

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 7TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

OA. NOS. 270 & 271 of 2017

in

Election Petition No. 15 of 2016

ELP No.15 of 2016

Duraisamy V.P.
S/o.V.Perumal,
New No.17, Old No.8/1, Ramanujam Street,
Thiyagaraya Nagar,
Chennai 600 017. ... Petitioner

-VS-

- 1.Dr.V.Saroja,
W/o.Logaranjan,
Old No.401/22, New No.27D/401,
Bharathi Nagar,
Sankagiri Post & Taluk,
Salem 637 301.
- 2.Kuppusamy.C.,
New No.5/52, Old No.5/73, Singilipatty,
L.Kanavaipatti Post,
Namakkal 637 002.
- 3.Arjun K.
Door No.5, Mookeneri Road,
Hasthampatti,
Salem Town,
Salem 636 008.
- 4.Arunkumar C.
Door No.3/214, Arundhatheir Street,
Mullukkurichi post,
Rasipuram 636 118.
- 5.Chinnathambi K.
Door No.3/139, Pallar Street,
Mamundi Agragaram,
Thiruchengodu 637 503.
- 6.Bharath P.

Door No.10/11, Muniyappan Pudur,
R.Pudhupatti,
Rasipuram 637 407.

7.Pushpagandhi J.
Door No.35, Housing Board Colony,
Rasipuram 637 408.

8.Senthil A.
Door No.4/221, Ward-3,
Thoppanaickenpatty,
Vaugam Post,
Rasipuram.

9.Duraisamy P.V
Door No.2/156, Poosaliyur,
Manthuruttu Post,
Rasipuram 636 202.

10.Duraisamy P.
Door No.4/99, Arunthatheir Street,
Mathiyampatti Post,
Rasipuram 637 503.

11.Manickam S.M.
Door No.34, Indira Colony,
Pudhupalayam Road,
Rasipuram 637 408.

12.Returning Officer,
No.92, Rasipuram (Reserved) Assembly
Constituency cum District Supply Officer
Cum Consumer Protection Officer,
Namakkal District.

13.Chief Electoral Officer of Tamil nadu,
Public (Elections) Department,
Fort St.George, Secretariat,
Chennai 600 009

...Respondents

(Respondents 12 & 13 struck off from the array of
respondents in ELP.No.15 of 2016 as per order of this Court
dated 29.06.2017 made in OA.Nos.387 & 388/2017)

O.A.NoS. 270 & 271 of 2017

Dr.V.Saroja,
W/o.Logaranjan,
Old No.401/22, New No.27D/401,
Bharathi Nagar,
Sankagiri Post & Taluk,
Salem 637 301.

... Applicant / 1st Respondent

1.Duraisamy V.P.
S/o.V.Perumal,
New No.17, Old No.8/1, Ramanujam Street,
Thiyagaraya Nagar,
Chennai 600 017.

...1st respondent/Election Petitioner

2.Kuppusamy.C.,
New No.5/52, Old No.5/73, Singilipatty,
L.Kanavaipatti Post,
Namakkal 637 002.

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Public (Elections) Department,
Fort St.George, Secretariat,
Chennai 600 009.

... Respondents/Respondents

O.A.No. 270 of 2017

This Original Application praying that this Hon'ble Court be pleased to strike out the pleadings in paragraphs 1 to 9, 11, 14 to 17, 29, 31, 33 and 34 of election petition.

O.A.No. 271 of 2017

This Original Application praying that this Hon'ble Court be pleased to reject the election petition as not maintainable.

These applications having been heard on 06.11.2017 for orders in the presence of Mr.T.V.Ramanujam, Senior Counsel for the applicant/1st respondent in both applications, Mr. V.Arun, advocate for the 1st respondent/Election Petitioner in both applications and upon reading the Judges Summon and affidavit of Dr.V.Saroja filed in both Applications, and the common counter affidavit of Mr. V.P.Duraisamy, filed in O.A.Nos. 270 & 271 of 2017 and this Court having stood over for consideration

till this day and coming on this day before this Court for orders in the presence of the aforementioned advocates,

The Court made the following order:-

The Election Petition challenges the election of one Dr.V.Saroja as returned candidate from No.92, Rasipuram (Reserve) Assembly Constituency mainly on the ground of corrupt practice. The runner up candidate has filed the Election Petition and the returned candidate has been arrayed as the 1st respondent in Election Petition. Pending Election Petition, the returned candidate has come up with these two applications:

(i) O.A.No.270 of 2017 has been filed seeking to strike off the pleadings in paragraphs 1 to 9, 11, 14 to 17, 29, 31, 33 and 34 in the Election Petition as being vague, vexatious, frivolous, without material facts and material particulars; and

(ii) O.A.No.271 of 2017 has been seeking to reject the Election Petition as it does not disclose any cause of action.

For the sake of convenience, the petitioner in the original applications, who is the returned candidate, will hereinafter be referred to as the 1st respondent and the opposite party in the original applications, who is the runner up candidate, will hereinafter be referred to as "election petitioner" as they have been arraigned in the election petition.

2. The facts that give rise to the applications in nutshell is as follows:- The General Election for Tamil Nadu Legislative Assembly was held on on 16.05.2016. In the said election, the petitioner contested from 92, Rasipuram Assembly Constituency which was reserved for Scheduled Caste candidates, as the candidate of Dravida Munnetra Kazhagam [in short, "the DMK"] party, while The 1st respondent/returned candidate, contested the election as the candidate of All India Anna Dravid Munnetra Kazhagam [in short, "the AIADMK"] party. The results of the election was declared on 19.05.2016, in which, the 1st respondent was declared as the returned candidate from Rasipuram Assembly Constituency. Challenging the election of the 1st respondent, the unsuccessful candidate has filed the election petition. The election of the 1st respondent has been challenged mainly on the ground of corrupt practice besides violation of election laws committed during pre-poll and during the conduct of the poll and the corrupt practice and violation of election laws committed by the 1st respondent have materially affected the result of the election. On service of notice in the election petition, the 1st respondent entered appearance through counsel and has come up with the present original applications.

3. According to the petitioner, after the publication of final electoral list for Tamil Nadu

Legislative Assembly Election 2016, in Tamil Nadu, there were many bogus and multiple entries of names found in the electoral lists. Therefore, his party delegates sent several representations to the Chief Election Commissioner, Tamil Nadu, to take steps to rectify all incorrect and multiple entries of names in the electoral lists. They have also approached the Election Commission of India [ECI], New Delhi, in this regard. Based on such representations, the Election Commission of India had conducted a field inquiry in Tamil Nadu and found that the electoral lists contained many bogus and multiple entries of names, the Election Commission of India directed them to submit a list of specific bogus and multiple entries constituency wise. Pursuant to the same, on 12.02.2016, One Mr.P.Muthukumar, an Advocate belonging to the DMK party submitted lists of bogus voters in 62 assembly constituencies in three volumes which includes Rasipuram Assembly Constituency, wherein 20271 bogus voters were found in the final electoral lists. A writ petition was also filed in W.P.No.7437 of 2016 in this regard. Yet, no steps were taken to remove the names of bogus voters and to conduct free and fair election. Subsequently, the ECI had declared the Model Code of Conduct [MCC] on 04.03.2016, without rectifying the electors lists which materially affected the results of the election.

4. Further, according to the petitioner, after

filing of nomination papers, the 1st respondent opened an election office at Rasipuram-Aathur Road, near Rasipuram New Bus Stand on 09.04.2016, in a grand gala manner by bringing about 2000 voters from Rasipuram Assembly Constituency by way of various commercial vehicles. She has also distributed free Dothies bearing her party flag colour border and Saries bearing her party symbol of two leaves and cash of Rs.200/- per head. Hence, the Rasipuram Town Secretary of DMK party lodged a complaint to the Returning Officer pointing out the violation of MCC. But, no action was taken by the Returning Officer. The AIADMK party functionaries had started collecting bank account details of the voters to enable them to deposit cash in their account. A complaint was also given by the DMK party office bearers in this regard. ON 20.04.2016 , AIADMK party leader J.Jayalalitha had held an election campaign meeting at Salem District where, she had introduced 47 candidates of her party including the 1st respondent. At that time, the 1st respondent took more than 5000 voters from Rasipuram Constituency in number of commercial vehicles by paying Rs.500/- per head. This was also in violation of MCC. This incident was widely reported in Daily News Papers. After filing of nomination papers, the 1st respondent had started distributing cash through his party functionaries to woo voters. The petitioner also came to know through reliable sources that AIADMK functionaries have transported huge amount of cash much prior to the

publication of election notification and stashed the same in each and every assembly constituency so as to easily facilitate the distribution of cash to the voters to woo them as and when required. This could be evident from the seizure of five crores of cash from one Mr. Anbunathan, an AIADMK party functionary at Karur District. Despite repeated representations from DMK party functionaries regarding modus of cash transportation and distribution to the voters and requesting the Chief Election Commissioner [CEO] to deploy due police force as per MCC to curb the huge amount of cash transportation and to curb distribution of cash distribution to the voters, no steps have been taken by the CEO. The 1st respondent party which was in power then, with misused the government officials and particularly, with the help of the Director of Animal Husbandry and Veterinary Science, conducted animal health campus for animals which were given to the beneficiaries in Rasipuram Assembly constituency in violation of MCC, in order to entice the voters to cast votes in her favour. The 1st respondent's party Head Quarters office bears had also started distributing huge amount of cash to various welfare associations, political outfits and community outfits which supported the AIADMK party.

5. The incidents of large scale money transaction in the state of Tamil Nadu were also duly informed to the Director General of Police (Elections). But, no action was

taken. The petitioner came to understand that the 1st respondent distributed cash through one M.Ramasamy, who was owning a factory in the name and style of "M/s Amman Sago Factory". There were some vehicles kept plying from the factory. He was informed that there would be money transactions for distributing money to the voters in the constituency with the assistance of one Mr.Raju, Deputy Superintendent of Police, who was the Election In charge for Assembly Constituency. On the complaint of the petitioner, the Election Observers including the officials from Income Tax Department, raided the factory premises. The above said Deputy Superintendent of Police threatened the supporters of the petitioner for having filed the complaint against him. The Block Development Officer, Vennadhur Union also abused his official power by extending his assistance to one Mr.Kaliyappan a party functionary of the 1st respondent to distribute money under work for food scheme in respective of the fact whether they worked or not. The husband and the sisters of the 1st respondent have also distributed money and supplied chicken biriyani to various person to woo them in their favour. The postal ballots were not properly supplied to the constituencies through out the State including Rasipuram Constituency. The above corrupt practices which were committed by the 1st respondent with the assistance of the State Government officials materially affected the result of the election. Hence, the election petition.

6. Pending Election Petition, the 1st respondent/returned candidate has come up with these original applications seeking to strike off certain paragraphs in the election petition and consequently, reject the election petition as being bereft of necessary cause of action.

7. The above original applications have been filed on the ground that the averments contained in the election petition are vague, vexatious and unspecific, bereft of material facts and without full particulars of the alleged corrupt practice and they do not make out any cause of action to maintain the election petition. Especially, paragraphs 1 to 9, 11, 14 to 17, 29, 31, 33 and 34 do not contain concise statement of material facts as required under Section 83(1)(a) of the Representation of People Act [in short "the RP Act"] and they contain only unnecessary, scandalous, vexatious and vague allegations. Therefore, those paragraphs are liable to be struck off under Order VI, Rule 16 of CPC. Apart from that, the averments also do not give rise to any cause of action as no material evidence has been filed along with election petition in support of the averments. All those documents which have been filed along with the election petition are irrelevant documents and news papers clippings which are not admissible in evidence. Since the averments in the election

petition do not contain any material particulars the 1st respondent is not in a position to effectively defend those allegations.

8. The petitioner filed a detailed counter affidavit inter alia contending that the election petition contained all the material particulars as required under Section 81 of the RP Act. The petitioner has specifically alleged corrupt practice by the 1st respondent and has also given all the material particulars as required under law in the election petition. The averments made in the election petition contain a concise statement of all necessary material facts which the petitioner relies and hence, there is no necessity to strike off the pleadings or to reject the election petition for want of cause of action for trial.

9. On the above pleadings, I have heard the learned counsel for the petitioner and the learned counsel for the 1st respondent and also perused the records carefully.

10. The points that arise for consideration in the instant case are as follows:-

(1) Whether the election petition lacks a concise statement of material facts as required under Section 83(1) of the RP Act?

(2) Whether the averments in the election petition do not give rise to any cause of action to maintain the election petition.

11. The learned senior counsel appearing for the 1st respondent would submit that the averments in the election petition are only general and purely based upon news paper reports which are not at all admissible in evidence and most of the allegations contained therein are vague and unspecific. The petitioner mainly relies upon various representations either from party Head Quarters or from some other party cadres and all those representations contained only general allegations of corrupt practice in all over the State and absolutely there were no material particulars relating to Rasipuram Constituency pleaded in the election petition. Further, the allegations made against the government officials also do not satisfy the requirements under Section 123(7) of the RP Act.

12. The learned senior counsel took this court through the averments in the election petition para-wise to substantiate his contentions that the averments in the election petition are vague, vexatious, unspecific and the petitioner nowhere pleaded the material facts in the election petition as required under Section 83(1) of the RP Act. The learned senior counsel in support of his

contentions relied on a few judgments about which I would make reference at the appropriate place in this order.

13. Per contra, the learned counsel appearing for the petitioner vehemently oppose the original applications contending that the petitioner specifically set forth full particulars of corrupt practice which would be sufficient to maintain the election petition and he has specifically named the persons who were involved in corrupt practice, the date and place of commission of such corrupt practice. The petitioner has filed a separate affidavit giving all particulars in the prescribed form supporting the allegations of corrupt practice. The news paper reports filed by the petitioner along with photographs would clearly show the corrupt practice committed by the 1st respondent. The learned counsel in support of his contention relied on a few judgments about which also I would make reference at the appropriate place in this order.

14. Before considering the rival submission, let us turn to the relevant provisions of the RP Act which deal with election petition so as to decide the points involved herein.

15. Section 83 of the RP Act deals with contents of election petition which reads as follows:-

83. Contents of petition.— (1)

An election petition— (a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

16. Section 100 of the RP Act deals with grounds for declaring election to be void which reads as follows:-

100. **Grounds for declaring election to be void.**— (1) Subject to the provisions of sub-section (2) if the High Court is of opinion—

(a) that on the date of his election a returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any

rules or orders made under this Act, 2 [the High Court] shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then the High Court may decide that the election of the returned candidate is not void.

17. Section 123 of the RP Act deals with the corrupt practice and the relevant provisions which read as follows:

"123. **Corrupt practices.**—The following shall be

deemed to be corrupt practices for the purposes of this Act: (1) "Bribery", that is to say—

(A) any gift, offer or promise by a candidate or his agent or by any other person with the consent of a candidate or his election agent of any gratification, to any person whomsoever, with the object, directly or indirectly of inducing—

(a) a person to stand or not to stand as, or to withdraw or not to withdraw from being a candidate at an election, or (b) an elector to vote or refrain from voting at an election, or as a reward to—

(i) a person for having so stood or not stood, or for having withdrawn or not having withdrawn his candidature; or (ii) an elector for having voted or refrained from voting;

(B) the receipt of, or agreement to receive, any gratification, whether as a motive or a reward—

(a) by a person for standing or not standing as, or for withdrawing or not withdrawing from being, a candidate; or (b) by any person whomsoever for himself or any other person for voting or refraining from voting, or inducing or attempting to induce any elector to vote or refrain from voting, or any candidate to

withdraw or not to withdraw his candidature.

Explanation.—For the purposes of this clause the term "gratification" is not restricted to pecuniary gratifications or gratifications estimable in money and it includes all forms of entertainment and all forms of employment for reward but it does not include the payment of any expenses bona fide incurred at, or for the purpose of, any election and duly entered in the account of election expenses referred to in section 78.

(5) The hiring or procuring, whether on payment or otherwise, of any vehicle or vessel by a candidate or his agent or by any other person with the consent of a candidate or his election agent, or the use of such vehicle or vessel for the free conveyance of any elector (other than the candidate himself, the members of his family or his agent) to or from any polling station provided under section 25 or a place fixed under subsection (1) of section 29 for the poll:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to and from any such polling station or place fixed for the poll

shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical power: Provided further that the use of any public transport vehicle or vessel or any tramcar or railway carriage by any elector at his own cost for the purpose of going to or coming from any such polling station or place fixed for the poll shall not be deemed to be a corrupt practice under this clause.

Explanation.—In this clause, the expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport, whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise. (6)

The incurring or authorizing of expenditure in contravention of section 77. (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:—

(a) gazetted officers;

(b) stipendiary judges and magistrates; (c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed: ;

(h) class of person in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with

the consent of /the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

...
 "

18. Keeping in mind the above statutory provisions, I have considered the rival submissions carefully and also perused the records carefully.

Point Nos.1 & 2

19. Section 83 of the RP Act consists of three important elements. Sub-section 83 (1)(a) states that any allegation shall contain a concise statement of material particulars which the election petitioner relied upon; sub-section (1)(b) stipulates that the election petition shall set forth full particulars of any corrupt practice which are alleged by the petitioner and the particulars of corrupt practice should be complete in every respect and it should specify the exact name of the person who alleged to have committed such corrupt practice and also the place at and the date on which corrupt practice was committed ; and sub-section (1)(c) stipulates that every election petition to be

verified in the manner laid down in the Code of Civil Procedure, 1908. Order VI Rule 15 of CPC deals with the verification of the pleadings. Sub-rule 4 of Rule 15 of CPC stipulates that the person verifying the pleadings shall also file an affidavit in support of such allegation in a prescribed form.

20. What is meant by "material fact" has been dealt with by the Hon'ble Supreme Court as well as this court in number of judgments.

21. In **Azar Hussain v. Rajiv Gandhi, 1986 (Supp) SCC 315**, the Hon'ble Supreme Court , in para 14, has held as follows:-

14. Before we deal with these grounds seriatim, we consider it appropriate to restate the settled position of law as it emerges from the numerous decisions of this Court which have been cited before us in regard to the question as to what exactly is the content of the expression "material facts and particulars", which the election petitioner shall incorporate in his petition by virtue of Section 83(1) of the Act.

"(1) *What are material facts and particulars?* Material facts are facts which if

established would give the petitioner the relief asked for. The test required to be answered is whether the court could have given a direct verdict in .favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition [*Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi* (1969) 1 SCC 372 : AIR 1969 SC 734 : (1969) 3 SCR 217].

(2) In regard to the alleged corrupt practice pertaining to the assistance obtained from a government servant, the following facts are essential to clothe the petition with a cause of action which will call for an answer from the returned candidate and must therefore be pleaded [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] :

(a) mode of assistance;

(b) measure of assistance; and

(c) all various forms of facts pertaining to the assistance.

(3) In the context of an allegation as regards procuring,

obtaining, abetting or attempting to obtain or procure the assistance of government servants in election it is absolutely essential to plead the following:

(a) kind or form of assistance obtained or procured;

(b) in what manner the assistance was obtained or procured or attempted to be obtained or procured by the election candidate for promoting the prospects of his election [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(4) The returned candidate must be told as to what assistance he was supposed to have sought, the type of assistance, the manner of assistance, the time of assistance, the persons from whom the actual and specific assistance was procured [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(5) There must also be a statement in the election petition describing the manner in which the prospects of the election was furthered and the

way in which the assistance was rendered [(1972) 1 SCC 214 : AIR 1972 SC 515 : (1972) 2 SCR 742] .

(6) The election petitioner must state with exactness the time of assistance, the manner of assistance, the persons from whom assistance was obtained or procured, the time and date of the same, all these will have to be set out in the particulars [(1972) 1 SCC 214 : AIR 1972 SC 515: (1972) 2 SCR 742] ."

22. In another judgment in the case of **C.P. John v. Babu M.Palnisery**, **2014 (10) SCC 547** the Hon'ble Supreme Court in paras 18 & 19 has held as follows:-

18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an election petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the election petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said Section 83(1)(b) is to the effect that such particulars

should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.

19. To put it differently, when the election petition is taken up for consideration, the Court which deals with such an election petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any room for doubt as to the nature of such allegation, the parties involved, the date, time and the place, etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the

proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94-A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of the First Class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form 25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statements of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

23. In yet another judgment in the case of **Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari**, 2014 (5) SCC

312, the Hon'ble Supreme Court, in para 15, has held as follows;-

15. This Court has consistently held that the court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been "materially affected". There can be no dispute to the settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In the absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court

to frame an issue not arising on the pleadings."

24. It is also the well-settled law that election petition can be summarily rejected, if it does not furnish a complete cause of action as required under Order VII, Rule 11 of CPC and the failure to plead even a single material fact will lead to an incomplete cause of action and incomplete allegations of such corrupt practice are liable to be struck off under Order VI, Rule 16 of CPC. But, in a case where the petition suffers from a deficiency of material particulars, the court has its discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

25. In **Udhav Singh v. Madhav Rao Scindia, (1977) 1 SCC 511**, the Hon'ble Supreme Court has held as follows:-

41. Like the Code of Civil Procedure, this section also envisages a distinction between "*material facts*" and "*material particulars*". Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between "*material facts*" and "*material particulars*" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single *material fact* leads to an

incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of *material facts* the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of *material particulars* the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

26. In **V.Narayanaswamy v. C.P.Thirunavukkarasu**, (2000) 2 SCC 294, the Hon'ble Supreme Court has held that the election petition is liable to be dismissed, if it lacks material facts.

27. In the light of the above settled principles, let me now consider whether the election petition lacks any material facts warranting striking off the pleadings and consequentially, whether the election petition is liable to be rejected at its threshold for want of a complete cause of action.

28. The 1st respondent sought to strike off the pleadings in paragraphs 1 to 9, 11, 14 to 17, 29, 31, 33

and 34 of the Election Petition. Let me now consider the averments para-wise in the election petition.

29. The election petitioner in paragraphs 1 and 2 of the election petition averred his entry into politics as a party member in DMK and his political. He further narrated details about his elevation in the party since 1984; his past contest history and the results of the elections. In para 3, the election petitioner averred the enrollment of bogus names and also multiple entries of names of voters in the electoral lists for all the assembly constituencies and also the failure of the authorities concerned to rectify the electoral lists.

30. In para 4, the petitioner stated about his representation and various other representations from his party delegates regarding bogus voters and multiple entries in the final electoral rolls. In para 5, the petitioner stated about the inquiry conducted by Senior Principal Secretary of ECI on the directions of the ECI with regard to massive inclusion of bogus voters and multiple entries and also the mode suggested by his party personalities to purify the electoral rolls. Para 6 of the election petition states about the submission of lists of bogus and multiple entries of names of voters in three volume on the directions of the ECI authority to facilitate purification of final lists. According to the petitioner,

there were 20271 bogus voters were found in Rasipuram Assembly Constituency alone.

31. Para 7 of the election petition states about the filing of writ petition by the DMK Party Organization Secretary seeking for a direction to the authorities concerned to correct and rectify the entries of names of bogus voters and also the software submitted by his party to rectify the electoral lists. According to the petitioner, the failure on the part of the election authorities to rectify the electoral lists materially affected the results of the election. In paragraphs 8 & 9, the petitioner stated about the declaration of MCC on 04.03.2016 and the schedule of the election. Again the petitioner averred the inaction on the part of the election authorities to purify the electoral lists.

32. It is seen from the facts enumerated above that the election petitioner, *inter alia*, pleaded about the existence of bogus voters and double entries of names of voters in the electoral lists for most of the Assembly Constituencies in the State, more particularly, for Rasipuram Assembly Constituency and the alleged inaction on the part of the election authorities despite repeated representations from himself and from his party delegates. Those pleadings, in the considered opinion of this court, cannot be said to be scandalous, vexatious or unnecessary

warranting striking off.

33. In para 11 of the petition, the election petitioner has stated that on 15.04.2016, he came to know personally from his party workers that AIADMK party functionaries were collecting bank account details of the voters, as per the instructions from their Ministers, to deposit cash in their respective account to entice their votes in favour of ruling political party and a general representation from his Party Organization Secretary dated 16.04.2016 to the ECI in this regard. In the considered opinion of this court, as rightly pointed out by the learned counsel for the 1st respondent, the allegations in para 11 are general, vague and also bereft of any particulars and there is no specific allegation against the 1st respondent. Thus, the pleading in para 11 is liable to struck off.

34. In para 14, the election petitioner, *inter alia*, stated about the alleged transportation of huge amount of cash by the AIADMK party functionaries and stored the same well prior to the election so as to easily facilitate distribution of cash to the voters at a later point of time with the assistance of the government officials.

35. In para 15, the election petitioner pleaded

about the huge amount of cash transported by using ambulance vehicle and the alleged seizure of five crores of cash from one Mr.Anbunathan, an AIADMI party person at Karur District based on the information furnished by the DMK party functionaries and also about the new paper reports in this regard. Even according to the election petitioner, this incident had occurred in neighboring District and there is no specific allegation of corrupt practice against the 1st respondent. Thus, the pleadings in paragraphs 14 and 15 of the election petition are also liable to be struck off.

36. In para 16, the election petitioner pleaded about the failure on the part of the election authorities to monitor cash movement by deploying flying squad to the border check posts and in and around the constituency despite repeated representations from the petitioner to CEO, Tamil Nadu to prevent the transportation of money. According to the petitioner, had effective steps been taken by the CEO to monitor the cash movement and to prevent the distribution of cash to the voters in and around the constituency, the result of the election would have been otherwise.

37. In para 17, the election petitioner pleaded about a representation from his Party Organization Secretary dated 29.04.2016 against the alleged misuse of power by the ruling political party. The election

petitioner further stated about the camp allegedly conducted by the Department of Animal Husbandry and Veterinary Sciences for the beneficiaries in Rasipuram Constituencies to entice voters in violation of MCC. In the considered opinion of this court, the above pleading is very vague and the election petitioner did not furnish specific particulars as to whether any such camps were conducted in Rasipuram Assembly Constituency and if so, who were all the beneficiaries of the camp. Thus, the pleading in para 17 is liable to be struck off.

38. In para 29, the election petitioner pleaded about the appointment of separate Director General of Police for conducting election and the failure of the State Government to provide proper assistance to enable the Director General of Police to conduct the election in a free and fair manner. Further, according to the election petitioner his Party Organization Secretary a representation to the ECI in this regard.

39. In para 31, the election petitioner stated about the information passed on to him by a local news reporter regarding the election campaign held by the then Chief Minister Ms.J.Jayalalitha and the subsequent press release by the Government focusing the appeal made by her towards voters in all assembly constituencies to vote for her party candidates in violation of MCC. The election petitioner

made a reference about a representation sent by the Party Organization Secretary to the CEO in this regard.

40. In para 33, the election petitioner stated about the failure of the election authorities to enforce the MCC in the assembly constituency in question by deploying sufficient police force and the CEO failed to give proper instructions to the surveillance team and the election observes to keep a strict vigil to ensure that no violation of MCC is taken place.

41. This court carefully gone through the pleadings in the election petitioner, more particularly, the paragraphs which were sought to be struck off by the 1st respondent. In the considered opinion of this court, except the pleadings in paragraphs 11, 14, 15 and 17 of the election petition which were vague and contained only general allegations and bereft of full particulars regarding the alleged corrupt practice, the pleadings in the other paragraphs, which the 1st respondent wanted to be struck off, are found to contain material facts regarding the corrupt practice allegedly committed by the 1st respondent besides alleged lapses on the part of the ECI to rectify the electoral lists and also the failure on the part of the ECI to strictly enforce the MCC to ensure a free and fair Election. Those averments, in the considered opinion of this court, constitute a complete cause of

action for trial and in the above circumstance, the Election Petition does not deserve a rejection at its threshold.

42. Thus, O.A.No.270 of 2017 partly succeeds and O.A.No.271 of 2017 deserves for dismissal in toto. The point Nos. 1 and 2 are answered accordingly.

43. **In the result,** (i) **O.A.No.270 of 2017:** This Original Application is partly allowed and the pleadings in paragraph Nos.11, 14, 15 and 17 alone are struck off. No costs.

(ii) **O.A.No.271 of 2017:** This Original Application is dismissed. No costs.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 07TH DAY OF DECEMBER 2017.

sd/-

ASSISTANT REGISTRAR (O.S.II)

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DATED THIS THE DAY OF 2017

COURT OFFICER (O.S.)

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cns- 11.12.2017

OA.Nos. 270 & 271 of 2017

in

ELP. NO. 15 of 2016

ORDER

DATED: 07.12.2017

THE HON'BLE MR. JUSTICE

V.BHARATHIDASAN

FOR APPROVAL: 12/12/2017

APPROVED ON: 12/12/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 7TH DAY OF DECEMBER 2017

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

OA. NOS. 270 & 271 of 2017

in

Election Petition No. 15 of 2016

ELP No.15 of 2016

Duraisamy V.P.

S/o.V.Perumal,

New No.17, Old No.8/1, Ramanujam Street,

Thiyagaraya Nagar,

Chennai 600 017.

... Petitioner

-VS-

1.Dr.V.Saroja,

W/o.Logaranjan,

Old No.401/22, New No.27D/401,

Bharathi Nagar,

Sankagiri Post & Taluk,

Salem 637 301.

2.Kuppusamy.C.,

New No.5/52, Old No.5/73, Singilipatty,

L.Kanavaipatti Post,

Namakkal 637 002.

3.Arjun K.

Door No.5, Mookeneri Road,

Hasthampatti,

Salem Town,

Salem 636 008.

4.Arunkumar C.

Door No.3/214, Arundhatheir Street,

Mullukkurichi post,

Rasipuram 636 118.

5.Chinnathambi K.

Door No.3/139, Pallar Street,

Mamundi Agragaram,

Thiruchengodu 637 503.

6.Bharath P.

Door No.10/11, Muniyappan Pudur,

R.Pudhupatti,

Rasipuram 637 407.

- 7.Pushpagandhi J.
Door No.35, Housing Board Colony,
Rasipuram 637 408.
 - 8.Senthil A.
Door No.4/221, Ward-3,
Thoppanaickenpatty,
Vaugam Post,
Rasipuram.
 - 9.Duraisamy P.V
Door No.2/156, Poosalipur,
Manthuruttu Post,
Rasipuram 636 202.
 - 10.Duraisamy P.
Door No.4/99, Arunthatheir Street,
Mathiyampatti Post,
Rasipuram 637 503.
 - 11.Manickam S.M.
Door No.34, Indira Colony,
Pudhupalayam Road,
Rasipuram 637 408.
 - 12.Returning Officer,
No.92, Rasipuram (Reserved) Assembly
Constituency cum District Supply Officer
Cum Consumer Protection Officer,
Namakkal District.
 - 13.Chief Electoral Officer of Tamil nadu,
Public (Elections) Department,
Fort St.George, Secretariat,
Chennai 600 009
- ...Respondents

(Respondents 12 & 13 struck off from the array of respondents in ELP.No.15 of 2016 as per order of this Court dated 29.06.2017 made in OA.Nos.387 & 388/2017)

O.A.NoS. 270 & 271 of 2017

Dr.V.Saroja,
W/o.Logaranjan,
Old No.401/22, New No.27D/401,
Bharathi Nagar,
Sankagiri Post & Taluk,
Salem 637 301.

... Applicant / 1st Respondent

-VS-

- 1.Duraisamy V.P.
S/o.V.Perumal,
New No.17, Old No.8/1, Ramanujam Street,
Thiyagaraya Nagar,

Chennai 600 017.

...1st respondent/Election Petitioner

- 2.Kuppusamy.C.,
New No.5/52, Old No.5/73, Singilipatty,
L.Kanavaipatti Post,
Namakkal 637 002.
- 3.Arjun K.
Door No.5, Mookeneri Road,
Hasthampatti,
Salem Town,
Salem 636 008.
- 4.Arunkumar C.
Door No.3/214, Arundhatheir Street,
Mullukkurichi post,
Rasipuram 636 118.
- 5.Chinnathambi K.
Door No.3/139, Pallar Street,
Mamundi Agragaram,
Thiruchengodu 637 503.
- 6.Bharathi P.
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Rasipuram 637 407.
- 7.Pushpagandhi J.
Door No.35, Housing Board Colony,
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Door No.4/221, Ward-3,
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Door No.34, Indira Colony,
Pudhupalayam Road,
Rasipuram 637 408.

12.Returning Officer,
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Constituency cum District Supply Officer
Cum Consumer Protection Officer,
Namakkal District.

13.Chief Electoral Officer of Tamil nadu,
Public (Elections) Department,
Fort St.George, Secretariat,
Chennai 600 009. ... Respondents/Respondents

O.A.No. 270 of 2017

This Original Application praying that this Hon'ble Court be pleased to strike out the pleadings in paragraphs 1 to 9, 11, 14 to 17, 29, 31, 33 and 34 of election petition.

O.A.No. 271 of 2017

This Original Application praying that this Hon'ble Court be pleased to reject the election petition as not maintainable.

These applications having been heard on 06.11.2017 for orders in the presence of Mr.T.V.Ramanujam, Senior Counsel for the applicant/1st respondent in both applications, Mr. V.Arun, advocate for the 1st respondent/Election Petitioner in both applications and upon reading the Judges Summon and affidavit of Dr.V.Saroja filed in both Applications, and the common counter affidavit of Mr. V.P.Duraisamy, filed in O.A.Nos. 270 & 271 of 2017 and this Court having stood over for consideration till this day and coming on this day before this Court for orders in the presence of the aforementioned advocates,

IT IS ORDERED AS FOLLOWS :-

(i) That the OA.No.270/2017 is partly allowed and the pleadings in paragraph Nos.11, 14, 15 and 17 of Election petition be and are hereby struck off.

(ii) That the O.A.No.271 of 2017 be and is hereby dismissed.

(iii) That there shall be no orders as to costs.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 07TH DAY OF DECEMBER 2017.

SD/-
ASSISTANT REGISTRAR
Original Side - II

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in

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ORDER

DATED: 07.12.2017

THE HON'BLE MR. JUSTICE

V.BHARATHIDASAN

FOR APPROVAL: 12/12/2017

APPROVED ON: 12/12/2017