

Original Application Nos.140 & 141 of 2020
in E.P.No.4 of 2019

Reserved on : 09.10.2020
Pronounced on : 16.10.2020

M.S.RAMESH.J,

By placing support on his common affidavit dated 16.02.2020, Mr.P.Raveendranath Kumar, who is the third respondent in the main Election Petition, has filed the present two applications namely, OA.No.140 of 2020 under Order VII Rule XI of the Code of Civil Procedure (herein after referred to as 'CPC') to reject the Election Petition No.4 of 2019, primarily on the ground that it fails to disclose any cause of action and an application in O.A.No.141 of 2020 under Order VI Rule XVI CPC, to strike off certain portions of the pleadings in the main Election Petition, claiming that such pleadings are unnecessary, scandalous, frivolous or vexatious. Since the allegations made in the common affidavit to both the applications are one and the same, both these applications are disposed of, through a common order.

2. The learned counsel for the applicant/third respondent was given ample opportunities to put forth their arguments. The main

Election Petition came to be filed on 08.07.2019 and after counters and written statements were filed, the present applications came to be filed on 17.02.2020. After the counter was filed on 19.03.2020, the matter was listed on three occasions viz., on 06.03.2020, 21.08.2020 and 11.09.2020. On 11.09.2020, the matter came to be adjourned to 06.10.2020 as a last chance to the applicant for placing their arguments. Even today, the learned counsel for the third respondent seeks further time. I find no justification in granting any further time and accordingly, after hearing the counsel for the Election Petitioner and on perusal of the affidavit filed in support of the above applications, the present order is passed.

3. The Election results for the Constituency No.33, Theni Parliamentary Constituency in the State of Tamil Nadu was declared on 23.05.2019 and Mr.P.Raveendranath Kumar, S/o. Thiru. O.Paneer Selvam was elected. One of the electors in the said Constituency has filed the main Election Petition No.4 of 2019, challenging the election of Mr.P.Raveendranath Kumar.

4. Pending Election Petition, the returned candidate had filed two interim applications before this Court. The application in

O.A.No.140 of 2020 is for rejecting the plaint under Order 7 Rule 11 of the Code of Civil Procedure. In order to deal with the present application, there is a duty cast on this Court to determine whether the Election Petition discloses a cause of action by scrutinizing the averments made in the petition alone. Such a proposition has been laid down in several decisions of the Hon'ble Apex Court, as well as, various High Courts and the decision of the Hon'ble Supreme Court in ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali (Gajra) (D) thro' Lrs & Others*** reported in ***Civil Appeal No.9519 of 2019***, is one. In this legal background, the averments in the Election Petition were looked into.

5. The relief claimed in the Election Petition filed under the provisions of the Conduct of Election Rules, 1961, are founded on the grounds inter-alia ascribable to Section 100 of the Representations of People Act, 1951. The averments are predominantly on the ground of corrupt practices alleged to have been committed by the returned candidate.

6. The application in O.A.No.141 of 2020 is for striking off the pleadings in paragraphs 5, 6, 8 to 12, 14, 16 to 28 in the Election

Petition No.4 of 2019. The grounds raised in this application are to the effect that the Election Petitioner has suppressed "material facts"; has made empty allegations based on surmises and assumptions and not on material facts; and that some of the averments are scandalous.

7. The averments in the common affidavit in both these applications reveals that the applicant had alleged that the election petitioner had suppressed the material fact that he belongs to Dravida Munetra Khazhagam (DMK), the opposing party and therefore has misrepresented. With regard to the allegations of the corrupt practices alleged in the Election Petition, it is stated that these allegations are without any proof and not based on pleadings of material facts. The applicant had also stated that the distribution of money, sarees and dhoties alleged by the applicant and his party men. are conjectures without any material particulars. The allegations of connivance of the applicant along with the Election Commission officials has been denied as bereft of statement of material facts and particulars in the Election Petition.

8. In order to verify the grounds raised by the applicant, the averments in the Election Petition was perused and the following two issues arises for consideration:-

a)Whether the averments in the Election Petition discloses a cause of action and if not, whether the Petition under Order VII Rule XI CPC requires to be allowed?

b)Whether the averments in paragraphs 5, 6, 8 to 12, 14, 16 to 28 in the Election Petition are unnecessary, scandalous, frivolous or vexatious in order to strike off such portions of the pleadings under Order VI Rule XVI CPC?

9. Issue Nos. a & b :-

i) In para 5 of the Election Petition, the applicant has alleged that the returned candidate is the son of the Deputy Chief Minister of Tamil Nadu namely, Mr.O.Paneer Selvam and using such influence, he had indulged several sitting ministers of the cabinets, caste leaders, party functionaries, MLAs along with Government officials, for his son's victory in the election.

ii) In para 6, it is alleged that the returned candidate had suppressed his assets in the form of shares and its financial values

of his share holdings in M/s.Vani Fabrics Ltd., where he was a Director holding 16.67% of shares, at the time of filing his nomination.

iii) In paragraphs 8, 9, 10, 12 & 16, it is alleged that the returned candidate and his men had distributed various articles like two leaves printed sarees, dhoties with printed board of their party flag colour, sweet boxes, liquors, cash on hand and promise on milk etc., to the electors of Theni Parliamentary Constituency. It is further alleged that on 07.04.2019, at about 12 pm., the returned candidate and his brother distributed sarees with Rs.1000/- each to the residents of Thendral Nagar in the Bodi Constituency, for obtaining favourable votes. The applicant has also referred to the name of one Prathap Kumar, who is the brother of the third respondent to be involved in such distribution of money and other items. Some of the names of the electors namely, Lakshmi, Mariyamman, Santhosh and Raja are alleged to have received this illegal gratification.

iv) In paragraphs 11, 14, 18 & 21 to 28, reference has been made to the incident of counter mandating the election at Vellore

Parliamentary Constituency, wherein the election officials, who had counter mandated the election were indifferent to similar incidents of corrupt practices that had occurred in Theni Parliamentary Constituency. Reference is also made to the order of the Hon'ble Division Bench of the Madras High Court in the batch of Writ Petitions in W.P.Nos.11977 & 11978 of 2019, that dealt with countermanding the election of Vellore Parliamentary Constituency.

10. The predominant ground raised in the present petitions are that the allegations in the Election Petition are based on surmises and assumptions and not on material facts. It is also alleged that the averments are scandalous. It is on this basis, that the returned candidate seeks for rejection of the plaint, as well as, striking out the pleadings.

11. On an overall consideration of the allegations in the Election Petition, it is seen that the allegations of corrupt practices including the possible names of the parties alleged to have committed such corrupt practice and the date and place of such alleged commission of corrupt practice, which is a mandatory requirement of Section 83 of the Representation of People Act, 1951

(hereinafter referred to as 'RP Act'), have been made. Among the grounds to declare an election to be void as envisaged under Section 100 of the RP Act, the commission of corrupt practice by a returned candidate or any other person connected to him, is one among them.

12. Section 123 of the RP Act defines corrupt practice to include any gift, offer or promise of a candidate to elector or any person for voting or induce such elector to vote in favour of the candidate. All the ingredients to maintain an application under Section 83 and the grounds referred under Section 100(1)(b) of the RP Act have been clearly stated in the Election Petition, as detailed by this Court in the preceding paragraphs. In order to find out as to whether these grounds have constitute a cause of action to maintain an Election Petition, it would be appropriate to refer to a couple of decisions of the Hon'ble Supreme Court, in order to determine the meaning of the term "cause of action".

13. In ***Church of Christ Charitable Trust and Educational Charitable Society V. Ponniamman Educational Trust*** reported in **2012 (8) SCC 706**, the Hon'ble Supreme Court held that a cause

of action must include some act done by the defendant since in the absence of such act, no cause of action can possibly accrue.

14. In **A.B.C. Laminart Private Ltd., & another V. A.P. Agencies, Salem** reported in **1989 (2) SCC 163**, the meaning of cause of action was explained by the Hon'ble Supreme Court as follows:-

"12. A cause of action means every fact, which if traversed, it would be necessary for the plaintiff to prove in order to support his right to a judgment of the Court. In other words, it is a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no

relation whatever to the defence which may be set up by the defendant nor does it depend upon the character of the relief prayed for by the plaintiff.

15. Thus, by applying the ratio in the aforesaid decisions, all the averments in the Election Petition were considered as a bundle of facts and while doing so, the specific averments with regard to the alleged corrupt practices committed by the returned candidate which constitute a ground for declaring an election to be void under Section 100 has been spelt out in paragraphs 8, 9, 10, 12 & 16 of the Election Petition. The averments has also set forth the full particulars of the alleged corrupt practice including the possible names of the parties alleged to have committed such corrupt practices and the date and place of commission of each of such corrupt practices. The allegations with regard to these corrupt practices namely, distribution of money, sarees, dhoties, sweet boxes, liquors etc., are deemed to be bribery which is a corrupt practice as defined under Section 123 of the RP Act. All these allegations in the Election Petition, when taken as a bundle of facts would give the election petitioner a right to the relief and thus, would constitute a valid cause of action for maintaining the Election

Petition.

16. With regard to the ground that the allegations in the Election Petition are based on surmises and assumptions and not on "material facts" are concerned, it would be appropriate to refer to the judgment of the Hon'ble Supreme Court on the distinction made to the expression "material facts", in **Madiraju Venkata Ramana Raju Vs. Peddireddigari Ramachandra Reddy & others** reported in 2018 (14) SCC 1. The relevant portion of the judgment reads thus:-

"23.In the case of Harkirat Singh (supra), this Court once again reiterated thus:

46.From the above provisions, it is clear that an election petition must contain a concise statement of-material facts on which the petitioner relies. It should also contain full particulars of any corrupt practice that the petitioner alleges including a full statement of names of the parties alleged to have committed such corrupt practice and the date and place of commission of such practice. Such election petition shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (1838) 8 Ad & EI 331

(hereinafter referred to as -the Code) for the verification of pleadings. It should be accompanied by an affidavit in the prescribed form in support of allegation of such practice and particulars thereof.

47. All material facts, therefore, in accordance with the provisions of the Act, have to be set out in the election petition. If the material facts are not stated in a petition, it is liable to be dismissed on that ground as the case would be covered by clause (a) of sub-section (1) of Section 83 of the Act read with clause (a) of Rule 11 of Order 7 of the Code.

48. The expression "material facts" has neither been defined in the Act nor in the Code. According to the dictionary meaning, "material" means "fundamental", "vital", "basic", "cardinal", "central", "crucial", "decisive", "essential", "pivotal", "indispensable", "elementary" or "primary". Burton's Legal Thesaurus (3rd Edn.) p.349. The phrase "material facts", therefore, may be said to be those facts upon which a party relies for its claim or defence. In other words, "material facts" are facts upon which the plaintiff's cause of action or the defendant's defence depends.

What particulars 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. It is, however, absolutely essential that all basis and primary facts which must be proved at the trial by the party to establish the existence of a cause of action or defence are material facts and must be stated in the pleading by the party. (emphasis supplied). Again in paragraphs 51 & 52, this Court observed thus:

“51.A distinction between “material facts” and “particulars”, however, must not be overlooked. “Material facts” are primary or basic facts which must be pleaded by the plaintiff or by the defendant in support of the case set up by him either to prove his cause of action or defence. “Particulars”, on the other hand, are details in support of material facts pleaded by the party. 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. “Particulars” thus ensure conduct of fair trial and would not take the opposite party by surprise.

52.All material facts must be pleaded by the party in support of the case set up by him. since the object and purpose is to enable the opposite party to know the case he has to meet

with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial. And again in paragraph 72, the Court noted thus:

72. The Court, however, drew the distinction between material facts and particulars. According to the Court, "material facts" are facts, if established would give the petitioner the relief prayed for. The test 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. (emphasis supplied)

24. In Ashraf Kokkur (supra), this Court adverted to the exposition in M.Kamalam V. V.A.Syed Mohammed, 35 and G.M.

(1978) 2 SCC 659 Siddeshwar V. Prasanna Kumar and in paragraph 21 noted that the pleadings must be taken as a whole to ascertain whether the same constitute the material facts involving triable issues. In paragraph 22, the Court observed as follows:

22. After all, the inquiry under Order 7 Rule 11(a) CPC is only as to whether the facts as pleaded disclose a cause of action and not complete cause of action. The limited inquiry is only to see whether the petition should be thrown out at the threshold. In an election petition, the requirement under Section 83 of the RP Act is to provide a precise and concise statement of material facts. The expression "material facts" plainly means facts pertaining to the subject matter and which are relied on by the election petitioner. If the party does not prove those facts, he fails at the trial. (emphasis supplied)."

17. In the preceding paragraphs, I have found that the basic facts and allegations in paragraphs 8, 9, 10, 12 and 16 would constitute a valid 'cause of action' to maintain the relief sought for in the Election Petition and by applying the *ratio decidendi* in *Madiraju Venkata Ramana Raju's case (supra)*, such primary or basic facts pleaded by the plaintiff in support of the case set up by him could be termed as "material facts".

18. In the case of **V.S.Achuthanandan V. P.J.Francis & another** reported in **2001 (3) SCC 81**, it has been observed that the Election Petition was not liable to be dismissed in limine, merely because full particulars of corrupt practice alleged are not set out.

The relevant portion of the judgment reads as follows:-

"15. It would, thus appear, that the election petition was rejected mainly on the ground that it did not disclose the cause of action as according to the learned trial Judge the allegations regarding corrupt practice were vague and did not disclose 'material facts and full particulars' of the corrupt practice alleged. It is evident that the learned trial Judge did not distinguish between the 'material facts' and 'material particulars' of allegations regarding corrupt practices as defined under Section 123 of the Act. The law on the point is well-settled which appear to have not been taken note of appointed by the learned trial Judge. After referring to various pronouncements of this Court including cases in Balwan Singh v. Lakshmi Narain and Ors., 1960(3) SCR 91, Samant N. Balakrishna and Anr. v. George Fernandez and ors., 1969(3) SCC 238, Virendra Kumar Saklecha v. Jagjiwan and Ors. 1972(1) SCC 826, Shri Udhav Singh v. Madhav Rao Scindia, 1977(1) SCC 511, F.A.

Sepa and Ors. v. Singara and Ors. and Gajan Krishnaji Bapat and Anr. v. Dattaji Raghobaji Meghe and Ors., 1995(5) SCC 347 and host of other authorities, this Court in L.R. Shivaramagowda etc v. T.M. Chandrashekar etc., 1998(6) Scale 361 held that while failure to plead 'material facts' is fatal to the election petition and no amendment of the pleading is permissible to introduce such material facts after the time limit prescribed for filing the election petition, the absence of 'material particulars' can be cured at a later stage by an appropriate amendment. An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. It is, therefore, evident that material facts are such primary facts which must be proved at the trial by a party to establish existence of a cause of action. Whether in an election petition a particular fact is material fact or not, and as such, required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon, and in the light of the special circumstances of the case.

...

It was, therefore, wrongly, found that in the absence of specific pleadings and full particulars

of corrupt practices, the election petition deserved rejection as it allegedly did not disclose any cause of action. The trial Judge appears to have equated the cause of action with proof and thus committed an illegality of law requiring interference by us. This Court in Mohan Rawale v. Damodar Tatyaba @ Dadasheb & Ors., 1994(2) SCC 392 held that a reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleadings are considered. So long as the claim discloses some cause of action or arises some question fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are generally more known than clearly understood. It was further held that the failure of the pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the "ground" in Section 81(1); of "material facts" in Section 83(1)(a) and of "full particulars" in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of

Order VI Rules 2 and 4 and Order 7, Rule 1(e) Code of Civil Procedure. There is a distinction amongst the 'grounds' in Section 81(1); the 'material facts' in Section 83(1)(a) and "full particulars" in Section 83(1)(b)."

19. As held in *Achuthanandan's case* (supra), material facts would be, such primary facts which must be proved at the trial by the party to establish existence of such cause of action. It was observed that so long as the petitioner discloses some cause of action or raise some questions fit to be decided by a Judge, such material facts would be sufficient to maintain the Election Petition and such statements of material facts, which comply with the requirements of Section 83 read with Sections 100 and 123 of the RP Act, cannot be struck off under Order 6 Rule 16 of CPC.

20. In the application in O.A.No.141 of 2020 filed under Order 6 Rule 16 CPC., the applicant has sought for striking off most of the portions of the pleadings in the main Election Petition on the ground that such pleadings are unnecessary, scandalous, frivolous or vexatious. In the preceding paragraphs, I have held that when the averments in the Election Petition were considered as a bundle of

facts, the allegations made therein would constitute a valid cause of action which could be termed as "material facts", which allegations are neither in violation of any statutory provisions but are in conformity with the grounds for which an election petitioner may seek for declaring an election as void, under the provisions of the RP Act.

21. The Hon'ble Apex Court has time and again held that the Courts would not ordinarily strike out the relevant pleadings by invoking its powers under Order 6 Rule 16 CPC. In ***Abdul Razak (Dead) Through LRs. and others V. Mangesh Rajaram Wagle and others reported in 2010 (2) SCC 432***, the Hon'ble Supreme Court had held that since striking off the pleadings has a serious adverse impact on the rights of the parties concerned, extreme caution is to be taken by the Courts in exercising its powers under Order 6 Rule 16 CPC. The relevant portion of the order reads as follows:-

*"16. Order VI Rule 16 CPC which empowers the Court to strike out the pleadings reads thus:
"Striking out pleadings. - The Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading--"*

(a) which may be unnecessary, scandalous, frivolous or vexatious, or

(b) which may tend to prejudice, embarrass or delay the fair trial of the suit, or

(c) which is otherwise an abuse of the process of the court."

A reading of the plain language of the above reproduced provisions makes it clear that the court's power to strike out any pleading at any stage of the proceedings can be exercised in either of the three eventualities i.e., where the pleadings are considered by the court unnecessary, scandalous, frivolous or vexatious; or where the court is satisfied that the pleadings tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise considered as an abuse of the court.

17. Normally, a court cannot direct or dictate the parties as to what should be their pleading and how they should prepare their pleadings. If the parties do not violate any statutory provision, they have the freedom to make appropriate averments and raise arguable issues. The court can strike off the pleadings only if it is satisfied that the same are unnecessary, scandalous, frivolous or vexatious or tend to

prejudice, embarrass or delay the fair trial of the suit or the court is satisfied that suit is an abuse of the process of the court. Since the striking off pleadings has serious adverse impact on the rights of the concerned party, the power to do so has to be exercised with great care and circumspection.

18. In *Knowles v. Roberts* (1888) 38 Ch D, 263, Bowen, L.J. Observed:

"It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognized principle that a defendant may claim ex debito justitiae to have the plaintiff's claim presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict even to severity in taking care to prevent pleadings from

degenerating into the old oppressive pleadings of the Court of Chancery."

19. The above reproduced observations have been quoted with approval in *Sathi Vijay Kumar v. Tota Singh and others* (2006) 13 SCC 353. In that case, the order passed by the High Court deleting paragraphs 11, 12 and 13(a) from the election petition filed by the appellant was questioned before this Court on the ground that the case does not fall within the ambit of Order VI Rule 16. This Court first held that the provisions of Order VI Rule 16 CPC are applicable to election petitions. The Court then referred to the earlier judgments in *Roop Lal Sathi v. Nachhattar Singh Gill* (1982) 3 SCC 487, *K.K. Modi v. K.N. Modi* (1998) 3 SCC 573, *Union Bank of India v. Naresh Kumar* (1996) 6 SCC 660 and held that the power to strike out pleading is extraordinary in nature and must be exercised by the Court sparingly and with extreme care, caution and circumspection."

22. A similar view has been expressed in ***Sathi Vijaya Kumar V. Tota Singh*** reported in **2006 (13) SCC 353**, whereby it was observed that a Court cannot direct parties as how they should prepare the pleadings and so long as the parties do not offend the

rules of pleadings by making averments or making arguable issues, the pleadings cannot be struck down. The relevant portions of the order reads thus:-

"31. Since the general principles as to pleadings in civil suits apply to election petitions as well, the pleadings which are required to be struck off under Rule 16 of Order 6 in a suit can also be ordered to be struck off in an election petition. In appropriate cases, therefore, an Election Tribunal (High Court) may invoke the power under Order 6 Rule 16 of the Code.

32. This Court in Azhar Hussain v. Rajiv Gandhi [1986 Supp SCC 315] , indicated that the whole purpose of conferment of such powers i.e. either to dismiss election petitions in limine or striking out unnecessary, scandalous, frivolous or vexatious pleadings 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 does not embarrass the returned candidate. "The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose." It was also observed that such hanging sword of the election petition on the returned candidate would not keep him sufficiently free to devote his

whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the constituency concerned. The precious time and attention demanded by his elected office would be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office in particular, and instead of resolving their problems, he would be engaged in defending himself in the litigation pending against him. The fact that an election petition calling into question his election is pending, may, in a given case, act as a psychological factor and may not permit him to act with full freedom. The Court, in these circumstances, may exercise the power of striking out pleadings in appropriate cases if it is warranted in the facts and circumstances of the case.

33. *At the same time, however, it cannot be overlooked that normally a court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the court would not order*

striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the court sparingly and with extreme care, caution and circumspection (vide Roop Lal Sathi v. Nachhattar Singh Gill [(1982) 3 SCC 487 : AIR 1982 SC 1559] ; K.K. Modi v. K.N. Modi [(1998) 3 SCC 573 : AIR 1998 SC 1297] ; United Bank of India v. Naresh Kumar [(1996) 6 SCC 660 : AIR 1997 SC 3]).

34. *More than a century back, in Knowles v. Roberts [(1888) 38 Ch D 263 : 58 LT 259 (CA)] Bowen, L.J. said:*

"It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognised principle that a defendant may claim ex debito justitiae to have the plaintiff's claim presented in an intelligible form, so that he may not be embarrassed in meeting it;

and the Court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery."

23. In the light of the ratio laid down in the aforesaid decisions of the Hon'ble Supreme Court in *Abdul Razak and Sathi Vijaya Kumar's cases (supra)*, I am of the view that the averments in the Election Petition, which are sought to be struck down, are relevant and material facts to maintain an Election Petition and hence, this Court may not be justified in striking down such pleadings at the threshold.

24. In ***Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal*** reported in **2017 (13) SCC 174**, it was held that since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order 7 Rule 11 CPC to the exercise of power of rejection of plaint have to be strictly adhered to.

25. Applying the law laid down by the Hon'ble Supreme Court in the aforesaid decisions, this Court is of the affirmed view that the

election petitioner, having made out a cause of action in the Election Petition and since the material facts in paragraphs 5, 6, 8 to 12, 14 & 16 to 28, cannot be termed to be scandalous or immaterial, it would be premature to either terminate the Election Petition at the threshold or strike out such of those material pleadings as sought for by the petitioner.

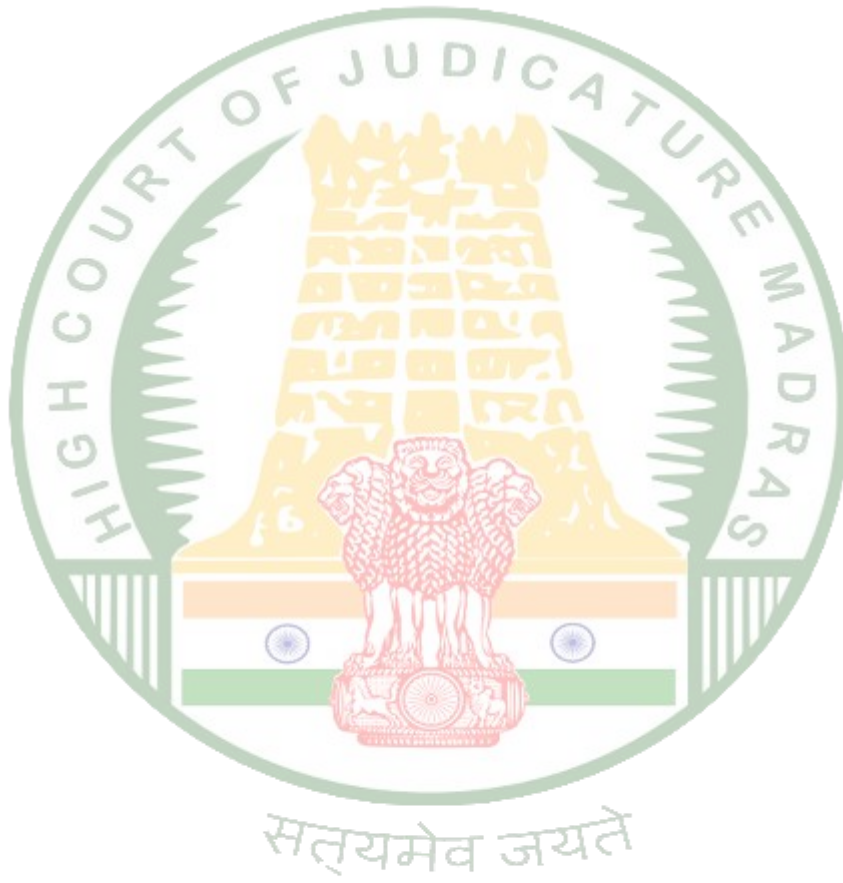
26. In the light of the above observations, both the applications filed by the returned candidate under Order 7 Rule 11 and Order 6 Rule 16 of CPC, does not require consideration. Accordingly, both the Original Applications stand dismissed.

16.10.2020

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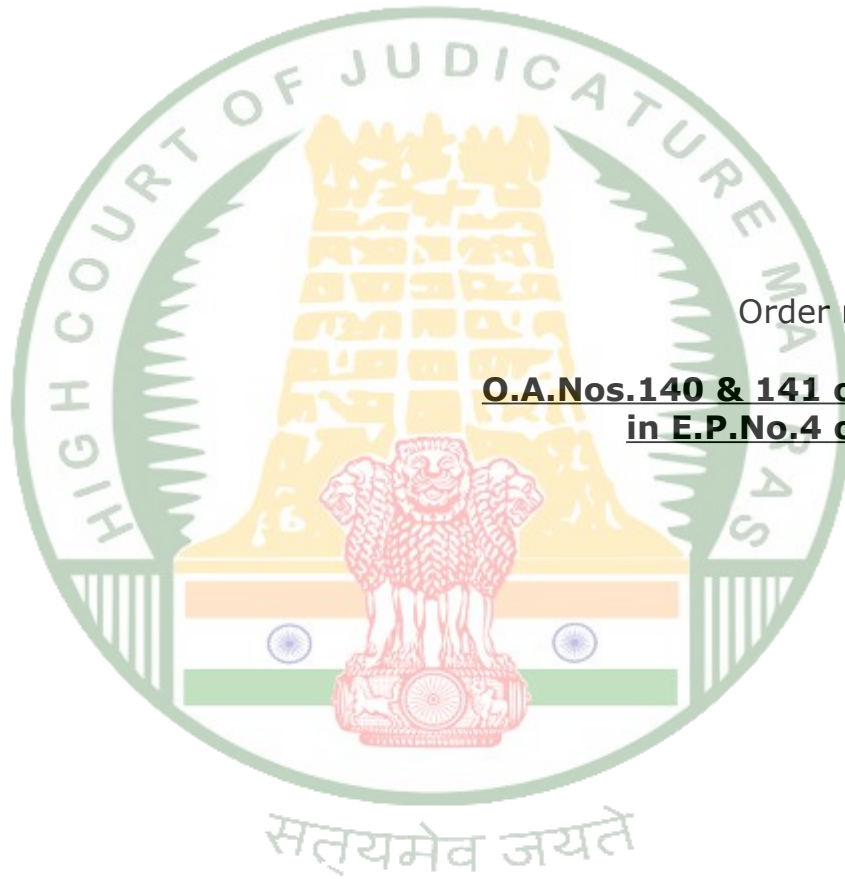
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M.S.RAMESH.J,

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Order made in

O.A.Nos.140 & 141 of 2020
in E.P.No.4 of 2019

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