

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

OA. NOS. 929 & 930 of 2019

in

Election Petition No. 3 of 2019

**ELP No.3 of 2019**

A.Santhana Kumar,  
5E-48/NA,  
Munisamy Nagar,  
Thoothukudi 628008.

... Petitioner

-VS-

- 1.The Chief Election Commissioner,  
Nirvachan Sadhan,  
Ashoka Road, New Delhi - 110001.
- 2.Kanimozhi Karunanidhi,  
No.14, I Main Road, CIT Colony,  
Mylapore, Chennai 600 004.
- 3.G.Saravanan,  
No.146, 11, Guruspuram,  
Thoothukudi Taluk,  
Thoothukudi District - 628 001.
- 4.B.Selvin,  
S/o.G.Balasingh,  
106H/3, Duvipuram, 2<sup>nd</sup> Street,  
VVD Main Road,  
Thoothukudi Taluk 628 003.
- 5.S.Lourdes,  
Door No.7/700, Amandivalli Road,  
Mootam Post,  
Kalkulam Taluk,  
Kanyakumari District 629202.
- 6.J.Sivaneswaran,  
S/o.Jegaveera Pandian,  
7/32A, West Street,  
Panicka Nadar Kudiiruppu,  
Tiruchendur Taluk, Thoothukudi 628218.

7.A.Jeyaraj,

No.112, Karungulam,  
Pandiyan Kulam,  
Srivaikundam Taluk, Thoothukudi.

8.A.Ramesh,  
39/39, Emperor Street,  
Thoothukudi.

9.V.Siva  
No.34/1, Bryant Nagar, 3<sup>rd</sup> Street,  
Thoothukudi 628 008.

10.Aamalan Rajiv Bonifas,  
S/o.High Court Durai,  
371, Santhankulamvazhi,  
Kalunguvilai, Komanaeri,  
Thoothukudi District.

11.M.Bhuvaneshwaran,  
S/o.Malaiandi nadar,  
Door No.5/102, South Street,  
Mela Alwarthoppu Post, Srivaikundam Taluk,  
Thoothukudi District 628 612.

12.K.Guru,  
S/o.Kaliaperumal,  
39, 18<sup>th</sup> Street, Padmavathi Nagar,  
Madambakkam, Kancheepuram District.

13.P.Ramakrishnan,  
S/o.Paul,  
Door No.3/56, middle Street,  
Kandaswampuram, Melapandyapuram,  
Otapidaram Taluk.

14.M.Sankaralingam,  
S/o.Muthu nadar,  
1/11-66, Mela Street, Vallivillaikanum,  
Thoothukudi District.

15.Sunman,  
No.40, Boldenpuram, I Street,  
Thoothukudi.

16.M.Rajalingam,  
S/o.Muthu Nadar,  
1/11-Mela Street, Vallivillaikanum,  
Thoothukudi District.

17. T. Marakatha Raghava Raj,  
S/o.Thangarai,  
24A, Kaniyalar Street, Arumuganeri,

Tiruchendur Taluk 628202.

18.D.Jayaganesh,  
S/o.Duraimani,  
2/203, Middle Street, Perurani,  
Thoothukudi District 628103.

19.Jasper Gnana Martin,  
S/o.Gnanamuthu,  
No.111/11D/1A/1, SKSR Colony,  
Bolpettai, Thoothukudi District 628002.

20.R.Sennai Natarajan,  
S/o.Ramaiah,  
Door No.55/83, 2<sup>nd</sup> Street,  
Krishnapalayam, Arapalayam Cross Road,  
Madurai District.

21.M.Ganesan,  
S/o.E.Murugan,  
Pillaiyar Koil Street,  
Door No.122,Vasavapuram,  
Thiruvaikandu Taluk,  
Thoothukudi District.

22.J.Ravishankar,  
S/o.Jayachandran,  
303, Kadalaikara Street, Lane-1,  
Kovilpatti 628501.

23.TPS.Pon Kumaran,  
S/o.Srinivasagam,  
289-B, Sivathikulam Road,  
Thoothukudi 628003.

24.S.Ponraj,  
No.136, Lakshmi Managaram,  
Middle Street,  
Arumuganeri 628 202.

25.Ponnuswamy,  
69/6, East Street,  
Sankaralingapuram, Kovilpatti,  
Thoothukudi District.

26.M.Antohillery,  
S/o.T.Mariasosai Micheal,  
2G/117A, Kokur Main Road,  
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Thoothukudi 628008.

27.M.Ramakrishnan,  
S/o.Late C.Mylsamy,

2/331, Bharadhidasan Nagar,  
Kuralkuttai Via,  
Bodipatti, Tiruppur District.

28.M.Maharajan,  
S/o.Mandhiram,  
Door No.6/58, South Street,  
Muthulakshmipuram,  
Meighanapuram, Tiruchendur Taluk.

29.Dr.Tamilisai Soundararajan,  
No.7, Logaih Colony,  
4<sup>th</sup> Cross Street, Saligramam, Chennai 600 093.

30.S.Christantine Rajasekar,  
19/32, Udangudi Road,Paramakurichi,  
Tiruchendur.

31.E.V.S.Rajakumar Naidu,  
S/o.Subbarayulu,  
B-1, Bhimasena Flat, No.3,  
Mures Gate Road, Alwarpet,  
Chennai 600 018.

32.P.Balamurugan,  
S/o.Pooraja  
9/39-4, Kamarajar Nagar West Street,  
Kootampalli, Pudukottai,  
Thoothukudi 628103.

33.S.Germanus,  
S/o.Singrayar,  
No.1, Saint Susaiapar North Car Street,  
Pannagudi 627109, Radhapuram Taluk,  
Tirunelveli.

34.C.Subhashini Malathi,  
D/o.M.T.Chandrakanth,  
1/261, Alangara Thatta,  
Arockiyapuram Post,  
Thoothukudi District 628 002.

35.ER.P.Pradeep Ganesan,  
S/o.Perianban,  
Door No.371/1, Kelashanmugapuram,  
Proper Street, Thoothukudi 628003.

36.P.Rajkumar,  
S/o.Bolaih, 57-D, Sathur Main Road,  
Kovilpatti, Thoothukudi District.

37.Gabriel James Fernando,  
S/o.Xavier Fernando,

No.3/168-B, Zion Nagar,  
Uzhavankonam, Kaniyakulam,  
Nagercoil, Kanyakumari District 629003.

38.G.James,  
S/o.D.Gabriel,  
Door No.4/5, Kavalkadu,  
Idayarkadu Post,  
Srivaikundam,  
Thoothukudi 628802. ...Respondents

**OA.No.929 & 930 Of 2019**

Kanimozhi Karunanidhi,  
No.14, I Main Road, CIT Colony,  
Mylapore, Chennai 600 004. .... Applicant/2<sup>nd</sup> Respondent

-VS-

1.A.Santhana Kumar,  
5E-48/NA,  
Munisamy Nagar,  
Thoothukudi 628008. .... 1<sup>st</sup> Respondent/Petitioner

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38.G.James,  
S/o.D.Gabriel,  
Door No.4/5, Kavalkadu,  
Idayarkadu Post,  
Srivaikundam,  
Thoothukudi 628802. ...Respondents/Respondents

**O.A.No. 929 of 2019**

This Original Application praying that this Hon'ble Court be pleased to strike off the paragraphs 5 to 17 in the Election Petition No.3 of 2019.

**O.A.No. 930 of 2019**

This Original Application praying that this Hon'ble Court be pleased to reject the Election Petition No.3 of 2019.

These applications coming on this day before this Court for hearing in the presence of Mr.P.Wilson, Senior Counsel for M/s.Wilson Associates, advocates for the Applicant/2<sup>nd</sup> Respondent, Mr.S.Makesh, advocate for the 1<sup>st</sup> Respondent/Election Petitioner, Mr.Niranjana Rajagopalan, advocate for the 2<sup>nd</sup> Respondent and Mr.K.Samidurai, advocate for the 20<sup>th</sup> Respondent in both applications; and upon reading the Judges Summon and affidavit of Kanimozhi Karunanidhi, filed in both Applications, Common Counter Affidavit of 1<sup>st</sup> Respondent / Election Petitioner filed in OA.Nos.929 & 930 of 2019 and

**The Court made the following order:-**

Original Applications in O.A.No.929 of 2019 is

filed to strike off the Paragraphs 5 to 17 in the Election Petition No.3 of 2019 and O.A.No.930 of 2019 is filed to reject the Election Petition No.3 of 2019. Both the applications are filed by the 2<sup>nd</sup> respondent in the Election Petition, who was elected in the Thoothukudi Paliamentary Lok Sabha Constituency.

**Pleadings of the applicant:**

2. The applicant states that the Elections to the 17<sup>th</sup> Lok Sabha were held on 18.04.2019. The notification of the Election was issued on 19.03.2019, inviting nominations of the candidates for all constituencies including No.36, Thoothukudi Lok Sabha Constituency. As per the schedule of Election, the last date for filing nominations was 26.03.2019. The applicant filed her nomination on 25.03.2019. The date for scrutiny of nomination was 27.03.2019 and the Returning Officer, on being satisfied that the papers submitted by the applicant was in order, accepted the nomination. The date of polling was 18.04.2019 and the Election results were declared on 23.05.2019. The applicant was declared as Elected candidate on 23.05.2019 and the Returning Officer issued Election Certificate on the same date.

3. The applicant states that she was sponsored by the Dravida Munnetra Kazhagam (DMK) Party to contest from the No.36, Thoothukudi Lok Sabha Constituency in the DMK party symbol of "Rising Sun". The 1<sup>st</sup> respondent /

Election Petitioner has filed the Election Petition in his capacity as a voter. The Election Petition is sought to be rejected mainly on the ground that the averments contained in the Election Petition are wholly vague, and bereft of material facts and therefore, do not meet the requirements of Sections 81, 83, 86 and 100 of the Representation of Peoples Act, 1951. A Bare reading of the Election Petition does not disclose any cause of action against the applicant for filing the above Election Petition. Thus, no ground is made out by the 1<sup>st</sup> respondent / Election Petitioner to assail the election of the applicant. It is further contended that the Election Petition is not supported by any corrupt practice affidavit as mandated by Rule 94-A of the Conduct of Elections Rules, 1961. Thus, the Election Petition deserved to be rejected in limine. Besides, para 2 to 17 deserve to be struck off.

सत्यमेव जयते

4. It is contended that paragraphs 1 and 2 are concerned, they are mere description of the petitioner and factual statements. In paragraph 3, the respondent has merely described the issuance of the Election Notification and the filing of nominations. In paragraph 4, there are no averments / allegations against the applicant except the fact that the application filed her nomination on 25.04.2016 and was elected with a margin of 3,47,209 votes, having secured 5,63,143 votes in total.

Paragraph 5, the bereft of material facts and totally vague and as a result, is contrary to Sections 81 to 83 of the Representation of Peoples Act. The material facts are to be pleaded in the Election Petition. However, there is no such material facts available.

5. The applicant states that she had mentioned the words "Porunthathu" in the column requiring to provide the PAN Number, the last financial year of filing the Income Tax Return and the total income shown in the income tax return for the past five financial years of the spouse of the applicant in the affidavit Form 26 and that the suppression of the same amounts to non-compliance of the Constitution of India and the orders made by the Election Commission of India and therefore, materially affecting the result of the election. However, the respondent has not stated any material fact about why the acceptance of the nomination of the applicant was improper nor has substantiated why it amounts to the non-compliance with the provisions of the Constitution of India or how the result of the election is materially affected.

6. The respondents / petitioner has not claimed that the spouse of the applicant has a PAN Number. Further, he has not claimed that the spouse of the applicant has any such similar PAN Number in Singapore.

The respondent / petitioner has simply claimed that the applicant had failed to mention the income tax details of

her spouse. However, it is contended that the spouse of the applicant does not have a PAN Number. If at all, the contents of the statement is erroneous, the respondent / petitioner ought to have substantiated the allegations that the statement is incorrect. In the absence of any such averments, the bland and vague statement that the applicant had not provided her spouse's PAN Number cannot be maintained in an Election Petition.

7. It is further contended by the applicant that her spouse neither possesses a PAN Number nor pays income tax in Singapore since he does not have any income in Singapore. Thus, Paragraph 5 is vague, bereft of material facts and deserves to be struck off.

8. The averments in Paragraph 6 are vague and bereft of material facts. The contention of the respondents / petitioner is nothing but misinterpretation of Form 26. Under Part A, No.2 of Form 266, the information provided relates to the constituency in whose electoral roll, the name of the applicant is enrolled in, whereas in S.No.3 of Part-B, it relates to the constituency in which is stood for election. The applicant has stated in the column in S.No.3 of Part-B does not state, whether it is the constituency, where the candidate is standing for election or where the candidate's name is included in the electoral roll. Thus, the applicant had mentioned the constituency, where she

was standing for election. This is not in contravention of any law or rules governing the election. The respondent / Election petitioner has miserably failed to understand the provisions of Form 26 and has filed the Election Petition under his faulty understanding.

9. The contents in Paragraph 7 are also vague and bereft of material facts and do not disclose any cause of action to file the above Election Petition. The column under Part A, No.4, S.No.2 of Form 26 filed by the applicant, which is referred to by the respondent / Election Petitioner has been duly filled in and accepted to be proper by the Returning Officer. The Returning Officer on being subjectively satisfied that the filling in of these columns satisfies the requirements of all concerned laws, and after pre-vetting of the affidavit and nomination form as per the directions of Hon'ble Supreme Court of India in the case of Resurgence India Vs. Election Commission, has accepted the applicant nomination papers. Thus, the contention of the respondent / Election Petitioner that the PAN Number and other details of the spouse of the applicant had been filled in as "Porunthathu" and therefore, the Election is materially affected, wholly untenable is incorrect. The Election Petitioner is merely going on a fishing exercise without having any knowledge or documents in his possession showing any wrong doing on the part of the

applicant.

10. The averments in Paragraphs 8 and 9 are concerned, they are wholly vague, bereft of material facts and do not disclose any cause of action. The entire paragraph is surmises and conjecture. The basis of the para is only the colorful imagination of the petitioner. There is no any material facts, which vitiates election of the applicant. The allegation of suppression of material facts, the Election petitioner has not substantiated the same by way of evidence.

11. The contentions in Paragraph 10 of the Election Petition is also vague and bereft of material facts. In view of the fact that the entire averments in the Election Petitions are vague and bereft of material facts, no trial can be conducted on the basis of the said vague averments. Thus, the Election Petition itself is liable to be rejected.

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12. The applicant herein further contended that all the subsequent paragraphs in Election Petitions are also vague and bereft of material facts and with reference to certain paragraphs. It is contended that the contents are mere repetitions and further, the Election Petitioner has not voted in the Present Election and therefore, the Election Petitioner has not stated in the

body of the petition that he has voted in the present election. Therefore, he has no *locus standi* to maintain the above Election petition.

13. With these grounds, the applicant states that the Election Petition is liable to be rejected in limine.

**Counter filed by the 1<sup>st</sup> respondent / Election Petitioner:**

14. The 1<sup>st</sup> respondent / Election Petitioner filed a common counter affidavit in respect of both the original applications filed by the applicant.

15. The contention of the 1<sup>st</sup> respondent / petitioner in his counter is that at this point of time, the 1<sup>st</sup> respondent need not be obliged to aver the material particulars, constituting the material facts and the manner of evidence to prove the same, but the applicant though acquired the knowledge of the case from the succinct material facts stated in the election petition to make out a defence, has filed the above application with preposterous averments to reject the above petition and strike out the paragraphs 5 to 17 with subtle statements by dissecting the facts stated in the Election Petition.

<https://hcservices.ecourts.gov.in/hcservices/> 16. The 1<sup>st</sup> respondent emphatically states that the applicant / 2<sup>nd</sup> respondent having stated in her

nomination, Form 26 affidavit, under Part A, that her spouse is working as 'Mnyhrf® (btëehL)', in tamil language, that is consultant, in overseas and earning "CÂa«" in tamil language, that is salary in serial.No.9(b) and 9A(b), respectively, contradicting the same, she has averred in the above application that her spouse do not have income in Singapore at Paragraph 6, at Page.No.8 of the affidavit of the above application, which warrant trial to substantiate the same.

17. Though the applicant / 2<sup>nd</sup> respondent has denied the payment of income tax in overseas by her spouse in the above application, has not stated that her spouse do not have any overseas income tax reference number, and do not file return in overseas, in regard to the averments in paragraph 8 of the election petition filed by the 1<sup>st</sup> respondent.

18. Perusal of the election petition, it is literally plausible that, as she has mentioned in tamil language "Ethumillai" to the query, whether there is any income tax arrears by her spouse, the election petition is filed upon the premise that the applicant herein has failed to disclose the information in regard to the payment of income tax of her spouse, that is including the status of filing of income tax return irrespective of paying income tax or not. It is contended that the

aforementioned premise is inclusive of the fact that the applicant / 2<sup>nd</sup> respondent ought to have disclosed the status of filing of income tax return of her spouse, being salaried, namely Aravindan, with relevant number in overseas, irrespective of paying income tax or not, as sought by the election commission of India, non-compliance of the same is in violation of the Article 324 of the Constitution of India, which constitutes the concise form of material facts stated in the petition and it is not necessary to aver the material particulars to amplify the material facts.

19. It is stated that the applicant / 2<sup>nd</sup> respondent is obliged to disprove the alleged fact "that the act of non-disclosure of the status of filing of income tax in Form 26 with relevant income tax reference number in overseas infringing the fundamental rights of the electors is unconstitutional" and the trial is warranted for the same. It is further stated that it could be literally understood that the election petition is filed, highlighting the material fact, disclosing one of the cause of action, inter alia, that since the information to be provided by the candidate is sought clearly under the caption "DETAILS OF PERMANENT ACCOUNT NUMBER AND STATUS OF FILING OF INCOME TAX RETURN" in Serial No.4, under Part.A, of FORM 26, by the election commission of India, the candidate is obliged to disclose

the status of filing of the income tax return irrespective of the fact whether the income tax is paid or not, in other words that any person, who ever not paying any income tax but filing income tax return is obliged to disclose the details of status of income tax filing in the country having citizenship with relevant income tax reference number, under serial No.4, Part.A of Form 26, but as the applicant has mentioned in tamil language "Ethumillai" to the query, whether there is any income tax arrears by her spouse, being working as a consultant earning salary according to her information provided under Part A, No.9(b) and 9A(b) of Form 26, it is stated that the 1<sup>st</sup> respondent averred in the election petition that the applicant had failed to disclose the payment of income tax that is including the status of filing of income tax.

20. It is stated that the applicant / 2<sup>nd</sup> respondent having provided information that her spouse does not possess PAN card ought to have disclosed any income tax reference number in overseas, being salaried in overseas in compliance with Constitution of India failing to disclose the same the right to sue accrues to the 1<sup>st</sup> respondent / petitioner. The above Election Petition is filed based upon the particulars provided by the applicant in Form 26, in the form of information, having stated that her husband is earning salary in

overseas by working as consultant under part A, SERIAL No.9(b) and 9A(b), she ought to have disclosed the relevant INCOME TAX REFERENCE NUMBER of her spouse in overseas, failing which the above election petition is filed, challenging the unconstitutional act of the applicant. Besides, it is pertinent to submit here that the averments in the above application is premature at the threshold, in as much as of the reason that without answering the aforementioned material facts, by the way of defence averments, particularly in regard to the non-disclosure of status of filing of income tax return in overseas irrespective of whether paying income tax or not, being salaried working as consultant, the above application is premature with the motive to scuttle the process of law, and to thwart the trial.

21. The Election Petition is filed mainly on the following grounds providing the right to sue the applicant / 2<sup>nd</sup> respondent:

- a)** The Election Commission of India had exercised its powers to conduct the election for the 2019 Lok Sabha election under Article 324 of the Constitution of India, and by virtue of the same, it had required the candidates to provide information under Form 26 prescribed under Rule 4A of the Conduct of Election Rules 1961, to the electors as they are entitled to know the status of the

prospective candidates in all aspects as mandated by the Election Commission of India in Form 26. It is very pertinent to emphasize here the Election Commission of India is empowered to seek any information in order to disseminate to the electors in addition to the Right to Information under Section 33A of the representation of people Act, 1951 by virtue of the Hon'ble Apex Court order in ***Union of India Vs. Association of Democratic Reforms and another, reported in (2002) 5 SCC 294***, and the 1<sup>st</sup> respondent / petitioner before this Court, seeking relief as the returned candidate has acted unconstitutionally having failed to comply with the direction provided under Article 324 of the Constitution of India.

b) While so, the Election Commission of India in exercise of its aforementioned powers had required the candidates to provide the information to the electors in regard to the status of filing of Income tax by them, their spouse, Hindu Joint Family and dependants under Part A, Serial No.4, with the caption "DETAILS OF PERMANENT ACCOUNT NUMBER AND STATUS OF FILING OF INCOME TAX RETURN", contemplating that the candidate must disclose the status of filing of income tax either concerned person is paying income tax or not, but in

as the returned candidate has failed to disclose the same, the 1<sup>st</sup> respondent / petitioner before

this Hon'ble Court, seeking relief with the contention that the act of not disclosing the status of filing of income tax with income tax reference number in compliance with the direction of the Election Commission of India is unconstitutional.

c) Upon perusal of the Form 26 of the returned candidate by the 1<sup>st</sup> respondent / petitioner as a elector, the 1<sup>st</sup> respondent found apparently that she had not disclosed the status of the income tax filing of her spouse claiming that he is Overseas citizen, when the elector is entitled to know about the status of filing of the income tax irrespective of the fact whether he is overseas citizen or not and whether he is paying income tax or not, it is explicit that she must have disclosed the status of filing of income tax return of her spouse in overseas to facilitate the electors to compare the same with previous returns of her spouse and for future reference, failing which the right to sue accrues to the 1<sup>st</sup> respondent against the unconstitutional act.

d) The instructions under the serial No.4 of the Part A of the Form 26, clearly mandates that those who are not possessing the PAN card should mention that they do not possess PAN CARD with the intention to provide information to the electors about the candidate, who do not possess PAN card, facilitating the electors to verify

the authenticity of the same, in the same way, the returned candidate ought have mentioned that whether her spouse is possessing any income tax reference number in the country or not where he is citizen, failing to adhere with the same, the returned candidate has debarred the electors from getting information, and the 1<sup>st</sup> respondent before this Court, seeking relief against the unconstitutional act of the applicant.

e) In other words, it is explicit that the candidate is not expressly absolved from disclosing the status of the income tax filing with the relevant income tax reference number in the case of their spouse being overseas citizen and if they do not possess PAN card, irrespective of whether paying income tax or not, as the main intention of the FORM 26 is to provide information to the public including regarding the status of filing of the income tax, in order to decide about the casting of their votes, having deprived to get the information to make decision, the 1<sup>st</sup> respondent / petitioner before this Court against the unconstitutional act of the applicant affecting the legitimate expectation of the elector.

f) Besides though the petitioner is not bound to state the manner of evidence in the pleadings, it is necessary to highlight the candidate herself had disclosed that her spouse is earning salary as consultant

at overseas at Serial No.9(b) and 9A(b), respectively under Part A, and in serial No.4 Part A, she has mentioned in tamil language "Ethumilai" to the query, whether there is any arrears of tax. Therefore, on plain reading of the above information, it is natural for an elector to expect the candidate to disclose the income tax number of her spouse in overseas irrespective of the fact whether the spouse is paying income tax or not, while he is drawing salary according to the information provided by her and hence, the petitioner is before this Court, challenging the unconstitutional act of the applicant / 2<sup>nd</sup> respondent.

22. Therefore, as the right to sue accrues to the 1<sup>st</sup> respondent / petitioner based upon the above stated primary material facts, disclosing the cause of action, the above election petition is filed and the 1<sup>st</sup> respondent / petitioner is bound to prove the same in the case of denial of every material facts by the applicant / 2<sup>nd</sup> respondent, for which, the trial is warranted.

23. It is stated that in the above application, the applicant has averred that the spouse of her is not paying income tax, which is unwarranted in the application for rejection of petition because the applicant must not make any averment, which is in the form of defence, which could be proved only by the way of

trial. The applicant has not proved any of the ingredients need to strike out pleadings and mere bald plea that the paragraphs in the election petition to be struck out is sheer attempt to cease the litigation by abusing the process of law since the averments of the petitioner are not vexatious, scandalous or either abuse of process of law, in fact the averments are crucially dealing with the ambiguous stand of the applicant in regard to the payment and filing of income tax of the spouse who is overseas citizen, disclosing the cause of action.

24. It is contended that the non submission of documents not in possession while presenting the petition does not debar the petitioner to file any document obtained after the presentation of plaint with the leave of the Court and the averment of the petitioner that no document was filed and the trial is not warranted is sheer attempt to scuttle the litigation at the threshold without providing any opportunity to substantiate the relief prayed for.

25. The respondent / petitioner states that the trial is warranted to prove:

**A)** That the applicant / 2<sup>nd</sup> respondent ought to

have disclosed the status of filing of income tax return irrespective of paying tax or not and non compliance of

the same is unconstitutional.

**B)** That the applicant / 2<sup>nd</sup> respondent is not absolved from disclosing the status of filing of income tax return by merely stating overseas citizen and the same is unconstitutional.

**C)** That the electors are precluded unconstitutionally from getting information in regard to the status of filing of income tax return of the spouse violating the fundamental right guaranteed to them affecting the legitimate expectation.

**D)** That the applicant / 2<sup>nd</sup> respondent ought to have disclosed the income tax reference number of her spouse being salaried in overseas, which is non compliance with statutory requirements.

**E)** That the applicant / 2<sup>nd</sup> respondent has garnered votes by unconstitutional act.

**F)** That the result is materially affected as the electors were debarred from getting information in regard to the income tax reference number and financial status of the spouse of the applicant, being salaried to check the credentials of the statement of the return candidate and to decide about the casting of vote.

**G)** That the result is materially affected because that the elector is having right to file the counter affidavit before the returning officer in the case of any discrepancies found in regard to any information provided in Form 26, affidavit, hence deprivation of the

information in regard to details of status of income tax barred the electors to dispute the same in the case of discrepancy, and if the information provided was disputed, pursuant to the same, if the nomination was not accepted, the distribution of wasted votes would have certainly benefited among the other contested candidates.

**H)** That the result is materially affected since the information in regard to the status of filing of income tax return of her spouse is not provided by the applicant / 2<sup>nd</sup> respondent, the electors in enmasse are deprived of opportunity to make correct decision in regard to casting of votes.

**I)** That the result is materially affected because being the candidate without adhering to the constitutional requirements contested with the candidates, who had adhered to the constitution and garnered the votes, which would have been distributed to other candidates, if the nomination was rejected.

26. It is further contended that the above petition is not with surmise and conjectures, it is definite against the unconstitutional act of the returned candidate and once as the petitioner stated the violation of Article 324, the averment of the applicant in regard to the non stating of orders is unwarranted. The 1<sup>st</sup> respondent / petitioner have not filed the above petition under Section 123 of the Representation of People Act

1951, and the filing of affidavit under Rule 94-A of the Conduct of Election Rules, 1961 is unwarranted.

**Arguments on behalf of the applicant:**

27. The learned Senior counsel appearing on behalf of the applicant reiterated the contentions set out in the applications, by stating that the Election Petition is filed with vague allegations, which all are bereft of material facts. In the absence of any material facts and clarity in the averments, the applicant / 2<sup>nd</sup> respondent cannot be in a position to face the trial or met out such vague allegations. Thus, the Election Petition is liable to be rejected in limine on the ground that the averments in the entire Election Petitions are vague and bereft of material facts. Furnishing of material facts is an essence of an Election Petition. Thus, in the absence of any material facts, the Courts would not be in a position to proceed with the trial by framing the issues. Accordingly, the Election Petition is devoid of merits.

28. The Rejection of Election Petitions and striking off the paragraphs were considered by the Hon'ble Supreme Court of India, time and again, holding that the Election Petition cannot be posted for trial, but must be rejected at the threshold if on a reading of the election petition, it does not disclose material

facts. The counter filed by the 1<sup>st</sup> respondent / Election Petitioner is that such material facts are required to be disclosed only for cases of corrupt practices is unacceptable. Therefore, in the absence of any material facts or the material facts are not disclosed in the Election Petition, then the Election Petitions deserves to be rejected in limine and the same is incapable of being taken up for trial. The degree of material facts required is higher than ordinary civil suits. Therefore, the Election Petition itself is to be scrapped.

29. In support of the said contentions, the learned Senior counsel appearing on behalf of the applicant cited the following judgments:

In the case of **Ram Sukh Vs. Dinesh Aggarwal**, reported in (2009) 10 SCC 541, the Hon'ble Supreme Court of India held as follows:

*"10. Section 83, the pivotal provision for the present case, requires that: (a) the election petition must contain a concise statement of "material facts" on which the petitioner relies and (b) he should also set forth "full particulars" of any corrupt practices which the petitioner alleges. Proviso to clause (c) of sub-section (1) of Section 83*

any corrupt practice, the election 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. It is plain that the requirement of disclosure of "material facts" and "full particulars" as stipulated in the section is mandatory.

11. Section 86 mandates that where the election petition does not comply with the provisions of Section 81 or Section 82 or Section 117 of the Act, the High Court should dismiss the election petition. Section 87 which lays down the procedure required to be followed by the High Court while trying an election petition, requires that every election petition shall be tried, as nearly as may be, in accordance with the procedure applicable under the Code to the trial of the suits, subject of course to the provisions of the Act and of any requirement made thereunder.

12. It is evident that the controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is whether the election petition lacked "material facts"

required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial? As already noted, it is mandatory that all "material facts" are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out "material facts" in his petition?

**13.** The phrase "material facts" has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends. (See *Mahadeorao Sukaji Shivankar v. Ramaratan Bapu* [(2004) 7 SCC 181].) Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are "material facts". Material facts are facts which, if established, would give the

*petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.*

**14.** *The requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure with reference to Sections 81, 83 and 86 of the Act came up for consideration before a three-Judge Bench of this Court in Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238]. Speaking for the three-Judge Bench, M. Hidayatullah, C.J., inter alia, laid down that:*

*(i) Section 83 of the Act is mandatory and requires first a concise statement of material facts and then the fullest possible particulars;*  
*(ii) omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad;*  
*(iii) the function of particulars is to present in full a picture of the cause of action and to make the opposite party understand the case he will have to meet;*

*(iv) material facts and particulars are distinct matters—material facts will mention statements*

of fact and particulars will set out the names of persons with date, time and place; and  
 (v) in stating the material facts it will not do merely to quote the words of the section because then the efficacy of the material facts will be lost.

15. At this juncture, in order to appreciate the real object and purport of the phrase "material facts", particularly with reference to election law, it would be appropriate to notice the distinction between the phrases "material facts" as appearing in clause (a) and "particulars" as appearing in clause (b) of sub-section (1) of Section 83. As stated above, "material facts" are primary or basic facts which have to be pleaded by the petitioner to prove his cause of action and by the defendant to prove his defence. "Particulars", on the other hand, are details in support of the material facts, pleaded by the parties. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Unlike "material facts" which

provide the basic foundation on which the entire edifice of the election petition is built, "particulars" are to be stated to ensure that the opposite party is not taken by surprise.

**16.** The distinction between "material facts" and "particulars" and their requirement in an election petition was succinctly brought out by this Court in *Virender Nath Gautam v. Satpal Singh* [(2007) 3 SCC 617] wherein C.K. Thakker, J., stated thus: (SCC pp. 631-32, para 50)

"50. There is distinction between *facta probanda* (the facts required to be proved i.e. material facts) and *facta probantia* (the facts by means of which they are proved i.e. particulars or evidence). It is settled law that

pleadings must contain only *facta probanda* and not *facta probantia*. The material facts on which the party relies for his claim are called *facta probanda* and they must be stated in the pleadings. But the facts or facts by means of which *facta probanda* (material facts) are proved and which are in the nature of *facta probantia* (particulars or evidence) need not be set out in the pleadings. They are not facts in

proved at the trial in order to establish the fact in issue."

**17.** Now, before examining the rival submissions in the light of the aforestated legal position, it would be expedient to deal with another submission of the learned counsel for the appellant that the High Court should not have exercised its power either under Order 6 Rule 16 or Order 7 Rule 11 of the Code to reject the election petition at the threshold. The argument is twofold viz.:

(i) that even if the election petition was liable to be dismissed ultimately, it should have been dismissed only after affording an opportunity to the election petitioner to adduce evidence in support of his allegation in the petition, and

(ii) since Section 83 does not find a place in Section 86 of the Act, rejection of the petition at the threshold would amount to reading into sub-section (1) of Section 86 an additional ground.

In our opinion, both the contentions are misconceived and untenable.

**18.** Undoubtedly, by virtue of Section 87 of the Act, the provisions of the Code apply to

the trial of an election petition and, therefore, in the absence of anything to the contrary in the Act, the court trying an election petition can act in exercise of its power under the Code, including Order 6 Rule 16 and Order 7 Rule 11 of the Code. The object of both the provisions is to ensure that meaningless litigation, which is otherwise bound to prove abortive, should not be permitted to occupy the judicial time of the courts. If that is so in matters pertaining to ordinary civil litigation, it must apply with greater vigour in election matters where the pendency of an election petition is likely to inhibit the elected representative of the people in the discharge of his public duties for which the electorate have reposed confidence in him. The submission, therefore, must fail.

**19.** Coming to the second limb of the argument viz. absence of Section 83 in Section 86 of the Act, which specifically provides for dismissal of an election petition which does not comply with certain provisions of the Act, in our view, the issue is no longer *res integra*. A similar plea was negatived by a three-Judge Bench of this Court in *Hardwari Lal v. Kanwal*

*Singh [(1972) 1 SCC 214] , wherein speaking for the Bench, A.N. Ray, J. (as His Lordship then was) said: (SCC p. 221, para 23)*

"23. Counsel on behalf of the respondent submitted that an election petition could not be dismissed by reason of want of material facts because Section 86 of the Act conferred power on the High Court to dismiss the election petition which did not comply with the provisions of Section 81, or Section 82 or Section 117 of the Act. It was emphasised that Section 83 did not find place in Section 86. Under Section 87 of the Act every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure, 1908, to the trial of suits. A suit which does not furnish cause of action can be dismissed."

23. There is no quarrel with the proposition that the instructions contained in the Handbook for the Returning Officers are issued by the Election Commission in exercise of its statutory functions and are, therefore, binding on the Returning Officers. They are obliged to follow them in letter and spirit. But the question for consideration is whether the

afore-extracted paragraphs of the election petition disclose material facts so as to constitute a complete cause of action. In other words, the question is whether the alleged omission on the part of the Returning Officer ipso facto "materially affected" the election result. It goes without saying that the averments in the said two paragraphs are to be read in conjunction with the preceding paragraphs in the election petition. What is stated in the preceding paragraphs, as can be noticed from Grounds (i) and (ii) reproduced above, is that by the time specimen signature of the polling agent was circulated 80% of the polling was over and because of the absence of the polling agent the voters got confused and voted in favour of the first respondent. In our opinion, to say the least, the pleading is vague and does not spell out as to how the election results were materially affected because of these two factors. These facts fall short of being "material facts" as contemplated in Section 83(1)(a) of the Act to constitute a complete cause of action in relation to the allegation under Section 100(1)(d)(iv) of the Act. It is not the case of the election

*petitioner that in the absence of his election agent there was some malpractice at the polling stations during the polling.*

**24.** *It needs little reiteration that for the purpose of Section 100(1)(d)(iv), it was necessary for the election petitioner to aver specifically in what manner the result of the election insofar as it concerned the first respondent was materially affected due to the said omission on the part of the Returning Officer. Unfortunately, such averment is missing in the election petition."*

30. Citing the above judgment, the learned Senior counsel reiterated the following propositions were laid down:

- ◆ As per Section 83 of the Representation of Peoples Act, 1951, an election petition should mandatorily contain material facts. The petitioner should also set forth material particulars. Therefore, the contention of the learned counsel for the election petitioner that the pleadings need not contain material facts and particulars and they can be added during evidence cannot be countenanced in law.

- ◆ That failure to comply with Section 83 viz. Failure to set out material facts is fatal to

the election petition, and the election petition must be rejected without trial.

- ◆ Section 83 requires a statement of every single material fact, and then some material particulars. Omission to state even a single material fact leads to an incomplete cause of action and renders the election petition liable to be rejected.
- ◆ It is not enough to simply quote the words of the section. How an election has been materially affected has to be pleaded.
- ◆ Meaning of material facts - material facts are primary or basic facts, which have to be pleaded by the election petitioner to prove cause of action.
- ◆ Court can invoke power under Order 7 Rule 11 and Order 16 Rule 11 to reject election petitions and strike off paras for failure to plead material facts.
- ◆ Petitioner must plead how on the account of the alleged non compliance by the returned candidate, the election has been materially affected.

31. In the case of ***Hari Shanker Jain V. Sonia***

***Gandhi***, reported in (2001) 8 SCC 233, the Hon'ble Supreme

Court of India held as follows:

"23. Section 83(1) (a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Code of Civil Procedure, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC

238 : (1969) 3 SCR 603] , Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433] .) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

**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."*

Therefore, in addition to the law on material facts, the Hon'ble Supreme Court of India has also stressed in the above judgment that while considering an application to reject the election petition, only the averments in the election petition should be seen and nothing else. In the present case, while arguing, the learned counsel for the election petition attempted to support the election petition by referring to some facts in the affidavit filed by the 2<sup>nd</sup> Respondent and the counter affidavit to these applications. It is further stated that those pleadings should not be considered by this Court while considering the above application since only the averments in the election petition should be considered.

32. In the case of ***Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi***, reported in 1987 Supp SCC 93, the Hon'ble Supreme Court of India held as below:

*"8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under Order VI Rule 16 of the Code of Civil Procedure*

*and to reject the election petition under Order VII Rule 11 of the Code at the preliminary*

stage even though no written statement had been filed by the respondent. Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in Section 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement 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. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Sections 81 and 82 or Section 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder,

every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of Civil Procedure Code apply to the trial of an election petition, Order VI Rule 16 and Order VI Rule 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. 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.

9. In *K. Kamaraja Nadar v. Kunju Thevar* [AIR 1958 SC 687 : 1959 SCR 583 : 14 ELR 270] the Election Tribunal and the High Court both refused to consider preliminary objections raised by the returned candidate at the initial stage on the ground that the same would be considered at the trial of the election petition. This Court set aside the order and directed that the preliminary objection should be entertained and a decision reached thereupon

before further proceedings were taken in the election petition. Bhagwati, J. speaking for the Court observed thus:

"We are of opinion that both the Election Tribunal and the High Court were wrong in the view they took. If the preliminary objection was not entertained and a decision reached thereupon, further proceedings taken in the election petition would mean a full-fledged trial involving examination of a large number of witnesses on behalf of the second respondent in support of the numerous allegations of corrupt practices attributed by him to the appellant, his agents or others working on his behalf; examination of a large number of witnesses by or on behalf of the appellant controverting the allegations made against him; examination of witnesses in support of the recrimination submitted by the appellant against the second respondent; and a large number of visits by the appellant from distant places like Delhi and Bombay to Ranchi resulting in not only heavy expenses and loss of time and diversion of the appellant from his public duty in the various fields of activity including those in the House of the People. It

would mean unnecessary harassment and expenses for the appellant which could certainly be avoided if the preliminary objection urged by him was decided at the initial stage by the Election Tribunal."

**10.** In *Udhav Singh v. Madhav Rao Scindia* [(1977) 1 SCC 511 : AIR 1976 SC 744 : (1976) 2 SCR 246] this Court held that 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 VI Rule 16, 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 *Charan Lal Sahu v. Giani Zail Singh* [(1984) 1 SCC 390 : (1984) 2 SCR 6] an election petition challenging the election of Giani Zail Singh, President was rejected summarily at the initial stage by a Constitution Bench of this Court on the ground that the pleadings contained in the election petition even assuming to be true and correct did not disclose any cause of action for setting aside the election of the returned

candidate. The precise question as raised by the appellant was considered at length by this Court in *Azhar Hussain v. Rajiv Gandhi* [1986 Supp SCC 315 : AIR 1986 SC 1253 : 1986 All LJ 625] and this Court held that the High Court while dealing with the election petition has power to strike out pleadings under Order VI Rule 16 and to reject the election petition under Order VII Rule 11 if the petition does not disclose essential facts to clothe it with complete cause of action. Failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1) (a) and election petition could therefore be and must be dismissed if it suffers from any such vice. The Court repelled the submission that the power to reject an election petition summarily under the Code of Civil Procedure should not be exercised at the threshold. The Court observed as under: (SCC pp. 324-25, para 12)

"In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing

appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also

treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in

regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections."

**11.** In *Bhagwati Prasad Dixit*

'Ghorewala' v. *Rajeev Gandhi* [(1986) 4 SCC 78 : 1986 SCC (Cri) 399] this Court again reiterated that in an election petition pleadings have to be precise, specific and unambiguous and if the election petition does not disclose a cause of action it should be rejected in limine. These authorities have settled the legal position that an election petition is liable to be dismissed in limine at the initial stage if it does not disclose any cause of action. Cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act. If the allegations contained in the petition do not set out grounds of challenge as contemplated by Section 100 of the Act and if the allegations do not conform to the requirement of Sections 81 and 83 of the Act, the pleadings are liable to be struck off and the election petition is liable to be rejected under Order VII Rule 11. A pleading if vague and general is embarrassing. If the

allegation contained in the election petition even assuming to be true and correct do not make out any case of corrupt practice or any ground under Section 100 of the Act, the pleading would be unnecessary, frivolous and vexatious. It is always open to strike out the same. If after striking out defective pleadings the Court finds that no cause of action remains to be tried it would be duty bound to reject the petition under Order VII Rule 11 of the Code of Civil Procedure. If a preliminary objection is raised before the commencement of the trial, the Court is duty bound to consider the same, it need not postpone the consideration for subsequent stage of the trial.

**12.** The appellant placed reliance on the decision of this Court in *Union of India v. Surjit Singh Atwal* [(1979) 1 SCC 520 : AIR 1979 SC 1701 : (1979) 2 SCR 1002] in support of his submission that unless a plea is raised by the respondent in the written statement it is not open to the Court to strike out pleadings contained in the election petition. In *Surjit Singh Atwal* case [(1979) 1 SCC 520 : AIR 1979 SC 1701 : (1979) 2 SCR 1002]

plaintiff had filed a suit for recovery of certain amount of money which he claimed to be due to him from the Union of India under a contract. The Union of India filed a written statement five years after the filing of the suit wherein they raised no plea that the contract between the parties was hit by failure to comply with the provisions of Section 175(3) of the Government of India Act, 1935. More than a dozen years after the institution of the suit and eight years after the filing of the written statement, an application for amendment of the written statement was filed on behalf of the Union of India raising a plea that the contract was hit by the failure to comply with the provisions of Section 175(3) of the Government of India Act, 1935. The trial court dismissed the suit in view of the additional plea raised in the written statement, but the High Court decreed the suit. On appeal by the Union of India this Court upheld the order of the High Court, and in that connection it observed that the illegality of the contract should have been specifically pleaded as required by Order VI Rule 8 and Order VIII Rule 2 of the Code of Civil Procedure. The decision has no relevance

to the question under consideration. The appellant then placed reliance on a Division Bench decision of the Madhya Pradesh High Court in *Vidya Charan Shukla v. G.P. Tiwari* [AIR 1963 MP 356 : 1963 MPLJ 688 : 1963 Jab LJ 660] . In that case a Division Bench of the High Court held that the preliminary objections relating to non-maintainability of an election petition should not be allowed to be raised by mere applications without filing a complete written statement. We do not find any justification to uphold this view. As discussed earlier Order VI Rule 16 of Civil Procedure Code permits striking of pleadings at any stage of proceedings. It does not admit of any exception that the respondent must file written statement before the preliminary objections could be entertained. In view of this Court's decisions as discussed earlier the view taken by the Madhya Pradesh High Court in *Vidya Charan Shukla* case [AIR 1963 MP 356 : 1963 MPLJ 688 : 1963 Jab LJ 660] is no longer a good law.

**13.** The appellant's grievance that in entertaining the preliminary objections and rejecting the election petition under Order VII Rule 11 the High Court deprived the appellant's

opportunity to amend the petition and to make good the deficiencies by supplying the necessary particulars and details of the corrupt practice alleged in the petition, is devoid of any merit. Firstly, the appellant was free to file amendment application, but at no stage he expressed any desire to make any amendment application nor he made any application to that effect before the High Court. It was open to the appellant to have made that application but he himself did not make any such application. The High Court was under no legal obligation to direct the appellant to amend pleadings or to suo moto grant time for the same. Secondly, the allegations of corrupt practice as required by Section 83 were not complete and the same did not furnish any cause of action, any amendment made after the expiry of the period of limitation could not be permitted which would amount to raise a new ground of challenge. The question, however, does not arise as the appellant did not file any amendment application. During the course of hearing of this appeal before us the appellant has made applications for amendment of the election

petition which we shall deal with later.

**31.** The above scanning of the election petition would show that the appellant failed to plead complete details of corrupt practice which could constitute a cause of action as contemplated by Section 100 of the Act and he further failed to give the material facts and other details of the alleged corrupt practices. The allegations relating to corrupt practice, even if assumed to be true as stated in the various paragraphs of the election petition do not constitute any corrupt practice. The petition was drafted in a highly vague and general manner. Various paragraphs of the petition presented disjointed averments and it is difficult to make out as to what actually the petitioner intended to plead. At the conclusion of hearing of the appeal before us appellant made applications for amending the election petition, to remove the defects pointed out by the High Court and to render the allegations of corrupt practice in accordance with the provisions of Section 83 read with Section 123 of the Act. Having given our anxious consideration to the amendment applications, we are of the opinion that these

applications cannot be allowed at this stage. It must be borne in mind that the election petition was presented to the Registrar of the High Court, at Lucknow Bench on the last day of the limitation prescribed for filing the election petition. The appellant could not raise any ground of challenge after the expiry of limitation. Order VI Rule 17 no doubt permits amendment of an election petition but the same is subject to the provisions of the Act. Section 81 prescribes a period of 45 days from the date of the election for presenting election petition calling in question, the election of a returned candidate. After the expiry of that period no election petition is maintainable and the High Court or this Court has no jurisdiction to extend the period of limitation. An order of amendment permitting a new ground to be raised beyond the time specified in Section 81 would amount to contravention of those provisions and beyond the ambit of Section 81 of the Act. It necessarily follows that a new ground cannot be raised or inserted in an election petition by way of amendment after the expiry of the period of limitation. The amendments claimed by the

appellant are not in the nature of supplying particulars instead those seek to raise new ground of challenge. Various paragraphs of the election petition which are sought to be amended, do not disclose any cause of action; therefore it is not permissible to allow their amendment after expiry of the period of limitation. Amendment applications are accordingly rejected."

33. Therefore, in the above judgment, the following law is laid down:

- ◆ High Court must exercise power under Order 7 Rule 11 and Order 6 Rule 16 even without a written statement.
- ◆ A petition without material facts does not disclose cause of action and must be rejected. An elected candidate ought not to be made to face trial on the basis of a petition which lacks material facts.
- ◆ Court must delete pleadings which are frivolous, unnecessary etc.,
- ◆ Failure to plead even a single material fact leads to an incomplete cause of action and such allegations are liable to be struck off.

- ◆ The grounds to challenge an election are only

those in section 100 and no other ground should be entertained. If other grounds are specified, such paras must be struck off.

- ♦ Amendment to the petition cannot be permitted to cure failure to plead material facts. In any case, pleadings can be amended only within the limitation period for filing the election petition (in the present case, it expired on July 8, 2019)
- ♦ Outside the four corners of the RP Act, 1951, there is no right to challenge the election. The RP Act is a self contained code and nothing can be imported into it.
- ♦ A litigant who is vexatious and not genuine must not be permitted to maintain an election petition.

34. In the case of **Azhar Hussain Vs. Rajiv Gandhi**, reported in 1986 Supp SCC 315, the Hon'ble Supreme Court of India gave instances of what material facts are:

*"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] ."

Therefore, material facts pertain not only to corrupt practice but also other allegations.

35. In the case of **Jitu Patnaik Vs. Sanatan Mohakud**, reported in (2012) 4 SCC 194, the Hon'ble Supreme Court of India held as below:

"39. In view of the above legal position that the Handbook does not have statutory character and there being no non-compliance with the provisions of the Constitution or the 1951 Act or any Rules framed or orders made under the 1951 Act by the Returning Officer insofar as the death of an independent candidate was concerned, the averments made in Para 7(A) of the election petition do not furnish any cause of action for declaring the election of the returned candidate

to be void under Section 100(1)(d)(iv). The High Court seriously erred in holding otherwise and ordering trial of the election petition on the pleadings set out in Para 7(A).

**45.** A bare perusal of the above provisions would show that the first part of Order 6 Rule 2 CPC is similar to sub-section (1)(a) of Section 83 of the 1951 Act. It is imperative for an election petition to contain a concise statement of the material facts on which the election petitioner relies. What are the material facts? All basic and primary facts which must be proved at the trial by a party to establish the existence of a cause of action or defence are material facts. The bare allegations are never treated as material facts. The material facts are such facts which afford a basis for the allegations made in the election petition. The meaning of "material facts" has been explained by this Court on more than one occasion. Without multiplying the authorities, reference to one of the later decisions of this Court in *Virender Nath Gautam v. Satpal Singh* [(2007) 3 SCC 617] shall suffice.

**54.** In *Samant N. Balkrishna v. George Fernandez* [(1969) 3 SCC 238] while dealing with

*the requirement in an election petition as to the statement of material facts and the consequences of lack of such disclosure, this Court, inter alia, expounded the legal position that omission of even a single material fact leads to an incomplete cause of action and statement of claim becomes bad."*

These principles were also followed by the Hon'ble Supreme Court of India in the case of C.P. John Vs. Babu M. Palissery & Ors. Reported in (2014) 10 SCC 547.

36. With reference to the application of the above judgments, the learned Senior counsel emphasized that the 1<sup>st</sup> respondent / Election Petitioner has merely described the Election Notification and the filing of nominations. However, there are no averments / allegations except to say that the 2<sup>nd</sup> respondent has filed her nomination on 25.04.2016. The learned Senior counsel reemphasized that the contentions raised in their applications in support of the above judgments. Accordingly, he is of the strong opinion that the Election Petition is incapable of being tried by this Court and consequently, liable to be rejected on the threshold.

**Election Petitioner:**

37. It is stated that the written arguments are submitted in regard to the explanations provided in the counter affidavit in the above application.

38. The 1<sup>st</sup> respondent/petitioner states that at the outset that the election of the returned candidate could be challenged only by way of the above election petition under Section 80A of the Representation of People Act, 1951, pertaining to the issues of law and fact raised in the process of the election, because no other remedy is available to the elector as there is explicit bar under Article 329 (b) of the Constitution of India as provided hereunder:

**Article 329:**

Notwithstanding anything in this Constitution....

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies, made or purporting to be made under Article 327 or Article 328, shall not be called in question in any court;

(b) No election to either House of Parliament or to the House or either House of the Legislature of a State shall be called in question except by an election petition presented to such authority and in such manner

<https://hcservices.ecourts.gov.in/hcservices> provided for by or under any law made by the appropriate Legislature.

**39. Section 80A of Representation of People Act, 1951 is as follows:**

(1) The Court having jurisdiction to try an election petition shall be the High Court.

(2) Such jurisdiction shall be exercised ordinarily by a single Judge of the High Court and the Chief Justice, shall, from time to time, assign one or more Judges for that purpose:

Provided that where the High Court consists only of one Judge, he shall try all election petitions presented to that Court.

(3) The High Court in its discretion may, in the interests of justice or convenience, try an election petition, wholly or partly, at a place other than the place of seat of the High Court.

40. Therefore, the 1<sup>st</sup> respondent/petitioner, herein has filed the above election petition under Section 80A and Section 100 (1)(d)(iv) of the Representation of the People Act, 1951 praying to declare the election of the returned candidate as void and set aside the same.

**41. Section 100(1)(d)(iv) is as hereunder:**

(1) Subject to the provisions of sub-section (2)

if High Court is of opinion—

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

(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.

42. It is emphasized that no Writ jurisdiction can be invoked under Article 226 of the Constitution of India against the violation of law by any return candidate in the course of election process except by the way of election petition under representation of people act since there is express bar under Article 329(b) of the Constitution of India. In 1988 1 SCC 277, Election Commission of India Vs. Shivaji and others the Hon'ble Apex Court held:

“that the process of election to either house of parliament or state legislature can be challenged only by filing election petition and not by filing writ petition under Article 226”

43. It is stated that in accordance with the law, the 1<sup>st</sup> respondent/petitioner herein, filed the above election petition, having no other remedy against the violation of law and facts, by the return candidate, highlighting non disclosure of the status of income tax

filing of her spouse, as required by the election commission of India under Article 324 of the Constitution of India, by virtue of the directions issued by the **Hon'ble Apex Court in (2002) 5 SCC 294, Union of India Vs. Association of Democratic Reforms and another.**

44. Article 324 of the Constitution of India: Superintendence, direction and control of elections to be vested in an election commission.

45. In view of the Article 324 of the Constitution of India, the Hon'ble Apex Court issued directions in **(2002) 5 SCC 294, Union of India Vs. Association of Democratic Reforms and another as hereunder at page 322 para 48, 49:**

**"48.** The Election Commission is directed to call for information on affidavit by issuing necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature:

(1) Whether the candidate is convicted/acquitted/discharged of any criminal

*offence in the past – if any, whether he is punished with imprisonment or fine.*

*(2) Prior to six months of filing of nomination, whether the candidate is accused in any pending case, of any offence punishable with imprisonment for two years or more, and in which charge is framed or cognizance is taken by the court of law. If so, the details thereof.*

*(3) The assets (immovable, movable, bank balance, etc.) of a candidate and of his/her spouse and that of dependants.*

*(4) Liabilities, if any, particularly whether there are any overdues of any public financial institution or government dues.*

*(5) The educational qualifications of the candidate.*

Hence, it is manifest that apart from the right to information conferred under Section 33A of the Representation of People Act, 1951, for the elector, the additional information could be sought by the election commission exercising powers under Article 324 of the Constitution of India in order to disseminate to the electors.

commission of India, the 2<sup>nd</sup> respondent/1<sup>st</sup> respondent has sought for the information regarding the status of filing of income tax return of the candidate and their family including Hindu Undivided Family, with permanent account number, under Part-A, S.No. 4 of Form 26, under Rule 4 A of the Conduct of Election Rules, 1961 in order to disseminate the same to the electors but the applicant herein has not disclosed the same claiming that her spouse is overseas citizen, not possessing the PAN card, violating the directions of the election commission, while it is immaterial whether he is overseas citizen or not, because the main purpose of the requirement of information is to provide details of the status of income tax to the electors to make them aware of the past, present, future status of the candidate.

47. It is further stated that the submissions of the applicant that since the columns under Part-A, Serial No. 4, in the Form 26 are only pertaining to the PAN card and also financial years not pertaining to overseas, at the threshold is not acceptable, because the main contention of the petitioner is that if the spouse of applicant do not possess PAN card, she must have provided the income tax reference number of respective country where he is citizen, in compliance with law laid down by Hon'ble Apex Court in (2002) 5 SCC 294, Union of India Vs. Association of Democratic Reforms and another, for

the purpose of transparency, as she has mentioned in serial No. 9(b) and (9A)(b) that her husband is working as consultant in overseas and earning salary. Also, it is emphasized that the applicant without any query in serial No. 4, under Part-A, at column No. 2 has mentioned that her spouse is "overseas citizen" like the same way she ought to have disclosed the status of filing the income tax return with income tax reference number.

48. It is further emphasized that the oral submissions of the applicant at threshold stage that the FORM 26 of nomination form does not have column for disclosing the status of income tax filing of spouse in overseas, so she has not disclosed the same, and asserting a contradict statement in the affidavit of the above application at para 6, that her spouse do not have income in Singapore, by totally contradicting the details provided in Serial No. 9(b) and 9(A)(b) of Form 26, affidavit, under Part A that her spouse is working as consultant and earning income respectively, is unlawful and hence the trial is warranted to ascertain the real facts.

49. It is also stated that in other words it is highlighted that the obligation of the candidate to disclose the status of income tax does not absolve because of the citizenship of spouse in overseas, because

the electors would be debarred from knowing the past, present and future status of income of the spouse and also it causes difficulty to the electors to decide to whom they have to cast vote. Accordingly, it is stated that in view of the aforesaid facts that the submissions of the applicant that since only the PAN card number is required to be provided under Part-A, Serial No. 4, and as her spouse doesn't possess PAN card she is not bound to disclose the income in overseas is not acceptable because the main object of seeking information is to disseminate to the electors. It is further stated that obviously, the 1<sup>st</sup> respondent/election petitioner, asserts that the applicant herein, the returned candidate, must have disclosed about the status of filing of income tax return of her spouse in overseas, as the main purpose of Form 26 is to disclose the income status of the candidate and their family to the electors, but whereas the applicant herein, the returned candidate, denies at the outset by stating that there is no liability to disclose the status of filing of income tax return of her spouse in overseas as there is no PAN card for her spouse, besides stating that only the PAN holders has to disclose the same as required by the FORM 26. Hence, the assertion and denial of the applicant and petitioner herein, respectively gives raise to mixed question of law and

facts in issue which warrants trial. "It is trite principle if any fact is asserted by one party and denied by the other it warrants trial".

50. It is further stated that in accordance with the principles of law, that the pleadings has to read in whole in order to ascertain the cause of action and not by dissecting, if the above election petition is read in whole it provides the material facts disclosing the cause of action upon violation of law, because in para 8 of the election petition, the material fact is asserted that the spouse of the returned candidate is citizen of Singapore, and each citizen is provided income tax reference in Singapore, and in the case of denial of the same by the applicant herein in her defence, it would become fact in issue, so when the fact is available to admit or to deny in the petition, it is preposterous to pray for rejection of the election petition by requiring the evidence, which is not required to be stated in the pleadings Under Order 6 Rule 2 of CPC. Moreover, mere statements of the applicant that the petitioner herein has to state in the pleadings about the availability of PAN number of her spouse to challenge the election of her is complete twisting of the material facts in the pleadings, because

the above election petition is filed upon the premise of non disclosure of the income tax return of her spouse in Singapore and not with the PAN also as she herself has mentioned in form 26 that there is no PAN number, it is absurd to expect the petitioner to challenge the return candidate with PAN. The above election petition is filed based upon the mixed questions of law and fact, which could be tried only under the election petition and not under any other jurisdiction. Further, under Order XIV Rule 2 of the CPC, the issues of law can be tried as preliminary issue only in regard to jurisdiction of the Court and bar to suit created by any law for the time being in force and not any other issues. That each and every paragraph of the above election petition provides material propositions containing facts and law, and the averments at para 8 of the election petition about the income tax reference number in Singapore, is intrinsically to be proved by the 1<sup>st</sup> respondent/petitioner, being material fact, as her spouse is earning income as stated by her in Form 26, and the averments in the above application that the petition is vague, bereft of details and the PAN number should have been provided by the petitioner to contradict the details of spouse in regard to the status of filing of income tax return is the way of twisting the facts in order to scuttle the proceedings.

51. The 1<sup>st</sup> respondent/petitioner having stated that the material fact "that the citizens earning income are provided with income tax reference number in Singapore, as her spouse is earning income in Singapore, the petitioner is bound to produce the material particulars regarding the same, which could be produced later stage as per the law laid by Hon'ble Apex Court in **1998 1 SCC 416**, at para 7 page 420

"The election petition, however, is required to contain a concise statement of material facts, this being equivalent to a cause of action. The entire evidence in support of such material facts is not required to be set out. From the contents of the election petition, it is not possible to hold that a concise statement of material facts is not to be found in the petition.

In the case of Arun Kumar Bose v. Mohd. Furkan Ansari [(1984) 1 SCC 91 : AIR 1983 SC 1311] (AIR at p. 1314) this Court distinguished the provision of Section 83(1)(a) from Section 83(1)(b): (SCC pp. 96-97, para 8)

"The scheme in Section 83(1) of the Act makes the position very clear. Clause (a) refers to general allegations and requires a concise statement of

*material facts to be furnished while clause (b) referring to corrupt practice requires all details to be given."*

*In that case, the number of wrongly rejected ballot papers and the counting table numbers were given. Booth numbers were also given. Particulars of ballot papers, however, were not given as not available. It was held that pleadings set out material facts as per Section 83(1)(a). No corrupt practice was involved and Section 83(1)(b) was not attracted. Pleading was held to be adequate."*

52. It is emphasized that the above application is filed as if bereft of material facts based upon the premise, stated in para 4(iii) and 6 of the affidavit of the applicant, that the above election petition is filed under Section 123 of the Representation of people Act, 1951, highlighting the corrupt practices, when the same is not filed under Section 123 of the Representation of people Act and hence, the above election petition is not bereft of material facts, because it possess the necessary material facts to constitute the cause of action, which is stated in concise form in compliance with Section 83(1)(a) of the Representation of People Act, 1951.

53. Section 83 of the Representation of People Act 1951, is as follows:

(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.]”*

54. In compliance with Section 83 (1) (a) of the Representation of People Act, 1951, the above election petition contains a concise statement of the material facts, emphasizing the violation of law, highlighting that there is income tax reference number provided in Singapore, which is not disclosed by the applicant in Form 26, at paragraph 8, for which, material particulars could be provided later, and the demand of the applicant that everything should be stated in the election petition is frivolous and against law. Moreover, the need of material facts to be decided based upon the facts and circumstances of each case, hence for challenging the violation of law, the material fact essential to be proved by the petitioner along with the issues of law is explicitly stated in the election petition.

55. The 1<sup>st</sup> respondent / petitioner, has stated in the election petition that the result of materially affected because of not disclosing the status of filing of income tax return of her spouse to electors at para 5, and particulars how the result is affected, could be provided later to prove the same and not essential to state every particulars in the pleadings.

56. From the averments, in the every paragraph of

the election petition, it could be easily deciphered there is a case to meet and it is essential to make out the following defence:

a. In what manner, the applicant herein is not liable to disclose the status of income tax return of her in overseas while it is requirements of the law of the Hon'ble Apex Court to declare the same for transparency.

b. In what manner, the returned candidate is absolved from disclosing the requirement of disclosing the status of filling of income tax return claiming there is no column in Form 26 for overseas citizen.

c. In what manner, the returned candidate is not bound to disclose even the Income Tax reference number of overseas.

57. It is stated that leaving away all the above stated merits of the case and praying for rejection of plaint and striking out the paragraphs as if there is no defence to make out is illegal.

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58. *In (2007) 3 SCC 617, Virendar Nath Gautam Vs. Satpal Singh & Others at Page 632, Para 52 and 53*, the Hon'ble Apex Court rendered as follows:

"52. The High Court, in our considered opinion, stepped into prohibited area of considering correctness of allegations and evidence in support of averments by entering

into the merits of the case which would be permissible only at the stage of trial of the election petition and not at the stage of consideration whether the election petition was maintainable and dismissed the petition. The said action, therefore, cannot be upheld and the order deserves to be set aside.

53. On an additional ground also, the order of the High Court is liable to be set aside. All allegations in para 8 of the election petition, as also sub-paras (i) to (iv) of para 8 relate to improper and illegal reception and acceptance of votes and the election petitioner has challenged the election of the returned candidate on that ground and not on the ground of "corrupt practice". He was, therefore, required to state material facts in the election petition under Section 83(1)(a) of the Act. It was, however, not necessary to "set forth full particulars", which is the requirement of Section 83(1)(b) of "any corrupt practice".

59. In (2015) 8 SCC 331, **P.V.Guru Raj Reddy Vs.**

**P.Neeradha Reddy and others**, the Hon'ble Apex Court has rendered in Para 5, page 333 held as under:

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**"5. Rejection of the plaint under Order**

7 Rule 11 of CPC is a drastic power conferred in the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order 7 Rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaint that have to be read as a whole to find out whether it discloses a cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order 7 Rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaint is wholly immaterial. It is only if the averments in the plaint ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law the plaint can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial."

It is stated that the submissions of the applicant herein at threshold in regard to the merits of the case that they are not bound to disclose the status of filing of the income tax return of her spouse in overseas, in Form

entertainable in law.

60. In **(2016) 15 SCC 219, Ajay Arjun Singh Vs. Sharadendu Tiwari and others**, the Hon'ble Apex Court held that:

Civil Procedure Code, 1908 - Order 6 Rule 16 and Order 7 Rule 11 - "Principles of law governing decision on said application are same those governing decision on application under Order 7 Rule 11, CPC -Consequently, while entertaining an application for striking out pleadings, Court must presume that all the averments / allegations made in pleadings are factually correct and decide the application by scrutinizing whether allegations are relevant in the context of relief sought - Any explanation to allegations contained in pleadings is a matter to be considered during trial and cannot be taken into account at that state. Para No.4, PG.No.223

It authorises the court to order that any matter in any pleading before it be struck out on the grounds specified under clauses (a), (b) and (c). Each one of them is a distinct ground. For example, clause (a) authorises the court to strike out the pleadings which may be (i) unnecessary, (ii) scandalous, (iii) frivolous, (iv)

<https://hcservices.ecourts.gov.in/hcservices/>. If a pleading or part of it is to be struck out on the ground that it is unnecessary, the test to be

applied is whether the allegations contained in the pleading is relevant and essential to grant the relief sought. Allegations which are unconnected with the relief sought in the proceeding fall under this category. Similarly, if a pleading is to be struck out on the ground that it is scandalous, the court must first record its satisfaction that the pleading is scandalous in the legal sense and then enquire whether such scandalous allegation is called for or necessary having regard to the nature of the relief sought in the proceeding. Obviously, such authority must be exercised with circumspection and on the basis of some rational principles. The very purpose of the Rule is to ensure that parties to a legal proceeding are entitled ex debito justitiae to have the case against them presented in an intelligible form so that they may not be embarrassed in meeting the case.

#### **Para 28**

The application i.e. IA No. 12911 of 2014 does not disclose on which one of the grounds contemplated under Order 6 Rule 16, the various paragraphs of the election petition are required to be struck out. On the other hand, the appellant gave an elaborate explanation with respect to each of the allegations contained in the various paragraphs of the election petition which are prayed to be struck out.

61. It is contended that the 1<sup>st</sup> respondent / petitioner, has provided the elaborate explanation in the counter affidavit filed in the above application in regard to each averments of the election petition, but the applicant herein do not provide any explanation how the paragraphs are, unnecessary to the relief sought, how they are scandalous, that is against the morality, how they are frivolous and vexatious. The explanations of the applicant herein, in regard to the merits of the election petition in order to reject the election petition are not entertainable, except if it is self contradictory, and it is emphasized that the averments of the 1<sup>st</sup> respondent / petitioner in the above election petition are relevant to the relief sought. Moreover, it is further stated that the proper explanation to every averments of the application is stated in the counter affidavit of the 1<sup>st</sup> respondent / petitioner, in regard to the right to sue at Paragraph No.10 and also in regard to the averment that the result is materially affected because of non disclosure of the status of filing of income tax return at paragraph 5 of the election petition, the proper explanation is provided at Para 14(F) to (I) of the counter affidavit of the 1<sup>st</sup> respondent / petitioner. Order 7 Rule 14(3) of the CPC provides remedy in the case of the document not in possession, at the time of presentation of the petition, to produce the same with the leave of the Court at later stage. Since the

verification in the election petition is general to all paragraphs from 1 to 17, the failure to reiterate the same in the verified affidavit where it is affirmed, is not a substantial defect.

62. It is stated that the above application to reject the petition under Order 7 Rule 11 is filed by the applicant, stating bereft of material facts based upon the premise as if the election petition is filed under Section 123 of Representation of People Act, 1951, alleging corrupt practices, but whereas the above election petition is not filed under Section 123 of the Representation of People Act, 1951, so the concise form of material facts in compliance with Section 83(1)(a) of the Representation of the People Act, 1951, stated in the election petition is enough, therefore, the above applications is not maintainable in law and liable to be dismissed. Moreover, as the applicant has not proved that the averments in the election Petition are unnecessary, scandalous, frivolous, vexatious the application under Order 6 Rule 16 to strike out the paragraphs 5 to 17 is liable to be dismissed.

**Conclusion:**

63. The averments set out by the parties in their respective pleadings as well as the arguments placed are considered.

64. This Court is of the prima facie opinion that all the petitions are to be tried and rejection of Election Petition in limine, must be on certain limited grounds. The Court is bound to ensure that whether any prima facie case is made out in the Election Petition, so as to conduct a Trial in respect of the issues to be formulated. The principles mainly to be borne in mind is that, whether the Election Petition is wholly incapable of being proceeded with or there are no material facts, enabling this Court to try the Election Petition or the Election Petitions do not contain any details even for formulating issues with reference to the provisions of the Representation of Peoples Act 1951.

65. Undoubtedly, the Scope of Election Petitions are restricted. Broadly dealing of the Election Petitions are impermissible. The Election Petitions are bound to be decided strictly in accordance with the provisions of the Representation of the Peoples Act, 1951. Therefore, only in the event of presentation of certain definite grounds, which all are otherwise permissible with reference to the statutes, the Election Petitions cannot be entertained at all. The scope of Election Petitions are well defined by the Constitutional Courts across the Country. The Scope of Election Petitions are being restricted. The Rejection Petition is to be considered in accordance with the

provisions of the Act as well as the Constitutional principles.

66. In this context, this Court has to arrive a conclusion, whether this Election Petition is capable of being tried or not?

67. Equally, this Court is aware of the fact that appreciation of evidences or material facts set out in the pleadings, cannot be considered at this juncture. In the event of any such appreciation or findings, the same would affect the further proceedings, if at all undertaken pursuant to the Election Petition by this Court. Therefore, this Court, with caution, has to exercise the power of considering these rejection petitions as well as the petition to strike off the paragraphs. Any appreciation of material facts, particulars or other documents, undoubtedly would cause prejudice to the interests of the parties. Any such conclusion or appreciation of documents would undoubtedly cause certain inconvenience and prejudice to the parties for the purpose of conducting the trial in a free and fair manner. All the merits and the demerits of the issues are to be decided only during the full fledged trial and on appreciation of evidences or documents, and the same cannot be done in respect of the petitions filed to reject the Election Petition. All these principles are

to be borne in mind, while deciding the rejection petitions by this Court.

68. In the present case, to understand the prima facie case with reference to the Election Petition filed, it is contended by the applicant / 2<sup>nd</sup> respondent that the Election Petition is wholly vague and bereft of material facts. In the absence of any such material facts, the Courts would not be in a position to try the Election Petition and therefore, the Election Petition is to be treated as a vague petition and filed in order to achieve the political mileage and therefore, the Election Petition is to be rejected in limine. Per contra, the 1<sup>st</sup> respondent / Election Petitioner disputed the contentions by stating that there are violations in respect of submitting the particulars in Form 26 and there are violations of Article 324 of the Constitution of India. The 1<sup>st</sup> respondent / Election Petitioner mainly contended that "the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 327 or Article 328, shall not be called in question in any Court". No election to either house of Parliament or to the house or either house of the legislature of a State shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law

made by the appropriate legislature.

69. It is contended that as per Section 100(1)(d)(iv) of the Representation of the peoples Act, 1951, any non compliance with the provisions of the Constitution or of the Representation of the peoples Act or of any rules or orders made under this Act is a ground for challenging the validity of election. Relying on the said provision as well as Article 324 of the Constitution of India, the 1<sup>st</sup> respondent / Election petitioner contended that the informations given in Form 26 by the applicant / 2<sup>nd</sup> respondent is in violation of the provisions of the Representation of Peoples Act, 1951 as well as Article 324 of the Constitution of India and such material facts are to be adjudicated by conducting trial. Thus, the Election Petition cannot be rejected in limine as the respondents / Election Petitioner has substantially set out grounds for trial. This Court is of the considered opinion that the 1<sup>st</sup> respondent / Election Petitioner raised certain grounds with reference to Section 100(1)(d)(iv) of the Representation of the Peoples Act and with reference to Article 324 of the Constitution of India.

70. In support of the said contention, the judgment of the Hon'ble Supreme Court of India in the case of **Union of India Vs. Association of Democratic**

<https://hcservices.ecourts.gov.in/hcservices/>

**Reforms and another, reported in (2002) 5 SCC 294,**

wherein, the Apex Court observes that Election Commission is directed to call for information on affidavit by necessary order in exercise of its power under Article 324 of the Constitution of India from each candidate seeking election to parliament or a state legislature as a necessary part of his nomination paper, furnishing therein, information on the following aspects in relation to his/her candidature. The details of the particulars are also stated, wherein the Hon'ble Supreme Court categorically enumerates that "assets (immovable, movable, bank balance) of a candidate and of his/her spouse and that of dependants". Therefore, it is manifest that apart from the right to information conferred under Section 33A of the Representation of the Peoples Act, 1951, for the elector, the additional information could be sought by the election commission exercising powers under Article 324 of the Constitution of India in order to disseminate to the electors.

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71. The 1<sup>st</sup> respondent / Election Petitioner questioned the manner, in which, the informations are provided by the applicant / 2<sup>nd</sup> respondent in Form 26. The contention of the 1<sup>st</sup> respondent / Election Petitioner is that those particulars furnished by the applicant / 2<sup>nd</sup> respondent are not only insufficient, but in violation of the Constitutional provisions as well as in violation of

the provisions of the Representation of the Peoples Act, 1951. Perusal of the allegations and counter allegations set out by the respective parties in these applications, this Court is of an opinion that elaborate arguments were made and the pleadings regarding the averments are also met out. However, all such disputed issues are to be tried with reference to the documents as well as the evidences to be produced. Such disputed facts and issues cannot be decided in this application filed to reject the Election Petition itself. Such a course is impermissible and the Courts cannot form any opinion at this stage with reference to the averments and counter averments made by the respective parties. Though the parties have elaborately made certain allegations and counter allegations in order to prove or disprove their contentions, the same cannot be appreciated by this Court nor any findings can be given in these applications. All such exercise is to be done by the High Court only at the time of dealing with the Election Petition and in the event of any such appreciation of the contentions made by the respective parties, undoubtedly, would cause prejudice to the interests of either of the parties, which is impermissible and cannot be done in a petition to reject the Election Petition. The only endeavour is to verify whether the Election Petition is wholly vague or bereft of material facts.

72. Perusal of the entire materials placed before this Court, this Court has no hesitation in arriving a conclusion that the Election Petition cannot be held as vague or bereft of material facts. The material facts contended, must be considered at the time of conduct of trial and not at this stage. When there are prima facie allegations, which all are made and such allegations are traceable with reference to the provisions of the Representation of the Peoples Act and the Constitution of India, then the Courts would not reject the Election Petition in limine, but to proceed for trial, which would be appropriate in the interest of justice. This being the principles, this Court is of an opinion that rejection of the Election Petition is unacceptable and accordingly, this Court is inclined to proceed with the Election Petition in accord with the principles.

73. Consequently, the Original Application Nos.929 & 930 of 2019 in Election Petition No.3 of 2019 stand dismissed. No costs.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI,  
CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE  
19TH DAY OF NOVEMBER 2019.

SD/-

ASSISTANT REGISTRAR

Original Side - I

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2019

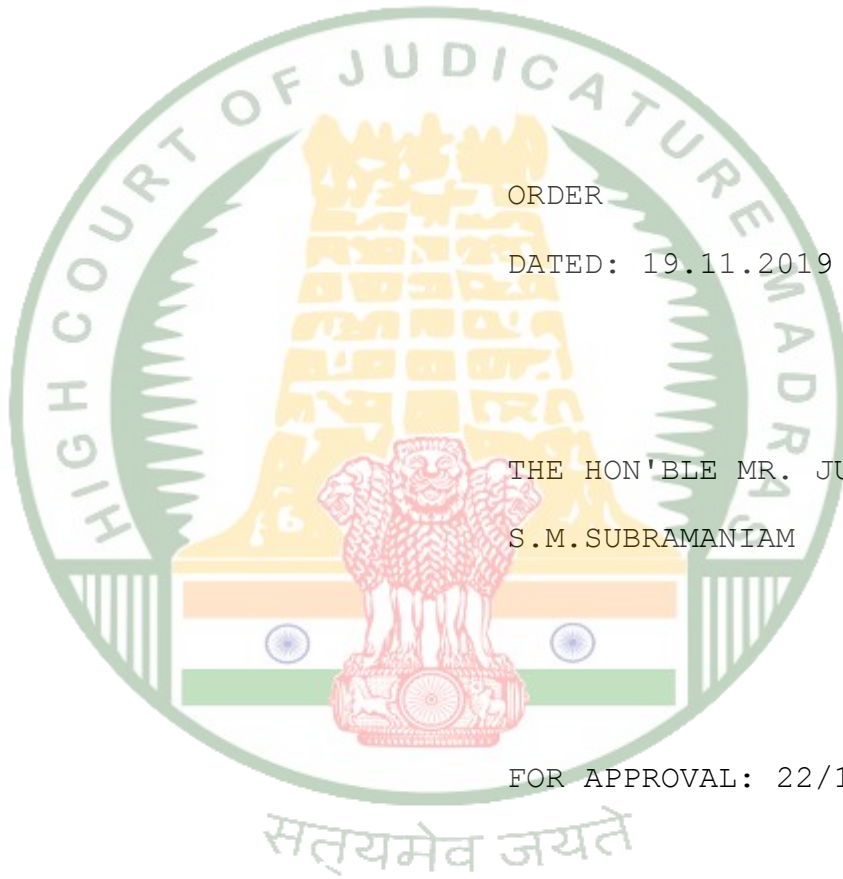
COURT OFFICER(OS)

cns- 21.11.2019

OA.Nos. 929 & 930 of 2019

in

ELP. NO. 3 of 2019



ORDER

DATED: 19.11.2019

THE HON'BLE MR. JUSTICE  
S.M.SUBRAMANIAM

FOR APPROVAL: 22/11/2019

APPROVED ON: 22/11/2019

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

TUESDAY, THE 19TH DAY OF NOVEMBER 2019

THE HON'BLE MR. JUSTICE S.M.SUBRAMANIAM

OA. NOS. 929 & 930 of 2019

in

Election Petition No. 3 of 2019

**ELP No.3 of 2019**

A.Santhana Kumar,  
5E-48/NA,  
Munisamy Nagar,  
Thoothukudi 628008.

... Petitioner

-VS-

- 1.The Chief Election Commissioner,  
Nirvachan Sadhan,  
Ashoka Road, New Delhi - 110001.
- 2.Kanimozhi Karunanidhi,  
No.14, I Main Road, CIT Colony,  
Mylapore, Chennai 600 004.
- 3.G.Saravanan,  
No.146, 11, Guruspuram,  
Thoothukudi Taluk,  
Thoothukudi District - 628 001.
- 4.B.Selvin,  
S/o.G.Balasingh,  
106H/3, Duvipuram, 2<sup>nd</sup> Street,  
VVD Main Road,  
Thoothukudi Taluk 628 003.
- 5.S.Lourdes,  
Door No.7/700, Amandivalli Road,  
Mootam Post,  
Kalkulam Taluk,  
Kanyakumari District 629202.
- 6.J.Sivaneswaran,  
S/o.Jegaveera Pandian,  
7/32A, West Street,  
Panicka Nadar Kudiiruppu,  
Tiruchendur Taluk, Thoothukudi 628218.

7.A.Jeyaraj,

No.112, Karungulam,  
Pandiyan Kulam,  
Srivaikundam Taluk, Thoothukudi.

8.A.Ramesh,  
39/39, Emperor Street,  
Thoothukudi.

9.V.Siva  
No.34/1, Bryant Nagar, 3<sup>rd</sup> Street,  
Thoothukudi 628 008.

10.Aamalan Rajiv Bonifas,  
S/o.High Court Durai,  
371, Santhankulamvazhi,  
Kalunguvilai, Komanaeri,  
Thoothukudi District.

11.M.Bhuvaneshwaran,  
S/o.Malaiandi nadar,  
Door No.5/102, South Street,  
Mela Alwarthoppu Post, Srivaikundam Taluk,  
Thoothukudi District 628 612.

12.K.Guru,  
S/o.Kaliaperumal,  
39, 18<sup>th</sup> Street, Padmavathi Nagar,  
Madambakkam, Kancheepuram District.

13.P.Ramakrishnan,  
S/o.Paul,  
Door No.3/56, middle Street,  
Kandaswampuram, Melapandyapuram,  
Otapidaram Taluk.

14.M.Sankaralingam,  
S/o.Muthu nadar,  
1/11-66, Mela Street, Vallivillaikanum,  
Thoothukudi District.

15.Sunman,  
No.40, Boldenpuram, I Street,  
Thoothukudi.

16.M.Rajalingam,  
S/o.Muthu Nadar,  
1/11-Mela Street, Vallivillaikanum,  
Thoothukudi District.

17. T. Marakatha Raghava Raj,  
S/o.Thangarai,  
24A, Kaniyalar Street, Arumuganeri,

Tiruchendur Taluk 628202.

18.D.Jayaganesh,  
S/o.Duraimani,  
2/203, Middle Street, Perurani,  
Thoothukudi District 628103.

19.Jasper Gnana Martin,  
S/o.Gnanamuthu,  
No.111/11D/1A/1, SKSR Colony,  
Bolpettai, Thoothukudi District 628002.

20.R.Sennai Natarajan,  
S/o.Ramaiah,  
Door No.55/83, 2<sup>nd</sup> Street,  
Krishnapalayam, Arapalayam Cross Road,  
Madurai District.

21.M.Ganesan,  
S/o.E.Murugan,  
Pillaiyar Koil Street,  
Door No.122,Vasavapuram,  
Thiruvaikandu Taluk,  
Thoothukudi District.

22.J.Ravishankar,  
S/o.Jayachandran,  
303, Kadalaikara Street, Lane-1,  
Kovilpatti 628501.

23.TPS.Pon Kumaran,  
S/o.Srinivasagam,  
289-B, Sivathikulam Road,  
Thoothukudi 628003.

24.S.Ponraj,  
No.136, Lakshmi Managaram,  
Middle Street,  
Arumuganeri 628 202.

25.Ponnuswamy,  
69/6, East Street,  
Sankaralingapuram, Kovilpatti,  
Thoothukudi District.

26.M.Antohillery,  
S/o.T.Mariasosai Micheal,  
2G/117A, Kokur Main Road,  
Rajiv Nagar West,  
Thoothukudi 628008.

27.M.Ramakrishnan,  
S/o.Late C.Mylsamy,

2/331, Bharadhidasan Nagar,  
Kuralkuttai Via,  
Bodipatti, Tiruppur District.

28.M.Maharajan,  
S/o.Mandhiram,  
Door No.6/58, South Street,  
Muthulakshmipuram,  
Meighanapuram, Tiruchendur Taluk.

29.Dr.Tamilisai Soundararajan,  
No.7, Logaih Colony,  
4<sup>th</sup> Cross Street, Saligramam, Chennai 600 093.

30.S.Christantine Rajasekar,  
19/32, Udangudi Road,Paramakurichi,  
Tiruchendur.

31.E.V.S.Rajakumar Naidu,  
S/o.Subbarayulu,  
B-1, Bhimasena Flat, No.3,  
Mures Gate Road, Alwarpet,  
Chennai 600 018.

32.P.Balamurugan,  
S/o.Pooraja  
9/39-4, Kamarajar Nagar West Street,  
Kootampalli, Pudukottai,  
Thoothukudi 628103.

33.S.Germanus,  
S/o.Singrayar,  
No.1, Saint Susaiapar North Car Street,  
Pannagudi 627109, Radhapuram Taluk,  
Tirunelveli.

34.C.Subhashini Malathi,  
D/o.M.T.Chandrakanth,  
1/261, Alangara Thatta,  
Arockiyapuram Post,  
Thoothukudi District 628 002.

35.ER.P.Pradeep Ganesan,  
S/o.Perianban,  
Door No.371/1, Kelashanmugapuram,  
Proper Street, Thoothukudi 628003.

36.P.Rajkumar,  
S/o.Bolaih, 57-D, Sathur Main Road,  
Kovilpatti, Thoothukudi District.

37.Gabriel James Fernando,  
S/o.Xavier Fernando,

No.3/168-B, Zion Nagar,  
Uzhavankonam, Kaniyakulam,  
Nagercoil, Kanyakumari District 629003.

38.G.James,  
S/o.D.Gabriel,  
Door No.4/5, Kavalkadu,  
Idayarkadu Post,  
Srivaikundam,  
Thoothukudi 628802. ...Respondents

**OA.No.929 & 930 Of 2019**

Kanimozhi Karunanidhi,  
No.14, I Main Road, CIT Colony,  
Mylapore, Chennai 600 004. .... Applicant/2<sup>nd</sup> Respondent

-VS-

1.A.Santhana Kumar,  
5E-48/NA,  
Munisamy Nagar,  
Thoothukudi 628008. .... 1<sup>st</sup> Respondent/Petitioner

2.The Chief Election Commissioner,  
Nirvachan Sadhan,  
Ashoka Road, New Delhi - 110001.

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Thoothukudi 628103.

33.S.Germanus,  
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S/o.Perianban,  
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Proper Stret, Thoothukudi 628003.

36.P.Rajkumar,  
S/o.Bolaih, 57-D, Sathur Main Road,  
Kovilpatti, Thoothukudi District.

37.Gabriel James Fernando,  
S/o.Xavier Fernando,  
No.3/168-B, Zion Nagar,

Uzhavankonam, Kaniyakulam,  
Nagercoil, Kanyakumari District 629003.

38.G.James,  
S/o.D.Gabriel,  
Door No.4/5, Kavalkadu,  
Idayarkadu Post,  
Srivaikundam,  
Thoothukudi 628802. ...Respondents/Respondents

**O.A.No. 929 of 2019**

This Original Application praying that this Hon'ble Court be pleased to strike off the paragraphs 5 to 17 in the Election Petition No.3 of 2019.

**O.A.No. 930 of 2019**

This Original Application praying that this Hon'ble Court be pleased to reject the Election Petition No.3 of 2019.

These applications coming on this day before this Court for hearing in the presence of Mr.P.Wilson, Senior Counsel for M/s.Wilson Associates, advocates for the Applicant/2<sup>nd</sup> Respondent, Mr.S.Makesh, advocate for the 1<sup>st</sup> Respondent/Election Petitioner, Mr.Niranjana Rajagopalan, advocate for the 2<sup>nd</sup> Respondent and Mr.K.Samidurai, advocate for the 20<sup>th</sup> Respondent in both applications; and upon reading the Judges Summon and affidavit of Kanimozhi Karunanidhi, filed in both Applications, Common Counter Affidavit of 1<sup>st</sup> Respondent / Election Petitioner filed in OA.Nos.929 & 930 of 2019 and this Court concludes that the Election Petition cannot be held as vague or bereft of material facts. The

material facts contended, must be considered at the time of conduct of trial and not at this stage and this Court is of an opinion that rejection of the Election Petition is unacceptable and accordingly, this Court is inclined to proceed with the Election Petition in accord with the principles,

**IT IS ORDERED AS FOLLOWS:-**

(1) That the Original Application Nos.929 & 930 of 2019 in Election Petition No.3 of 2019 be and are hereby dismissed.

(2) That there shall be no order as to costs.

WITNESS, THE HON'BLE THIRU AMRESHWAR PRATAP SAHI,  
CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE  
19TH DAY OF NOVEMBER 2019.

सत्यमेव जयते

SD/-

ASSISTANT REGISTRAR

Original Side - I

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//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2019

COURT OFFICER(OS)

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

cns- 21.11.2019

OA.Nos. 929 & 930 of 2019

in

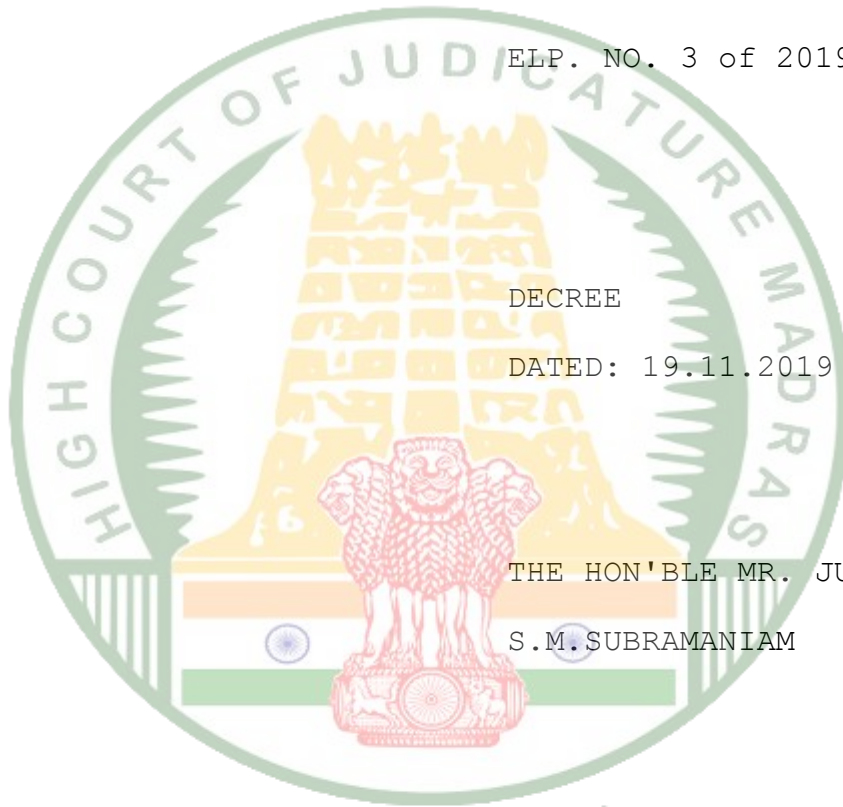
ELP. NO. 3 of 2019

DECREE

DATED: 19.11.2019

THE HON'BLE MR. JUSTICE

S.M.SUBRAMANIAM



सत्यमेव जयते

FOR APPROVAL:22/11/2019

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APPROVED ON: 22/11/2019