant Party, no such contention of the Respondent can hold well in the eyes of law. It may be pertinent to state here that the Respondent has created an



independent website for his alleged political movement under the domain name <http://kcpalanisamy.com> but also continues to use the name of the Complainant and the disputed domain name in tandem in his official social media accounts only to mislead the public.

That the Registrant/Respondent has registered the disputed domain / website in bad faith by preventing the Complainant herein, who holds the sole rights and interests in any variation of the name 'AIADMK' or 'aiadm k' or 'All India Anna Dravida Munnetra Kazhagam', from registering its website/domain in .IN or .Bharat registry, and has intentionally presented, encoded or inserted the name, style, flag of the Complainant Party as well as the details of the original organization, past bye-laws, etc. of the Complainant Party with a sole intent to mislead and misrepresent the internet users & general public and attract them to the disputed domain name / website.

Sub-Clause (c) of Clause 4 of INDRP warrants that Claimant exhibit that the Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.

It is submitted that the position of law is that bad faith is synonymous with "dishonest intention" or "constructed fraud". Reliance in this regard is placed on:



- (a) Bryan A. Garner, Black's Law Dictionary 64 (5th ed. Thomson Reuters 2016) defines bad faith as "bad faith, n (17c) Dishonesty of belief, purpose, or motive."
- (b) P Ramanatha Aiyar, The Major Law Lexicon 659 (4th Ed. Lexis Nexis Butterworths Wadhwa Nagpur 2010) defines Bad faith as

"It is the opposite of good faith, generally implying or involving, but not limited so, actual or pconstructive fraud, or a design to mislead or deceive another, or any other sinister motive. Conceptually bad faith can be understood as a "dishonest intention", Harrison v. Telon Valley Trading Co. Ltd. (2004) 1 WLR 2577. (Wharton's Law Lexicon, 15th Edn.)"

"Opposite of good faith; generally implying or involving actual or constructive fraud or design to mislead or deceive another; a neglect or refusal to fulfil some duty or some contractual obligation, not prompted by an honest mistake as to one's rights and duties, but by some interested or sinister motive. [S. 55(3) CPC (5 of 1908)]."



“The standard used to find a violation of the Anti-cybersquatting Consumer Protection Act, including the cyber squatter’s intent to divert Web traffic from the mark owner, offer to ransom the name to the mark owner, and whether the mark is distinctive and famous. (Cyber Law)”

The disputed domain name is self-evident identifying the natural and well known acronym and thereby the name/mark of the Complainant Party, and was registered with the clear knowledge of existence of name and mark and the rights in the name of the Complainant by the Respondent and has been continued to be used by the Respondent despite his expulsion from the Party, all factors evidencing dishonest intention on part of the Respondent.

In the context of bad faith on part of the Respondent, the Complainant places reliance on the decisions in *Modi-Mundipharma Pvt Ltd. v. Preet International Pvt Ltd & Anr.*, 2009 SCC OnLine Del 3922, paras 74, 76, 80; *Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia*, (2004) 3 SCC 90, paras 5-6; *Bharatiya Janata Party (BJP) v. Iahead, Vinay KM / WhoisGuard / Namecheap.com / Enom Inc. bjp.com*, 2011 SCC OnLine WIPO 1044; *Buendnis 90 Die Gruenen v. RJG Engineering Inc.*, 2001 SCC OnLine WIPO 882; *Acqua*



Minerals Limited v. Pramod Borse & Anr., AIR 2001 Del 463, Para 28, 31-36, 40, 42-46; *Tom Cruise v. Network Operations Center/Alberta Hot Rods tomcruise.com*, 2006 SCC OnLine WIPO 596, para 6C; NIXI Arbitral Award in the matter of *Sidhartha Malya v. Puneet Agarwal*.

It is submitted that the contents of the website are also identifiers of the Complainant Party being,

- (a) Use of the official address of the Complainant (Ex.C-18, Ex.C-26, Colly). It is pertinent to state that the Respondent who did not feel it significant to deny this averment in his counter to section 9 proceedings [Ex.C-8] has falsely adduced evidence before this Tribunal, denying the same.
- (b) Embedding of the official twitter and facebook feed of the Complainant (Ex.C-8 (para 10), C-10 (para 7)). It is pertinent to state that the Respondent who had admitted to embedding the official social media feed of the party in various proceedings has however falsely adduced evidence before this Tribunal, denying the same (Q.8, RW-1, cross ex.).
- (c) Use of the details of the dignitaries of the Complainant (Ex.C-18, Ex.C-26, Colly) (d) Publishing of the old bye



laws of the Complainant (Ex.C-26, Colly; Q-9, RW-1 Cross)

- (d) Provision of a grievance corner to post grievances regarding the Party / Tamil Nadu Government (Ex.C-26, Colly)
- (e) Official flag of the party has been captured in the as per bylaw 4 in membership card and the official symbol, of two leaves of the party[Ex.C-15 to C-17]
- (f) Use of the Colour combination that signifies and denotes the Complainant Party (Ex.C-18, C-15 to C-17)

By the use of the disputed domain name with the contents of the said domain, the Respondent is creating confusion amongst the general public and party fraternity in respect of the Complainant Party (Ex C- 9, Colly). An example would be evident from FIR registered against the Respondent in Sular Police Station [Ex.C-5, Colly].

It is submitted that the Respondent has acted in violation of the Clause 3 of the INDRP which is extracted below which establishes the fact that the Respondent has acted in a malafide manner and has been using the disputed domain in bad faith.



“3. Registrant's Representations

By applying to register a domain name, or by asking a Registrar to maintain or renew a domain name registration, the Registrant hereby represents and warrants that:

- (a) the credentials furnished by the Registrant for registration of Domain Name are complete and accurate;*
- (b) to the knowledge of Registrant, the registration of the domain name will not infringe upon or otherwise violate the rights of any third party;*
- (c) the Registrant is not registering the domain name for an unlawful and malafide purpose; and*
- (d) the Registrant will not knowingly use the domain name in violation or abuse of any applicable laws or regulations. It is the **sole responsibility of the Registrant** to determine whether their domain name registration infringes or violates someone else's rights.”*



It is submitted that the disputed domain name has been registered by the Respondent when he was a member of the Complainant Party, and admittedly without authorization from the Complainant Party. It is needless to state that any website to be registered in the name of the Complainant Party would appear to the common person as an official website of the Complainant and as such the person creating and managing such website should be necessarily authorised by the Complainant Party. As evident from the cross-examination of RW-1 [Q-5, per tribunal], the Respondent was not authorized to develop or manage the disputed domain. It is further submitted that through his elusive answers to the Tribunal, the Respondent has attempted to approbate and reprobate in his position on authorization from Party to act on its behalf from a general comparison of Q-5, per tribunal, RW-1 cross and Ex.C-10 para 8 at page 239. In any event mere because the Respondent was a member of the complainant party at the time of registration does not entitle him with any rights in respect of the disputed domain name sans a specific authorization in this regard from the Party.

Further, having so illegally registered the disputed domain in the name of the Complaint without any authorization from the Complainant Party, the Respondent is continuing to use the disputed domain name even after his expulsion from the Party, with a sole intent to damage the goodwill and



reputation of the Complainant's Party and to create a confusion amongst the public and benefit out of the same. (Ex.C-15 to C-17)

It is further submitted that there is no disclaimer in the disputed domain name that it is not the official website of the Complainant AIADMK although the disputed domain name reads aiadmkn.org.in. Further, the Respondent through his continued management of the disputed domain name is attempting to arm twist the Complainant as can be seen from his evidence affidavit and cross-examination, Q-7 per tribunal, that the Respondent would permit the Complainant to use the disputed domain name which is registered in the name of the Complainant only and only when the Complainant comes to the terms of ideology of Dr. MGR. In other words, the Respondent has no intent to use the disputed domain for a legitimate purpose but has malafide continued to use the website registered in the name of the Complainant only to settle scores with the Complainant. **[evidence of bad faith under Clause 7(a) of INDRP].**

SUBMISSIONS OF THE RESPONDENT (Regarding Issues No. 3, 4, & 5):-

The Respondent submits regarding Issues No. 3, 4 & 5 as under through its written submissions:-



Since all the aforementioned issues are inter-connected with each other, the same are dealt with jointly hereunder.

It is stated that initially, the complainant had set up a case before this Hon'ble Tribunal that the Respondent is engaged in 'cyber squatting' through the disputed domain which rightfully belongs to and reflects/refers only to the complainant *vide* para 3. The complainant had further alleged *vide* para 3 and 16 of the complaint that the Respondent is engaged in collecting and receiving money from the general public for the membership in the name of the complainant. Thus, initially at the time of filing of the present complaint, it was the case of the complainant that the Respondent is engaged in misrepresenting the complainant's identity/its address/its symbol/its political leaders so as to profit in the form of money and therefore, it is a case of cybersquatting. The relevant para are reproduced hereinbelow:

Complaint Paragraphs

"3. The domain name under dispute is <http://aiadmkn.org.in> which has been registered the .IN Registry in the name of KC Palanisamy and as such this complaint is being filed under the present INDRP Policy and INDRP Rules of Procedure against the Registrant/Respondent for



cybersquatting on the domain name which rightfully belongs to and reflects/refers only the complainant herein.”

“16. The malafide intent and bad faith of the Respondent in registering the disputed name is further evident from the fact that he has been misrepresenting the disputed domain name/website as if it were the official website of the Complainant Party and has been enrolling members, collecting & receiving money from the general public for membership in the name and style of the Complainant, through the website having the disputed domain name i.e., www.aladmkn.org.in.”

The Respondent *vide* its reply Para 2-4 strongly objected to the assertion that the Respondent is involved in any commercial activity through the disputed domain as alleged or at all and the said para is reproduced herein below:

“2.-4. The contents of para 2 to 4 saves the matter of record are wrong and denied. It is vehemently denied that the Respondent 19 has indulged in any



instance of cybersquatting as alleged or at all. The Respondent submits that cybersquatting by its very definition involves the practice of registering, trafficking in, or using a domain name with the bad faith intent to profit from the goodwill of someone else's trademark. The World Intellectual Property Organization defines cybersquatting as "the preemptive registration of trademarks by third parties as domain names. Cybersquatters exploit the firstcome, first-served nature of the domain name registration system to register names of trademarks, famous people or businesses with which they have no connection." The Complainant cannot claim that the Respondent in the present instance has engaged in the act of cybersquatting, since (i) The domain name is not being used in bad faith (ii) The domain name is not being used for commercial purposes or to derive profit from the goodwill of another person's trademark (iii) in any case, the Complainant cannot claim to enjoy trademark rights by virtue of being a



political party; and (iv) the Respondent has a valid and subsisting connection with the political party. It has been held in several cases that the scope of the INDRP is narrow and restricted to determining cases of abusive cybersquatting [Bennett, Coleman and Co. Ltd. V Sarv Webs Pvt Ltd. [INDRP/1195]; MasterCard International Incorporated v. Champion Software Technologies Ltd. [INDRP/972 & INDRP/978]; Intel Corporation v. Intelsitio Mexico, [WIPO Domain Name Decision D2012-0718; Audi AG v. Stratofec [WIPO Case No. D2012-1894]. It was clearly held in each of these cases that INDRP proceedings are of a narrow compass and are intended to deal with cases of abusive cybersquatting. 20 The origin of the principle stems from the Second Staff Report on UDRP (24 October 1999) at Para 4.1 Clause(c), which when addressing the scope of dispute policies such as the INDRP and UDRP states "Except in cases involving 'abusive registrations' made with bad-faith intent to profit commercially from others' trademarks (e.g., cybersquatting and



cyberpiracy), the adopted policy leaves the resolution of disputes to the courts (or arbitrators where agreed by the parties) and calls for registrars not to disturb a registration until those courts decide". The absence of bad faith intent on behalf of the Respondent, the lack of intent to profit commercially through the use of the website and the lack of trademark rights held by the Complainant's, therefore demonstrates that the present complaint deserves a dismissal on this ground alone. The Respondent further submits that no documentary proof has been placed on record to substantiate such a baseless allegation and the Respondent reserves the right to institute defamation proceedings against the Complainant without prejudice to his other legal rights. In so far as the reference of the dispute to the National Internet Exchange of India ('NIXI') is concerned, status of the political party, the non-registrability of trademark and their locus to file the present complaint is categorically disputed by the Respondent herein and in relation thereto, the



preliminary objections be read as part and parcel to the reply on merits.”

Further, not only has the Respondent denied the said averment but also established the said fact by putting specific questions to the witness *vide* Question No. 44, 45 and 46 and the same are reproduced hereinbelow:

“Q.44. Please see para no. 23 of your evidence affidavit. Is it correct that you have not disclosed in your complaint the name of any person(s) and/ or any bank account of any such person(s) from whom the Respondent has allegedly accepted and/or is accepting the money in the name of the complainant?”

Ans. Yes.

Q.45. Is it correct to say that you have not placed any screenshot of so-called disputed domain name, which shows that the Respondent is inviting the general public to pay money to him much less in the name of the complainant party?”

Ans. It is denied.



Q.46. I put it to you that you are knowingly and with malafide intention to mislead this Hon'ble Tribunal, not only giving the incorrect answer, but also made bold averments to bring so-called dispute within the domain of the present dispute mechanism. What do you have to say?

Ans. It is denied.”

From the aforesaid facts and circumstances, it is at least abundantly clear that the Respondent is not involved in cybersquatting as alleged or at all. Thus, the Respondent has established his case beyond the doubt that there is no commercial interest in any manner whatsoever and therefore, the complaint is liable to be dismissed on this ground alone.

Be that as it may, being fully aware that EPS' case is based upon falsehood and no commercial element is present in the present matter, an altogether new case was built *vide* Para 5(d) of the rejoinder to the reply that the Respondent is confusing the general public by using the official address/official twitter account/official face account/dignitaries/publishing old bye-laws/using colour combination of the complainant. The same contention has also been stated in the evidence by way of an affidavit of the



complainant *vide* Para 14. However, again the complainant has desperately failed to prove the same and his falsehood has been demolished and has no legs to stand on as evident from the cross examination. Para 14 of the evidence by way of an affidavit of the complainant and question of cross examination of CW-1 in relation to the above said are as follows:

“Para 14 of the Complainant:

14. I state that a cursory glance at the disputed domain name would show identical factors in addition to the name which add to the confusion in the minds of the public and in the mind of a reasonable person, such as

a. Use of the official address of the Complainant

b. Publishing of several official photographs of the Complainant Party,

c. Publishing of Party's historical background, its achievement in the state of Tamil Nadu,



d. Publishing of the old bye laws of the Complainant

e. Use of the details of the dignitaries of the Complainant

f. Embedding of the official twitter and facebook feed of the Complainant

g. Use of the Colour combination that signifies and denotes the Complainant Party

h. Provision of a grievance corner to post grievances regarding the Party /Tamil Nadu Government

i. Provision for membership application / registration in the name and style of the Complainant Party using identifiers such as symbols, colour combinations, 30 flags, etc that when put together solely reflects the Complainant Party and no one else especially in the target demographic.



j. Absence of disclaimer that the website is not the official website of the Complainant Party but is in respect of the alleged independent website of the Respondent.”

Regarding the use of official address

The question was put to the witness as to the evidence of using the official address *vide* question no 76, 77 and 78 of the cross examination and the same are reproduced hereinbelow:

“Q. 76. [Attention of the witness is drawn to para 14 of his evidence affidavit and more particularly para 14(a)] Can you please tell us where in the so-called alleged disputed domain name, the Respondent has shown/used the official address of the complainant party?

Ans. Yes, it is there. The evidence for the same will be provided later.

Q.77. I put it to you that you intentionally and knowingly not given an answer to question no. 76 so as to mislead this



Hon'ble Tribunal. What do you have to say?

Ans. I deny.

Q.78. I put it to you that nowhere in the so-called alleged disputed domain name website, the Respondent has mentioned the official address of the complainant party. What do you have to say?

Ans. I deny.”

Regarding use of official photographs

The question was put to the witness as to the evidence of using the so-called official photographs of the complainant vide question no 79, 80, 81, 82 and 83. The same are reproduced hereinbelow:

“Q.79. [Attention of the witness is drawn to para 14(b) of his evidence affidavit]

What do you mean by "official photographs of the complainant party?"



Ans. Photographs and official statements released by the party, which are in our official website also.

Q.80. Have you placed any document on record such as byelaws defining the term "official photographs" by the complainant party?

Ans. No.

Q.81. Is there any rule/notification or the byelaws or any other document in support of your answer to question no.80?

Ans. No.

Q.82. Is there any notification/rules/regulations/any documents issued by the complainant party restricting the publication of political history, background and achievement of the political party?

Ans. It is a common rule. No one else can claim the achievements of our party.



Q.83. (Attention of the witness is drawn to his answer to question no. 82)

What do you mean by "common rule"?

Ans. "Common rule is not a written rule rather it's a conscious rule."

Regarding the circulation of old rules

The question was put to the witness on the aspect of circulation of old rules of the complainant party *vide* question no 84 of the cross-examination. The same are reproduced herein below:

"Q.84. Has the complainant party issued any circular till date that the old rules of the complainant party cannot be published or brought to the notice of the public at large?"

Ans. No."

Regarding logo:

Question on the aspect of purported usage of the logo was put to the witness *vide* question no 32,34 and 35 of the cross-examination. The same are reproduced hereinbelow:



“Q.32. Reference is made on page no. 35 of the document of the Complaint /Exhibit C-15.

Is it correct that two photographs, one Dr. MG Ramachandran and other one of Dr. Jayalalithaa are clearly visible on the logo?

Ans. Yes.

Q.34. Please again see page no. 35 of complaint which is Exhibit C-15.

Is it correct that said two photographs are enclosed in a circle?

Ans. Yes.

Q.35. I put it to you that you have intentionally not placed on record the complainant party symbol as the complainant party is completed distinguishable to the Respondent symbol/logo?

Ans. It is denied.”



Regarding purported membership cards

Questions on the purported membership cards being issued by the complainant for running parallel membership were put to the witness *vide* question no 36, 37 and 38 and the same is reproduced hereinbelow.

“Q.36. Please look at the translated copy of the so-called Membership Form/ Exhibit C-15. Is it correct that word 'united' is mentioned before All India Anna Dravida Munnetra Kazhagam?”

Ans. Yes.

Q.37. Please see page no. 37 and 38 of the document mentioned in complaint which is purported to be described as Register Your Existing Member Card'/ Exhibit C-17. Is it correct that it is specifically mentioned in the said document that for becoming a member of Respondent's political movement, it is mandatory to be in consonance with the ideology of upholding the old party rules/bye-laws of the complainant party?”



Ans. I cannot answer this question in 'Yes' or 'No' (Vol.) as the document is fraud. Our case is that the Respondent is fraudulently duplicating the identity which includes the name, symbol, enrollment and membership card.

Q.38. I put it to you that the Respondent has never invited or called any person to become a member of the complainant party through the disputed domain name. What do you have to say?

Ans. I do not agree.”

From the aforesaid answers to the questions, it is absolutely clear that the Respondent is not even involved in any illegal/unlawful motive much less creating any confusion in the mind of the general public. It is most humbly submitted that fair criticism cannot be a ground for bad faith registrations in any manner whatsoever. In this connection, reference is drawn to the case laws of WIPO panels wherein the Panels have routinely held that a Registrant has legitimate interest in domain names which are criticism websites (***Howard Jarvis Taxpayers Association v. Paul McCauley Case No. D20040014***)



The Respondent further submits that the use of the disputed domain name for non-commercial purposes would be deemed fair use. In **Estate of Shakur v. Barranco Case Nos. AF-0348[a]-[b] [WIPO Oct. 23, 2000]**, the Respondent owned domain names dedicated to a fan club for the late hip-hop artist Tupac Shakur. The tribunal upheld “the use of the domain names for fan club purposes, considering the websites non-commercial, free of charge, and without tarnishing the claimant's mark.”

The relevant portions of the aforesaid rulings are reproduced herein below:

Estate of Shakur v. Barranco Case Nos. AF-0348[a]-[b] WIPO Oct. 23, 2000

Rights or Legitimate Interests

The position asserted by the Claimant, if accepted, would effectively prohibit any fan club from being established on the Internet if it mentioned in the site name an artist's name, where part or all of that name related to a registered mark or even perhaps transgressed claims of common law rights in a name. It would also permit persons in the position of this Claimant to unjustly enrich themselves by confiscating the work of fans and admirers in establishing a web site supporting their



favorite artists without any opportunity for compensation.

Howard Jarvis Taxpayers Association v. Paul McCauley (Case No. D20040014)

B. Respondent Has a Legitimate Interest in Its Criticism Site

*Turning to the case at hand, applying the approach described above, the Panel concludes that Complainant has failed to prove that Respondent lacks a legitimate interest in the Domain Name. In particular, it has failed to prove that Respondent is not entitled to the protections of paragraph 4(c)(iii) of the Policy, **which provides that Respondent has a legitimate interest if he is "making a legitimate noncommercial or fair use of the domain name, without intent for commercial gain to misleadingly divert consumers or to tarnish the trademark or service mark at issue."***

Respondent's website appears to be a classic criticism site. The content is openly critical of the management of the HJTA organization. See, e.g., *Bridgestone Firestone, Inc. v. Myers*, Case No. D2000-0190 (WIPO July 6, 2000) (use of *bridgestone-firestone.net* for criticism site is a legitimate interest).



There is no evidence in the record to suggest that Respondent's use is not "legitimate," such as use of a criticism site as a mere pretext for cybersquatting. Cf. Rolex Watch U.S.A., Inc. v. Spider Webs, Ltd., Case No. D2001-0398 (WIPO July 2, 2001) (Respondent claimed domain name incorporating Rolex mark was used for legitimate discussion site but had admitted in prior court proceedings that he was a "domain name speculator" that acquired famous trademark domain names in order sell them to the trademark owners at a profit). Respondent thus appears to be "making a legitimate noncommercial or fair use of the domain name." Policy 4(c)(iii).

*Moreover, there appears to be neither misleading diversion of consumers nor tarnishment of the mark. **Complainant has not established that Respondent is seeking to divert consumers for two separate reasons. First, the concept of "misleadingly diverting consumers" refers to the kind of confusion that arises in a trademark infringement context when a competitor diverts consumers to its site and, potentially, diverts sales. A "competitor" in this context (and also for purposes of paragraph 4(b)(iii) of the Policy), is a person or entity in competition with the Complainant for the provision of goods or services, and not merely any person or***



entity with an interest oppositional to that of a mark holder. *Vishwa Nirmala Dharma a.k.a. Sahaja Yoga v. Sahaja Yoga Ex-Members Network and SD Montford*, Case No. D2001-0467 (WIPO June 16, 2001) ("**declining to accept the contention of the Complainant that the broad definition of 'competitor' will include not only commercial or business competitors, but anyone acting in opposition to another**"); *Tribeca Film Center, Inc. v. Brusasco-Mackenzie*, Case No. D2000-1772 (WIPO April 10, 2001) ("**a Respondent can 'disrupt the business of a competitor' only if it offers goods or services that can compete with or rival the goods or services offered by the trademark owner**"). Although Complainant argues that Respondent operates his website and has attempted to raise money to "disrupt" HJTA operations, nowhere in the Complaint does the Complainant argue that Respondent is its "competitor" in the provision of tax reform associational services.

The Complainant has failed to prove that the domain name in question was registered in bad faith. "Abusive Registrations" are a primary element to be established for a dispute to fall within the INDRP. This has been clarified in the **Final Report of the WIPO Internet Domain Name Process [April 30, 1999]** at Para 135 [i] and also in the



Second Staff Report on UDRP [24 October 1999] at Para 4.1 Clause [c], which states:

“Except in cases involving “abusive registrations” made with bad-faith intent to profit commercially from others’ trademarks [e.g., cybersquatting and cyberpiracy], the adopted policy leaves the resolution of disputes to the courts [or arbitrators where agreed by the parties] and calls for registrars not to disturb a registration until those courts decide. The adopted policy establishes a streamlined, inexpensive administrative dispute-resolution procedure intended only for the relatively narrow class of cases of “abusive registrations.”

On the contrary the present matter is a classic case of reverse cybersquatting where the Respondent being dissenting voice has been harassed, humiliated and has been put under undue pressure and coercion through the misuse of legal machinery including through the invocation of the present dispute mechanism at the instance of EPS. Some of the glaring examples are as follows:

- a. The complainant was never interested in protecting its so-called intellectual property in its abbreviation (AIADMK) which is evident from the facts which are as follows:



1. The Respondent himself has produced a document *vide* Page No. 92 of the list of documents that there were at least 5 domain names which were available with the abbreviation AIADMK. In connection thereto, a specific question was put to the witness *vide* Question 47 and 48 and the same is reproduced hereinbelow:

“Q.47. Please see Exhibit C-19 at page no. 92 of the list of documents filed along with the complaint. Is it correct to say that there are at least five other domain names available with abbreviation with AIADMK even according to you?”

Ans. Yes.

Q.48. Have you purchased those domain names having abbreviation with AIADMK even till today?”

Ans. I do not remember.”

2. It is also proved beyond the reasonable doubt that there were other domain names available in the name and style of AIADMK and no action has been taken against them which is evident from Question



49, 50, 51 and 52 and the same is reproduced hereinbelow:

“ Q.49. I put it to you again that you are intentionally not giving the answer to question no. 48. Is it correct?

Ans. It is denied.

At this stage the witness is confronted with a website having domain name/address supportaiadmkn.org.

Q.50. Is it correct that the aforesaid domain name / address is not your official website?

Ans. Yes

Q.51. I put it you that there are other websites also apart from supportaiadmkn.org with abbreviation AIADMK registered and you have not taken any action against any one of them, as you are fully aware that nobody can claim exclusivity in the name of the party. What do you have to say?

Ans. It is denied.



Q.52. I put it to you that you have not placed any document on record to show or demonstrate that any action against those having abbreviation AIADMK registered, have been taken. What do you have to say?

Ans. It is denied.”

3. In order to cover up the lacunas and to mislead this Hon’ble Tribunal, after the cross-examination on 27.10.2023, another hopeless piece of evidence was placed on record by the complainant *vide* Page 230 of the additional evidence filed after the cross-examination so as to demonstrate that EPS, under the garb of the complaint is interested in protecting its so-called intellectual property rights. However, the truth came to surface before this Hon’ble Tribunal during the cross-examination when it was revealed that such domain names were purchased only with the intention of creating new evidence *vide* question no. 113, 114, 115, 116, 117, 118, 119 and 120. The same are reproduced hereinbelow:

Q.113. (Attention of the witness is drawn to the last page of the affidavit Exhibit C-29) What do you want to prove from this Exhibit C-29 at page 230?



Ans. To demonstrate that we had purchased other domains too.

Q.114. Do you mean to say that these domain names were purchased prior to filing of the present complaint?

Ans. I do not know.

Q.115. (Attention of the witness is drawn to his answer to question no. 112)

Do you mean to say that this document was handed over to the Counsel before the filing of the present complaint?

Ans. I do not know.

Q.116. I put it to you that you are knowingly with a malafide intention to mislead this Hon'ble Tribunal do not want to disclose the date of purchase of the domain name. What do you have to say?

Ans. I deny.

Q.117. I put it to you that you had purchased the said domain names just one day prior to



the last cross- examination that is on 26.10.2023. What do you have to say?

Ans. Maybe.

Q.118. At this stage witness is confronted with the website whois.com which is known for collecting the information regarding the name of the Registrant as well as the date of purchase of the domain name(s) Again, I put it to you that the alleged domain names that were purchased on 26.10.2023 so as to cover up the lacunae and to mislead this Hon'ble Tribunal. What do you have to say?

Ans. I deny.

Q.119. Do you know that deposing falsely, that too, on an affidavit is an offence under Section 340 of Cr.P.C.?

Ans. Yes.

Q.120. (Again attention of the witness is drawn to Q/A 50) Have you taken any action against the said domain name i.e. 'supportaiadmkn.org till date?

Ans. No."



4. Thus, from the aforesaid circumstances it can be safely concluded that the complainant is not interested in protecting its so-called domain name but that the present case is a classic example of political vendetta as emerged during the cross-examination as follows:

a. Admittedly, an FIR was registered in connection to the domain name, however, evidence suggests that the same was nothing but an offshoot of a political vendetta *vide* answer to Question No. 56, 57, 58, 59, 60, 61, 62, 63 during the cross-examination of CW-1. The same is reproduced hereinbelow:

“Q.56. Is it correct to say that the complainant party was in power in the year 2019-2020?”

Ans. Yes.

Q.57. Is it correct that Mr. EPS was the Chief Minister of State of Tamil Nadu and you were the Law Minister?”

Ans. Yes.



Q.58. Please see your evidence affidavit and more particularly para no.9. So is it correct to say that FIR No. 45/2020 got registered against the Respondent when the complainant party was in power?

Ans. Yes. (Vol.) The complaint was given by one of the party members against the Respondent on serious offence and accordingly, the concerned police station registered the FIR.

Q.59. So is it correct to say that the police has not filed the chargesheet in the said FIR till date?

Ans. I have to check it. I think not filed.

Q.60. (Attention of the witness is drawn to contents of the FIR No. 45 of 2020)

So is it correct to say that the contents of the FIR and the pleading of the complaint in the present case are almost same or similar?

Ans. Maybe.



Q.61. Is it correct to say that the FIR No. 45 of 2020 is primarily based upon the disputed domain name which is also subject matter of the present arbitration proceedings?

Ans. Yes.

Q.62. I put it to you that the police has not been able to file the chargesheet in the said FIR till date as there is no evidence of commissioning of so-called "serious" offence till date. What do you have to say?

Ans. No comments.

Q.63. (Attention of the witness is drawn to para 9 of his evidence affidavit and more particularly last seven lines of the said para) I put it to you that a false FIR was lodged to put undue pressure on the Respondent so as to silent his political legitimate demand. What do you have to say?

Ans. It is denied."

- b. In addition to the aforesaid, none of the investigating agencies had taken any action in



connection with the so-called disputed domain name including the internet service providers as evident from answers to Question No. 64 and 65. The same are reproduced hereinbelow:

Q.64. (Attention of the witness is drawn to para 10 of his evidence affidavit)

Is it correct that you yourself has claimed that the legal notice dated 24.01.2022 was sent to the Internet Service Provider (ISP) seeking to block the alleged disputed domain name?

Ans. Yes.

Q.65. Is it correct that admittedly no action has been taken by any of the service provider against the Respondent in connection to the legal notice dated 24.01.2022?

Ans. Yes.

- c. Moreover, not even the Hon'ble Madras High Court had granted any relief in Section 9 Petitions vide answer to Question No. 66-69 and 72- 74. The same is reproduced hereinbelow:



“Q.66. (Attention of the witness is drawn to para 11 of his evidence affidavit)

Is it correct that even no interim relief was granted by the Hon'ble Madras High Court in the petition filed under Section 9 of Arbitration and Conciliation Act, 1996, seeking to restrain the Respondent from using the alleged domain name?

Ans. The petition was pending and later was withdrawn to invoke the jurisdiction of this Hon'ble Tribunal.

Q.67. Did you withdraw the said Section 9 petition before or after filing the complaint before this Hon'ble Tribunal?

Ans. I have to check.

Q.68. I put it to you that you had withdrawn the said Section 9 petition after filing the complaint before this Hon'ble Tribunal. What do you have to say?

Ans. I do not know.



Q.69. Is it correct that the said Section 9 petition was withdrawn by the complainant party on 08.08.2023?

Ans. Yes.

Q.72. I put it to you that you had withdrawn Section 9 petition after realising that the said petition was not maintainable as the complainant party was/is not having a registered trademark in its favour. What do you have to say?

Ans. It is denied.

Q.73. Were you present at the time of passing of order of withdrawal dated 08.08.2023 of Hon'ble Madras High Court?

Ans. No.

Q.74. I put it to you that a frivolous FIR was registered against the Respondent and absolutely false legal notice dated 24.01.2022 was issued to ISPs in connection to the alleged so-called disputed domain name. What do you have to say?



Ans. I deny.”

Therefore, the present complaint is liable to be dismissed both on merits as well as technicalities.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

After careful analysis of the submissions of both the parties, this Tribunal has to decide this issue in terms of Clause 4(c) of the INDR Policy wherein only one test is required whether the Disputed Domain Name has been registered or is being used either in bad faith or illegal/unlawful purpose. The Tribunal after consideration of the submissions finds that a FIR was filed by the Complainant Party in 2020 against the Respondent with the allegation for illegally misusing the Disputed Domain Name. The investigation under this FIR is still in process and no final report has been filed. It is also submitted that the proceedings for quashing of FIR before the Hon'ble Madras High Court are pending wherein the notice has already been issued on the quashing petition. In these circumstances, since the issue of illegal and unlawful purpose is involved in the criminal proceedings, this issue of illegal and unlawful purpose is not considered by this Tribunal since already under investigation in pursuant to the FIR filed by the Complainant Party. However, the issue of the “bad faith” which is a question of fact is considered by this



Tribunal and is being decided accordingly after considering all the facts, evidences and circumstances.

After considering the submissions of the Complainant Party, this Tribunal finds force in the submissions of the Complainant Party that the Disputed Domain Name is being used in bad faith by the Respondent. The crux of the submissions of the Respondent is that the Disputed Domain Name is not used in bad faith while it is used as a fair political criticism of some of the policies of the Complainant Party, it is also submitted by the Respondent that through the Disputed Domain Name, the past good works of the Complainant Party are demonstrated. The Respondent further submits that the policies of the Complainant Party have been deviated from the ideology of the Founder Members Dr. M. G. Ramachandran and Dr. Jayalalithaa.

After consideration, this Tribunal is of the view that opposition within the party or from the outside of the party for the fair criticism is very much necessary in any democratic system but the same must be within the permissible limits under the law, rules and regulations. The case of the Respondent is neither of an intra-party factionalism nor of inter-party opposition but it is a case of an opposition by an expelled member from the party. The submission of the Complainant Party also bears force that the internal criticism within the party must be in accordance



with the bylaws of the party and in the present case the criticism of Respondent cannot be considered within the party criticism since expelled. The Tribunal does not find any force in the submissions of the Respondent that 'support.aiadmkn' website is not of the Complainant Party and despite that no action has been taken by the Complainant Party against that since as per the submissions of the Complainant Party, this website is working in good faith for the Complainant Party and not for the bad faith. Thus, the issue of the bad faith is a factor which is sensed by the person injured. The Complainant Party is considering the criticism by the Respondent as a bad faith. This Tribunal is also convinced with the submission of the Complainant that the Complainant Party is a registered party and the criticism is done by the Respondent who is the expelled member of the party by misusing the name of the party. The Tribunal also finds force in the submission of the Complainant that criticism of the Complainant Party could not have been in bad faith had it been done through the domain name not similar to the Complainant Party. Thus, after considering all the facts and circumstances and evidence, this Tribunal is of view that element of bad faith exists and particular domain name is being used in bad faith by the Respondent.

In view of the above observations, Issue No. 3 is decided in favour of the Complainant Party and against the Respondent.



ISSUE NO. 4: WHETHER THE CLAIMANT HOLDS LEGITIMATE RIGHTS OR INTERESTS IN THE DISPUTED DOMAIN NAME? ISSUE NO. 4, 8 & 9

The Claimant submits regarding Issues No. 4, 8 & 9 as under through its written submissions:-

SUBMISSIONS OF THE COMPLAINANT:-

The Complainant is a political Party established in the year 1972 by Bharat Ratna Mr. M. G. Ramachandran. It has a pre-eminent presence in regions of Tamil Nadu and Puducherry as well as significant presence in other regions such as Andhra Pradesh, Telangana, Maharashtra, Andaman & Nicobar, etc. and, presently has over one and half crore members. The Complainant is popularly referred and is well-known by its acronym – AIADMK / aiadmK not just in the regions of Tamil Nadu & Puducherry but all around the globe. The name AIADMK / aiadmK therefore denotes and identifies only the Complainant and nothing or no one else.

That the class of dispute under INDRP is not restricted to a trademark or a service mark alone but also extends to name in which Complainant has rights and which Registrant has no rights or legitimate interests but has been using it either in bad faith or for illegal or unlawful purpose. For the same reasons, the contention that the law has prohibited political parties to get any trademark registered in their name/symbol



and reference to section 9 of the Trademark Act are all baseless. In any event the name, emblem/symbol, flag, etc have been registered in the name of the Complainant with the Election Commission of India, and as such the Respondent is prohibited under law to utilize any of such registered name, emblem/symbol, flag and other identifiers of the Complainant Party.

The present dispute has been challenged by the Respondent on an alleged basis that the disputed domain name does not satisfy the necessary ingredients under Rule 4 of the INDRP. Such contention is liable to be dismissed and the present complaint and the reliefs sought under it are liable to be allowed for the following reasons:

Class of Disputes under Rule 4 of INDRP	Circumstances in the Present Case
(a) The Registrant's domain name is identical and/or confusingly similar to a Name, Trademark or Service Mark etc. in which the Complainant has rights; and	The name of the disputed domain is identical to the name of the Complainant. This apart, even according to the disputed domain the rights to the domain have been reserved in the name of the Complainant [Ex.C-18 at p. 39, Ex.C26,



	<p>Colly, pgs. 156, 158 - “© 2017. All India Anna Dravida Munnetra Kazhagam (AIADMK)”]</p> <p>Disputed domain carries an exactly identical name to that of the Complainant and has been published in relation to the Complainant</p>
<p>(b) The Registrant has no rights or legitimate interests in respect of the domain name; and</p>	<p>Prime facie no legitimate being an expelled</p> <p>It is submitted that the Respondent was expelled from the Complainant Party in the year 2018, and has failed to challenge the same until 2021, as such the Respondent is a third party to the Complainant party and has no legitimate interests</p>



	<p>or rights to the name and identity of the Complainant Party.</p> <p>Even assuming he succeeds in his claims and becomes a member, a member has no legitimate right to hold a domain name/property in the name of the party.</p>
<p>(c) The Registrant's domain name has been registered or is being used either in bad faith or for illegal/unlawful purpose.</p>	<p>The names being identical by itself establishes bad faith in as much as the Respondent is not claiming any other organisation or expansion to the letters AIADMK. He is also referring to the Complainant only.</p> <p>The website under the disputed domain name uses the name, official flag and symbol of the</p>



Complainant party. It had linked the official Twitter handle of the party to it. The address of the party was shown in it. The old byelaws of the party was displayed. It is the claim of the Respondent that he is against the present byelaws of the party if it is the case the domain name cannot be in the name of the complainant party. When that is the case, it means that the Respondent wants users of the internet to be drawn to the disputed website knowing fully well that it is not an official website. This clearly amounts to bad faith in using the domain name. It is an act of deceit.



Dispute on domain name:

2. The present Complaint has been filed in view of the illegalities committed by the Respondent in cybersquatting and name jacking the name, identity and property mark of the Complainant. It is submitted that the dispute is on the domain name and not to the contents thereof. Without prejudice, it is submitted that the contents also establishes the case of the Complainant by exhibiting the bad faith of the Respondent in the usage of the disputed domain name.
3. It is further submitted that Respondent's contention that the nature of dispute as agitated cannot be tried before this Arbitral Tribunal is baseless. It is submitted that the Complainant is on a limited aspect as to registration & use of the name & mark of the Complainant without any rights by the Respondent in bad faith in the disputed domain.

AIADMK

4. As regards the Respondent's contention that the term AIADMK does not connote to the Complainant, it is submitted that the Complainant, All India Anna Dravida Munnetra Kazhagam (AIADMK) is a political party established, and its well known globally by its name and natural acronym, AIADMK. The name All India Anna Dravida Munnetra Kazhagam i.e., AIADMK represents



and identifies the Complainant and the Complainant alone and it is the Complainant which has sole rights to its name and any acronyms thereto.

5. Unlike a name of a common person, name of a political party are not common names but are purposely unique, crafted in such manner to mark as identifier of the principles and ideologies that each party represents and stands for. In such sense, the name of a political party is much more sacrosanct than a name of a mere commercial entity, as it plays a significant role in the democratic process of the country and are also subject to equally strict laws that protect the identifiers such as names, symbols, identifiers etc of a political party.
6. It is further submitted that name includes any abbreviations or acronyms of such name. For instance, even under trademark law “name” includes any abbreviation of a name, so also under Emblems and Names (Prevention of Improper Use) Act, 1950.
7. Abbreviations or acronyms of a political party are part of the common usage and democratic discussions and processes in India. The acronym at this instance, AIADMK, is a natural abbreviation of the well-known name All India Anna Dravida Munnetra Kazhagam, and as such the contention that complainant has not



established that AIADMK stands for All India Anna Dravida Munnetra Kazhagam cannot be allowed.

8. This apart, such contention of the Respondent is also inequitable and illegal, as the Respondent's own domain as well as the documents acknowledge that the acronym AIADMK denotes and identifies the Complainant.
 - (a) For instance, the meta data of the disputed domain name as can be seen in the Ex.C-9, Colly (at pages 27 & 29) states thus "*All India Anna Dravida Munnetra Kazhagam (AIADMK) is an Indian regional political party with great influence in the state of Tamil Nadu*". Admittedly the Respondent is the author of the website, and therefore the author of the components of the website including the meta data which describes each website when the same is listed in the search engines.
 - (b) Further, the contents of the disputed domain including those the reference to the growth of the Party [Ex.C-26, Colly Pages 139 – 145] clearly establishes the fact that the disputed domain name connotes to the Complainant and the Complainant alone.



- (c) This apart, the Respondent has further admitted to the acronym of the Complainant in his own independent website as can be seen from Ex.C-28, wherein at page 227, the description of the Respondent reads thus: “*K C Palanisamy (born 7 December 1959) is an Indian politician, former Member of Parliament (MP) and Member of Legislative Assembly (MLA) Tamil Nadu (TN). A former member of **All India Anna Dravida Munnetra Kazhagam (AIADMK).***”
- (d) The cause title in the civil suit filed by the Respondent against the Complainant challenging his expulsion from the Party viz. Ex.C-12 reads thus: “*Civil Suit No. 352 of 2021 Mr. K.C.Palanisamy .. Plaintiff Versus **The All India Anna Dravida Munnetra Kazhagam (AIADMK)** ...*”
- (e) The Affidavit of the Respondent before the Madras High Court in Crl.O.P No. 4146 of 2022 at para 2 – 5, pages 253 – 256;
- (f) Similarly, in Ex.C-21 at p. 268, the about page of the Respondent’s independent website commences thus: “*About – Former Member of Parliament and a Member of Legislative Assembly ADMK*



representing AIADMK – Tamil Nadu, India – With over 30 years of influential leadership experience within highvisibility roles, KC Palanisamy is a prominent figure in the AIADMK party and a key leader from Tamil Nadu. He serving as an ADMK party spokesman until few years ago. KCP’s expertise and experience have been instrumental in shaping the party’s vision and communicating its values to the public.” And concludes thus “Palanisamy is committed to empowering and boosting diverse populations towards common goals with a vision to emerge as a leader amongs the cader of AIADMK party. – Palanisamy’s honesty and integrity have earned him the support of a large cadre base and amongs the public in Tamil Nadu. He is passionate about forming an AIADMK government in the 2024 parliamentary elections and winning all 39 seats in the state.”

Complainant has rights in the name/mark AIADMK

9. As regards the Respondent’s contention that the complainant has no rights reserved in the name AIADMK or that the same is not a trademark or service mark, thereby not covered within the scope of Clause 4 of the INDRP, it is submitted that the disputed domain itself at the end of each page states that the copyrights



to the disputed domain rests with the All India Anna Dravida Munnetra Kazhagam (AIADMK) i.e., the Complainant herein. [Ex.C-18 at p. 39, Ex.C-26, Colly, pgs. 156, 158] stating thus: “© **2017. All India Anna Dravida Munnetra Kazhagam (AIADMK)**”, thereby admitting that the Respondent has no legal rights in the disputed domain name. Thus, the Respondent cannot be permitted to dispute that the Complainant’s name also includes its natural acronym AIADMK or that complainant is not entitled to protect its rights and interests in the same.

10. It is further submitted that even personal names are entitled to protection under the Policy and common law, if one is able to establish the name of such person serves as a distinctive identifier of goods or services offered under that name. It is also a settled law that even a *name simpliciter* could have a secondary meaning depending on the length and amount of sale/service under the mark, nature and extent of advertising, consumer surveys and media recognition, and for such purposes, limited extent of geographical extent of recognition of such mark would not limit the rights that otherwise vest in such person.
11. It is submitted that the Complainant is an established political party since 1972 and is a state recognized



political party with over one and a half crore members. It has significant presence across the state as evident from the fact that it has functioned as the ruling dispensation for several decades, and is currently the main opposition party in the Tamil Nadu State Legislative Assembly. Further, the Complainant also has an eminent presence in other parts of the country and also has global recognition atleast among the tamil / tamil familiar diaspora known by its full name as well as the acronym AIADMK [Ex.C-24, Colly, P.120]. Even the byelaws of the Party has subscribed to this natural acronym [Ex.C-22, Colly, Rule-1 a), P.54].

12. It is further submitted that the Complainant has been signified and known by AIADMK as can be seen from various exhibits produced before this Tribunal, wherein even different functionaries of the government has addressed the Complainant by its natural acronym, AIADMK [Court – Ex.C-3, P.108; Ex.C-12 – causetitle (p.13), prayer (p.14); Ex. C – 13, para 2. Election Commission of India – Ex.C-23, Colly, P.35, 36, 38. Law Commission of India – Ex.C-24, P.132. Government of India – Ex.C-24, Colly, P.129, 131].
13. The website authored by the Respondent i.e., disputed domain, and the Respondent’s own website stands to prove the rights that exists and stands vested in the



Complainant in as much as the Complainant is a state recognized political party which has been in existence since 1972, has even been the ruling regime for more than three terms, consecutively.

14. Being such, naturally the Complainant enjoys substantial media recognition as well as recognition from several units of the Government to its name and mark AIADMK. In any event, the Complainant has a property mark in AIADMK. As such, the name and mark has been ascribed with a secondary meaning and become a well known mark as recognized under the Trademarks Act. Reliance in this context is placed on the decisions of *Bharatiya Janata Party (BJP) v. Jahead, Vinay KM / WhoisGuard / Namecheap.com / Enom Inc. bjp.com*, 2011 SCC OnLine WIPO 1044, NIXI Arbitral Award in the matter of *Sidhartha Malya v. Puneet Agarwal, Tom Cruise v. Network Operations Center/ Alberta Hot Rods tomcruise.com*, 2006 SCC OnLine WIPO 596.
15. Further, being a recognised political party registered with the Election Commission of India, the Complainant also enjoys protection against uses of its name and identifiers, ascribing exclusivity.



16. It is therefore submitted that the Complainant admittedly holds right and interests in the name and mark AIADMK and its proprietary rights are entitled for protection under the Policy. In this regard the Respondent's contention that there is prohibition on political parties from enjoying trademark is denied as incorrect.
17. The contention that the name of the Complainant is not entitled to protection under the Trademark Act in view of section 9(2)(d) is also liable to be rejected as Section 9(2)(d) states that a mark shall not be registered as trademark if its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950, and the Emblems Act do not carry any proscription on registering a trademark in the name of a political party.
18. It is submitted that the Emblems And Names (Prevention Of Improper Use) Act, 1950 has been enacted to prevent the improper use of certain emblems and names for professional and commercial purposes. Section 3 of the Act strictly regulates usage of any name or emblem specified in the Schedule or any colourable imitation thereof for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trade mark or design, without the previous permission of the Central Government or such officer of



Government as may be authorised in this behalf by the Central Government.

19. It is submitted that contrary to the contentions of the Respondent, the symbols/names of the political parties are not included in the schedule to the Emblems Act, which otherwise carries an exhaustive list of names and emblems that are protected under the Emblems Act. In fact, in the case of *Hans Raj Jain v. Election Commission of India*, 2015 SCC OnLine Del 8173, the Delhi High Court has dealt with the challenge to derecognize a political party on account of the usage of a symbols covered under the Emblems Act. Para 15 of this judgment also holds a politics as akin to a profession or occupation.
20. In view of lack of bar under the trademark act, the rights and interests of the Complainant in its name, in addition to the Election laws, would be covered under the ambit of a “*well known trade mark*” as the terms “mark” and “service” cannot be restricted to mere commercial entities but are inclusive terms by the language employed in the Trade Marks Act, 1999. On such grounds also, the challenge to the maintainability of the present dispute is liable to be rejected. Further, the contention of lack of exclusivity in respect of the other domain names is also liable to rejected as the



Complainant as on date hold the rights to other domains which are relevant and pertinent to the Complainant. In any case, Respondent who lacks any rights in the disputed domain cannot be permitted to question the bonafides of the Complainant on the basis of lack of exclusivity. This apart, the Complainant also holds property mark in its name, logo, symbols, emblems, etc. As such, the rights of the Complainant to the name and thereby to the disputed domain name cannot be excluded from the purview of the INDRP.

21. Such contention is also illogical for the fact that the domain name is applicable to all entities whether commercial or not and a third party to a mark or name cannot be permitted to shield its illegalities on the basis of mere, improper technicalities. It is also a settled law that Policy governing domain disputes are also applicable to political parties and organizations. Reliance in this context is placed on the decisions of *Bharatiya Janata Party (BJP) v. Iahead, Vinay KM/WhoisGuard/Namecheap.com/Enom Inc.*, 2011 SCC OnLine WIPO 1044, *Buendnis 90 Die Gruenen v. RJG Engineering Inc.*, 2001 SCC OnLine WIPO 882.
22. It is submitted that the contentions against the maintainability of complaint for want of rights to its name, or marks or that same is outside the scope of



INDRP, apart from the fact that INDRP Clause 3 contemplate complaint as also to misuse of name, is also admittedly against the contentions of Respondent in his petition to quash the FIR in CrI. O.P. 4146 of 2022 [Ex.C-10]: “c. *The Respondent police had failed to conduct a preliminary enquiry on the facts stated by the defecto complainant in the complaint since the said complaint is related to running a website under the domain name of www.aiadmkn.org which would come under the commercial dispute*”. The Respondent is therefore estopped from maintaining such challenges in view of his submissions before the Hon’ble High Court of Madras.

SUBMISSIONS OF THE RESPONDENT:-

The submissions have already been considered along with the submissions under Issue No. 3.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

After considering the submissions of the parties this Tribunal is of a view that the Respondent has no legitimate rights or interest in the disputed domain name. The disputed domain name bears the abbreviation “AIADMKN” which belongs to the Complainant Party. The Complainant successfully establishes that the presence of “AIADMKN” relates only to the Complainant Party which is registered with the Election Commission of India. The Complainant’s submission that



even the Respondent acknowledges the Complainant Party with its abbreviation “AIADMK” is also accepted by this Tribunal. This Tribunal also considers the media presence of the Complainant Party with the abbreviation “AIADMK” since its establishment in 1972. After considering the various case laws cited by the Complainant, this Tribunal reaches to the finding that Complainant holds legitimate rights and interest in the disputed domain name.

Accordingly, the Issue No. 4 is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 5: WHETHER OR NOT THE CLAIMANT IS ENTITLED FOR TRANSFER OF THE DISPUTED DOMAIN NAME TO ITS NAME?

SUBMISSIONS OF THE COMPLAINANT:-

In view of the submissions made in the Complaint, the Complainant i.e., eminent presence of complainant, complainant being a political party, malafide intent of the Respondent towards the complainant and the disputed domain name and rights and interests of the complainant, and in particular, the Registrant/Respondent has registered the disputed domain / website in bad faith by preventing the Complainant herein, who holds the sole rights and interests in any variation of the name ‘AIADMK’ or ‘aiadmkn’ or ‘All India Anna Dravida Munnetra Kazhagam’, from registering its



website/domain in .IN or .Bharat registry, and has intentionally presented, encoded or inserted the name, style, flag of the Complainant Party as well as the details of the original organization, past bye-laws, etc. of the Complainant Party with a sole intent to mislead and misrepresent the internet users & general public and attract them to the disputed domain name / website. Further, the Registrant/Respondent is also profiteering by such confusion, by engaging in parallel membership drive to the Complainant Party, the Complainant has made a specific plea under para 27 of the Complaint that the disputed domain name be transferred in the name of the Complainant.

Submissions: Malafide Conduct of Respondent in the disputed domain name

The Respondent has been engaged in a pattern of conduct with an intent to illegally disrupt the internal administration to an association from which he has been expelled and has been barred by the law of limitation from maintaining any claims against such expulsion. The same is evident from the list of litigations pending between the parties, as filed before this Arbitral Tribunal. It is submitted that the registration of the disputed domain name by the Respondent has prevented the owner of the name from registering a website in its name in .IN Registry. By the registration of the disputed domain name under his name without any rights and without any legitimate interests, the Respondent has created an



unfortunate situation where an Indian political party is deprived of a registration of domain in its name in .org format in the .IN registry. This coupled with the intent as exhibited in the evidence affidavit of the Respondent and the cross-examination of RW-1 evidences the real, malafide intent of the Respondent in respect of the disputed domain name [**evidence of bad faith under Clause 7(a) of INDRP**]. It is therefore all the more significant for the disputed domain name to be transferred to the Complainant Party, as the Respondent has been tarnishing the Complainant's name, reputation and goodwill amongst the common person through the disputed domain name.

It is further submitted that the Respondent has made false averments and presented false statements before this Hon'ble Tribunal as elucidated in the above paras, in particular, approbating and reprobating his stand as against the disputed domain, its content, his position in re the Complainant, his intended use for the disputed domain, etc.

It is further submitted that the Respondent has also conducted himself in a cavalier manner in respect of the present proceedings, by misleading the Tribunal in respect of his position qua the disputed domain, qua the Complainant, his health, his affiliation with the Party, his intent towards the disputed domain, etc.



It is therefore submitted that the Respondent lacks any legitimate interests or the bonafides to claim any right in the disputed domain name and on the contrary, the Respondent has registered and continued to utilize the disputed domain name with malafide intent to induce the Complainant to act in accordance with Respondent's interpretation of the ideologies of the Party as well as to protect his vested interests and political mileage.

The Respondent has raised all the preliminary objections based on the Rules of INDRP. The policy is the focal or the primary document which gives the nature of the disputes that can be raised and the resolution mechanism for the same. The Rules are framed by the Registry and can only be a guiding principle and cannot be the basis to deny any complainant. The claim of the Respondent that the present dispute cannot be adjudicated in view of other proceedings that are pending is incorrect. None of the pending proceedings relate to the prayer for transfer of the disputed domain name.

SUBMISSIONS OF THE RESPONDENT:-

The submissions have already been considered along with the submissions under Issue No. 3.



ANALYSIS/FINDINGS OF THE TRIBUNAL:-

After considering the submissions of the parties this Tribunal is of a view that the Respondent has been engaged in the process of criticism of the Complainant Party with the intent to illegally disrupt the internal administration of the Complainant from which he has been expelled. The conduct of the Respondent of criticizing the Policies of the Complainant Party by using the domain name with the abbreviation name of the Complainant Party "AIADMK" makes the Complainant Party entitled for the transfer of the disputed domain name in its favour and/or for the cancellation of the disputed domain name. In view of the findings under Issue Nos. 1, 2, 3 and 4 the Complainant is entitled for the transfer of the disputed domain name in its favour.

Accordingly, the Issue No. 5 is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 6: WHETHER THE PRESENT COMPLAINT HAS BEEN FILED WITHIN LIMITATION?

SUBMISSIONS OF THE COMPLAINANT:-

The Respondent's contention on bar under limitation is inapplicable to the present dispute in as much as the Respondent continues to use and manage the disputed domain name until date.



“d. As regards the contention that the Complaint is barred under limitation it is submitted that said contentions are baseless and unfounded in as much as the website is being managed until date by the Respondent” (Para 3(d) of the Complainant’s rejoinder).

As regards the Respondent’s contention that the present complaint is barred by limitation, as the Complainant having come to know of the disputed domain name since January 2020, is baseless as:

- (a) there cannot be a contention of bar by limitation as the Respondent continues to use the disputed domain name until date. It is a settled law that doctrine of delay and laches or limitation does not apply to infringement of marks or passing off as a fresh cause of action is generated every time an infringement or passing off occurs.
- (b) Further, Courts have consistently held that mere delay in bringing an action against infringement or passing off or abusive usage is not detrimental to the owner of the mark whose rights have been affected by the Respondent. *Reliance Macleods Pharmaceuticals Limited v. Aareen Healthcare Private Limited*, 2023 SCC OnLine Del 320, para 9, *M/s. Hindustan Pencils Private*



Limited v. M/s India Stationery Products Co & Anr., ILR (1989) I Delhi 115, paras 26,30,39; *Libertad Servicios Financieros, S.A. de C.V.S.F.P v. Telepathy, Inc. libertad.com*, 2012 SCC OnLine WIPO 25, para 6A; *Bharatiya Janata Party (BJP) v. Iahead, Vinay KM / WhoisGuard / Namecheap.com / Enom Inc. bjp.com*, 2011 SCC OnLine WIPO 1044 para 6 – laches (p.6).

- (c) The plea of delay is merely a baseless defence. The Respondent who has registered the domain name with knowledge that the same is identical to the Complainant and continued to manage the disputed domain even after his expulsion from the Party cannot be permitted to use the defence of delay as a shield for his illegal and abusive activity. It is pertinent to state that concepts of *laches* and *inordinate delay* are not similar to *acquiescence*, for it is a settled law that mere silence does not tantamount to acquiescence; and the Respondent in such sense has not established any acquiescence on part of the Complainant barring bald and vague averments. Reliance in this context is placed on *M/s. Hindustan Pencils Private Limited v. M/s India Stationery Products Co & Anr.*, ILR (1989) I Delhi 115, paras 20-22, 37.
- (d) The law is further in favour of the Complainant as the infringement or passing off or cybersquatting at the



instant case is not just in respect of a similar mark but of the same mark i.e., disputed domain name is identical to Complainant's mark AIADMK, registered with full knowledge of the existence and goodwill of the Complainant thereby evidencing the dishonest intention of the Respondent. In this context, reliance is placed on the decisions in *Modi-Mundipharma Pvt Ltd. v. Preet International Pvt Ltd & Anr.*, 2009 SCC OnLine Del 3922, paras 74, 76, 80; *Midas Hygiene Industries (P) Ltd v. Sudhir Bhatia*, (2004) 3 SCC 90, paras 5-6; *M/s. Hindustan Pencils Private Limited v. M/s India Stationery Products Co & Anr.*, ILR (1989) I Delhi 115, paras 11.

- (e) It is also relevant to note that courts at several instances have also protected the mark despite "inordinate delay" or laches or even acquiescence where the Defendant or Respondent has acted fraudulently or with knowledge of the owner's rights [knowledge – statement of copyright in the disputed domain – Ex.C-18 at p. 39, Ex.C26, Colly, pgs. 156, 158 - "© 2017. All India Anna Dravida Munnetra Kazhagam (AIADMK)"]. The rationale behind such extension of protection being that unwary consumer or visitor ought not be continued to be misled by condoning the action of the Respondent. Reliance in this context is placed on the decisions in *Modi-Mundipharma Pvt Ltd. v. Preet International Pvt Ltd & Anr.*, 2009 SCC OnLine Del 3922, paras 82-83; *M/s.*



Hindustan Pencils Private Limited v. M/s India Stationery Products Co & Anr., ILR (1989) I Delhi 115, paras 28-29, 38.

- (f) This is also applicable to the instant case, considering that disputed domain name is the immediate answer to any search result of the Complainant's marks and naturally any visitor who in exercise of their democratic right intend to learn about the Complainant Party is being mislead into the disputed domain where the name, reputation and authority of the Complainant Party is being deceitfully portrayed by an expelled member to settle scores with the present administration/Party.
- (g) In any event, Policy also does not contemplate any limitation to bring in an action for abusive use.

Without prejudice, it is further submitted that period during pandemic is to be exempted in light of the decision of the Supreme Court as well as considering the significant role played by the complainant party as the government in charge of the State of Tamil Nadu in the pandemic period, in prevention mechanisms against the COVID-19 pandemic. As such, the present complaint cannot by any stretch of imagination be treated as barred by limitation.



SUBMISSIONS OF THE RESPONDENT:-

In connection to the issue of limitation, the Respondent has specifically stated *vide* para 2(h) of the Reply that the complainant came to know about the domain name in January 2017 itself and the police complaint was also filed against the Respondent on the said issue in January 2020. Thus, the complaint is heavily barred by limitation. The relevant portion of the said para 2(h) is reproduced hereinbelow:

“The Complaint is also ex facie barred by limitation and has been cleverly drafted only to create a camouflage of cause of action against the Respondent who has been raising his voice for a valid cause and for the betterment of the people of India. Apart from this, in the garb of the present complaint, the tool is being used in order to silence the voice of the Respondent. Admittedly, the Complainant came to know about the domain name in the year January 2017 itself and further, the police complaint was also filed against the Respondent on the said issue in January 2020. Now, the relief is being sought in the present



complaint to transfer the domain name in the name of the Complainant after more than 3 years from the date of cause of action. The complaint thus deserves a dismissal on this ground alone.”

In reply to the aforesaid issue of limitation raised by the Respondent, the complainant has not denied the said fact, however, stated that the website is being managed until today by the Respondent. The said para 3(d) of the rejoinder is also reproduced hereinbelow:

“d. As regards the contention that the Complaint is barred under limitation it is submitted that said contentions are baseless and unfounded in as much as the website is being managed until date by the Respondent.”

The complainant though in para 5 (a) denied that the disputed domain name is being run by the Respondent in the capacity of being a member of the party, however, insofar as the knowledge of the website is concerned, the same has not been denied specifically.



The complainant in addition to the above and in order to cover up the issue of limitation has also knowingly and with the *mala fide* intention made contradictory stands in his evidence by way of an affidavit filed by CW-1 which has also been demolished during the cross-examination *vide* answers to the question no 24, 25, 26 as well as the answer given by CW-1 to the Question No.6 put forth by this Hon'ble Tribunal. It is relevant to mention here that the complainant in the said cross-examination stated that they came to know about the disputed website in 2020, however, upon being asked the specific question by this Hon'ble Tribunal again regarding the knowledge of the disputed domain name, the witness stated that the domain name arose for the first time in the year 2019. It is quite apparent that the testimony of the complainant is not believable. Coupled with the admissions made by the complainant in the rejoinder to the reply filed by the Respondent, it stands proved that the so-called disputed domain name was very much in the knowledge of the complainant and in fact, the disputed domain name was being operated with their knowledge and consent. The relevant portion of the testimony of CW-1 on this aspect is reproduced hereinbelow:

“Q.24. Please see para 9 of your evidence affidavit particular reference is made on first line of it. Can you please tell us in which year and month, the alleged



disputed domain name was brought/ came to the knowledge of the complainant party?

Ans. In January, 2020.

Q.25. Please see first line of para 10 of your evidence affidavit. Is it correct that respective references made in para 9 and 10 are contradictory on the aspect of knowledge?

Ans. No.

Q.26. I put it to you that the complaint is heavily barred by limitation and to cross the said hurdle, you falsely deposed in para 10 of your evidence affidavit. What do you have to say?

Ans. It is denied.”

“As per the Tribunal examination dated 14.11.2023:

Q.6. When this particular dispute regarding this disputed domain name arose for the first time?



Ans. 2019.”

That no case of recurring cause of action has been set up by the complainant in its complaint and thus, the present complaint is heavily barred by limitation. Further, assuming without admitting that the present complaint is not barred by limitation in view of recurring cause of action, certainly, the complainant slept over his rights by not filing the complaint before this Hon'ble Tribunal, and therefore, the complaint amounts to be dismissed on the ground of delay and laches.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

The submissions of the Respondent of no recurring cause of action has been setup by the Complainant in its Complaint and thus the present Complaint is heavily barred by limitation, since the Complainant came to know about the disputed domain name in January, 2017 itself, cannot be accepted by this Tribunal. The submissions of the Complainant that the Respondent continues to use disputed domain name until date deserves to be accepted. It is a settled law that law of limitation doesn't apply to infringement of marks or passing off as a fresh cause of action is generated every time when an infringement or passing off occurs.

With these observations and after thoughtful consideration of the various case laws cited by the parties this issue of limitation is decided in favour of the Complainant and against the Respondent.



ISSUE NO. 7: WHETHER THE PRESENT COMPLAINT IS MAINTAINABLE IN THE ABSENCE OF THE POWER OF ATTORNEY AS REQUIRED UNDER RULE 3(B) OF THE INDRP RULES OF PROCEDURE?

SUBMISSIONS OF THE COMPLAINANT:-

The present Complaint of the Complainant is filed on the authority of the present General Secretary of the Party through Organizing Secretary of the Party (Member of Parliament), as the authorized signatory of the Party. The Election Commission of India has taken the present administration and byelaws on record. No stay or injunction against the present administration of the Party. Present complaint is limited to usage of disputed domain name by the Respondent, who is a rank outsider to the complainant party and other litigations are irrelevant for the said purpose. Complaint has been filed along with a valid Vakalatnama instead of a Power of Attorney, and in any event, the defect, if any is curable. Without prejudice, Respondent's representation is also faulty for violation of Rule 3(b). [Para 6 of the Complaint, Para 4(b) of the Rejoinder filed by the Complainant.]

It is submitted that the subject complaint was filed as per the Rules & Procedures of the NIXI, under the authority of the present General Secretary of the Party through Organizing



Secretary of the Party (Member of Parliament), as the authorized signatory of the Party.

It is submitted that under the byelaw 20-A(viii) of the Complainant Party, the General Secretary of the Party has been vested with the power to represent the Party in the legal proceedings [Ex.C-22, Colly, P. 71]. Accordingly, the General Secretary of the Complainant Party vide Ex.C-1 has authorized Mr. C.Ve.Shanmugam, Member of Parliament and Organizing Secretary of the Party to act, appear and represent the Party and to appoint advocates to act, appear and represent the Party in proceedings.

It is submitted that the contentions that the present General Secretary is not the lawfully elected office bearers as such neither he nor the authorized signatory can validly represent the Party or that the letter of Election Commission of India dated 20.04.2023 states taken on record subject to litigations or that there are several rival factions and groups in respect of the Complainant are all baseless, for the simple reason that the Election Commission of India has taken the present administration and byelaws on record, and despite several attempts by various parties, there is no stay or injunction against the present administration of the Party. In any event the Complainant has exhibits marked in the present proceedings [Ex.C-3, Ex.C-24, Colly at P. 120, 122,124,126, 127-128; Ex.C-25 colly at P. 129, 130, 131,132] establishes



that the present General Secretary has been recognized by various functionaries of the state. Most importantly, the present Complaint has been filed by the Party in its own name and such the contention that there are litigations surrounding the General Secretary are irrelevant for the simple and undeniable fact that the mark vests upon the Complainant Party and not the General Secretary.

In any event, the Respondent an outsider cannot be permitted to question the administration of the complainant in a complaint made against him for misuse of domain name [**doctrine of indoor management**]. It is submitted that the present complaint is limited to usage of disputed domain name by the Respondent, who is a rank outsider to the complainant party and other litigations are irrelevant for the said purpose.

Further, the contention that the complaint is not maintainable for lack of Power of Attorney required under Rule 3(b) of INDRP Rules of Procedure is not maintainable for the reason that the complaint has been filed along with a valid *Vakalatnama* instead of a Power of Attorney. Reliance in these contexts is placed upon the decisions in

- (a) *Ramdeo Tilokchand Agarwal v Lahu Natha*, AIR 1937 Nag 65, especially at para 3: “*I observe that, in my opinion, the Vakalatnama is a Power of Attorney. In Stroud's*



Judicial Dictionary “Power of Attorney” is defined as: An authority whereby one “is set in the turne, stead, or place of another” to act for him.”

- (b) *Madupu Harinarayana @ Maribabu v. Learned 1st Additional District Judge, Kadapa & Ors, (2011) 4 ALD 61, paras 16 & 17.*

In any event, the defect, if any, is curable and cannot be maintained as a challenge on maintainability of the subject complaint. Reliance in this context is placed on the decision of the Supreme Court in *Uday Shankar Triyar v Ram Kalewar Prasad Singh*, (2006) 1 SCC 75 (3judges bench), paras 15 – 17. Without prejudice to the above submissions, it is submitted that Clause 4(b) of the INDRP is equally applicable to the Respondent and yet the Respondent has also filed only a Vakalatnama and not any Power of Attorney before this Hon’ble Tribunal.

SUBMISSIONS OF THE RESPONDENT:-

The very invocation of the instant dispute mechanism is marked by procedural infirmities in as much as the complainant stands in grave violation of Rule 3(b) of the INDRP Rules of Procedure and Policy (**INDRP Policy and**



Procedure) which mandates that the complaint has to be accompanied by a Power of Attorney in order to invoke the instant dispute mechanism. Rule 3(b) of the INDRP Rules of Procedure is reproduced hereinbelow:

“3(b). Either Party or its authorized representative shall submit a Power of Attorney while filing a Complaint or Reply to the Complaint”.

Admittedly, *vide* Para 6 of the complaint, Mr. C. Ve Shanmugam claims to have filed the present complaint based upon the purported authorization letter dated 24.07.2023. The Respondent had taken a specific objection *qua* the Power of Attorney *vide* Para 2(a) of the reply as well as put specific questions to CW-1 in connection thereto. CW-1 had also admitted the fact that merely a purported authorization letter has been placed on record. The relevant portion of para no. 6 of the complaint, Para 2(a) of the reply of the Respondent as well as the cross examination in relation to the above said are reproduced hereinbelow:

Para no.6 of the complaint “.....*In exercise of the said powers, Mr. C.Ve. Shanmugam a Member of Parliament and the Organizing Secretary of the Party has been authorized vide letter dated 23.07.2023 by the*



General Secretary of the Complainant to represent the Complainant in the present proceedings (Annexure-1).”

Para No. 2 (a) of the reply:

That the complaint in its present form is not maintainable on account of grave violation of Rule 3(b) of the INDRP Procedure which states that complaint has to be accompanied by a Power of Attorney showing at least prima facie that the attorney holder has the power and authority to present the complaint before the forum. Admittedly, no such Power of Attorney has been placed on record and therefore, the complaint is liable to be dismissed at the threshold solely on this ground.

Cross Examination of CW-1 in relation to the Power of Attorney:

Q.2. Reference to para no. 1 of evidence affidavit. Is it correct that you are claiming to be the authorized representative of the complainant to institute the present complaint?

Ans. Yes.



Q.3. Is it correct to say that you are claiming an authority based on Exhibit C1 of the evidence affidavit?

Ans. Yes.

Q.4. I put it to you that Exhibit C1 is mainly a purported authorization letter and not a Power of Attorney. What do you have to say?

Ans. Yes. (Vol.) It is an authorization letter based on which I have executed Vakalatnama.

Q.5. I put it to you that even Vakalatnama cannot be a Power of Attorney? What do you have to say?

Ans. I deny the suggestion.”

It is further interesting to note that despite serious objections on record with respect to the non-compliance with the INDRP Rules of Procedure *qua* the Power of Attorney, the Respondent relied on the misconceived argument that during the filing of the complaint, a *Vakalatnama* was placed on record in *lieu* of a Power of Attorney. In this connection, the complainant places reliance on the case law “**Anil Kumar and Anr. vs Amit Kumar 2021 SCC Online Del 5020**” in which it has been categorically held that an attorney cannot be both the Power of Attorney holder as well as pleader on behalf of his



client. Such an act besides being a professional misconduct, is in grave contravention of the Advocates Act, 1961 and cannot be permitted under the aegis of this Hon'ble Tribunal.

The relevant portion of the aforesaid ruling is reproduced herein below:

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Online Del 5020**

7. *It is made clear that the practice of advocates acting as Power of Attorney holders of their clients, as also as advocates in the matter is contrary to the provisions of the Advocates Act, 1961. Any advocate who is engaged by a client would have to play only one role, i.e., that of the advocate in the proceedings and cannot act as a Power of Attorney holder and verify pleadings and file applications or any other documents or give evidence on behalf of his client. This aspect has to be scrupulously ensured by all the Trial Courts. This legal position has been settled by various decisions. In Baker Oil Tools (India) Pvt. Ltd. v. Baker Hughes Ltd., (2011) 47 PTC 296 (Del), the Court held:*

"Thus as is manifest from the said rule, it would be a professional misconduct if a lawyer were to don two hats at the same time. However not only that,



the partnership firms have a hurdle for acting in the said two capacities even under The Partnership Act, as every partner in a partnership firm is an agent of another and if one were to be acting as an advocate for a client, the rest would also be in the same capacity by virtue of agency and the same would be the situation in case of an advocate acting as a client. However, it cannot be forgotten by any who has ever been graced with the honour of wearing the robe that the lawyer is first an officer of the court and his prime duty is to assist the court in the administration of justice. The rules of conduct as per the Bar Council of India Rules may act as a guardian angel for ensuring the moral conduct of the lawyers but the legacy of the traditions of the Bar cannot be bedaubed by a few for the lucre of commercial gains. A lawyer cannot forget that this is called a noble profession not only because by virtue of this he enjoys an aristocratic position in the society but also because it obligates him to be worthy of the confidence of the community in him as a vehicle of achieving justice. The rules of conduct of this profession with its ever expanding horizons are although governed by the Bar Council of India rules but more by the rich traditions of the Bar and by the canons of conscience of the members of the calling of justice of being the Samaritans of the



society. Thus the foreign companies and firms must respect the laws of this land and the solicitors and law firms are equally not expected to discharge their duties as clients for these foreign companies/firms. Law is not a trade and briefs no merchandise and so the avarice of commercial gains should not malign this profession. Hence there can be no divergent view on the legal proposition that an Advocate cannot act in the dual capacity, that of a constituted attorney and an advocate.”

Without prejudice to the aforesaid, the complainant has also desperately failed to prove the authorization letter/Exhibit C-1 as the Respondent has specifically and categorically denied any such issuance of the authorisation letter in his reply and moreover, specific questions were also put to CW-1 *vide* question no. 11 and 12 of the cross-examination and the same is reproduced herein below:

“Q.11. Do you have the original authority letter/ Exhibit C-1?”

Ans. No. It will be produced later.

Q.12. I put it to you that the original authority letter/ Exhibit C-1 is a forged/ fabricated document. Is it so?



Ans. I deny.”

Thus, when the authority letter is itself disputed, the same would have been proved only by EPS by entering into the witness box and proving the same.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

The submissions of the Complainant are duly considered by this Tribunal. The objection of the Respondent is that the present complaint has been preferred by the Complainant without any Power of Attorney as required under Rule 3 (b) of INDRP Rules, therefore not maintainable. After appreciating all the documents and submissions of the parties, this Tribunal finds that Exhibit C-1 is filed by the Complainant along with the Complaint as a Letter of Authorization for filing the Complaint. The contents of this Letter of Authorization clearly shows that Mr. C. V. e Shanmugam was authorized by the Complainant Party on 24.07.2023 to file Complaints, representations, litigations, dispute resolutions, appeal and execution for protecting party intellectual property right, cyber rights, before all competent authorities and bodies etc. Through this Letter of Authorization Mr. Shanmugam was also authorized to appoint advocates. After considering the contents of Letter of Authorization it cannot be said that it is not a Power of Attorney. The Rule 3 (b) of INDRP Rules envisages for the requirement of Power of Attorney but it



doesn't specify the nature and form of the Power of Attorney. In this case in terms of Rule 3 (b) only the Complainants authorized representative can file the present complaint, since the complainant party is a juridical person, henceforth either the Power of Attorney or an Authorization Letter is sufficient to comply the requirement of the Rule 3 (b) of INDRP Rules. The submissions of the Respondent are misconceived as besides the Letter of Authorization, Vakalatnama of the Complainant Party has also been placed, thus, Vakalatnama is not considered as a Power of Attorney for filing the Complaint as the Complaint is duly signed by Mr. Shanmugam.

With these views this issue is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 8: WHETHER THE COMPLAINT IS MAINTAINABLE IN THE ABSENCE OF A REGISTERED TRADEMARK WHICH IS A MANDATORY REQUIREMENT AS PER CLAUSE 4(V)(B) OF THE INDRP POLICY?

SUBMISSIONS OF THE COMPLAINANT:-

The submissions have already been considered along with the submissions under Issue No. 4.

SUBMISSIONS OF THE RESPONDENT:-



For initiating the present arbitration proceedings, the very first step is to file the complaint strictly in accordance with the INDRP Rules of Procedure and any interpretation to the contrary would amount to rewriting of the statute/procedure. The legislature in its wisdom has specifically laid down the minimum requirement for filing of the complaint and thus, the same cannot be ignored in all probability. The INDRP Policy would only come into the picture if the complaint is filed in accordance with the INDRP Rules of Procedure and therefore, any complaint which is being filed in contravention of the INDRP Rules of Procedure is liable to be dismissed at the threshold. In the present case, this Hon'ble Tribunal does not have the jurisdiction to entertain the dispute as the very basic requirement/notion of 'trade and commerce' is absent in the present dispute. In this connection, the Respondent *vide* para 2(c) of its reply to the complaint filed by the complainant has taken the objection that neither the complaint is admissible nor maintainable before this Hon'ble Tribunal in view of non-fulfillment of Rule 4(b)(v) of the INDRP Rules of Procedure. The said Rule 4(b)(v) of the INDRP Rules of Procedure is reproduced hereinbelow:

“The complaint shall incorporate the following:

v. specify the trademark(s) or service mark(s) on which the Complaint is based



and, for each mark, describe the goods or services, if any, with which the mark is used or intended to be used.”

Moreover, no complaint can be filed by any complainant who does not possess the trademark and service mark which is further clarified in the INDRP Rules of Procedure vide Rule 4(b)(vi) and the same is reproduced herein below:

vi. describe the grounds on which the Complaint is made, in particular, including-
- the manner in which the domain name in question is identical or confusingly similar to a trademark or service mark in which the Complainant has rights; and

Admittedly, in the present complaint, neither has the complainant claimed that the complainant is involved in any activity of trade and commerce nor does the complainant possess any trademark/service mark(s) in its name which is also evident from the specific answers given by the complainant's witness, namely, Mr. C. Ve Shanmugam (“**CW-1**”) during the cross-examination wherein it has been admitted that the complainant being a political party does not engage in any commercial activity. The relevant portions of the testimony of CW-1 in connection to the submission made above are as follows:



“Q.42. Is it correct that the complainant party does not have a registered trademark/service mark either in its name or its abbreviation?”

Ans. Yes.

Q.43. I put it to you that the complaint itself is not maintainable as the same does not clear the first hurdle of having a similar trademark or service mark of the complainant party in its name. What do you have to say?”

Ans. No.

Q.86. Is it correct that the complainant party is involved in politics/social welfare services and does not engage in any commercial/business activity?”

Ans. Yes”

Therefore, in view of the circumstances as stated above demonstrating the non-fulfillment of the requirement of ‘trade and commerce’ at the threshold as well as in view of the complainant not having any registered trademark(s)/service mark(s), this Hon’ble Tribunal does not have the jurisdiction and the domain to adjudicate the



present dispute between the parties since the disputes between the parties are purely ideological in nature.

The argument of the counsel for the complainant that as per the INDRP Policy, wide power is given to the Hon'ble Tribunal in view of the words used in the first paragraph of the .In Domain Name Dispute Resolution Policy.

Further, the INDRP Rules of Procedures are enacted under Clause 10 of the INDRP Policy and also as per Clause 16 of the INDRP Policy, it is applicable to all/ any dispute related to .in domain names. Thus, even without complying with the INDRP Rules of Procedure, the present complaint is very well maintainable. The said argument is misconceived in as much as had the legislature intended to do so, there was no requirement to set up INDRP Rules of Procedure. Further, it is a settled principle of law that the Arbitrator can act and/or to adjudicate the dispute within the 4 corners of the contract. And therefore, the said argument is not only illogical but would also amount to absolute ignorance of the procedure which is a mandatory requirement otherwise.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

The submissions of both the parties are considered. The issue raised by the Respondent is that the Complaint filed do not



the meet the requirement of Rule 4(b)(v) of INDRP Rules read with Clause 4(a) of INDRP Policy. It is the case of the Respondent that, the Complaint lacks with the specification of Trade Mark/ Service Mark which describes the Goods & Services, for which, the 'Mark' is being used or intended to be used, therefore, not maintainable.

The Complainant is a Political Party in existence since 1972 and has already been registered with Election Commission of India as a State Political Party. The Electoral symbols are associated with the identity and recognition of Political Party and are governed by the Election symbols (Reservation & Allotment) order of 1968. In the present era, the identity of a Political Party not can be recognized only by the Election symbols but can be recognized also by the Domain names which acquired the wide popularity amongst the Public. In the present case, the symbol of the Complainant Party is already registered with the Election Commission of India and its abbreviated name 'AIADMK' has also gained mass presence & popularity amongst the Public since 1972, in these circumstances, there can be no doubt with regards to the Party name and its symbol. Even though Electoral symbols fall within the scope of Trade Marks/ Service Marks, the Indian Law doesn't provide for its registration, on the contrary, it explicitly prohibits it under Section 23(1) of Trade Marks Act, 1999. The non - registration of the Election symbol under the Trade Marks Act, 1999 doesn't mean it is



not a Trade Mark/ Service Mark. Concludingly, it is a Trade Mark/ Service Mark, although unregistered under the Trade Marks Act, 1999.

The Complainant has its own Intellectual Property Rights in form of Election symbol having its life till registered with Election Commission of India and also have monetary implications, since under the latest economic theories and the report of International Monetary Fund, the Politics/ Political Parties have an impact on the economy, with these observations, the objections of the Respondent have no value and in the manner, same are hereby rejected.

The requirement under Clause No. 4 (b)(v) of INDRP Policy is with regards to the Trade Mark/ Service Mark and not with regards to the registered Trade Mark/ Service Mark. On careful perusal of the INDRP Policy and Rules thereunder, this Tribunal is of a view that under Clause No. 4 (b)(v) of INDRP Policy, there cannot be any mandatory requirement even for Trade Mark/ Service Mark, since at the time of the registration of the particular Domain name, this requirement is not mandated then how can it be mandated at the time of availing of remedies for injury. The purposeful interpretation may be considered as no mandatory requirement for Trade Mark/ Service Mark under Clause No. 4 (b)(v) of INDRP Policy, however, in the present case, there is a presence of an Intellectual Property in form of an Election symbol analogous with Trade Mark/ Service Mark, therefore, this Tribunal is of



a view that the requirement under Clause 4 (b)(v) of INDRP Policy stands fulfilled.

Accordingly, this Issue is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 9: WHETHER THE DISPUTE RAISED BEFORE THIS HON'BLE FORUM FALLS WITHIN THE FOUR CORNERS OF CLAUSE 4 OF THE INDRP POLICY?

SUBMISSIONS OF THE COMPLAINANT:-

The submissions have already been considered along with the submissions under Issue No. 4

SUBMISSIONS OF THE RESPONDENT:-

In addition to the submissions pertaining to the jurisdiction and domain of this Hon'ble Tribunal as stated above, the Respondent further submits that there are currently various disputes which are pending between the parties including but not limited to the disputes involving the alleged disputed domain name and therefore, this Hon'ble Forum does not have the jurisdiction to adjudicate the present dispute within the four corners of INDRP Rules of Procedure as well as the INDRP Policy.

In the complaint, it has been admittedly claimed that Mr. Edappadi K Palanisamy ('EPS') is the present General Secretary of the complainant and that he has authorized Mr.



C.Ve Shanmugam to file the present complaint *vide* para 6. However, the Respondent *vide* para 2(e) of the preliminary submissions as well as Para 6 of the reply to the complaint on merits (“Respondent’s reply”) has not only disputed the said fact but also brought to the knowledge of this Hon’ble Forum that a suit in connection to the appointment of EPS as a General Secretary is also a subject matter of a representative suit filed before the Hon’ble Madras High Court *vide* **O.A No. 1204 of 2022 CSDR No. 119663 of 2021**. It is further relevant to mention here that the disputed domain name is also discussed which is evident from para 25 of the said order. Admittedly, the suit was filed much before the filing of the present complaint through EPS and therefore, any finding passed by this Hon’ble Tribunal would certainly prejudice not only the rights of the Respondent but also of various other Plaintiffs in the suit bearing no. **CSDR No. 119663 of 2021**. The relevant paras are reproduce herein below:

“

Para No. 6 of the complaint:

It is submitted that Mr. Edappadi K. Palanisamy is the present General Secretary of the Complainant Party and as such he has the sole and supreme authority to represent or authorize



another person to represent the Complainant. In exercise of the said powers, Mr. C.Ve. Shanmugam a Member of Parliament and the Organizing Secretary of the Party has been authorized vide letter dated 23.07.2023 by the General Secretary of the Complainant to represent the Complainant in the present proceedings (Annexure-1).

Para 2(e) of the preliminary submission of the reply:

Without prejudice to any of the aforesaid, it is stated that Mr. Edapaddi K. Palaniswamy has no authority to either present the complaint or authorize any person to represent the Complainant. No rules have been placed on record showing that Mr. Edapaddi K. Palaniswamy has been appointed as the General Secretary of the Complainant or has any authority to sue on behalf of the political party. **It is pertinent to mention herein that the Election Commission of India (ECI) has not recognised Mr. Edapaddi K. Palaniswamy as the General Secretary of the Complainant till date. The issue of**



appointment of the so-called Interim General Secretary/Secretary/General Secretary, Mr. Edapaddi K. Palaniswamy, is a matter subjudice before various courts/forums, the details of which are provided in the succeeding paragraphs. Therefore, the complaint could not have been instituted by the Complainant and is liable to be dismissed. The issues pertaining to the appointment of Mr. Edapaddi K. Palaniswamy and/or its validity is a contentious political issue involving a drawn-out litigation history which is beyond the scope of the present arbitral tribunal. The fact remains that the present complaint is nothing but an abuse of procedures which are enacted for the benefit of traders to protect their intellectual properties and not for the benefit of political parties setting up a political agenda and seeking exclusivity & control over the political party via the medium of the present forum. General Secretary, Mr. Edapaddi K. Palaniswamy, is a matter subjudice before various courts/forums, the details of which are provided in the succeeding paragraphs.



Therefore, the complaint could not have been instituted by the Complainant and is liable to be dismissed. The issues pertaining to the appointment of Mr. Edappadi K. Palaniswamy and/or its validity is a contentious political issue involving a drawn-out litigation history which is beyond the scope of the present arbitral tribunal. The fact remains that the present complaint is nothing but an abuse of procedures which are enacted for the benefit of traders to protect their intellectual properties and not for the benefit of political parties setting up a political agenda and seeking exclusivity & control over the political party via the medium of the present forum.

Para 6 of the reply on the merit:

That the contents of para No. 6 are false, incorrect, vexatious and hence, vehemently denied. It is specifically denied that Mr. Edappadi K. Palanisamy has the supreme authority to represent or authorize another person to present the complaint. No document has been placed on record to demonstrate that Mr.



Edappadi K. Palanisamy has any authority to present the complaint as alleged or otherwise. Further, no valid Power of Attorney has been filed along with the complaint to substantiate the said contention. The Complainant has also conveniently not disclosed that Mr. Edapaddi K. Palanisamy was allegedly elected as the Interim General Secretary vide a purported Resolution No.7 on 11.07.2022. However, the ECI has not recognised the aforesaid resolutions passed and/or amendments made in the party constitution on 11.07.2022 as yet to effect the appointment of Mr. Edapaddi K. Palanisamy. This Hon'ble Tribunal may take judicial notice of the same by visiting the official website of ECI. Moreover, numerous litigation challenging the validity of the amendments made by the General Council dated 11.07.2022 including the issue of appointment of Mr. Edapaddi K. Palanisamy as the Interim General Secretary are pending before Hon'ble Madras High Court. Importantly, original applications bearing O.A.No.599 and



O.A.No.601 of 2022 in Civil Suit in CS No.102 of 2022 which have been filed in a representative capacity under Order 8 Rule 1 of the Code of Civil Procedure ('CPC') by the primary members of the party are also pending before the Hon'ble Court. The Hon'ble Madras High Court has also allowed the primary members application in O.A. No. 1244 Lof 2022 on 26.04.2022 against the Respondent in a representative capacity. Hence, in the present circumstances, it is wrong to suggest that Mr. Eddapadi K. Palanisamy is an authorized person or has any right to file the complaint. The copy of the O.A.No.599 and O.A.No.601 of 2022 in Civil Suit in CS No.102 of 2022 which have been filed in a representative capacity under Order 8 Rule 1 of the Code of Civil Procedure ('CPC') by the primary members of the part as well as the copy of O.A. No. 1244 of 2022 on 26.04.2022 against the Respondent in a representative capacity are annexed herewith and marked Annexure R1 (Colly).



Para 25 of the order passed by the Hon'ble Madras High Court(Annexure R-1):

25. This Court finds that the other defence taken by the Respondents/defendants in their counter affidavits that all can be decided only in the Suit after recording evidence and not at this stage. Rest of the grounds raised by the Respondents/defendants such as whether the documents produced by the applicants/plaintiffs have been created and concocted; whether the signatures of the Coordinator and Joint Coordinator in the membership card are genuine or not, whether the applicants/plaintiffs are the members of the first Respondent political party or not; whether the applicants/plaintiffs having common interest with their members of the first Respondent political party; and whether they are entitled to file the suit under the representative capacity all can be decided only after full fledged trial, not at this stage.”



Apart from the aforesaid representative suit, the complainant himself has filed an order dated 25.08.2023 passed by the Hon'ble Division Bench Madras High Court along with the rejoinder *vide* Annexure 18 at page no. 94 of the list of documents. The said order also suggests that though no interim injunction is granted by the Hon'ble Court, however, the serious disputes *qua* the appointment of EPS as well as the party bye-laws are subjudice before the trial courts. Moreover, the counsel for the complainant duly conceded that there are at least 25 cases pending in various trial courts.

Further, EPS has purportedly based his complaint through the complainant party on the reasoning that the Respondent is a third ranker as he was expelled from the party on two different occasions i.e., in 2016 as well as 2018 and therefore, the Respondent does not have any legitimate right, title or interest in the disputed domain name. However, the complainant *vide* para 11 of the complaint has also admitted that the issues pertaining to the so-called expulsion of the Respondent from the complainant party is pending adjudication before the appellate authority bearing **OSA No 28 of 2023** before the Hon'ble Madras High Court. The relevant para No.11 of the complaint is reproduced herein below:

“

Para 11 of the Complaint:



*Pertinently, the Respondent has chosen to challenge his expulsion from the Complainant Party from 2018 only on 04.12.2021 through a civil suit before the Hon'ble High Court of Madras in C.S. No. 352/2021. As a matter of record, this suit came to be filed immediately after the announcement of the intra-party elections to then interim posts of Coordinator & Joint Coordinator on 02.12.2021. Thus, the malafide conduct of the Respondent is evident from his conduct in the said suit, wherein despite being an outsider & third-party to the organization at Complainant Party, the Respondent had filed an urgent application seeking to stall the internal elections at the Complainant Party. The Hon'ble High Court of Madras refused to grant any reliefs to the Respondent and the election was conducted without any deterrence in view of the suit in CS No. 352 of 2021. Subsequently, the suit filed by the Respondent was dismissed by the Hon'ble High Court of Madras on 19.09.2022 with specific finding that the Respondent, being a non-member of the Complainant Party lacked the locus standi to maintain the civil suit (Annexure-5). **It is submitted that this***



Judgment remains in force despite the pendency of the appeal in OSA 28 of 2023 before the Madras High Court.”

In addition to the above, admittedly an FIR was also lodged against the Respondent as stated *vide* para 22 of the complaint which according to the Respondent was registered at the instance of EPS. It is stated that the said FIR was registered primarily in connection to the so-called disputed domain name against which a quashing petition has also been filed by the Respondent and the same is also pending adjudication before the Hon'ble Madras High Court. The fact regarding the FIR being lodged primarily based upon the so-called disputed domain name is also admitted by CW-1 in his answer to Question No. 61 during the cross-examination and therefore, any finding given by this Hon'ble Tribunal would again certainly prejudice the rights of the Respondent which he is legitimately pursuing and which is the subject matter of the Hon'ble Madras High Court. Para No. 22 of the complaint and question No. 60,61, and 62 of the cross-examination testimony of CW-1 are reproduced hereinbelow:

“

Para No. 22 of the Complaint:

22. As a matter of fact, it has been brought to the notice of the Complainant that the Respondent had run a similar website in



the past. A criminal complaint came to be registered against him through one of the Party members, Mr. Palanisamy s/o. Kandavel and a FIR bearing no. 45 of 2020 was registered against the Respondent in Sulur Police Station, Coimbatore, Tamil Nadu (Annexure 12) on account of the fraud committed by the Respondent through such website. The Respondent had since been enlarged on bail and has now started carrying out his vested interests and illegalities through the disputed domain name / website.

Reply of the Respondent to the para 22 of the complaint:

“It is stated that the Respondent has also filed a Criminal Original Petition bearing CRI. O.P. No. 4146 of 2022 to quash the F.I.R. in Crime No.45 of 2020 on the file of Sulur Police Station, which is pending before the Hon'ble Court. Further, absolutely baseless allegations have been made that the Respondent has been in the process of registering domains that rightfully belong to the complainant.



Apart from the domain in question, no other document has been placed on record so as to substantiate such a baseless and defamatory allegation.....”

“Question No. 60, 61, and 62 of the Cross-Examination of CW-1

Q.60. (Attention of the witness is drawn to contents of the FIR No. 45 of 2020)

So is it correct to say that the contents of the FIR and the pleading of the complaint in the present case are almost same or similar?

Ans. Maybe.

Q.61. Is it correct to say that the FIR No. 45 of 2020 is primarily based upon the disputed domain name which is also subject matter of the present arbitration proceedings?

Ans. Yes.

Q.62. I put it to you that the police has not been able to file the chargesheet in the said FIR till date as there is no evidence of



commissioning of so-called "serious" offence till date. What do you have to say?

7

Ans. No comments."

Pertinently, a revision petition bearing no. Crl RC 1775 of 2023 in connection to the offence of defamation committed by EPS against the Respondent is also a subject matter of the proceedings before the Hon'ble Madras High Court in which the notice has also been issued *inter alia* EPS has been directed to produce the relevant documents. Needless to say, the said revision petition is an off-shoot of the allegations made in the Section 9 Petition filed by EPS through the complainant which was also based on the disputed domain name. Since, the allegation are made in the Section 9 Petition as well as in the present complaint that the Respondent is engaged in collection of money from the so called disputed website, the said disputed website is also required to be shown in a working condition to the Hon'ble Courts to demonstrate that there is no such link available on the disputed domain website for collection of money. Therefore, if the domain name is transferred to the complainant and/or transferred to the In Registry it would seriously prejudice the right of the Respondent to lead evidence before the Ld. Trial Court as well as before the Hon'ble Madras High Court.



Admittedly, the complaint of defamation was also filed by the Respondent much prior to filing the present complaint.

Without prejudice to the aforesaid, there is also a history of litigation between the parties which are particularly elaborated *vide* Para 2-9 of the para-wise reply which is running for at least 8 pages.

Therefore, certainly, there are complicated questions of law and facts which are involved in the present matter which besides being non-arbitrable are also directly and indirectly linked to the disputed domain name. It is most humbly submitted that the ingredients which are required to be satisfied in the present matter cannot be decided without going into complicated and larger disputes pending between the parties as reproduced above. The law in this regard is also clear *vide* a catena of judgments/rulings published by WIPO wherein it has been held that complicated questions of law and fact are beyond the jurisdiction of the limited purpose and domain with which the domain dispute policy is enacted.

It is most respectfully submitted that the primary purpose with which the INDRP is formulated is to adjudicate cases of domain name cybersquatting, focusing on the wrongful registration or use of domain names in bad faith to exploit trademarks or trade names. However, as stated above, the present dispute involves intricate legal questions extending beyond the realm of mere domain ownership. It implicates



fundamental political rights, constitutional freedoms, and the intricate dynamics within a political landscape. As such, a cursory administrative proceeding such as the INDRP is not sufficient to address the depth and breadth of this dispute adequately.

The INDRP is limited to deciding cases involving domain name cybersquatting and is not the appropriate mechanism to adjudicate complex factual and legal issues that have arisen herein [**Quarerview v. Quarerview Co. Ltd., eResolution Case Numbers AF-0209a and AF-0209b; Adaptive Molecular Technologies Inc. v. Priscilla Woodward and others; Les Editions Jalou v. Sidharth Saigal and Chalk Media FZE Case No. D2023-1430**]. The domain name in the present instance is inseparable from the “*much larger, complex disputes between the parties*”, which would in all probability be classified as “legitimate disputes” and would thus be beyond the scope of the INDRP [**Pret A Manger [Europe] Limited v. Prettogo LLC, Case No. D2018-0782, Jason Crouch and Virginia McNeill v. Clement Stein, D2005-1201**]. The above observations have further been solidified in the legislative history of the UDRP.

The relevant portions of the aforesaid rulings are reproduced herein below:

**Les Editions Jalou v. Sidharth Saigal and
Chalk Media FZE Case No. D2023-1430**



In the view of the Panel, the question of whether or not the Respondent has rights in the disputed domain name is inextricably tied to the question of whether or not the Licence Agreement was validly terminated by the Complainant. That matter's disputed between the parties and is not a question which the Panel finds to be suitable for determination within the confines of the UDRP. As observed in section 4.14.6 of WIPO Overview of WIPO Panel Views on Selected UDRP Questions, Third Edition ("WIPO Overview 3.0");

“Depending on the facts and circumstances of a particular case, and irrespective of whether the parties may also be engaged in court litigation, in some instances (e.g., complex business or contractual disputes) panels have tended to deny the case not on the UDRP merits but on the narrow grounds that the dispute between the parties exceeds the relatively limited "cybersquatting" scope of the UDRP, and would be more appropriately addressed by a court of competent jurisdiction.”



Jason Crouch and Virginia McNeill v. Clement Stein, D2005-1201] Last Two Paragraphs: -

Discussion and Findings:-

*The Policy was adopted to deal as is with the problem of cybersquatting, the registration of domain names consisting of, including, or confusingly similar to marks belonging to another for the purpose of profiting from the goodwill associated with said marks. **The questions under the Policy to be addressed by the Panel are relatively simple and straightforward. The proceeding is a summary one, without the benefit of confrontation of the witnesses, or even of a hearing. Although the subject of some criticism, the procedure has worked remarkably well in resolving the limited claims for which it was intended.***

In the present case, the dispute concerning the domain names is merely ancillary to much larger, complex disputes between the parties, involving alleged breaches of contract, breaches of



fiduciary duty, and tortious conduct. Indeed, Complainants seek relief in the nature of prohibitory injunctive relief, a type of relief far beyond the limited powers granted to the Panel under the Policy. A lawsuit is currently pending in the courts of California for the resolution of the larger disputes, disputes which are appropriate to be resolved by a court of law, and of the parties' disputes regarding the registration and use of the domain names. **The Panel holds that where the dispute concerning the domain names is part of and ancillary to much larger disputes involving questions of contractual obligations, fiduciary duties, and tortious conduct, it would be inappropriate to use the Policy to attempt to carve out and resolve the relatively minor, but interconnected, domain name dispute. See Adaptive Molecular Technologies, Inc. v. Priscilla Woodward & Charles R. Thorton, d/b/a Machines & More, WIPO Case No. D2000-0006, and Clinomics Biosciences, Inc. v. Simplicity Software, Inc., WIPO Case No. D2001-0823.**



Pret A Manger [Europe] Limited v. Prettogo LLC, Case No. D2018-0782, Jason Crouch and Virginia McNeill v. Clement Stein, D2005-1201 As the panel in *The Thread.com, LLC v. Jeffrey S. Poploff*, WIPO Case No. D2000-1470 stated, "[t]his Panel is not a general domain name court, and **the Policy is not designed to adjudicate all disputes of any kind that relate in any way to domain names. Rather, the Policy is narrowly crafted to apply to a particular type of abusive cybersquatting**".

Final Report of the WIPO Internet Domain Name Process [April 30, 1999] at Paragraph 135 clearly states that "**the scope of the procedure is limited so that it is available only in respect of deliberate, bad faith, abusive, domain name registrations or "cybersquatting" and is not applicable to disputes between parties with competing rights acting in good faith.**"

In such facts and circumstances coupled with the fact that there is absence of basic notions of trade and commerce in the present dispute, the scope of INDRP is not expansive enough to allow an adjudication of the present and the issues



are to be more appropriately dealt with in courts having competent jurisdiction. **(CitiCorp And Anr. vs Todi Investors and Anr (2006 SCC Online Del 1238)**

The relevant portion of the aforesaid ruling is reproduced herein below:

CitiCorp And Anr. vs Todi Investors and Anr (2006 SCC Online Del 1238)

46. (iii) It is trite law that an alternative statute must provide for determination of all the rights and liabilities of the parties for Section 9 of the Code of Civil Procedure to be applicable. In the instant case, the whole scheme of the IN Domain Name Dispute Resolution Policy shows that the remedies available under the said Policy are of an extremely limited nature "limited to requiring the cancellation of the registrant's domain name or the transfer of the registrant's domain name registration to the complainant" (paragraph 12 of the Policy). Paragraph 2 of the Policy, which lays down the purpose of the Policy, limits the same to resolution of a dispute between the registrant and the complainant "arising out of the registration and use of the IN Internet Domain Name". The scope of the suit is far greater than the disputes that the INDR Tribunal can adjudicate upon. Substantive relief is claimed for "infringement of trade mark" and "passing off"



which includes infringing the use of CITI in any manner or form either as a domain name or as a trade mark or trade name or on the website.

(iv) The status of the IN Registry is that of a not for profit company. The IN Domain Name Dispute Resolution Policy is neither a statute nor an Act. It is thus not a creation of the legislature and must be distinguished from a Central Act or a State Act as defined in Section 3(59) of the General Clauses Act. The status of an arbitrator under the INDRP is neither that of a Judge nor that of a Judicial Officer. He is not even a degree holder in law. The only qualification of an arbitrator as laid down in the Policy is that he should have some expertise either in computers or in law. In direct contradistinction, Section 134 of the Trade Marks Act mandates that only a District Court/District Judge is empowered to deal with suits for infringement of a trade mark or for passing off arising out of the use by the defendant of any trade mark which is identical with or deceptively similar to the trade mark of the plaintiff, whether registered or unregistered. The tribunal, therefore, is not a forum which can be said to provide adequate and effective machinery for the redress of all the disputes.

47. In view of the aforesaid, I have no hesitation in holding that the IN Domain Name Dispute Resolution



Policy (INDRP) does not oust the jurisdiction of this court to deal with the present suit. The inevitable result is that the present application must be rejected. The same is accordingly rejected.

From the aforesaid facts and circumstances and in view of a series of judgments as mentioned above, it is absolutely clear that this Hon'ble Tribunal does not have the jurisdiction to adjudicate the present dispute as the same certainly involves complicated questions of fact and law. Any finding of this Hon'ble Tribunal declaring that the disputed domain name has been registered in bad faith and/or for illegal or unlawful purpose/legitimate interest would certainly prejudice the rights of the Respondent and indirectly declare that the Respondent is a third ranker which is otherwise not within the domain and jurisdiction of this Hon'ble Tribunal.

Without prejudice, this Hon'ble Tribunal in any event does not have the jurisdiction to adjudicate the dispute between the parties as the only limited relief which can be granted by this Hon'ble Tribunal is to transfer the domain name to the complainant or to cancel the same *vide* Clause 11 of the INDRP Policy. No. conditional order/award can be passed by this Hon'ble Tribunal such as transferring or cancelling the disputed domain name till the final adjudication of the dispute between the parties. Had such power been available with this Hon'ble Tribunal, this Hon'ble Tribunal would have



at least passed such a conditional award. Needless to say, such power is only available with the civil courts and thus the present dispute, in view of the litigation history between the parties, does not fall within the jurisdiction. The said Clause is reproduced herein below:

“11.Remedies

The remedies available to a Complainant pursuant to any proceeding before an Arbitrator shall be limited to praying for the cancellation of the Registrant's domain name or the transfer of the Registrant's domain name registration to the Complainant. Costs as may be deemed fit may also be awarded by the Arbitrator. However, the implementation of such award of cost will not be supervised or controlled by .IN Registry.”

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

Considered the submissions of both the parties. This issue requires a ‘Test’ for the strict compliance of the terms, of the Clause No. 4 being the ‘Class of Disputes’ of INDRP Policy. For deciding this particular issue, it has to be seen that, any person who considers that, a registered Domain name



conflicts with his/ her legitimate rights or interests may file Complaint to .IN Registry on the premises mentioned under Sub – Clauses (a) to (c) of this Clause of INDRP Policy and for meeting out the legitimate rights and interests, the Complainant meets with this requirement, by virtue, of the findings and the decision of this Tribunal in Issue No. 4, herein – above decided.

The requirement of Clause No. 4 (a) of INDRP Policy is also met, by virtue, of the decision of this Tribunal delivered in Issues No. 1 to 8 herein – above.

The requirement of Clause No. 4 (b) of INDRP Policy is to be decided, in terms, of the Clause No. 6 of INDRP Policy. Now, for deciding the requirement of Clause No. 4 (b) of INDRP Policy, the provisions of Clause No. 6 of INDRP Policy are considered. The requirement under Clause No. 6 (a) of INDRP Policy for bonafide offering of goods & services has already been decided in Issue No. 3 herein – above which considered the use of disputed Domain name under 'Bad Faith'. The requirement under Clause No. 6 (b) of INDRP Policy with regards to Registrant's/ Respondent's presence in the name of Domain name has already been decided in Issues No. 1, 2, 3 & 4 herein – above.

Since all the Issues from Issues No. 1 to 4 stand decided in favour of the Complainant, resultantly, the Clause No. 6 (b)



of INDRP Policy is also decided in favour of the Complainant and against the Respondent.

With regards to Clause No. 6 (c) of INDRP Policy, it is the case of the Registrant/ Respondent that, a legitimate Non – Commercial name is carried without the intention of Commercial gain by misleading or deviating the consumers or to tarnish the Trade Mark/ Service Mark at issue. This particular requirement of Clause No. 6 (c) of INDRP Policy is considered and it can be appreciated that, the disputed Domain name is not fairly used and further, it can be further appreciated that, it is used with the intent of Commercial gain. The criticism of the Complainant Party by the Respondent is admitted by the Respondent and this particular criticism is in 'Bad Faith' has already been considered at Issue No. 3, thus, the criticism unlawfully carried by using the identical disputed Domain name is giving an injury to the Complainant Party. The study of a Cambridge University released on 06.03.2018 on Political Party strength and Economic growth clearly finds that, the Party strength directly affects the Economic growth, thus, this Tribunal is of a view that, the Commercial gain directly or indirectly by the Respondent from illegitimate Commercial unfair use of the disputed Domain name cannot be denied, accordingly, the requirement of Clause No. 6 (c) of INDRP Policy goes in favour of the Complainant and against the Respondent.



In the manner, the Issue No. 9 is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 10: WHETHER THE COMPLAINANT BEING A POLITICAL PARTY IS LEGALLY ENTITLED TO INVOKE THE PRESENT DISPUTE RESOLUTION MECHANISM?

SUBMISSIONS OF THE COMPLAINANT:-

The Complainant is a recognized state Party and an association of persons registered with the Election Commission of India under section 29A of the Representation of People Act, 1951. Complainant is a legal entity capable of suing & being sued in its name, etc. Disputed domain name states that the copyright vests with the Complainant Party.

It is submitted that the Complainant, *All India Anna Dravida Munnetra Kazhagam* (AIADMK) is a recognized state Party with the Election Commission of India under section 29A of the Representation of People Act, 1951. It is therefore submitted that the complainant is an association of persons registered with Election Commission of India, and is a legal entity capable of suing & being sued in its name. As such the contention that the Complainant is not a legal entity or that it cannot maintain a complaint in its own name etc cannot be permitted.



As a matter of record, the Complainant, like every other political party, is a legal entity capable of suing and being sued in its name. Complainant has also been maintaining independent bank accounts, filing independent Income Tax Returns, etc and is a legal entity in the eyes of law and as such is well entitled to maintain the present Complaint.

In any event, from Ex.C-10, Respondent has admittedly stated that complaint in respect of the mark / symbol “owned” by Complainant, should be made by the Complainant alone.

It is further submitted that the Respondent himself has filed litigations against the Complainant as can be seen from the cause title in the civil suit filed by the Respondent against the Complainant challenging his expulsion from the Party viz. Ex.C-12 reads thus: “*Civil Suit No. 352 of 2021 Mr. K.C.Palanisamy .. Plaintiff Versus **The All India Anna Dravida Munnetra Kazhagam (AIADMK)** ...*”. Notably, the Petition, A.No. 273 of 2022 to reject the suit in CS No. 352 of 2021 under Order 7 Rule 11 CPC was filed and sustained by the Complainant individually [ref. list of litigations between the parties, page 42 & Ex.C-12 Order]

SUBMISSIONS OF THE RESPONDENT:-

The Complainant being a political party cannot claim its exclusive right in the so-called domain name as the domain



name does not subsume any valid trademark and/or service mark. Under the rules in question, the domain names are protected against infringement in the commercial sphere alone. The political parties are an association of individuals with no commercial objectives and/or monetary implications.

Without prejudice, the Complainant being a political party cannot claim its exclusive right in the so-called domain name as the domain name does not subsume any valid trademark and/or service mark. Under the rules in question, the domain names are protected against infringement in the commercial sphere alone. The political parties are an association of individuals with no commercial objectives and/or monetary implications.

From a courtesy perusal of the INDRP Procedure and Dispute Resolution Policy, it is abundantly clear without any *iota* of doubt, that the policy/rules are adopted/enacted for protecting the trade and commerce of commercial entities which are entitled to invoke the present mechanism. It is also a settled principle of law as stated above that political parties are neither entitled to get their names registered under the Trademark Act nor work for profit which is a basic notion of any trade and commerce. Further, the protection of the domain names is given under the Trademark Act to traders and/or service providers who work for gain as held by the Hon'ble Courts across the country in a catena of judgments.



However, by no stretch of the imagination could the same protection be granted to any party who does not fulfill the aforesaid basic requirements, much less any political party.

In this connection, the Respondent placed reference to the relevant provisions of the Trademark Act, 1999 as well as the Emblems and Names Act which the Indian legislation in its wisdom has enacted and which demonstrates that the concept of intellectual property as envisaged under the Indian law is not applicable to political parties. Section 9 of the Trademark Act which provides absolute grounds for refusal of the grant of registration to trademarks and states under Section 9(2)(d) that a mark shall not be registered as a trademark if its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950. Further, not only the name/emblems but also its abbreviation is out of the purview of the trademark act in view of the definition given under Section 2(c) which states that the “name” includes any “abbreviation of the name”. Moreover, Section 3 of the Emblems and Names (Prevention of Improper Use) Act, 1950 (**Emblems Act**) prohibits symbols/names of political parties from being registered as a trademark or any design for the purpose of any trade, business calling or profession. Additionally, Section 4(b) of the Emblems Act specifically lays down that an emblem or name cannot be registered as a trademark if it directly contravenes the aforementioned Section 3. The schedule specified by Section 3 of the



Emblems Act provides that the marks enlisted therein cannot be registered. The schedule enlists within it symbols used by political parties which restricts it from being trademarked.

The Respondent submits that it has not acted in a way that would suggest an intention to harm the complainant [**The Honorable Ron Paul v. Whois Privacy Services Pty Ltd / JNR Corp Case No. D2013-0278**]. The relevant portions of the aforesaid rulings are reproduced herein below:

Discussion and Findings:-

A. Identical or Confusingly Similar

*As discussed above, Respondent asserts that being famous is not necessarily sufficient to demonstrate common law trademark rights. Moreover, Complainant has not shown, outside the political sphere, that his name has acquired secondary meaning in commerce for any specific goods or services. While Respondent recognizes that Complainant has written seven books, each of which was published while he was in Congress, Complainant has not shown that his books' success has accrued to his reputation and name as a commercial, rather than political, source. Hence, Respondent maintains that the name "**Ron Paul**" designates a politician, not a source of goods or commercial services. See, e.g.,*



Convergència Democràtica de Catalunya v. ar mas, WIPO Case No. DTV2003-0005 (denying complaint where the complainant's personal name "is used in a political context, but not in commerce to distinguish goods or services").

B. Rights or Legitimate Interests

*At the core of Respondent's arguments is that, well before the dispute arose, Respondent has been operating an independent and legitimate fan site linked to the Domain Name. At least from May 2008, when Respondent launched its fan site, **the evidence indicates that Respondent has offered updated news, commentary, and discussions about Ron Paul, while serving as a forum for his followers. As Respondent puts it, expressing support and devotion to Ron Paul's political ideals is a legitimate interest that does not require Complainant's authorization or approval.***

Convergència Democràtica de Catalunya v. ar mas, WIPO Case No. DTV2003-0005

Discussion and Findings

A. Identical or Confusingly Similar



*This Panel agrees with decisions in which prior Panels have recognized the right of a Complainant to claim a common law mark where there is no registered trademark. Nevertheless, in the present case, the Complainant is not the owner of a trademark or service mark registration for the words "Artur Mas", nor can these words neither be treated as an unregistered trademark or service mark. Under the Spanish Trademark Law of 2001 (Ley 17/2001, de 7 de diciembre, de Marcas) the personal name can be protected as an unregistered trademark when the name is used as a mark to distinguish **goods or services, and reaches the status of well-known mark** (marca notoriamente conocida) in the sense of the article 6 bis of the Paris Convention [see articles 6.2 d and 34.5 of the Spanish Trademark Law]. **However, in this case the Complainant has not proved the use of the name "Artur Mas" as a trademark or service mark for the purpose of the merchandising or other commercial promotion of goods or services. On the contrary, the name "Artur Mas" is used in a political context, but not in commerce to distinguish goods or services.** (In a similar vein, see The Reverend Dr.*



*Jerry Falwell and The Liberty Alliance v. Gary Cohn, Prolife.net, and God.info, WIPO Case No. D2002-0184, where the Panel denied the complaint of the Reverend Jerry Falwell, a well-known preacher in the United States. The Panel held that, well-known and all as he was, Mr. Falwell had failed to show that his name had been used in a trademark sense as a label for particular goods and services. **He failed to provide any marketing brochures, trade advertisements or other evidence of use of his name as a mark.** See also Israel Harold Asper v. Communication X Inc, WIPO Case No. D2001-0540, where the Panel held that the Complainant, a prominent Canadian businessman and philanthropist, had not shown that he had used his personal name for the purpose of merchandising or for any other commercial promotion of goods or services.)*

7. It is submitted that the Complainant is clearly and wantonly attempting to circumvent legitimate Court proceedings in order to abuse the INDRP and deprive the Respondent of its legal rights.
8. Moreover, the Respondent remains committed to the party's fundamental values and has refrained from engaging with rival parties or undertaking activities that



would compromise the party's interests. Despite disagreements with the current party leadership, the Respondent's loyalty and dedication to the party's ideologies remain unwavering. His actions are centered on constructive criticism and reform rather than division or disloyalty. This showcases a sincere commitment to the party's betterment, albeit from differing perspectives.

9. It is finally submitted that given the complexity of the matter and the farreaching political implications involved, a comprehensive examination is required beyond the limitations of the INDRP, which primarily addresses cybersquatting cases. The Respondent's actions are not solely about controlling a domain name but are rooted in a genuine desire for political discourse and reform within the party. The resolution of this case demands a nuanced consideration of political rights and constitutional freedoms, which extends beyond the confines of an administrative process designed for domain dispute resolution.
10. Last but not the least, it has been established beyond a reasonable doubt that the Respondent is/was the primary member of the complainant before the so-called expulsion and further, the counsel for the complainant has not even been able to put up its case to the



Respondent during the cross-examination which sufficiently establishes that the Respondent has legitimate right, title, and interest in the so-called disputed domain name. The Respondent has a legitimate right to fairly criticize anyone including the complainant in view of the provisions enshrined under Article 19 of the constitution of India i.e., freedom of speech and expression. The said Article 19 is also reproduced hereinbelow:

11. *“19. Protection of certain rights regarding freedom of speech etc., (a) to freedom of speech and expression;”*

ANALYSIS/FINDINGS OF THE TRIBUNAL:-

The submissions are considered. The Complainant is a Political Party and is an Artificial Juridical person which can sue and can be sued in its own name. After perusal of the list of litigations filed by the parties it is clear that there are cross cases filed by the Complainant Party and the Respondent. In view of this in the present litigation the objection of the Respondent is impermissible. The Respondent himself filed a Civil Suit No. 352 of 2021 titled as **‘K C PALANISAMY VS. ALL INDIA ANNA DRAVIDA MUNNETRA KAZHAGAM (Exhibit C-12, Civil Suit)’** which clearly shows the litigations are filed by the Respondent against the Complainant in other courts also. Further, the submissions of the Respondent that INDRP Policies and Rules do permit to institute a Complaint



only to a person having a protected Trademark/Service mark cannot be accepted, since, if the particular rule is allowed to be interpreted as interpreted by the Respondent then there can be no litigation not only in terms of INDRP Policy before this Tribunal but also in any court of law. Furthermore, the cases relied upon by the Respondent cannot be considered by this Tribunal, since, specifically under these cases issue decided was not with regards to the maintainability of the Complaint in the name of Political Party. In support of his submissions the Complainant relies on a case decided by WIPO on 28.07.2011 in *BJP Vs Iahead, Vinay KM 2011 SCC Online WIPO 1044*, wherein the particular complaint with regards to the domain name was allowed to be prosecuted by the Complainant Bhartiya Janta Party (BJP).

With the aforesaid views this issue is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 11: WHETHER THIS HON'BLE TRIBUNAL HAS THE JURISDICTION TO ADJUDICATE THE DISPUTE BETWEEN THE PARTIES IN VIEW OF COMPLICATED QUESTIONS OF LAW AND FACTS INVOLVED IN THE PRESENT MATTER?

SUBMISSIONS OF THE COMPLAINANT:-

The facts involved in the present dispute are very basic:



- (a) Complainant is a political Party which goes by the shortened name AIADMK not only amongst its cadres but also amongst the general public.
- (b) The Respondent has no right to use the name of the Complainant. He has been admittedly expelled from the Party. The legal proceedings have also confirmed the same.
- (c) The Respondent having no right to use the name AIADMK cannot own a website in that name and is bound to transfer the domain name to the rightful owner who is the Complainant.

Jurisdiction of the Tribunal

1. The facts involved in the present dispute are very basic:
 - (a) Complainant is a political Party which goes by the shortened name AIADMK not only amongst its cadres but also amongst the general public.
 - (b) The Respondent has no right to use the name of the Complainant. He has been admittedly expelled from the Party. The legal proceedings have also confirmed the same.
 - (c) The Respondent having no right to use the name AIADMK cannot own a website in that name and is



bound to transfer the domain name to the rightful owner who is the Complainant.

2. It is therefore submitted that the disputes involved in the present arbitral proceedings do not involve any complicated question of facts or law, on the contrary are amenable to and capable of resolution by this Hon'ble Appellate Tribunal.
3. It is further submitted that Respondent having registered its domain with .IN Registry is bound by dispute resolution Clause contained in its registration agreement, the INDRP, INDRP Rules of Procedure, as well as the incorporation of the Arbitration & Conciliation Act, 1996. The present complaint is therefore well within the jurisdiction of this Hon'ble Tribunal.

SUBMISSIONS OF THE RESPONDENT:-

The submissions have already been considered along with the submissions under Issue No. 9.

ANALYSIS/FINDINGS OF THE TRIBUNAL:-



After careful consideration of the submissions, of both, the Complainant and the Respondent, it is observed by this Tribunal that the particular issue is raised for the adjudication of present Domain name dispute after taking into account the complicated questions of fact and law. It is the case of Respondent that, since the present litigation involves various questions of fact & law, therefore, this Tribunal lacks with the jurisdiction to decide the present Domain name dispute. This Tribunal has gone through the list of litigations between the parties. After scrutinizing the different litigations between the parties, it is concluded that, the other litigations pending for adjudication before other Courts do not involve, directly or indirectly, the issue of the dispute of the present Domain name. Even the Respondent failed to demonstrate with a single piece of Evidence/ Document substantiating the issue of present Domain name under dispute before any other Court of Law other than this Tribunal. The issue of FIR No. 45/2020 registered against the Respondent in Sular Police Station, Coimbatore, Tamil Nadu, is certainly with regards to disputed Domain name but is a remedy under Criminal Justice System, moreover, the investigation under the said FIR is still pending and no final/ concluded report has been filed. The contents/ allegations, documents and evidences under this FIR is not considered for the adjudication of present Domain dispute. The litigations between the Complainant Party and Respondent and also with Mr. Edappadi K. Palaniswami by the



Respondent may or may not be complicated but are in no manner concerned with the present Domain name, thus, the complexity of the other disputes pending for adjudication before different Courts cannot be a barrier for adjudication of the present Domain name dispute. The cases cited by the Respondent do not impress this Tribunal on the aspect of 'complicated issues' to decide the present Domain name dispute. In terms of the Issue No. 9 framed and answered herein – above, the four – corners of Clause No. 4 of INDRP Policy need to be decided and which stand decided by answering all aforementioned Issues which are not considered to be complex. Moreso, after appreciation of the pleadings and evidences, it is safely viewed that no complicated questions of law & fact are involved in the case at hand.

With the aforesaid views this issue is decided in favour of the Complainant and against the Respondent.

ISSUE NO. 12: TO WHAT OTHER RELIEFS?

This Tribunal finds that no other relief except the transfer or cancellation of the disputed Domain name is within the jurisdiction of this Tribunal, in terms, of INDRP Policy & Rules read with the Arbitration & Conciliation Act, 1996 (as amended upto date) so why it is also considered in Issue No.



11 that there are no complicated issues of law & fact with regards to disputed Domain name.

ISSUE NO. 13: COSTS.

Considering the facts of the case a cost of Rs. 50,000/- is imposed upon the Respondent to be paid to the Complainant.

Disposal of Supplemental Written Submissions on behalf of the Respondent

The date 24.11.2023 was fixed by this Tribunal for the clarifications if any. The hearing was convened at 4:00 P.M through VC and during the course of hearing the counsel of the Respondent Mr. Ali requested the time for filing the supplementary submissions. The same was allowed to file in a course of day. The supplementary written submissions filed on 24.11.2023 is taken on record and is hereby disposed. The Ld. Counsel of the Respondent draws the attention on the Revision Petition bearing No. CRL RC 1775 of 2023 filed by the Respondent against EPS before the Hon'ble Madras High Court in which the notice has been issued. This Revision Petition was preferred by the Respondent against the dismissal of his Criminal complaint filed against EPS for defamation. It is submitted by the Respondent that it is an allegation upon the Respondent for collecting the money from the so called disputed domain website and it is further stated that there is no link available on the disputed domain website



for the collection of money. After considering these submissions this Tribunal is of a view that the submissions of the Respondent do not bear relevancy to the domain name dispute under consideration before this Tribunal. The issue of the bad faith is decided by this Tribunal as Issue No. 9 and the issue of illegal/unlawful is not touched upon, since being the matter having the criminal flavor and under investigation in FIR No. 45/2020 registered in 2020 pending for investigation in P.S Sular Police Station, Coimbatore, Tamil Nadu. The issue of Complaint of defamation and the Revision Petition arising therefrom are separate issue and not connected with the present domain name dispute and the issue of collection of money from the disputed domain name doesn't bear the relevancy for the adjudication of the present disputed domain name.

Through these submissions the issue of abbreviation "AIADMK" is again raised by the Respondent, this issue has already been considered in issue No. 4. The prayer through these submissions for not taking away the domain name on the ground that the same will be required in the trial of the FIR as well as in the defamation case cannot be accepted, since, the evidences required in these two cases are already under the possession of the Respondent and the same maybe filed as and when required.

G. CONCLUSION OF THE ARBITRAL TRIBUNAL:-



After considering the analysis under each and every issue it is concluded that the disputed domain name is similar not only to the name of the Complainant but also to the domain name of the Complainant which is enjoyed by the Complainant, since 1972 and 2013. The confusion is upto such extent that when the name of the Complainant is searched on the web the disputed domain name is surfaced on the top. The disputed domain name is also not backed with any Trade Mark or any Service Mark and lacks with an independent acknowledgement, popularity and media presence amongst the public. The name of the Complainant Party is popularly known with its abbreviation besides the full name, thus the disputed domain name is not only giving a confusion but also used with bad faith.

The Respondent is using the disputed domain name in bad faith and doesn't hold any legitimate rights or interest in the disputed domain name. Apart from it the Complainant holds legitimate rights and interest in the disputed domain name. All the conditions under Clause (4) and (6) of INDRP Policy stand satisfied and all the issues as decided are covered under INDRP Policy and Rules.



H. ORDER:-

- a) In view thereof, it is ordered that the domain name www.aiadmkn.org.in be transferred in favour of the Complainant by the Registry, as a result, the Respondent, his agents, servants, dealers, distributors and any other person(s) acting for and on its behalf are permanently restrained from using the domain name www.aiadmkn.org.in or any other deceptively similar mark or domain name, which may amount to infringement of Complainant's mark, domain name or any other identity and also from doing any other thing, which is likely to create confusion and deception with the goods/services or any activity of the Respondent for any connection with the Complainant.
- b) The Complaint is allowed in the above terms.
- c) Cost of Rs. 50,000/- be paid by the Respondent to the Complainant.
- d) National Internet Exchange of India (NIXI) is directed to take incidental or ancillary actions involved in the transfer of the domain name, as directed.


(DR. PANKAJ GARG)
SOLE ARBITRATOR

Place: New Delhi
Date : 28th November, 2023

