

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

MONDAY, THE 2ND DAY OF JANUARY 2017

THE HON'BLE MR. JUSTICE M.VENUGOPAL

O.A. No. 1147 of 2016

IN

Election Petition No. 1 of 2011

ELP No. 1 of 2011

Saidai Sa.Duraisamy,
S/o.Samiappan,
No.28/62, 1st Main Road,
C.I.T.Nagar,
Chennai - 35.

... Petitioner

-VS-

1. Stalin M.K.
S/o. M.Karunanidhi,
15, 4th Street,
Gopalapuram,
Chennai - 86.
2. Armstrong K.
S/o.M.Krishnan,
41, Venugopal Swamy Koil Street,
Perambur, Chennai - 11.
3. Ashok Kumar S.
S/o. M.Sankaralingam,
238, G-Block,
Gowthama Puram,
Perambur,
Chennai - 11.
4. Atick Yezdon. A.S.
S/o.A.S.Sahabeer,
14A, Dimmasamy Durga Street,
Agaram,
Chennai - 82.
5. Sivakumar.M.
S/o. M.Muthu,
6-113/NA, Thingal Sandhai Minnampalli,
Vazhapadi,
Salem - 636 106.

6. Azhagesan.S.
S/o.K.S.Mani,
52/37, Venkataraman Street,
Kondithope,
Chennai - 79.
7. Ramesh.D.
S/o.R.S.Dakshinamoorthy,
37/15, First North Street,
Kennedy Square,
Thiru Vi.Ka.Nagar,
Chennai - 11.
8. Ravi Kumar.T.
S/o.Thirumaal,
181, Kannadasan Street,
Senthamizh Nagar,
Pattabiram,
Chennai - 72.
9. Ganesan.P,
S/o. M.Pazhanimuthu,
1st Ward, East Street,
Veeraganoor (P.O.),
Gangavalli Taluk,
Salem District.
10. Kandasamy.S,
S/o. R.Subramani,
18/12, Gnanamabal Garden,
2nd Street,
Ayanavaram,
Chennai - 23.
11. Kalai Arasan.M.
S/o.Masa Naicker,
7C4/52, Sivan Koil Street,
Kodambakkam,
Chennai - 24.
12. Gopi.K.S.,
S/o. Kannan,
15-17, Gandhi Street,
West Saidapet,
Chennai - 15.
13. Shankar.K.P.M.,
S/o. K.P.Marimuthu,
2/19, Bajanaik Koil Street,
Choolaimedu,
Chennai - 94.

14. Charavanan.M.P.,
S/o. M.Paramanandham,
159/6, Golden Jubilee Flats,
Padikuppam Road,
Anna Nagar (West),
Chennai - 40.
15. Saravanan.S.P.,
S/o. Periasamy,
17, Gokul First Street,
Rajaji Nagar,
Villivakkam,
Chennai - 49.
16. Sivasubramani.S,
S/o. M.Sethu,
205, Anna Street,
Devar Nagar,
Padi,
Chennai - 50.
17. Suresh.D,
S/o.K.Devarajan,
131, Choolai High Road,
Chennai - 112.
18. Suriya Narayanan.D,
S/o.G.Durairaj,
5/4, Eswaran Nagar 3rd Street,
Ramapuram,
Chennai - 89.
19. Narayanarao.V.S.,
S/o.V.Selapathi Rao,
38/24, Gandhipuram First Street,
Kannapet,
T.Nagar,
Chennai-17.
20. Padmarajan.K,
S/o.K.Kunjambu Nair,
3/3-23A, Padma Nivas,
Rama Nagar Post,
Mettur Dam-3,
Mettur Taluk,
Salem District.
21. Murali Vinodh.M.
S/o.K.Masilamani,
3/266, C-Type Sidco Nagar,
Villivakkam,
Chennai.

22. Raghu.V.M.,
S/o. M.Vadivelu,
11/5, Thiru.Vi.Ka.Nagar,
8th Street,
Puliyanthope,
Chennai - 12.
23. Venkataramani.K.,
S/o.C.R.Krishnan,
6/27-B2, Annamalai Flats,
First Main Road,
Vengeeswarar nagar,
Vadapalani,
Chennai - 26.
24. Venugopal.M,
S/o. M.K.Munusamy,
4-9/28, South Dandapani Street,
T.Nagar,
Chennai - 17.
25. Jayaseelan.A,
S/o.A.Aandi Gounder,
17, 3rd Street,
Sundaram Colony,
West Tambaram,
Chennai - 45.
26. Jayaramaraj.T,
S/o.K.Thiruvambalam Nadar,
41/25, Madhavaperumal Koil Street,
Mylapore,
Chennai - 4.
27. The Returning Officer,
No.13, Kolathur Assembly
Constituency, (and)
Zonal Officer, Zone-IV,
Corporation of Chennai,
Chennai - 600 023. ...Respondents

*R27 has been struck off from the array of Respondents
as per order of this court dated 12/12/2012 in OA.No.1038
of 2012 in ELP.No.1 of 2011

OA.No.1147 of 2016

M.K.Stalin,
S/o.Thiru.M.Karunanidhi
15, 4th Street,
Gopalapuram, Chennai-86.
Presently residing at

No.25/9, Chitharanjan Salai,
Cenotaph Road,
Alwarpet,
Chennai 600 018.

...Applicant/1st respondent in
Election Petition
-VS-

1. Saidai. Sa. Duraisamy
S/o.Samiappan
No.28/62, 1st Main Road,
C.I.T.Nagar,
Chennai-600 035.

...1st Respondent/Petitioner in ELP

2. Armstrong K.
S/o.M.Krishnan,
41, Venugopal Swamy Koil Street,
Perambur, Chennai - 11.

3. Ashok Kumar S.
S/o. M.Sankaralingam,
238, G-Block,
Gowthama Puram,
Perambur,
Chennai - 11.

4. Atick Yezdon. A.S.
S/o.A.S.Sahabeer,
14A, Dimmasamy Durga Street,
Agaram,
Chennai - 82.

5. Sivakumar.M.
S/o. M.Muthu,
6-113/NA, Thingal Sandhai Minnampalli,
Vazhapadi,
Salem - 636 106.

6. Azhagesan.S.
S/o.K.S.Mani,
52/37, Venkataraman Street,
Kondithope,
Chennai - 79.

7. Ramesh.D.
S/o.R.S.Dakshinamoorthy,
37/15, First North Street,
Kennedy Square,
Thiru Vi.Ka.Nagar,
Chennai - 11.

8. Ravi Kumar.T.
S/o.Thirumaal,
181, Kannadasan Street,
Senthamizh Nagar,
Pattabiram,
Chennai - 72.
9. Ganesan.P,
S/o. M.Pazhinimuthu,
1st Ward, East Street,
Veeraganoor (P.O.),
Gangavalli Taluk,
Salem District.
10. Kandasamy.S,
S/o. R.Subramani,
18/12, Gnanamabal Garden,
2nd Street,
Ayanavaram,
Chennai - 23.
11. Kalai Arasan.M.
S/o.Masa Naicker,
7C4/52, Sivan Koil Street,
Kodambakkam,
Chennai - 24.
12. Gopi.K.S.,
S/o. Kannan,
15-17, Gandhi Street,
West Saidapet,
Chennai - 15.
13. Shankar.K.P.M.,
S/o. K.P.Marimuthu,
2/19, Bajanaï Koil Street,
Choolaimedu,
Chennai - 94.
14. Charavanan.M.P.,
S/o. M.Paramanandham,
159/6, Golden Jubilee Flats,
Padikuppam Road,
Anna Nagar (West),
Chennai - 40.
15. Saravanan.S.P.,
S/o. S.Periasamy,
17, Gokul First Street,
Rajaji Nagar,
Villiyakkam,
Chennai - 49.

16. Sivasubramani.S,
S/o, M.Sethu,
205, Anna Street,
Devar Nagar,
Padi,
Chennai - 50.
17. Suresh.D,
S/o.K.Devarajan,
131, Choolai High Road,
Chennai - 112.
18. Suriya Narayanan.D,
S/o.G.Durairaj,
5/4, Eswaran Nagar 3rd Street,
Ramapuram,
Chennai - 89.
19. Narayanarao.V.S.,
S/o.V.Selapathi Rao,
38/24, Gandhipuram First Street,
Kannapet,
T.Nagar,
Chennai-17.
20. Padmarajan.K,
S/o.K.Kunjambu Nair,
3/3-23A, Padma Nivas,
Rama Nagar Post,
Mettur Dam-3,
Mettur Taluk,
Salem District.
21. Murali Vinodh.M.
S/o.K.Masilamani,
3/266, C-Type Sidco Nagar,
Villivakkam,
Chennai.
22. Raghu.V.M.,
S/o. M.Vadivelu,
11/5, Thiru.Vi.Ka.Nagar,
8th Street,
Puliyanthope,
Chennai - 12.
23. Venkataramani.K.,
S/o.C.R.Krishnan,
6/27-B2, Annamalai Flats,
First Main Road,
Vengeeswarar nagar,

Vadapalani,
Chennai - 26.

24. Venugopal.M,
S/o. M.K.Munusamy,
4-9/28, South Dandapani Street,
T.Nagar,
Chennai - 17.

25. Jayaseelan.A,
S/o.A.Aandi Gounder,
17, 3rd Street,
Sundaram Colony,
West Tambaram,
Chennai - 45.

26. Jayaramaraj.T,
S/o.K.Thiruvambalam Nadar,
41/25, Madhavaperumal Koil Street,
Mylapore,
Chennai - 4. ...Respondents

This Application praying that this Hon'ble Court be pleased to issue subpoena to the Chief Electoral Officer of Tamilnadu, Secretariat, Chennai 9, to produce the original "Abstract Statement of Election Expenditure Accounts" pertaining to the returned candidate (Respondent-1 in the Election petition) as available on the website <http://www.elections.tn.gov.in/> and the 'Register for maintenance of Day to Day Accounts' - Annexure 14 (Part A), 'Cash Register for maintenance of Day to Day Accounts by Contesting Candidates' (Part B) and 'Bank Register for Maintenance of Day to Day Accounts by Contesting Candidates' (Part C) pertaining to the returned candidate (Respondent-1 in the Election Petition), submitted for

General Election - 2011 for No.13, Kolathur Assembly

Constituency, along with the reconciliation order passed by the District Electoral Officer and the Observer for Election Expenditure, nominated by the Election Commission of India, through the current Chief Electoral Officer of Tamilnadu, or by recalling CW1, to mark the summoned documents and to speak about the veracity of Exhibit P-17.

The Original Application having been heard on 23.12.2016 in the presence of Mr. Shanmugasundaram, Learned Senior Counsel for M/s. P.R. Raman, C. Seethapathy, A. Umasankar, S.P. Arthi, advocates for the applicant/1st respondent and Mr. T.V. Ramanujam, Learned Senior Counsel for M/s. S. Thiruvenkatasamy, K. Soundararajan, M. Karthikeyan, J. Ponnudurai, advocates for the 1st respondent/election petitioner herein and upon reading the Judges Summon and affidavit of M.K. Stalin and counter affidavit of Saidai Sa. Duraisamy 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:

The Applicant/1st Respondent has filed the present Original Application praying for passing of an order by this Court to issue subpoena to the Chief Electoral Officer of Tamil Nadu, Secretariat, Chennai - 9 to produce the original

"Abstract, Statement of Election Expenditure Accounts" pertaining to the returned candidate (Respondent-1 in the

Election Petition) as available on the website <http://www.elections.tn.gov.in/> and the 'Register for Maintenance of Day to Day Accounts' - Annexure 14 (Part A), 'Cash Register for Maintenance of Day to Day Accounts by Contesting Candidates' (Part B) and 'Bank Register for Maintenance of Day to Day Accounts by Contesting Candidates' (Part C) pertaining to the returned candidate (Respondent -1) in the Election Petition), submitted for General Election-2011 for No.13, Kolathur Assembly Constituency, along with the reconciliation order passed by the District Electoral Officer and the Observer for Election Expenditure, nominated by the Election Commission of India, through the present Chief Electoral Officer of Tamil Nadu, or by recalling C.W.1, to mark the summoned documents and to speak about the veracity of Exhibit P-17.

Applicant's Contentions:

2.The Learned Senior Counsel for the Applicant/1st Respondent (in Election Petition) submits that the 1st Respondent (Election Petitioner) in his Election Petition No.1 of 2011 had included in the List of Document attached to the Election Petition as Document No.68 viz., an "Abstract Statement of election Expenditure submitted by the Applicant (1st Respondent) made available from the Election Commission web site" containing 8 pages and the same was marked as Ex.P17.

3.The Learned Senior Counsel for the Applicant/1st Respondent urges before this Court that the afore-stated 8 pages in Ex.P17 in the Website only 2 pages of Ex.P17 are now found and therefore, it is just and necessary to summon the original 'Abstract Statement of Election Expenditure' pertaining to the returned candidate (Applicant/ 1st Respondent in Election Petition) available on the website of the Election Commission of India and also the entire original accounts submitted by the Applicant in the prescribed Register along with the reconciliation order passed by the District Electoral Officer etc.

4.The Learned Senior Counsel for the Applicant/1st Respondent contends that Ex.P17 is an incomplete document and the same does not contain the full details of the expenditure on each heads.

5.It is represented on behalf of the Applicant/1st Respondent that the 1st Respondent/Election Petitioner had conveniently suppressed the entire 'Accounts Details' with the Election Commission of India and had filed only Ex.P17 as if the same is the only record showing the whole expenditure of the Applicant (returned candidate).

6.Advancing his arguments, the Learned Senior Counsel
<https://hcservices.ecourts.gov.in/hcservices/>
 for the Applicant takes a plea that the Applicant, being the

returned candidate, had submitted entire records properly in the relevant prescribed register before the District Electoral Officer, Chennai District viz., the Commissioner of Corporation of Chennai, under Rule 88 of the Rules under Representation of People Act.

7.The Learned Senior Counsel for the Applicant/1st Respondent projects an argument that as far as the election expenditure of the Election Petitioner is concerned, only 2 pages of his accounts were uploaded and likewise in respect of the 2nd runner, only 2 pages were uploaded and further that when the Election Commission of India did the uploading of winner and 2 runners, it is not known how the Election Petitioner (1st Respondent in O.A.) had filed 8 pages of purported accounts submitted by the Applicant [1st Respondent -winner].

8.The Learned Senior Counsel for the Applicant/1st Respondent takes a stand that if the reliefs sought for by the Applicant/1st Respondent, in O.A.No.1147/2016 viz., for summoning the entire accounts as prayed for are not granted by this Court, then, it will cause an irreparable loss and hardship resulting in miscarriage of Justice. Furthermore, it is projected on the side of the Applicant/1st Respondent that if O.A.No.1147 of 2016 filed by the Applicant/1st Respondent is allowed, then, no prejudice would be caused to the 1st Respondent/ Election Petitioner.

9.The Learned Senior Counsel for the Applicant/1st Respondent submits that in Ex.P11 (Letter of the Chief Electoral Officer and Principal Secretary to Government) dated 01.06.2011 addressed to the 1st Respondent/Election Petitioner at paragraph 6 had stated that 'The Election Commission of India has appointed Election Expenditure Observer who furnished report directly to the Election Commission of India. Hence, the Election Commission of India may be addressed to furnish the required information' and therefore, the summoning of the documents mentioned in O.A. and marking the same through the concerned officer coupled with tendering of evidence to speak about the veracity of Ex.P17 are very much essential, just and necessary.

10.The Learned Senior Counsel for the Applicant/1st Respondent submits that the 1st Respondent/Election Petitioner has taken a new stand with reference to 10A of the Representation of the People Act, 1951

11.The Learned Senior Counsel for the Applicant/1st Respondent refers to the Handbook for Candidates of Election Commission of India, 2009 (Reprint 2011), Chapter XVIII under the Caption 'Accounts of Election Expenses' wherein para 2 speaks of 'Authority with whom Account should be lodged' and para 3 speaks of 'Maintenance of Account and Particulars to be entered in account', . In this connection,

the Learned Senior Counsel for the Applicant/1st Respondent has banked upon paras 2.1, 2.3 and 3.1 which reads as follows:

"2.1. In every State and Union Territory, the account of election expenses shall be lodged by a contesting candidate with the District Election Officer of the district in which the constituency from which he contested election lies

2.3 For the convenience of the contesting candidates, the District Election Officer should also issue a letter to all contesting candidates in every constituency within three days of the date of election of the returned candidate intimating the name designation and address of the District Election Officer with whom the account has to be lodged and also the last date before which the account should reach him.

Election in more than one constituency.

3.1 The account should contain the following particulars:

(a) the date on which the expenditure was incurred or authorized;

(b) the nature of expenditure (as for example, travelling, postage of printing and so on)

(c) the amount of the expenditure,
i.e.,

(i) the amount paid;

(ii) the amount outstanding;

(d) the date of payment;

(e) name and address of the payee;

(f) the serial number of vouchers
in case of amount paid;

(g) the serial number of bills, if
any, in case of amount outstanding;

(h) the name and address of the
person to whom the amount outstanding
is payable

N.B. The particulars mentioned in items
(e) to (h) above need not be given in
regard to any item of expenditure for
which it is unnecessary to obtain
voucher under Paragraph 5.

Further, paragraphs 15 & 16 read as under:

15. PUBLICATION OF REPORT

The DEO will publish a copy of
every report sent to the Commission by
affixing a copy thereof to your notice
board.

16. COMMISSION'S DECISION ON REPORT

The Commission will consider the
report and decide whether any
contesting candidate has failed to
lodge his account of election expenses
within the time and in the manner
required by law. In such a case the

Commission will call upon the candidate to show cause why he should not be disqualified.

Applicant's Citations:

12.The Learned Senior Counsel for the Applicant/1st Respondent relies on the decision of the Hon'ble Supreme Court in *K.K.Velusamy V. N.Palanisamy*, (2011) 11 *Supreme Court Cases* 275 at special page 277 & 278, wherein it is observed and held as follows:

"This inherent power of the court is not affected by the express power conferred upon the court under Order 18 rule 17 of the Code to recall any witness to enable the court to put such question to elicit any clarifications. The power to recall any witness under Order 18 Rule 17 can be exercised by the court either on its own motion or on an application filed by any of the parties to the suit requesting the court to exercise the said power. The power is discretionary and should be used sparingly in appropriate cases to enable the court to clarify any issue or doubt it may have in regard to the evidence led by the parties by recalling any witness so that the court itself can put questions and elicit answers. Once a witness is recalled

for purposes of such clarification, it may, of course, permit the parties to assist it by putting some questions. However, this power is not intended to be used to fill up omissions in the evidence of a witness who has already been examined. Order 18 Rule 17 is not a provision intended to enable the parties to recall any witnesses for their further examination-in-chief or cross-examination or to place additional material or evidence which could not be produced when the evidence was being recorded.

Order 18 Rule 17-A was deleted with effect from 1-7-2002. But the deletion does not mean that no evidence can be received at all, after a party closes his evidence. It only means that the amended structure of CPC found no need for such a provision, as the amended Code contemplated little or no time gap between completion of evidence and commencement and conclusion of arguments. Another reason for its deletion was the misuse thereof by the parties to prolong the proceedings under the pretext of discovery of new evidence.

Thus there is no specific provision in CPC enabling the parties to reopen the evidence for the purpose of further

examination-in-chief or cross-examination."

13.He also cites the order of this Court dated 02.11.2009 in C.R.P.(NPD).No.3414 of 2009 (between V.Palani V. P.Balasubramaniam), wherein at paragraph 7, it is observed as under:

"7. In this connection, it is not out of place for this Court to point out that in a processual system of jurisprudence, a Court of law is to deliver substantial justice to the parties over-riding technicalities to sub-serve the ends of justice. Hence, this court by taking a lenient view and not adopting pedantic approach, directs the first appellate Court, namely, additional Subordinate Judge, Chengalpet to issue subpoena to his office at Chengalpet to produce all connected records pertaining to E.P.No.95 of 2005 in O.S.No.5677 of 1996 and on receipt of the same, shall proceed with hearing of the appeal in A.S.No.105 of 2006 pending on its file and to dispose of the said appeal within a period of one month from the date of receipt of records, after providing due opportunities to both parties. It is also, made clear that

Additional Sub Judge, Chengalpet can hear the respective sides in regard to the marking of connected records in E.P.No.95 of 2005 as Exhibits subject to proof and relevancy if the exigency of situation requires and report compliance of the disposal of the appeal to this Court within a time frame fixed by this Court."

Contentions of the 1st Respondent:

14. Conversely, it is the submission of the Learned Senior Counsel for the 1st Respondent/ Election Petitioner that the Applicant/ 1st Respondent has filed O.A.No.1147 of 2016 before this Court to procure the evidence on his behalf and the same is impermissible in Law.

15. The Learned Senior Counsel for the 1st Respondent contends that for the accounts filed by the Applicant/1st Respondent before the concerned authority, he cannot procure an evidence by filing the present O.A. and in fact, the Applicant can avail the benefit of Rule 88 of the Conduct of Election Rules, 1961 by obtaining a certified copy of the document(s) and then, he rely upon the same and therefore, he is not entitled to the relief sought for by him in the Original Application.

16.The Learned Senior Counsel for the 1st Respondent contends that the 1st Respondent/ Election Petitioner filed the Election Petition No.1 of 2011 on 27.11.2011 and a counter was filed by the Applicant/ 1st Respondent and in fact, Ex.P17 (containing 8 pages) was filed as Document No.68 along with the Election Petition and para 65 of the Applicant/1st Respondent's counter to Election Petition No.1 of 2011 deals with this aspect.

17.The Learned Senior Counsel for the 1st Respondent/ Election Petitioner submits that there are necessary pleadings in E.L.P.No.1 of 2011 (filed by the 1st Respondent/Election Petitioner) beginning from 87 to 95 and also that, P.W.1 (Election Petitioner) had tendered evidence in regard to the election expenses of the Applicant/ 1st Respondent and also that the Applicant/1st Respondent at paragraph 65 of his counter to E.L.P.No.1 of 2011 had denied the averments made in paragraph 67 to 95 of the Election Petition. Therefore, it is the plea of the 1st Respondent/Election Petitioner that the Applicant/1st Respondent in paragraph 65 of his counter (to E.L.P.No.1 of 2011) had stated that the he had submitted his accounts to the authorities concerned well within the time limit prescribed under the Representation of the People Act and obtain the necessary approval by the concerned authority

etc.

18.The Learned Senior Counsel for the 1st Respondent/Election Petitioner brings it to the notice of this Court that P.W.1 examination commenced on 28.11.2012 and completed. The cross examination of P.W.1 went on for 25 days (for 15 hearings) and in fact, P.W.1 in his chief examination (on 25.03.2013) had stated that in the Election Commission's website it was shown that the 1st Respondent/Applicant in O.A.No.1147 of 2016 spent about Rs.3,00,000/- and above as election expenditure and further Ex.P17 was the Abstract Statement of election expenses of the Applicant (1st Respondent in ELP) with breakup details and added further, the expenses shown in Ex.P17 are an incorrect one and at that time, no objection was raised on the side of the Applicant/1st Respondent relating to Ex.P17.

19.The Learned Senior Counsel for the 1st Respondent brings it to the notice of this Court that P.W.1 that when the 1st Respondent/ Election Petitioner was further examined in chief on 26.03.2013, an objection petition on the side of the Applicant/1st Respondent. When P.W.1 had inter alia stated as under:

"... Before beginning any campaign procession, a popular music band from Kerala called "Senda Melam" was invited to play. Like this, this band was taken to about 10 to 15 places to play. They had to pay the music band travel

expenses and the bank's music charges for ½ an hour was Rs.35,000/-. (Recorded it with objection from the counsel for the first respondent. For this alone, several lakhs of rupees were spent."

20.Continuing further, the Learned Senior Counsel for the 1st Respondent/Election Petitioner emphatically submits that the Applicant /1st Respondent as R.W.3 before this Court had deposed that it was correct to state that Ex.P17 is the Abstract Statement of Election Expenses' filed by him.

21.The Learned Senior Counsel for the 1st Respondent/Election Petitioner contends that no useful purpose will be served in summoning either the present Chief Electoral Officer of Tamil Nadu or by recalling C.W.1 to mark the documents and to speak about the veracity of Ex.P17 and in reality, it would not help both sides, because of the reason that the Public Information Officer/Deputy Tahsildar, District Election Office, Chennai - 3 had furnished the information (under the Right to Information Act, 2005) in Na.Ka.No.2993/2016 dated 22.12.2016 to one V.Srinivasan, Chennai-15 - said to be the staff of the 1st Respondent/Election Petitioner [on his application dated 21.12.2016],

wherein it was stated as under:

"1.Original Election Expenditure Accounts Received from Thiru.M.K.Stalin, Contested from Kolathur Constituency during 2011 in Annexure-15 was sent to Election Commission of India at New Delhi, and no copy is available in this Office.

2.The Original Statement of Accounts (Containing 1 to 8 pages) were published in website in full during the year 2011 Elections and at present only 2 pages are available in website www.elections.tn.gov.in"

22.The Learned Senior Counsel for the 1st Respondent/Election Petitioner submits that the 1st Respondent/Election Petitioner at paragraph 88 of the Election Petition had pleaded about the expenses relating to firing of crackers would be included in the account of the candidate expenses for the purpose of Sec. 77 of the R.P. Act. In short, it is the stand of the 1st Respondent/Election Petitioner that the Applicant/1st Respondent had exceeded the expenditure in this regard.

23.The Learned Senior Counsel for the 1st Respondent/Election Petitioner submits that Rule 88 of the Conduct of Election Rules, 1961 has to be read with Appendix XXXI-A of the Hand Book for Candidates, Election Commission of India,

2009 (Reprint 2011). That apart, it is the stand of the 1st Respondent/Election Petitioner that Rule 86 of the Conduct of Election Rules, 1961 speaks about the 'Particulars of account of election expenses' to be maintained from day to day. In fact, Rule 88 speaks of 'Inspection of account and the obtaining of copies thereof'. Rule 89 enjoins about the 'Report by the [district election officer] (substituted by S.O.3875, dated 15-2-1966) as to the lodging of the account of election expenses and the decision of the Election Commission thereon'.

24.The Learned Senior Counsel for the 1st Respondent/Election Petitioner draws the attention of this Court that by pointing out that Chapter XVIII and Appendix XXXI-A of the Hand Book for Candidates deals with 'Election Expenses' and further that, Appendix XXXI-A contains Part 1 to Part 6 (the Abstract Statement of Election Expenses).

25.The Learned Senior Counsel for the 1st Respondent contends that the O.A.No.1147 of 2016 filed by the Applicant/1st Respondent is also not maintainable both in Law and on Facts and if the Applicant/1st Respondent desirous to summon original accounts, he has to summon it from the Election Commission of India, New Delhi and for that, he has to take appropriate Application for issuance of subpoena to the Election Commission of India.

26. In pith and substance, the Learned Senior Counsel for the 1st Respondent/Election Petitioner submits that there are enough pleadings raised by the 1st Respondent/Election Petitioner in his Election Petition and that the contra stand taken by the Applicant/1st Respondent is not correct.

27. The Learned Senior Counsel for the 1st Respondent/Election Petitioner contends that the ingredients of Sections 77(1) and 77(2) will have to be read with Section 100(1)(d)(iv) of the Act.

28. The Learned Senior Counsel for the 1st Respondent/Election Petitioner submits that the ingredients of Section 10-A of the Representation of the People Act, 1951 coupled with Rule 86 to 90 of the Conduct of Election Rules, 1961 will have to be taken into consideration by this Court in E.L.P.No.1 of 2011 as regards the plea of violation of Section 77(1) and 77(2) of the Act.

Discussions:

29. At the outset, this Court significantly points out that the aspect of non-production of a document or not summoning of a document/evidence either due to inadvertence or otherwise may not be a ground to reject the prayer for summoning of a certain record or examining a witness by summoning him. Of course, a party cannot be permitted to

lead evidence to fill up lacunae at the stage of the arguments. But, a Court of Law has ample discretion to permit a party to produce evidence at a later stage, if for sufficient reasons he or she could not produce it. To secure the ends of Justice or to advance the cause of Justice, a Court of Law can always exercise its inherent powers to permit a party to summon a witness or to produce a document and to adduce evidence thereto.

30. It cannot be forgotten that it is beyond the competence of a Court of Law to virtually oblige a party to examine any particular witness. Moreover, prior to a case being reserved for Judgment and when the arguments are in midway and if one side is to begin, at that point of time that when an application is projected by a party, then, at that stage, it is the prime duty of the Court to examine whether the document sought for in the application etc. do have any substantial bearing on the matters in issue in the Election Petition. After all, an inherent power of a Court is meant to do Justice in addition to and complementary to powers conferred under Civil Procedure Code either expressly or by implication.

31. No wonder, when documents/public documents are sought to be summoned/produced from a lawful custody, the issue of relevancy can be considered by a Court of Law after production of document. Further, while granting permission

to a party to produce a document, the Court cannot decide about the admissibility of document.

32.It is to be pointed out that a Court of Law cannot shut a prime document relied by an Applicant to a pending legal proceedings, for the purpose of an effective and efficacious determination of LIS between the parties. Also that, a Court of Law cannot utilise any document without getting to a party established or without putting it to a litigant against whom it is purported to be pressed into service, as opined by this Court.

33.Indeed, a litigant has to show good and sufficient reasons as to what prevented him to usher in necessary document(s) when his deposition was being recorded. The cogent reasons are to be advanced to permit a party to produce an evidence at a later point of time. It is to be noted that even an order for closure of evidence can be recalled.

34.Salient Features:

(i) It is to be noted that Section 86 of the Representation of People Act, 1951 speaks of 'Trial of Election Petitions'. Section 86(5) of the Act relates to 'The Power of the High Court to amend the Election Petition

based on an Application concerning the particulars of corrupt practice'.

(ii) No wonder, Section 86(6) of the Act enjoins that, 'The trial of an election petition shall, so far as is practicable consistently with the interests of justice in respect of the trial, be continued from day to day until its conclusion, unless the High Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded.' Further, Section 86(7) of the Act speaks of 'Every election petition shall be tried as expeditiously as possible and endeavour shall be made to conclude the trial within six months from the date on which the election petition is presented to the High Court for trial.'

(iii) Moreover, Section 83(1)(b) of the Act, under the caption 'Contents of Petition' is of mandatory character. In fact, the Election Petition must contain requisite particulars of corrupt practice with a view to enable the Court to appreciate the charges levelled. It is to be taken note of that a charge must be substantially proved as levelled and an evidence cannot be permitted to be let in in respect of a charge not disclosed in the Election Petition.

(iv) In fact, Section 87(1) of the Representation of the People Act, 1951 confers a discretionary power on the High Court to refuse to summon any witness only when it is of the earnest view that the evidence of the said witness is not material or that the party tendering such witness is indulging in otiose and frivolous ground mainly with a view to procrastinating the pending main Election Petition.

35. Bird's Eye view of Citations:

(i) In the decision of the Hon'ble Supreme Court in ***R.M.Seshadri V. C.Vasantha Pai and others, AIR 1969 Supreme Court 692*** wherein it is held that '***The Election Tribunal has power under Order 16, Rule 14 C.P.C. to suo motu summon a Court witness***'.

(ii) It is to be pertinently pointed out by this Court that an Election Petition may be decided expeditiously without unnecessary side proceedings, as per decision of the Hon'ble Supreme Court in ***Dilip Kumar Chaurasiya V. Ramesh Chandra Sahu @ Bhaiji and others, 1991 Supp. (2) Supreme Court Cases 260.***

(iii) In the decision of the Hon'ble Supreme Court in ***Harish Chandra Bajpai and another V. Triloki Singh and another, Air 1957 S.C. 444 at special page 448 (V 44 C 66 May)***, it is held that '***Public interest equally demanded that election disputes should be determined with despatch.***

That is the reason why a special jurisdiction is created and Tribunals are constituted for the trial of election petitions'. Also, in the Judgment of the Hon'ble Supreme Court dated 27.12.2015 in Civil Appeal Nos.2538-40/15 (Arising out of SLP (Civil) Nos.2487-2489/15), Mohd Akbar V. Ashok Sahu and others, the Hon'ble Supreme Court had echoed the similar sentiment.

Legal Principles:

36.It is to be pointed out that even while trying an Election Petition, the High Court retains the status of a Court and the inherent powers are available to it, as per decision *Ram Lakhan V. Ram Charitra and others, AIR 1993 Allahabad 199*. Ordinarily, it is for the Applicant to show a Sufficient/Good cause for non-summoning/ non-production of a document at the relevant point of time of pending main proceedings.

37.In this connection, it is not out of place for this Court to make a pertinent mention of the decision of the Hon'ble Supreme Court in *Salem Advocate Bar Association, Tamil Nadu V. Union of India, AIR 2005 Supreme Court 3353 at Special Page 3363, whereby and whereunder, at paragraph 33 & 34, it is observed as under:*

"33. Order XVIII Rule 2(4) which was inserted by Act 104 of 1976 has been omitted by Act 46 of 1999. Under the said Rule, the Court could direct or permit any party, to examine any party or any witness at any stage. The effect of deletion is the restoration of the status quo ante. This means that law that was prevalent prior to 1976 amendment, would govern. The principles as noticed hereinbefore in regard to deletion of Order XVIII, Rule 17(a) would apply to the deletion of this provision as well. Even prior to insertion of Order XVIII, Rule 2(4), such a permission could be granted by the Court in its discretion. The provision was inserted in 1976 by way of caution. The omission of Order XVIII, Rule 2(4) by 1999 amendment does not take away Court's inherent power to call for any witness at any stage either suo motu or on the prayer of a party invoking the inherent powers of the Court.

34. In order XVIII, Rule 2, sub-rules (3A) to (3D) have been inserted by Act 22 of 2002. The object of filing written arguments or fixing time limit of oral arguments is with a view to save time of court. The adherence to the requirement of these rules is

likely to help in administering fair and speedy justice."

Inherent Powers and the Civil Procedure Code:

38. It is to be remembered that every Court is a Court of Equity, but the inherent power under Section 151 C.P.C. has to be exercised by the concerned Court with great care, caution, utmost circumspection and only in an exceptional case and that too sparingly. It is a well settled principle in Law that an inherent power of the Court cannot override an express provisions of Law.

39. To put it precisely, a failure to produce evidence either due to inadvertence or negligence of a party is not a lawful ground to refuse the plea made subsequently in this regard by the party concerned. Besides this, an evidence is to be tendered on a plea properly raised and not in contradiction of the plea.

40. Apart from that, a discretionary relief under Section 151 C.P.C. cannot be claimed by any party as a matter of routine, since it is not his or her privilege. Undoubtedly, a Court of Law is to exercise its sound judicial discretion by applying its thinking judicial mind, based on the facts and circumstances, which float on the surface, in a given case.

41. At this stage, this Court relevantly points out that the Representation of the People Act, 1951 enjoins that all the powers of C.P.C. can be exercised and all the procedure in so far as it applies to the trial of civil suits may be followed in the trial of Election Petitions. An Election Petition is a Special Proceeding and not an action at Law or a suit in Equity.

42. In reality, the 'Presiding Deity' of a Court (the Judge) is the Sanctum and Sanctorum and ultimate custodian of a processual Justice. Further, a litigant should not suffer on account of the fact that he had not followed the procedure adumbrated either in Civil Procedure Code or in Civil Rules of Practice or any other rule as the case may be. Apart from that, even without applying for a Certified Copy of the Accounts in question [before the competent authority under Rule 88 of the Conduct of Election Rules, 1961], the present filing of O.A.No.1147 of 2016 [under Order 16 Rule 14 C.P.C.] is not a 'Bar' much less an 'Absolute Bar'.

43. It is to be pertinently pointed out by this Court that every 'Trial Court' (Original Court) is to appraise the evidence placed before it with a view to determine the 'Controversies/Disputes' in connection with such evidence is received. It is to be reminded that an HOMO SAPIEN is mortal. However, a Litigation is immortal. As a matter of fact, in an Election Petition, undoubtedly 'Destiny of

Constituency' is on trial and therefore, the delay in elongating the pending proceedings is to be avoided to secure the ends of Justice. Besides this, the Court trying an 'Election Petition' is to keep in mind the ingredients of Sections 146 (Questions lawful in cross-examination), 148 (Court to decide when question shall be asked and when witness compelled to answer), 150 (Procedure of Court in case of question being asked without reasonable grounds), 151 (Indecent and scandalous questions) and Section 152 (Questions intended to insult or annoy) of the Indian Evidence Act, 1872.

Disposition:

44. On a careful consideration of respective contentions, this Court, bearing in mind the entire conspectus of the attendant facts and circumstances of the present case which float on the surface and with a view to provide an opportunity to the Applicant/1st Respondent to substantiate his version of the case and even though the O.A.No.1147 of 2016 has been filed by the Applicant/1st Respondent, at a time when arguments were to be advanced on the side of the 1st Respondent/ Election Petitioner in main Election Petition, (at a belated stage), yet, this Court, keeping in mind of the fact that a Court of Law to bring out a clear scenario of any given proceedings/case on record, with an intent to aid the Court, for adjudicating either a

point of Fact/Law is to deliver substantial Justice to the parties overriding either technicalities or hyper technicalities, by taking a practical, pragmatic, purposeful, meaningful and a rational view, to prevent an aberration of Justice and to advance the cause of substantial Justice, allows this Original Application.

45. In fine, the O.A.No.1147 of 2016 is allowed. No costs. The Registry is directed to issue subpoena to the present Chief Electoral Officer of Tamil Nadu, Secretariat, Chennai - 9 (by mentioning his name) to produce the original "Abstract Statement of Election Expenditure Accounts" pertaining to the returned candidate (Respondent-1 in the Election Petition) as available on the website <http://www.elections.tn.gov.in> and the 'Register for Maintenance of Day to Day Accounts' - Annexure 14 (Part A), 'Cash Register for Maintenance of Day to Day Accounts by Contesting Candidates' (Part B) and 'Bank Register for Maintenance of Day to Day Accounts by Contesting Candidates' (Part C) pertaining to the Applicant (1st Respondent/returned candidate in the Election Petition), submitted for General Election-2011 for No.13, Kolathur Assembly Constituency, along with the reconciliation order passed by the District Electoral Officer and the Observer for Election Expenditure, nominated by the Election Commission of India, through the present Chief Electoral

Officer of Tamil Nadu, to mark the summoned documents and to speak about the veracity of Exhibit P-17, for the hearing of E.L.P.No.1 of 2011 on 11.01.2017 at 2.15 p.m. Liberty is granted to the 1st Respondent/Election Petitioner to adduce rebuttal evidence, if need be/situation so warrants. The Applicant/1st Respondent is directed to pay emergent batta in this regard. Private Notice is also permitted.

WITNESS THE HON'BLE THIRU SANJAY KISHAN KAUL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 2nd DAY OF JANUARY 2017.

SD/-

ASSISTANT REGISTRAR (O.S.II)

//CERTIFIED TO BE TRUE COPY//
DATED THIS THE DAY OF 2016

COURT OFFICER (OS)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

WEB COPY

cns - 04/01/2017

OA.NO.1147 OF 2016

in

ELP.NO.1 OF 2011

ORDER

DATED:02/01/2017

THE HON'BLE MR. JUSTICE

M.VENUGOPAL

FOR APPROVAL:

APPROVED ON :

WEB COPY