

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 7TH DAY OF NOVEMBER 2017

THE HON'BLE MR. JUSTICE P.N.PRAKASH

O.A.No.29 of 2017

in

Election Petition No.20 of 2016

ELP No.20 of 2016

A.Munusamy,
S/o.R.Arumugam,
No.3/365, Padavattamman Koil Street,
Kazhipattur Village, Padur Post,
Thiruporur Taluk,
Kanchipuram District Pin 603 103. ... Petitioner
-VS-

1.R.T.Arasu,
S/o.Thandiyan,
No.1/22, Mariyamman Koil Street,
Irumbedu Village, Maduranthagam Taluk,
Kanchipuram District 603 301.

2.P.Sampath,
No.51, Thenneripattu Village,
Vellore Post, Cheyyur Taluk,
Kanchipuram District 603 401.

3.T.Ramesh,
No.14, Manju Villagam, Paraman Keni,
Sekkanankuppam Post, Cheyyur Taluk,
Kanchipuram District 603 305.

4.Ehil Karoline,
No.64, Padmavathi Nagar Main Road,
Madampakkam, Chennai 600 126.

5.I.Kannan,
No.5/645, Kalaimagal Street,
New Otteri Extention, Vandalur,
Chennai 600 048.

6.V.Sadaiyappan,
No.3-14/3-133, Mariyamman Koil Street,
Ottiyambakkam Village, Thalambur Post,
Cholinganallur Taluk,
Kanchipuram District 600 073.

7.A.Dasarathan,
No.7, Ottraivadai Street,

Illedu Village,
Soonambedu Post, Cheyyur Taluk,
Kanchipuram District 603 401.

8.S.Krishnaraj,
No.60/3, Chengeniamman Koil Street,
Sengattur Village & Post,
Cheyyur Taluk,
Kanchipuram District 603 302.

9.C.Senthilkumar,
No.6112, Pettai Street,
Devarajapuram,
Cheyyur Village Post & Taluk,
Kanchipuram District 603 302.

10.K.Dhinakaran,
No.33, New Colony, Kalkulam Village,
Cheyyur Taluk, Kanchipuram District.

11.S.Munusamy,
Dr.Ambedkar Street,
Gangadevakuppam Village,
Seempulipuram Post, Cheyyur Taluk,
Kanchipuram District.

12.P.Ramachandran,
No.395, Malai Colony,
Kadukkapattu Village,
Palur Post, Cheyyur Taluk,
Kanchipuram District 603 302.

13.The District Election Officer/
District Collector,
Collectorate Kanchipuram,
Kanchipuram District.

14.The Returning Officer,
34, Cheyyur (SC) Assembly Constituency and
Special Deputy Collector
(Social Security Scheme)
Kanchipuram District.

... Respondents

OA.NO.29 of 2016

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Pin 603 103.

... 1st Respondent/Petitioner

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Kanchipuram District 603 401.
- 3.T.Ramesh,
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The Original Application praying that this Hon'ble Court be pleased to strike off the pleadings contained in paragraphs 20 to 31 of the petition filed in the above Election Petition No.20 of 2016.

The above Original Application having been heard on 13.10.2017 in the presence of Mr.P.Wilson, Senior Counsel for M/s.P.Wilson Associates, advocates for the Applicant/1st Respondent herein and of Mr.M.Jothikumar, advocate for the 1st respondent/Election Petitioner and Mr.Niranjan Rajagopalan, advocate for M/s.G.R.Associates, Standing Counsel for the respondents 13 & 14; and upon reading the Judges Summon and affidavit of R.T.Arasu, filed herein and this Court having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the above said advocates,

This Court made the following order :-

For the sake of convenience, the petitioner and the first respondent in O.A.No.29 of 2017 are referred to as the Returned Candidate and the Election Petitioner respectively.

2 This Original Application, purported to be filed under Order VI Rule 16 of the Civil Procedure Code, is filed by the Returned Candidate seeking striking off of the pleadings contained in paragraphs 20 to 31 of the Election Petition. Under Section 87 of the Representation of the People Act, 1951 ("for brevity "the R.P.Act"), the Election Tribunal will have to adhere to the procedure prescribed under the Civil Procedure Code as far as possible.

3 The Election Petition was filed by the Election Petitioner who was unsuccessful in getting elected in No.34, Cheyyur (S.C.) Assembly Constituency (Tamil Nadu), challenging the election of the Returned Candidate, who was successful and got elected.

4 In Election Petition No. 20/2016, the substantial reliefs sought are as follows:-

"(i) To order re-counting of all the postal votes, polled in No.34-Cheyyur (SC) Assembly Constituency in the general election to the Tamil Nadu Legislative Assembly held in the year 2016;

(ii) To declare that the election of the 1st Respondent from No.34-Cheyyur (SC) Assembly Constituency in the general election to the Tamil Nadu Legislative Assembly as null and void;

(iii) To declare that the petitioner

as elected from the No.34-Cheyyur (SC) Assembly Constituency in the general election to the Tamil Nadu Legislative Assembly;"

5 It can be seen that the reliefs claimed by the Election Petitioner (unsuccessful candidate) is mainly for recounting the postal votes polled in No.34-Cheyyur (S.C.) Assembly Constituency. The said Assembly Constituency was reserved for Scheduled Caste candidate. Notification for filing nominations was issued on 04.03.2016. The date of nominations commenced on 22.04.2016 and the last date for nomination was 29.04.2016. The nominations were scrutinized on 30.04.2016. The elections were held in the constituency as well as for the whole state of Tamil Nadu on 16.05.2016. The votes were counted on 19.05.2016 at the counting centre located in Sowbakmal Sowkar Government Girls Higher Secondary School at Madurantakam. The Election Petitioner, who belongs to the AIADMK party, stood in the "Twin Leaves" symbol. The Returned Candidate, who belongs to the DMK party, stood in the "Rising Sun" symbol. There were 13 candidates in the poll fray. The final votes secured by the Election Petitioner and the Returned Candidate are as follows:-

1. A.Munusamy (Election petitioner)	63,142
2. R.T.Arasu (Returned Candidate)	63,446

Therefore, the Returning Officer (the 14th respondent) declared the election of the Returned Candidate as having got elected from the said constituency.

6 In respect of the postal ballots over which the

present controversy has arisen, the details are as follows:-

1.Votes received	:	1,087
2.Valid votes	:	1,003
3.Rejected votes	:	84
4. A.Munusamy (Election Petitioner)	:	223
5. R.T.Arasu (Returned Candidate)	:	598

It was because of the narrow margin with which the Returned Candidate got elected, the Election Petitioner had raised a contention that since the counting of votes was not done properly, especially during the 19th round and the postal ballots were also not counted properly, he has come up with the Election Petition.

7 The major controversy revolves around the question of counting of votes and hence, the prayer for recount.

8 The nature of contents in an election petition is prescribed under Section 83 of the R.P. Act and the same reads thus:

"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."

9 In the Election Petition, in order to seek the reliefs set out above, the following pleadings have been made in paragraph nos. 20 to 31:

"20. The petitioner now reliably learnt later and came to know through his Chief Election agent Mr.Dhanasekaran, that the votes that were counted by the electronic machines were polled in favour of the petitioner and hence the petitioner would have been elected if the postal votes counted separately in-front of his agents. The postal votes have not been counted properly, the genuineness of the postal votes are not verified by the Returning Officer and the signature of the postal voters have been tampered, attestation of the postal votes have not been verified and the postal votes are not counted within the vicinity of the agents of the petitioner. The results of the postal votes have not been announced as contemplated under Rule 54 (A) (i) of Representation of People Act, 1951.

21. The petitioner now reliably learnt later and came to know through his Chief Election agent Mr.Dhanasekaran, that the Returning Officer has not kept the postal papers (covers) received by him in safe custody until the commencement of the counting of votes and that no contemporaneous records of the postal papers have been maintained by him held on 16.05.2016, the 1st Respondent collected almost all the postal ballot papers from the eligible candidates with signature alone from them through his agents by corrupt practice of bribing the eligible voters. Thereafter, the 1st respondent later endorsed the ballot papers through his agents and got them attested by

only three or four attestors.

22. The petitioner further submits that the 1st respondent has indulged in canvassing of postal voters, which is prohibited and on verification of the ink used by the voters for putting their signatures in postal vote ballot papers and for making the tick mark in the postal vote ballot paper clearly establish the corrupt practice committed by the 1st respondent and that they cannot be taken into account.

23. The petitioner submits that regarding the postal ballot papers, no contemporaneous record as provided under Rule 23 of the Conduct of Election Rules, 1961 have been prepared and maintained by the 14th Respondent and he has also not complied with the provisions contained in Rule 23 (6) of Conduct of Election Rules, 1961. Further, the 14th Respondent under whose custody the election records kept, has not maintained contemporaneous records for the receipt and safe custody of it. These failures on the part of the election officers materially affected the result of the election.

24. The petitioner further submits that the counting of postal ballot paper votes was not done at first on 19.05.2016 before the counting of votes in electronic voting machines as provided under Rule 54 (A) (i) of Conduct of Election Rules, 1961.

25. The petitioner submits that the counting of the postal votes and the electronic machines were done simultaneously and the Returning Officer failed to comply with the Rule 54(A) of the Conduct of Election Rules, 1961 which is a mandatory provision prescribes that the results of the Postal ballot votes have to be declared first, before counting of votes in the electronic voting machines. The covers in Form-13 C were not shown to the counting agent of the petitioner, before they were not opened for verification. Further, the mandatory provisions contained in Rule 54(A) ((4) were not followed during the counting of postal ballot papers and not done in accordance with the provisions of law and irregular procedure adopted by the 14th respondent which has vitiated the result of the election. The scrutiny of the rejected ballot papers would evidence the fact that they have all been procured the 1st respondent or through

his party workers with their consent by adopting corrupt means.

26. The petitioner further submits that after the counting of the votes in 19th round, the results of that round had not been announced and the agents were sent out from the hall and after an hour the results were announced adding the postal votes. The counting procedure adopted by the Returning Officer was not according to law.

27. The petitioner submits that the usual practice of counting the votes as per the Conduct of Election Rules, 1961. The Election Rules envisages that the votes received by post should be counted first by the Returning Officer (Rule 54(A)(i)) which has not been followed.

28. The petitioner submits that as per Rule 23 of the Conduct of Election Rules, 1961 the Election Rules has to be strictly followed by the Returning Officer but in the instant case the 14th respondent violated the said Rule and it vitiated the result of the election of No.34-Cheyyur (SC) Assembly Constituency.

29. The petitioner submits that he has a fair chance of success if all the postal votes are re-counted. The petitioner would be put to grave prejudice if the votes are not counted since the margin that is between the petitioner and the 1st Respondent is a meager of 304 votes only.

30. The petitioner submits that since the counting was improper and the postal votes are not counted properly, the petitioner presented his written representation for recounting on 19.05.2016, but the Returning Officer did not pass any orders on the petitioner's written representation on the same day i.e.19.05.2016 and he has passed the order on 30.05.2016 by rejecting the petitioner's written representation stating that the votes were counted properly and the signature of the petitioner's agents was obtained after counting of the postal, which are specifically denied by the petitioner.

31. The petitioner submits that the refusal of the 14th respondent for the re-count of the votes that have been duly communicated to the 13th Respondent by the Chief agent of the

petitioner and she had not acted on the representation for re-counting of votes had materially affected the election of the petitioner and hence the petitioner seeks re-count of the votes and to declare the petitioner as elected from No.34-Cheyyur (SC) Assembly Constituency."

10 The short question that falls for the consideration of this Court is whether on the basis of these averments, a case has been made out for conducting a recount of the ballots, including the postal ballots. It is under these circumstances that the Returned Candidate has come up with the present Original Application, viz., O.A. No.29 of 2017 to strike off the pleadings under Order VI Rule 16 C.P.C. and O.A. No.28 of 2017 to reject the plaint under Order VII Rule 11 C.P.C.

11 The question as to whether such a petition can be entertained has been considered in a number of cases by the Supreme Court. In **Hari Shanker Jain Vs. Sonia Gandhi [(2001) 8 SCC 233]**, the Supreme Court observed as under:-

"24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

Hence, such a petition is maintainable.

12 In the Original Application for striking down the pleadings, the Returned Candidate has stated that the averments in the election petition are wholly vague and

that the election petition is bereft of material facts and hence, substantially defective; the affidavit filed along with the election petition does not contain information for the allegations of postal votes not being verified properly by the Returning Officer; the Election Petitioner has not described as to how and when the postal votes were tampered with; the agent of the Election Petitioner was present at the time of counting the postal ballots and he did not raise any objection to the manner of counting and no representation was given to the Returning Officer to recount the postal votes; no objection was raised regarding the rejection of any postal vote; the Election Petitioner has made only a bald allegation that the genuineness of the postal votes was not verified by the Returning Officer and that the signature of the postal voters have been tampered with, whereas, no details at all have been given by the Election Petitioner as to (i) how many and which postal votes were tampered with, (ii) what are the serial numbers of the postal ballot votes which were tampered with, (iii) what are the names of the voters whose votes have been tampered with, (iv) whether these voters have complained that their votes have been tampered with, etc.; the Election Petitioner has also not given the details as to how he has come to the conclusion that the Returning Officer has not verified the postal votes or counted the postal votes; without any material fact being stated in paragraph no. 20 of the election petition as to what are

the votes that have been alleged to have been tampered with and how they had been allegedly tampered with, the Election Petitioner's contention cannot be countenanced.

13 It is further stated by the Returned Candidate in the Original Application that even on the allegation, that the postal ballots were collected by him from eligible candidates and he had bribed the eligible voters, there are no averments to show from how many voters, he had collected the ballots and what bribe was offered was also not set out in the election petition; the Election Petitioner has not stated how many postal ballot papers or the serial numbers of ballot papers of which the signatures have been tampered with and the names of voters whose votes have been tampered with; the Election Petitioner has not filed any document along with the election petition to show that any postal vote left the chain of custody of the Returning Officer or any other official involved in this process at any point of time.

14 It is the further contention of the Returned Candidate in the Original Application that there is no mandatory provision in Rule 54 of the Conduct of Election Rules that the postal votes have to be declared prior to the commencement of counting of EVM votes. In fact, *de hors* the same, the counting of postal ballots was done before the EVMs were opened; the Election Petitioner has not stated the name of the agents, who were sent out, what time they were sent out, etc.; the Election Petitioner has

also not filed any document to show that the agents were "sent out" of the counting hall; the Election Petitioner has not stated when the postal votes were counted and how Rule 54-A(1) of the Conduct of Election Rules has been violated and how the election process stands vitiated.

15 Taking notice on the aforesaid application, the Election Petitioner has filed a counter affidavit dated 11.08.2017.

16 In the counter affidavit, the Election Petitioner has stated that he had learnt from his Chief Election Agent (Dhanasekaran) that the Returning Officer did not count the postal votes in the presence of his agent; the genuineness of the postal votes was not verified; the results of the postal votes were not announced as contemplated in Rule 54-A(1) of the Conduct of Election Rules. The Returning Officer did not maintain contemporaneous records as per Rule 23(6) of the Conduct of Election Rules, 1961; the postal ballots were collected from three places; the Returning Officer did not show the postal ballot papers either to the Election Petitioner or his Chief Election Agent; even while counting of EVM votes during the 19th round, the results of the round had not been announced and the agents were sent out of the hall; after an hour or so, the results were announced by adding the postal votes; the counting procedure adopted by the Returning Officer was not according to law.

17 With reference to the complaint made by him, the

Election Petitioner, at paragraph nos. 12 & 13 of his counter affidavit, has stated as under:

"12. . . .I made a representation to the 14th Respondent for recounting of Votes on 19.05.2016 at 6.40 PM. and made another representation to the 13th Respondent on 20.05.2016 through my Chief Agent. However, the 14th Respondent passed order on 30.05.2016. The 13th Respondent also forwarded a letter in this regard to the 14th Respondent which was referred in order of the 14th Respondent passed order dated 30.05.2016. This abnormal delay of the 14th Respondent order confirmed all the above said allegations. I had a fair chance of success if all the postal votes are re-counted.

13. . . .The 14th Respondent has passed the order on 30.05.2016 by rejecting my written representation stating that the votes were counted properly and the signature of my agents were obtained after counting of the postal, which are specifically denied by me."

18 In order to prove his contention, the Election Petitioner has enclosed 7 documents along with his Election Petition. In the first complaint made by his Chief Election Agent, the only allegation made was that the postal ballots were not considered properly and it was decided in favour of the DMK (i.e. the Returned Candidate). After stating this, he had stated that the postal ballots and the 19th round counting of EVMs should be verified and the results should be announced properly and recount should be ordered. Even before any reply, the Chief Election Agent of the Election Petitioner has sent another letter dated 20.05.2016 to the District Election Officer. But, no new points were added in the said letter. It transpires that the District Election Officer has forwarded the complaint to the Returning Officer and a reply was sent.

19 The Returning Officer has sent a reply dated 30.05.2016 to the Election Petitioner stating that the counting was done in respect of all the 19 rounds properly and for each round, signatures were obtained from the agents; the postal votes were also counted; all these were recorded in the surveillance camera; for each round of counting, the results were announced and it was also written in the notice board; the counting was informed to all the agents; even for the postal ballots, after their counting, signatures were obtained from all the election agents. The reply dated 30.05.2016 given by the Returning Officer has been filed as a document by the Election Petitioner himself along with the Election Petition.

20 Whether a recount can be ordered on the mere asking of it, came to be considered by the Supreme Court in several cases. It is necessary to set out the legal principles laid down therein.

21 In **Chanda Singh v. Choudhary Shiv Ram Verma & Ors.** [(1975) 4 SCC 393], it was held as under:-

"6. . . . A democracy runs smooth on the wheels of periodic and pure elections. The verdict at the polls announced by the Returning Officers leads to the formation of Governments. A certain amount of stability in the electoral process is essential. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new threat to the certainty of the poll system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying if recount of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on

luckless candidates, particularly when the winning margin is only of a few hundred votes as here, to ask for a recount Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of miscount or illegality or other compulsions of justice necessitating such a drastic step. "

22 In **Vadivelu vs. Sundaram and others [(2000) 8 SCC 355]**, the Supreme Court, once again, referring to earlier cases of recounting of votes in a challenged election, had observed as follows:-

"16 The result of the analysis of the above cases would show that this Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. **The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order re-count of votes.** Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties. (emphasis added)

23 In **Kattinokkula Murali Krishna vs. Veeramalla Koteswara Rao & others [(2010) 1 SCC 466]**, the Supreme Court, once again, held that for a recount, material facts

have to be stated clearly in the election petition first and then, it has to be proved by cogent evidence.

"25. . . a narrow margin of votes between the returned candidate and the election petitioner does not *per se* give rise to a presumption that there had been an irregularity or illegality in the counting of votes. In the first instance, material facts in this behalf have to be stated clearly in the election petition and then proved by cogent evidence. Undoubtedly, the onus to prove the allegation of irregularity, impropriety or illegality in the election process on the part of the Election Officer is on the election petitioner and not on the Election Officer, as held by the authorities below. In the present case, both the forums below have found that material facts were lacking in the election petition. Having held so, in our view, the election petition should have been dismissed on this short ground alone..."

24 In the present case, the Chief Election Agent of the Election Petitioner has signed the statement of votes counted for the 19th round as well as the statement regarding the postal ballot papers. He had never raised any issue at the time of signing, but, thereafter, sent a vague complaint for recounting. That complaint has been suitably replied by the Returning Officer. Even before this Court, no details were given regarding the alleged breach of rules and as to how the counting of postal ballots was done contrary to law.

25 From a reading of the entire averments in the election petition, it is seen that the Election Petitioner has not even stated the number of postal votes that were secured by him and the Returned Candidate. It is incumbent on the Election Petitioner to plead this minimum material fact in the election petition. However, it is seen that along with the election petition, the petitioner has

enclosed the chart issued by the Returning Officer showing the postal votes obtained by each candidate, according to which, the Returned Candidate has secured 598 postal votes as against 223 votes secured by the Election Petitioner; 84 postal votes have been rejected and there is one vote under "NOTA" category. Even if this Tribunal were to treat the chart as part and parcel of the election petition, yet, the averments in the various paragraphs of the election petition extracted above are indeed very vague. The Election Commission has framed clear guidelines vide Circular No.52/2014-SDR dated 07.03.2014 for counting of postal ballots and paragraph no. 17 of the said guidelines is as under:

"17.Tallying of postal ballot numbers before counting:

The envelopes received from facilitation centres will be opened one by one and the number of postal ballots found in each envelope will be tallied with the numbers mentioned in the copies of relevant pages of the registers received from the facilitation center. The result of such tallying will be shown to the candidates and their election agents before the counting of postal ballots. Similarly, the register of postal ballots received by post shall also be shown to the candidates and their election agents."

26 This Court cannot start off with the presumption that the Returning Officer had not properly counted the postal ballots and the votes in the EVMs in the 19th round. In the teeth of illustration (e) in Section 114 of the Evidence Act, which states that the Court may presume that judicial and official acts have been regularly performed,

the burden is heavily cast on the Election Petitioner to make sufficient averments giving material facts in the pleadings to *prima facie* show that the Returning Officer was in league with the Returned Candidate and had violated the Election Commission guidelines relating to counting of postal ballots. The Election Petitioner has not even stated at what time the postal ballots were counted. He has not even stated who were his counting agents when the postal ballots were counted and during the counting of the votes in the EVMs in the 19th round. The Election Petitioner had also not explained under what circumstances, his election agent had signed the statutory forms in which the counting of votes was recorded. He is required to plead these material facts especially when the Returning Officer has given a detailed reply dated 30.05.2016 refuting the allegations made by his Chief Election Agent and asserting that the postal ballots and the EVMs in the 19th round were counted in the presence of the agents and the agents have also signed in the statutory forms. It is common knowledge that the names of service personnel who will be entitled to cast their vote by post, will find place in the voters' list itself. Similarly, one week before the election, the names of the officials on election duty who are to be issued with postal ballots will also be made known. Therefore, disputes will be raised by the counting agents then and there where a particular postal ballot cast in favour of one candidate is credited to the kitty of his

rival. All this has not been pleaded in the Election Petition.

27 Unless *prima facie* materials are furnished, this Tribunal cannot allow a full trial for the purpose of letting in evidence and ordering recount and thereafter declare the results. The very purpose of providing a specific provision under Order VI Rule 16 C.P.C., being applied in an election petition, came to be considered by the Supreme Court in **Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi [1987 Supp. SCC 93]**, wherein, it was held as under:

"8. . . . On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable

issues remain to be considered, it has power to reject the election petition under Order VII Rule 11."

(emphasis supplied).

28 Under the above circumstances, since the Election Petitioner has not made out a clear case for recount and the averments contained in paragraph nos. 20 to 31 of the election petition being vague and not eligible for being put on trial by leading evidence, the Original Application in O.A.No.29 of 2017 stands allowed. As a sequel, the averments made in paragraph nos. 20 to 31 in Election Petition No.20 of 2016 are hereby struck off.

Post O.A. No.28 of 2017 along with the Election Petition.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 7th DAY OF NOVEMBER 2017.

sd/-
ASSISTANT REGISTRAR
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cns.09.11.2017

O.A.No.29 of 2017

IN

ELP.NO.20 OF 2016

ORDER DATED: 07.11.2017

THE HON'BLE MR. JUSTICE

P.N.PRAKASH

FOR APPROVAL:09/11/2017

APPROVED ON :09/11/2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 7TH DAY OF NOVEMBER 2017

THE HON'BLE MR. JUSTICE P.N.PRAKASH

O.A.No.29 of 2017

in

Election Petition No.20 of 2016

ELP No.20 of 2016

A.Munusamy,
S/o.R.Arumugam,
No.3/365, Padavattamman Koil Street,
Kazhipattur Village, Padur Post,
Thiruporur Taluk,
Kanchipuram District,
Pin 603 103.

... Petitioner

-VS-

- 1.R.T.Arasu,
S/o.Thandiyan,
No.1/22, Mariyamman Koil Street,
Irumbedu Village, Maduranthagam Taluk,
Kanchipuram District 603 301.
- 2.P.Sampath,
No.51, Thenneripattu Village,
Vellore Post, Cheyyur Taluk,
Kanchipuram District 603 401.
- 3.T.Ramesh,
No.14, Manju Villagam, Paraman Keni,
Sekkanankuppam Post, Cheyyur Taluk,
Kanchipuram District 603 305.
- 4.Ehil Karoline,
No.64, Padmavathi Nagar Main Road,
Madampakkam, Chennai 600 126.
- 5.I.Kannan,
No.5/645, Kalaimagal Street,
New Otteri Extention, Vandalur,
Chennai 600 048.
- 6.V.Sadaiyappan,
No.3-14/3-133, Mariyamman Koil Street,
Ottiyambakkam Village, Thalambur Post,
Cholinganallur Taluk,
Kanchipuram District 600 073.

- 7.A.Dasarathan,
No.7, Ottraivadai Street,
Illedu Village,
Soonambedu Post, Cheyyur Taluk,
Kanchipuram District 603 401.
- 8.S.Krishnaraj,
No.60/3, Chengeniamman Koil Street,
Sengattur Village & Post,
Cheyyur Taluk,
Kanchipuram District 603 302.
- 9.C.Senthilkumar,
No.6112, Pettai Street,
Devarajapuram,
Cheyyur Village Post & Taluk,
Kanchipuram District 603 302.
- 10.K.Dhinakaran,
No.33, New Colony, Kalkulam Village,
Cheyyur Taluk, Kanchipuram District.
- 11.S.Munusamy,
Dr.Ambedkar Street,
Gangadevakuppam Village,
Seempulipuram Post, Cheyyur Taluk,
Kanchipuram District.
- 12.P.Ramachandran,
No.395, Malai Colony,
Kadukkapattu Village,
Palur Post, Cheyyur Taluk,
Kanchipuram District 603 302.
- 13.The District Election Officer/
District Collector,
Collectorate Kanchipuram,
Kanchipuram District.
- 14.The Returning Officer,
34, Cheyyur (SC) Assembly Constituency and
Special Deputy Collector
(Social Security Scheme)
Kanchipuram District. ... Respondents

OA.NO.29 of 2016

R.T.Arasu,
S/o.Thandiyan,
No.1/22, Mariyamman Koil Street,
Irumbedu Village, Maduranthagam Taluk,
Kanchipuram District 603 301. ... Petitioner

-VS-

- 1.A.Munusamy,
S/o.R.Arumugam,
No.3/365, Padavattamman Koil Street,
Kazhipattur Village, Padur Post,
Thiruporur Taluk,
Kanchipuram District,
Pin 603 103. ... 1st Respondent/Petitioner
- 2.P.Sampath,
No.51, Thenneripattu Village,
Vellore Post, Cheyyur Taluk,
Kanchipuram District 603 401.
- 3.T.Ramesh,
No.14, Manju Villagam, Paraman Keni,
Sekkanankuppam Post, Cheyyur Taluk,
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- 14.The Returning Officer,
34, Cheyyur (SC) Assembly Constituency and
Special Deputy Collector
(Social Security Scheme)
Kanchipuram District. ... Respondents / Respondents

The Original Application praying that this Hon'ble Court be pleased to strike off the pleadings contained in paragraphs 20 to 31 of the petition filed in the above Election Petition No.20 of 2016.

The above Original Application having been heard on 13.10.2017 in the presence of Mr.P.Wilson, Senior Counsel for M/s.P.Wilson Associates, advocates for the Applicant/1st Respondent herein and of Mr.M.Jothikumar, advocate for the 1st respondent/Election Petitioner and Mr.Niranjan Rajagopalan, advocate for M/s.G.R.Associates, Standing Counsel for the respondents 13 & 14; and upon reading the Judges Summon and affidavit of R.T.Arasu, filed herein and this Court having stood over for consideration till this

date and coming on this day before this Court for orders in the presence of the above said advocates and this Court having observed that the Election petitioner has not made out a clear case for recount and the averments contained in paragraph nos.20 to 31 of the election petition being vague and not eligible for being put on trial by leading evidence,

IT IS ORDERED AS FOLLOWS :-

(I) That the pleadings contained in Paragraph Nos.20 to 31 of the Election Petition No.20 of 2016 be and hereby are struck off.

(ii) That the O.A.No.28 of 2017 be posted along with the Election Petition.

WITNESS, THE HON'BLE MS. INDIRA BANERJEE, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 7th DAY OF NOVEMBER 2017.

sd/-
ASSISTANT REGISTRAR
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O.A.No.29 of 2017

IN

ELP.NO.20 OF 2016

ORDER DATED: 07.11.2017

THE HON'BLE MR. JUSTICE

P.N.PRAKASH

FOR APPROVAL:09/11/2017

APPROVED ON :09/11/2017