

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 24TH DAY OF JUNE 2022

THE HON'BLE MR. JUSTICE D.KRISHNAKUMAR

Election Petition No.17 of 2016

and

O.A. Nos.560,561 & 562 of 2021, 110 & 111 of 2022

ELP No. 17 of 2016

B.Ramkumar Adityan,
S/o.Mr.R.Balakrishna Adityan & Ms.Selvarathi,
No.563, Thoothukudi Road, Thiuchendur,
Thoothukudi District- 628 216

... Petitioner

-VS-

1.Mr.Anitha R.Radhakrishnan,
S/o.Mr.V.Ramamoorthy,
No.21,North Street,
Thandupathy P.O., Trichendur Taluk,
Thoothukudi District- 628 208.

* 2.Election Commission of India,
Nirvachan Sadan,
Ashoka Road,
New Delhi – 110 001.

3.The District Election Officer and Collector,
O/o. District Collector,
Collectorate Complex,
Korampallam,
Thoothukudi – 628 101.

4.The Returning Officer and Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Tiruchendur Legislative Assembly Constituency,
Tiruchendur – 628 216.

... Respondents

(Respondents 2 to 4 struck off from the array of respondents in ELP 17 of 2016 as per common order of this court dated 05.10.2017 made in O.A.Nos.409, 410& 411 of 2017 in ELP 17 of 2016).

OA.NOS.560, 561 & 562 OF 2021:-

Anitha P.Radhakrishnan,
S/o.M.V.Ramamoorthy,
No.21,North Street,
Thandupathu P.O,
Trichendur Taluk,
Thoothukudi District-628 208.

...Applicant/
1st Respondent

-VS-

1.B.Ramkumar Adityan,
S/o.Mr.R.Balakrishna Adityan & Ms.Selvarathi,
No.563,Thoothukudi Road,
Tiruchendur,
Thoothukudi District – 628 216.

...1st Respondent/
Election Petitioner

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3.The District Election Officer And Collector,
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Collectorate Complex,
Korampallam,
Thoothhukudi District-628 101.

4.The Returning Officer and
Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Trichendur Legislative Assembly Constituency,
Trichendur-628 216.

...Respondents/Respondents

(Respondents 2 to 4 struck off from the array of respondents in ELP 17 of 2016 as per common order of this court dated 05.10.2017 made in O.A.Nos.409, 410 & 411 of 2017 in ELP 17 of 2016).

OA.No.560 of 2021:-

This Original Application praying that this Hon'ble Court be pleased to strike off the Paragraph Nos.7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 in Election Petition No.17 of 2016 as unnecessary, frivolous, vexations and not existing or surviving as on this date, in view of the Applicant's term as Returned Candidate from No.215 Tiruchendur Constituency has come to an end due to the General Tamil Nadu state Assembly Election held in the month of 6th April 2021.

OA.No.561 of 2021:-

This Original Application praying that this Hon'ble Court be pleased to reject the Election Petition No.17 of 2016 filed by the petitioner and consequently dismiss the same.

OA.No.562 of 2021:-

This Original Application praying that this Hon'ble Court be pleased to dismiss E.L.P.No.17 of 2016 as INFRUCTUOUS in the view of 16th General election held for Tamil Nadu Legislative Assembly including

for the Tiruchendur Assembly constituency on 6th April 2021.

OA.NOS.110 & 111 OF 2022:-

B.Ramkumar Adityan,
S/o.Mr.R.Balakrishna Adityan & Ms.Selvarathi,
No.563, Thoothukudi Road, Thiuchendur,
Thoothukudi District- 628 216 ... Applicant/ Election Petitioner

-VS-

1. Mr.Anitha R.Radhakrishnan,
S/o.Mr.V.Ramamoorthy,
No.21,North Street,
Thandupathy P.O., Trichendur Taluk,
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4. The Returning Officer and Revenue Divisional Officer,
O/o. Revenue Divisional Officer,
Tiruchendur Legislative Assembly Constituency,
Tiruchendur – 628 216. ... Respondents

(Respondents 2 to 4 struck off from the array of respondents in ELP 17 of 2016 as per common order of this court dated 05.10.2017 made in O.A.Nos.409, 410 & 411 of 2017 in ELP 17 of 2016).

OA.NO.110 OF 2022:-

This Original Application praying that this Hon'ble Court be pleased to pass an Order in the Election Petition in ELP.No.17 of 2016 as per provisions of the Order 8 Rule 10 of Civil Procedure Code read with Order V Rule 1 and Order V Rule 5 of the Rules of the High Court, Madras Original Side 1994 for non filing of the Written Statement by the 1st Respondent.

OA.NO.111 OF 2022:-

This Original Application praying that this Hon'ble Court be pleased to pass an order in the Election Petition in ELP.No.17 of 2016 as per provisions of the Section 125A (i) and (iii) of the Representation of People Act, 1951 for not furnishing information and concealed information in the Affidavit in Form 26 during the Tiruchendur Legislative Assembly General Election, 2016 by the 1st Respondent.

The above Original Applications and Election Petition having been heard on 04/03/2022 in the presence of Mr.M.Jothikumar assisted by Mr.A.Manoj Kumar, advocates for the Election Petitioner, for the applicant in OA.Nos.110 & 111 of 2022 and for the Respondent in OA.No.560 to 562 of 2021; and of Mr.N.R.Elango, Senior counsel for M/s.S.Vijayakumar, Durai Gunasekaran & P.Praveen Kumar, advocates for the applicant in OA.Nos.560 to 562 of 2021 and for the 1st Respondent in Election Petition

and for the respondent in OA.Nos.110 & 111 of 2022; and and upon reading the Election Petition, Affidavit, and Judge's Summon, Affidavit of B.Ramkumar Adityan filed in OA.No.110 & 111 of 2022, and common counter affidavit filed in OA.Nos.560 to 562 of 2021 and Judges summon and affidavit of Anitha R.Radhakrishnan filed in OA.Nos.560 to 562 of 2021 and this court having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates and this court having observed that there is no specific allegation of corrupt practice in the election petition and the old Assembly is no longer is in existence and fresh elections were held on 06/04/2021, and **it is ordered as follows:-**

That the Paragraph Nos. 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 in Election Petition No.17 of 2016 as unnecessary, frivolous, vexations and not existing or surviving as on this date, in view of the Applicants term as Returned Candidate from No.215 Tiruchendur Constituency has come to an end due to the General Tamil Nadu state Assemble Election held in the month of 6th April 2021 be and are hereby struck off.

2. That the Election Petition No.17 of 2016 be and is hereby Rejected and dismissed as infructuous.

3. That the Original Application Nos.110 & 111 of 2022 be and

are hereby dismissed.

4. That there shall be no order as to cost.

WITNESS, THE HON'BLE MR.JUSTICE MUNISHWAR NATH
BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS,
AFORESAID THIS THE 24TH DAY OF JUNE 2022.

Sd./-

ASSISTANT REGISTRAR

Original Side – II

//Certified to be true copy//

Dated at Madras this the day of 2022.

COURT OFFICER(O.S.)

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

PK
30/06/2022

Election Petition No.17 of 2016
and
OA.Nos. 560, 561 & 562 of 2021,
110 & 111 of 2022

DECREE DATED: 24/06/2022

THE HON'BLE MR. JUSTICE
D.KRISHNAKUMAR

FOR APPROVAL: 01/07/2022

APPROVED ON :01/07/2022

Copy to:-

1. The Election Commission of India,
Nirvachan Sadan,
Ashoka Road, New Delhi.
2. The Returning Officer and Revenue
Divisional Officer,
O/o. Revenue Divisional Officer,
Tiruchendur Legislative Assembly
Constituency,
Tiruchendur – 628 216.

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... Petitioner

-VS-

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S/o.Mr.V.Ramamoorthy,
No.21,North Street,
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Thoothukudi District- 628 208.

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O/o. Revenue Divisional Officer,
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(Respondents 2 to 4 struck off from the array of respondents in ELP 17 of 2016 as per common order of this court dated 05.10.2017 made in O.A.Nos.409, 410& 411 of 2017 in ELP 17 of 2016).

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-VS-

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Thoothukudi District – 628 216.

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OA.No.560 of 2021:-

This Original Application praying that this Hon'ble Court be pleased to strike off the Paragraph Nos.7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 29 in Election Petition No.17 of 2016 as unnecessary, frivolous, vexations and not existing or surviving as on this date, in view of the Applicants term as Returned Candidate from No.215 Tiruchendur Constituency has come to an end due to the General Tamil Nadu state Assembly Election held in the month of 6th April 2021.

OA.No.561 of 2021:-

This Original Application praying that this Hon'ble Court be pleased to reject the Election Petition No.17 of 2016 filed by the petitioner and consequently dismiss the same.

OA.No.562 of 2021:-

This Original Application praying that this Hon'ble Court be pleased to dismiss E.L.P.No.17 of 2016 as INFRUCTUOUS in the view of 16th General election held for Tamil Nadu Legislative Assembly including for the Tiruchendur Assembly constituency on 6th April 2021.

OA.NOS.110 & 111 OF 2022:-

B.Ramkumar Adityan,
S/o.Mr.R.Balakrishna Adityan & Ms.Selvarathi,
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Thoothukudi District- 628 216 ... Applicant/ Election Petitioner

-VS-

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O/o. Revenue Divisional Officer,
Tiruchendur Legislative Assembly Constituency,
Tiruchendur – 628 216. ... Respondents

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provisions of the Order 8 Rule 10 of Civil Procedure Code read with Order V Rule 1 and Order V Rule 5 of the Rules of the High Court, Madras Original Side 1994 for non filing of the Written Statement by the 1st Respondent.

OA.NO.111 OF 2022:-

This Original Application praying that this Hon'ble Court be pleased to pass an order in the Election Petition in ELP.No.17 of 2016 as per provisions of the Section 125A (i) and (iii) of the Representation of People Act 1951 for not furnishing information and concealed information in the Affidavit in Form 26 during the Tiruchendur Legislative Assembly General Election 2016 by the 1st Respondent.

The above Original Applications and Election Petition having been heard on 04/03/2022 in the presence of Mr.M.Jothikumar assisted by Mr.A.Manoj Kumar, advocates for the Election Petitioner, for the applicant in OA.Nos.110 & 111 of 2022 and for the Respondent in OA.No.560 to 562 of 2021; and of Mr.N.R.Elango, Senior counsel for M/s.S.Vijayakumar, Durai Gunasekaran & P.Praveen Kumar, advocates for the applicant in OA.Nos.560 to 562 of 2021 and for the 1st Respondent in Election Petition and for the respondent in OA.Nos.110 & 111 of 2022; and upon reading the Election Petition, Affidavit, and Judge's Summon, Affidavit of B.Ramkumar Adityan filed in OA.No.110 & 111 of 2022, and common

counter affidavit filed in OA.Nos.560 to 562 of 2021 and Judges summon and affidavit of Anitha R.Radhakrishnan filed in OA.Nos.560 to 562 of 2021 and this court having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates and

the court made the following order:-

These original applications have been filed for the following relief:

(i) O.A.No.560 of 2021 to strike off Paragraph Nos.7 to 27 & 29 in the Election Petition No.17 / 2016 as unnecessary, frivolous, vexatious and not existing or surviving as on this date, in view of the applicant's term as Returned Candidate from No.215, Tiruchendur Constituency has come to an end due to the General Tamil Nadu State Assembly Election held in the month of 6th April, 2021.

(ii) O.A.No.561 of 2021 to reject the Election Petition No.17 of 2016 filed by the petitioner and consequently, dismiss the same.

(iii) O.A.No.562 of 2021 to dismiss E.L.P.No.17 of 2016 as infructuous in view of 16th General Election held for Tamil Nadu Legislative Assembly including for the Tiruchendur Assembly Constituency on 6th April, 2021.

For the sake of convenience, the array of parties in the original applications

have been adopted.

2. The first respondent / election petitioner has filed ELP No.17 of 2016 under Sections 80, 80A, 81, 83, 84, 100 (1)(d)(i), 125A of Representation of Peoples Act 1951 [in short “RP Act”], Rules 4, 4A, 8 and 10 of the Conduct of Election Rules, 1961 to declare that election of the returned candidate, namely the applicant herein from No.215, Tiruchendur Legislative Assembly Constituency, Thoothukudi District, Tamil Nadu held on 16.05.2016, in which results have been declared on 19.05.2016, as void.

BRIEF FACTS OF THE CASE

3. The applicant was elected from No.215, Tiruchendur Assembly Constituency in the 15th General Assembly Election held on 16.05.2016 and he was declared as a successful returned candidate from the said Constituency on 19.05.2016. The first respondent/election petitioner, being a voter and a Law Graduate, has filed the present election petition questioning the acceptance of the applicant's nomination dated 25.04.2016 by the Returning Officer of Tiruchendur Assembly Constituency on the following two grounds:

(i) Insufficient disclosure of educational qualification and

(ii) Incomplete information of criminal antecedents.

4. The brief case of the applicant, as averred in the affidavit filed

in support of O.A.No.560 of 2021, are as follows:

4.1. The applicant was sponsored by the political party “Dravida Munnetra Kazhagam” as a candidate to contest the election from No.215, Tiruchendur Assembly Constituency in the election scheduled on 16.05.2016. The applicant filed duly filled nomination by furnishing necessary details along with the affidavit in Form No.26, as per the directive of the Election Commission of India.

4.2. The nomination filed by the applicant on 25.04.2016 was taken up by the Returning Officer of Tiruchendur Constituency for scrutiny on 30.04.2016, along with the nominations filed by other candidates. The Returning Officer, after verifying the contents disclosed by the applicant in the affidavit filed in Form No.26 filed along with the nomination, accepted the nomination.

4.3. According to the applicant, he has clearly disclosed and revealed the details of the criminal cases pending against him in the appropriate columns stipulated in Clause 5(i)(a) 4 cases, 5(i)(b) 4 cases, 5(i)(c) 4 cases in Form 26 Affidavit, which is sufficient for the voters of Tiruchendur Assembly Constituency, to know about the details of criminal antecedents of the applicant. According to the applicant, in the affidavit in

Form 26, he has furnished the following criminal cases in Crime Nos.4/06, 67/2011, 185/2011 and 187/2011, which are pending at different stages before the Principal District Judge Court and Special Court for trial of MP/MLA cases in SC.Nos.3/2019, 139/2019, 14/2019 and 140/2019.

4.4. According to the applicant, he has fairly disclosed all the details of criminal cases in the nomination form filed on 25.04.2016 and contested the election held on 16.05.2016 and successful in the election and the acceptance of nomination of the applicant by the Returning Officer was perfectly valid, without any defects/infracton whatsoever, as alleged by the respondent/election petitioner.

4.5. According to the applicant, in Column 10 in Part A and Column 11 in Part B of the affidavit in Form 26, he has stated that he has studied 10th Standard at Bishop Assariya Memorial High School, Vellalanvilai, Tiruchendur Taluk. The respondent/election petitioner has alleged that the applicant has not mentioned the year of completion of 10th standard and leaving it as blank column, which is substantial in character and the Returning Officer has committed an error in accepting the nomination of the applicant.

4.6. The applicant further submits that soon after declaring the applicant as a returned candidate from No.215, Tiruchendur Constituency on 19.05.2016, the applicant functioned as an MLA belonging to Dravida Munnetra Kazhagam party and the term of 5 years office of the 15th Tamil Nadu State Assembly came to an end after the announcement of fresh election for the 16th Tamil Nadu State Assembly Constituency.

4.7. The applicant also submits that he has been nominated and sponsored as a candidate by the “Dravida Munnetra Kazhagam” party to contest the election held on 06.04.2021 and he was declared successful on 02.05.2021 and functioning now as a Member of the Legislative Assembly (MLA), representing No.215, Tiruchendur Constituency, pursuant to the General Election held on 06.04.2021 and therefore, the election petition itself has become infructuous. According to the applicant, the averments in the election petition are purely academic and vexatious and the respondent/election petitioner cannot be allowed to prolong and keep the infructuous election petition pending.

4.8. It is specifically contended by the applicant that there is no allegation as against the applicant for corrupt practice, unduly influencing the mind of the voters during election campaign and in the absence of any

specific allegation of corrupt practice in the election petition, on completion of the term of office of the 15th Tamil Nadu State Assembly, the election petition cannot be entertained and therefore seeks for striking off the pleadings and consequently, prays for rejection of the election petition as infructuous.

5. The first respondent / election petitioner has filed a common counter affidavit in these original applications stating as follows:

5.1. According to the first respondent/election petitioner, the applicant has filed incomplete nomination form and the Returning Officer did not properly scrutinize the nomination of the applicant and improperly accepted the same.

5.2. According to the first respondent/election petitioner, the applicant had furnished about the details of criminal cases pending against him, where the Court has taken cognizance, but did not furnish short description of the offences for which cognizance was taken in Columns 5(i)(b) and 5(ii)(b) of the affidavit in Form 26, which is very much crucial.

5.3. There are 3 Sub Columns in Column 10 in Part A and Column 11 in Part B, in which the applicant has stated about the completion of 10th Standard at Bishop Assariya Memorial High School, Vellalanvilai, Tiruchendur Taluk, but he did not furnish the year of completion of 10th Standard.

5.4. According to the respondent/election petitioner, the applicant has not furnished detailed information regarding the details of criminal cases pending before the Investigating Officer and before the Courts concerned and thereby, he has violated Section 33-A(1) of the RP Act and in this regard, placed reliance upon the decision of the Hon'ble Apex Court in ***Union of India v. Association of Democratic Reforms and another reported in [(2002) 5 SCC 294]***, wherein it was observed that *if there was a disclosure by a candidate with regard to his criminal antecedents, assets and liabilities and educational qualification, then it would strengthen the voters in taking appropriate decision of casting their votes.*

5.5. According to the respondent/election petitioner, non-filing of information about criminal cases and educational qualification and keeping blank spaces in the nomination is a very serious issue and substantial in character and the Returning Officer ought to have rejected the nomination of the applicant and in this regard placed reliance upon the decision of the Hon'ble Apex Court in ***Shaligram Shrivastva vs. Naresh Singh Patel [(2003) 2 SCC 176]***.

5.6. According to the respondent/election petitioner, non-disclosure of vital information in Form 26 would amount to corrupt practice

and therefore, the election petition cannot be rejected at the threshold stage and it needs detailed enquiry by framing of issues and therefore, prays for dismissal of these original applications.

SUBMISSION OF COUNSEL FOR THE PARTIES

6. Mr.N.R.Elango, learned Senior Counsel for Mr.S.Vijayakumar, learned counsel for the applicant made the following submissions / contentions:

(i) The election petition has been filed under Sections 80, 80A, 81, 83, 84, 100(1)(d)(i), 125A of the RP Act and Rules 4, 4A, 8, and 10 of the Conduct of Election Rules, 1961 and the first respondent/election petitioner has not filed the election petition under Section 123 of the RP Act, 1951, which deals with corrupt practices.

(ii) Since the election petition has not been filed on the ground of corrupt practice and further, fresh elections have already taken place and the old assembly is no longer in existence, the election petition would be rendered infructuous, because it would only be of an academic interest.

(iii) There is no specific allegation of suppression of material fact, but the only allegation is that the applicant has not disclosed full information about the criminal antecedents and the year of completion of his SSLC qualification.

(iv) In the absence of any specific allegation of corrupt practice, the first respondent/election petitioner cannot question the acceptance of nomination under Form 26 by the Returning Officer.

(v) The election petition itself is not maintainable, as the cause of action of the election held for the 15th General Tamil Nadu State Assembly term has come to an end and therefore, the election petition is liable to be dismissed as infructuous, in view of fresh election held for the 16th Tamil Nadu Legislative Assembly on 06.04.2021, in which the applicant has been elected as a Member of Legislative Assembly representing No.215, Tiruchendur Constituency.

The learned Senior Counsel for the applicant, in support of his submissions, has placed reliance upon the following decisions:

(i) Abdul Hussain v. Rajiv Gandhi [AIR 1986 SC 1253]

(ii) Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi [AIR 1987 SC 1577]

(iii) P.H.Pandian v. P.Veldurai and another [(2013) 14 SCC 685]

(iv) Krishnamoorthy v. Sivakumar and Others [(2015) 3 SCC 467]

(v) V.Anbazhagan v. A Laser and 13 others [Order dated 27.04.2016 in ELP.No.7 of 2011]

(vi) R.Sakkarapani v. K.Karuppasamy [Order dated 05.06.2018 in O.A.Nos.1052 and 1053 of 2017 in ELP.No.13 of 2016]

(vii) Gayad Ram v. Pratap Singh Bhati [Civil Writ Petition No.2031 / 2020 dated 18.02.2020 – High Court of Rajasthan at Jodhpur]
(viii) Prempal Singh v. Satya Pal Singh Baghel [Judgement dated 03.03.2020 in ELP.No.12/2017].

7. *Per contra*, Mr.M.Jothikumar, learned counsel for the first respondent/election petitioner has made the following submissions/contentions:

(i) The election petition filed against a returned candidate does not abate or become infructuous on the dissolution of assembly.

(ii) The applicant had filed incomplete, defective nomination and concealed information, which materially amounting to undue influence on the part of the applicant.

(iii) The voter's right to know the criminal antecedents of the candidate contesting for election for Member of Parliament or Member of Legislative Assembly is much more fundamental and basic for survival of democracy, as laid down by the Hon'ble Apex Court in ***Union of India v. Association for Democratic Reforms [(2002) 5 SCC 294]***.

(iv) Section 123(2) of the RP Act, 1951 reads that “***Undue influence***, that is to say, any direct or indirect

interference or attempt to interfere on the part of the candidate or his agent, or of any other person 7 [with the consent of the candidate or his election agent], with the free exercise of any electoral right”. Reliance has been placed upon the decision in ***Krishnamoorthy v. Sivakumar [(2015) 3 SCC 467]***.

(v) The applicant in Column 10 in Part A and Column 11 in Part B of the Affidavit in Form 26 has stated that he studied 10th standard at Bishop Assariya Memorial School, Vellalanvilai, Tiruchendur Taluk, but left blank the year of completion column.

(vi) In Column (5)(i) of Part A of Form 26, every candidate has to furnish the details of pending criminal cases, in which charges have been framed by the Court for an offence punishable with imprisonment for two years or more. In Column 5(i)(a) every candidate has to furnish about case / FIR Nos. together with complete details of concerned police station / District / State and in Column 5(i)(b), every candidate has to furnish Sections of the concerned Acts and short description of the offences for which charged. The applicant kept blank spaces where short description of the offences for which charge has to be furnished.

(vii) The applicant is guilty of Section 125 A (i) of the RP Act, 1951.

(viii) Where the tenure of office of the Legislative Assembly had come to an end, the question of qualification or disqualification would not become academic, since invalidation eventually may give rise to liability to refund the allowance received by a Member of the Legislative Assembly, as held by the Hon'ble Apex Court in ***Moti Ram v. Parm Dev & Anr. [AIR 1993 SC 1662]***.

The learned counsel for the respondent/election petitioner, in support of his submissions, has also placed reliance on the following decisions:

- (i) Sheodhan Singh v. Mohan Lal Gautam [AIR 1969 SC 1024]***
- (ii) Union of India v. Association for Democratic Reforms [(2002) 5 SCC 294]***
- (iii) Krishnamoorthy v. Sivakumar & Ors. [Order dated 15.06.2009 in CRP (NPD) No.3076 of 2008]***
- (iv) Resurgence India v. Election Commission of India & Anr. [Order dated 13.09.2013 in WP (Civil) No.121 of 2008]***
- (v) Krishnamurthy v. Sivakumar & Ors. [(2015) 3 SCC 467]***
- (vi) P.Veldurai v. Tamil Nadu Legislative Assembly [Order dated 06.02.2019 in W.P.No.30102 of 2011]***

8. This Court has anxiously considered the rival submissions and also perused the entire materials available on record.

9. The applicant earlier had filed an application in O.A.No.412 of

2017 for non-compliance of the mandatory provisions of the RP Act, 1951 and the said application was dismissed by this Court on 17.06.2020. The matter has been adjourned on several occasions at the instance of both sides and even during pandemic period, the matter has been heard through virtual mode as well as physical mode and in the meantime, the applicant has filed the present applications for the aforesaid prayer.

DISCUSSION

10. Before proceeding to the points for consideration, let this Court shall consider the power of this Court under Order VI Rule 16 Civil Procedure Code to strike out the pleadings, which reads as follows:

“16. 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 above provision reveals that there is no suo motu power conferred on the Court under this provision to strike off the pleadings. The Court can exercise this power only when a party files an application to strike off the pleadings. This Court must give an opportunity to other party to rebut the contentions raised in the application. Only when the Court

comes to the conclusion that the pleadings of the party is liable to be struck off for any of the grounds mentioned in Order VI Rule 16 C.P.C., the Court can strike off the pleadings at any stage of the suit. The words on its own motion, is not included in Order VI Rule 16 C.P.C.

11. The Hon'ble Apex Court in *S.Malla Reddy v. Future Builders Cooperative Housing Society and others* [(2013) 9 SCC 349] held as follows:

“25. Order 6 Rule 16 CPC has been substituted by the CPC (Amendment) Act, 1976. This provision deals with the amendment or striking out of the pleadings, which a party desires to be made in his opponent's pleadings. ***In other words, the plaintiff or the defendant may ask the Court for striking out the pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious.*** This Rule is based on the principle of ex debito justitiae. The Court is empowered under this Rule to strike out any matter in the pleadings that appears to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit. In the said judgment, it has been held that the plaintiff or defendant may ask the Court for striking off the pleadings of his opponent on the ground that the pleadings are shown to be unnecessary, scandalous, frivolous or vexatious or which tends to prejudice, embarrass or delay the fair trial of the suit.”

(emphasis supplied)

In view of the judgement of the Hon'ble Apex Court as referred to supra, only when a party seeks striking off the pleadings of his opponent, the Court can consider the same and pass orders as per Order VI Rule 16 C.P.C. Admittedly, in the case on hand, the applicant has filed O.A.No.560 of 2021

to strike off Paragraph Nos.7 to 27 & 19 in the Election Petition No.17 / 2016 as unnecessary, frivolous, vexatious and not existing or surviving as on date.

12. An election petition can be rejected under Order 7 Rule 11(a) CPC, if it does not disclose a cause of action. Pleadings could also be struck off under Order VI Rule 16, if they are scandalous, frivolous or vexatious, even before filing written statement. In an election petition, the fact which constitutes the corrupt practice must be stated and the fact must be correlated to one of the heads of corrupt practice. When the paragraphs in the plaint do not justify the essential requirement under Section 83 of the Representation of People Act, those paragraphs have to be struck off. Therefore, the instant applications filed by the applicant is maintainable.

13. The contention of the applicant that he has furnished the details of his educational qualification in Column 10 in Part A and Column 11 in Part B of the affidavit in Form 26 filing along with nomination that he has studied 10th Standard at Bishop Assariya Memorial High School, Vellalanvilai, Tiruchendur Taluk and he has not suppressed any material fact and non-disclosure of year of completion of educational qualification would not attract the provisions of Section 123 of the RP Act, 1951, which

deals with corrupt practice. The respondent/election petitioner has not placed any material before this Court to deny the said contention of the applicant that non-disclosure of year of completion of educational qualification would not amount to corrupt practice, unduly influencing the mind of the voters. Therefore, accepting the said contention of the applicant, mere non-disclosure of the year of completion of educational qualification would not amount to corrupt practice as defined under Section 123 of the RP Act, 1951.

14. The contention of the parties concerned would impress upon this Court to decide the following questions in these original applications:

(i) Whether the respondent/election petitioner has made out an allegation of corrupt practice against the applicant in the present election petition?

(ii) Whether the election petition is liable to be dismissed as infructuous?

QUESTION NO.1

15. Let this Court shall consider the relevant provision under

Section 123 of the Representation of the People Act, 1951, which elaborately deals with Corrupt Practices and more particularly, Section 123(2) of the Representation of the People Act, 1951 reads that “*Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person [with the consent of the candidate or his election agent], with the free exercise of any electoral right*”.

16. According to the applicant, the respondent/election petitioner has not made any specific allegation of corrupt practice as against the applicant in the averments/pleadings made in the election petition and since the tenure of office of the Tamil Nadu State Assembly has already come to an end during May 2021, the election petition itself has become infructuous. The learned Senior Counsel for the applicant has drew the attention of this Court to Column No.5 in Form 26 affidavit filed along with the nomination form, which prescribes the following details to be furnished by the candidate in the nomination form to contest in the elections:

5(a) – F.I.R. No. with name and address of Police Station concerned.

5(b)- Case No. with Name of the Court

5(c) –Sections of concerned Acts/Codes involved

5(d)- Brief description of offence

5(e)- Whether charges have been framed (mention Yes or No)

5(f) – If answer against item (e) above is Yes, then give the date on which charges were framed.

5(g)- Whether any Appeal/Application for revision has been filed against the proceedings (Mention Yes or No).

17. According to the applicant, it has been specifically alleged by the respondent/election petitioner that the applicant has not specified the details as required under Column 5(d), namely brief description of offences in the affidavit in Form 26. According to the applicant, as per the statutory provision, he has furnished brief description of the offences as to the applicant's involvement in the criminal cases, which are pending before the concerned criminal Courts. The learned Senior Counsel for the applicant contended that the particulars furnished by the applicant will satisfy the requirements of Column 5(d) of the affidavit in Form 26 and now the voters having easy access to know about the particulars of the applicant's involvement in the criminal cases, nature of the offences, gravity of the offences and other details and therefore, the applicant is not guilty of Section 125A of the RP Act, 1951. The learned Senior Counsel for the applicant has mainly relied upon the decisions in *Azhar Hussain v. Rajiv Gandhi [AIR 1986 SC 1253]*, *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi [AIR 1987 SC 1577]*, *P.H.Pandian v. P.Veldurai and Others*

[(2013) 4 SCC 685] and the order dated 27.04.2016 in E.L.P.No.7/2016 [V.Anbazhagan v. A.Lazer and Others].

18. According to the respondent/election petitioner, the applicant has not furnished the brief description of the offences as to the applicants involvement in criminal cases as required under Column 5(d) of the affidavit in Form 26 filed along with the nomination and the said non-disclosure would amount to corrupt practice unduly influencing the mind of the voting public. The learned counsel for the respondent/election petitioner has mainly relied upon the decision of a learned Single Judge of this Court in ***Krishnamoorthy v. Sivakumar and Others [Order dated 15.06.2009 in CRP(NPD)No.3076 of 2009.***

19. The entire submission of the parties revolves around Column 5(d) of the affidavit in Form 26 filed along with the nomination form. On a perusal of the details furnished by the applicant in the affidavit in Form 26, it could be seen that Column 5(d) requires only brief description of the offences as to the applicant's involvement in criminal cases, for which the applicant has given the brief description of the offences for appropriate crime numbers. The Column 5(d) of the affidavit in Form 26 does not specifically indicate that the details of criminal cases should be elaborately

described and as a voter, one can easily understand the short crux of the case details on going through the details furnished by the applicant in the affidavit in Form 26. Therefore, the contention of the respondent/election petitioner that the applicant has furnished incomplete information of his criminal antecedents, cannot be countenanced and the same is liable to be rejected.

20. Let this Court shall also consider the decisions relied on by the learned Senior Counsel for the applicant.

20.1. The Hon'ble Apex Court in the decision in *Azhar Hussain v. Rajiv Gandhi* [AIR 1986 SC 1253] has observed as under:

“An election petition can be and must be dismissed under the provisions of Civil Procedure Code, if the mandatory requirements enjoyed by Section 83 to incorporate the materials facts and particulars relating to alleged corrupt practice in the election petition are not complied with. The code of Civil Procedure applies to trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the Court trying the election petition can act in exercise of powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a). Therefore that Section 83 does not find a place in Section 86 of the Act which authorizes dismissal of election petitions in certain petitions in certain contingencies does not mean that powers under CPC cannot be exercised. An election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Civil Procedure Code and it is a settled law that omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all.”

(emphasis supplied)

20.2. In *Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi*

[AIR 1987 SC 1577], the Hon'ble Supreme Court has observed as under:

“8. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11.

(emphasis supplied)

14. The Representation of the People Act is a complete and self contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of

material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. ***If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry.***”

20.3. In ***P.H.Pandian v. P.Veldurai and Others [(2013) 4 SCC***

685] the Hon'ble Supreme Court observed as under:

“It is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. ***Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence.*** Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation of the People Act, 1951, it would only be of an academic interest.”
(emphasis supplied)

20.4. Following the aforesaid decisions, a learned Single Judge of this Court in ***ELP.No.7 of 2011 dated 27.04.2016 [V.Anbazhagan v. A.Laser and Others]*** has elaborately observed as under:

“50. In *Mundrika Singh Yadav vs. Shiv Bachan Yadav and others ((2005) 12 SCC 211)*, an election petition under Sections 80 and 80-A of the Representation of the People Act, 1951 filed by the appellant was dismissed by the High Court. In the above said election petition, the appellant had sought for the relief of recount of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly was over. Fresh elections were being held. Under these circumstances, the Apex Court has held that no relief could be allowed to the appellant in this appeal even if this appeal is allowed. The appeal was rendered infructuous and was dismissed accordingly.

51. In *P.H. Pandian vs. P. Veldurai and another((2013) 14 SCC 685)*, an appeal under Section 116-A of the Representation of the People Act, 1951 was filed questioning the judgment and order made by this Court in the election petition in ELP.No.1 of 1996 on 29.12.1999.

52. In this case, the Apex Court has observed that though fresh elections have since been held to Tamil Nadu Legislative Assembly and to an extent this appeal has been rendered infructuous, the manner in which the election petition was dealt with by the High Court causes us concern and that necessitates our making reference to some salient facts.

53. *Ultimately, the Apex Court has observed that it is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence.* Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation of the People Act, 1951, it would only be of an academic interest.

54. In *Shankar Pendaam vs. Smt. Jyoti Dhurve* (Judgment delivered on 18.7.2014 by the High Court of Madhya Pradesh, Jabalpur Bench in the Election Petition No.45 of 2009).

55. In this case, the election petition was filed by the petitioner therein under Section 80 read with Section 81 of the Representation of the People Act, 1951 for declaring the election of the respondent to be void.

56. This case is an identical one to that of the present case on hand. During the course of arguments of the learned Senior Counsel, who was appearing on behalf of the respondent before the Jabalpur Bench of Madhya Pradesh High Court had submitted that the said election petition had become infructuous because the term of the respondent had come to an end by efflux of time on 16th May, 2014 and thereafter, general elections had also taken place in May, 2014 and the respondent had already been elected from the same constituency of Loksabha. Thus, the grounds taken in this election petition have been rendered of academic importance and the academic questions should not ordinarily be decided by the Courts.

57. It was further submitted that this election petition had not been filed by the petitioner on the ground of corrupt practice. Therefore, it was urged that the election petition might be dismissed as infructuous.

58. The learned Senior Counsel had made reference to the following decisions of the Apex Court:- ***a. Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi (1987 (Supp) SCC 93).*** ***b. Sushma Swaraj vs. Raj Kumar Patel in SLP (Civil) No.2951 of 2014 decided on 5.5.2014.***

59. Having taken into consideration of the related facts and circumstances, the learned Single Judge of the Jabalpur Bench of Madhya Pradesh High Court has observed as under:-

“Considering the fact that the tenure of the respondent has already come to an end by the efflux of time and the matter has been rendered of academic importance. In view of the aforesaid discussion and in the light of the aforesaid decision of Apex Court in Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi (supra) and Sushma Swaraj vs. Rajkumar Patel (supra), I am of the considered view that nothing further survives in this matter. This petition has become infructuous, same is hereby dismissed as having been rendered infructuous.”

60. In a case between ***Chandra Mohan Shukla and Anil Dhirubhai Ambani and 11 others*** in the Election Petition No.6 of 2004 decided by the Lucknow Bench of High Court of

Judicature at Allahabad, Mr. Anupam Mehrotra, learned counsel for the respondents had raised a preliminary objection with submission that keeping in view of the fact that election petition challenging the same election has been dismissed by this Court and also since the term of elected representation of the Rajya Sabha has expired, petition should be dismissed as infructuous.

61. It was also submitted that the court should not adjudicate an academic issue and in any case the petitioner shall not be entitled for any benefit.

62. The learned Single Judge of the said High Court, has observed as under:-

“22. Keeping in view the submission made by learned counsel for the parties it appears that whenever in a petition, which includes election petition, the relief claimed with regard to main issue involved becomes redundant or infructuous then for other relief courts may exercise its discretion and may not proceed further in case right of the plaintiff or dependent satisfied or no grievance remained pending against defendant or respondents because of the change of circumstances. ***Court may use its discretion to drop the proceeding and may not proceed further in a matter even if, some relief of academic nature stand survive...***” (emphasis supplied)

21. The decisions cited supra lay down the following principles:

(i) *An election petition without the material facts relating to a corrupt practice is not an election petition at all ;*

(ii) *An election petition can be and must be dismissed under the Civil Procedure Code, if the mandatory requirements enjoyed by Section 83 of RP Act, 1951 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with ;*

(iii) *If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry;*

(iv) Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence.

22. A cursory reading of the decision in ***Krishnamoorthy v. Sivakumar and Others [Order dated 15.06.2009 in CRP(NPD)No.3076 of 2009]*** would reveal that in the said case, challenge was made to the election proceedings, wherein the petitioner therein was elected as President of Local Panchayat, on the ground that in the declaration annexed to the Nomination Form, the petitioner therein did not disclose the details of all 8 charge sheets, but mentioned only one crime number, out of which all 8 charge sheets arose and the learned Judge having held that the declaration of the petitioner therein actually fell short of the requirement, answered in negative against the petitioner therein for the contention with regard to suppression of information. However, the case on hand is entirely different, which pertains to election in respect of Member of Legislative Assembly and here, the applicant has given brief particulars of the cases for appropriate crime numbers, brief description of charges, stages of cases pending before the Investigating Officer, stages of those cases before the Courts concerned. Therefore, the decision in ***Krishnamoorthy's case (cited supra)***, relied on by the respondent/election petitioner, would not apply to the facts of the present case.

CONCLUSION

23. Now coming back to the present case on hand, as discussed in the earlier paragraphs, the respondent/election petitioner has not specifically alleged corrupt practice under Section 123 of the RP Act, 1951 in the election petition. The respondent/election petitioner is unable to make out any allegation of corrupt practice directly in the election petition and as a Law Graduate and a Voter of the Tiruchendur Assembly Constituency, he has made a faint attempt indirectly by taking the plea of undue influence by way of non-disclosure of material information. Therefore, this Court has come to the conclusion that there is no specific allegation of corrupt practice in the election petition. As held by the Hon'ble Apex Court in *Azhar Hussain case* (cited supra), an election petition without the material fact relating to a corrupt practice is not an election petition at all. ***Hence, question No.1 is answered in favour of the applicant.***

QUESTION NO.2

24. Once the charge of corrupt practice fails, the election petition would be rendered infructuous, because fresh elections have already taken place and the old Assembly is no longer in existence [*P.H. Pandian case (cited supra)*]. In the case on hand, the old Assembly is no longer in

existence, as the term of office has come to an end and fresh elections were held for the 16th Tamil Nadu Legislative Assembly on 06.04.2021, in which the applicant has been elected as a Member of Legislative Assembly, representing No.215, Tiruchendur Constituency. In the light of the decision in *P.H.Pandian case*, the *Election Petition is liable to be dismissed as infructuous. Hence, question No.2 is answered accordingly.*

25. In the result, *O.A.Nos.560, 561 and 562 of 2022 stand allowed. Consequently, Election Petition No.17 of 2016 stands dismissed as infructuous.* No costs.

WITNESS, THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 24TH DAY OF JUNE 2022.

Sd./-

ASSISTANT REGISTRAR

Original Side – II

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Dated at Madras this the day of 2022.

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PK
30/06/2022

Election Petition No.17 of 2016
and
OA.Nos. 560, 561 & 562 of 2021,
110 & 111 of 2022

ORDER DATED: 24/06/2022

THE HON'BLE MR. JUSTICE
D.KRISHNAKUMAR

FOR APPROVAL: 01/07/2022

APPROVED ON :01/07/2022

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