

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 4TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

O.A. No. 711 of 2021

in

Election Petition No.5 of 2021

ELP No.5 of 2021:-

KKC.Balu,
S/o. Chenniappan,
685, Chennimalai Road,
Perundurai Taluk,
Erode District.

... Petitioner

-VS-

1. Jayakumar
S/o.P.C.Subramani,
2/14, Shanmugapuram,
Ponmudi post, Perundurai Taluk,
Erode District.
2. Thoppu venkatachalam @ N.D.Venkatachalam,
S/o. Deivasigamani Gounder,
14/186, Thoppupalayam,
Perundurai Post,
Erode District.
3. C. Loganathan,
S/o. P.Chinnasamy,
2/100, Nalligoundanpalayam Pirivu,
Ingur, Perundurai Taluk,
Erode District - 638052.
4. Nandhakumar.C.K.
S/o.Lt.A.Chinnasamy,
Old No.23, New No.49,

Tashkent Street,
Perundurai,
Erode District - 638052.

5. Shankarsamy,
S/o.Periyamarannaicker,
114, Arugampalayam,
Pappampalayam post,
Uthukuli taluk,
Tiruppur District – 638 752.
6. Thambi,
S/o.Mahali,
19, Thalakaraipudur,
Perundurai taluk,
Erode District.
7. The Returning Officer,
No.103, Perundurai Assembly Constituency
cum District Supply Officer,
Namakkal District.
8. Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Fort St.George Secretariat,
Chennai - 600 009. ...Respondents

O.A.No.711 of 2021:

Jayakumar
S/o.P.C.Subramani,
2/14, Shanmugapuram,
Ponmudi post,
Perundurai Taluk,
Erode District. ... Applicant/1st Respondent

-VS-

1. KKC.Balu,
S/o. Chenniappan,

685, Chennimalai Road,
Perundurai Taluk,
Erode District.

Petitioner

... 1st Respondent/Election

2. Thoppu venkatachalam @ N.D.Venkatachalam,
S/o. Deivasigamani Gounder,
14/186, Thoppupalayam,
Perundurai Post,
Erode District.
3. C. Loganathan,
S/o. P.Chinnasamy,
2/100, Nalligoundanpalayam Pirivu,
Ingur, Perundurai Taluk,
Erode District - 638052.
4. Nandhakumar.C.K.
S/o.Lt.A.Chinnasamy,
Old No.23, New No.49,
Tashkent Street,
Perundurai,
Erode District - 638052.
5. Shankarsamy,
S/o.Periyamarannaicker,
114, Arugampalayam,
Pappampalayam post,
Uthukuli taluk,
Tiruppur District – 638 752.
6. Thambi,
S/o.Mahali,
19, Thalakaraipudur,
Perundurai taluk,
Erode District.
7. The Returning Officer,
No.103, Perundurai Assembly Constituency
cum District Supply Officer,
Namakkal District.

8. Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Fort St.George Secretariat,
Chennai - 600 009. ...Respondents

This Original Application praying that this Hon'ble Court be pleased to strike out Paragraph Nos.6 to 17 of the Election Petition in Election Petition No.5 of 2021.

The above Original Application having been heard on 18/02/2022 in the presence of Mr.B.Arvind Srevatsa, advocate for the Applicant/1st Respondent herein; and Mr.N.R.Elango, Senior Counsel for Mr.K.Sasindran, Advocate for the 1st Respondent/Election Petitioner; and upon reading the Judge's Summon, Affidavit of S.Jayakumar and Counter affidavit of K.K.C.Balu filed herein; 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 the paragraphs which are sought to be struck off cannot be stated to be unnecessary or tend to prejudice or embarrass or tend to cause any delay in disposal of the election petition and it is not offending the Rules of Pleadings and hence the said paragraphs need not be struck off invoking the provisions of Order VI Rule 16 CPC and this Court having found that no merit in this application and

it is ordered as follows:-

1. That the Original Application No.711 of 2021 in ELP.No.5 of 2021 be and is hereby dismissed.
2. That there shall be no order as to costs.

WITNESS, THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 4TH DAY OF MARCH 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
14/03/2022

OA.NO.711 OF 2021
in
ELP.NO.5 OF 2021

DECREE
DATED: 04/03/2022

THE HON'BLE MR. JUSTICE
V. BHARATHIDASAN

FOR APPROVAL:15/03/2022

APPROVED ON :15/03/2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS
(ORDINARY ORIGINAL CIVIL JURISDICTION)

FRIDAY, THE 4TH DAY OF MARCH 2022

THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

O.A. No. 711 of 2021

in

Election Petition No.5 of 2021

ELP No.5 of 2021:-

KKC.Balu,
S/o. Chenniappan,
685, Chennimalai Road,
Perundurai Taluk,
Erode District.

... Petitioner

-VS-

1. Jayakumar
S/o.P.C.Subramani,
2/14, Shanmugapuram,
Ponmudi post, Perundurai Taluk,
Erode District.
2. Thoppu venkatachalam @ N.D.Venkatachalam,
S/o. Deivasigamani Gounder,
14/186, Thoppupalayam,
Perundurai Post,
Erode District.
3. C. Loganathan,
S/o. P.Chinnasamy,
2/100, Nalligoundanpalayam Pirivu,
Ingur, Perundurai Taluk,
Erode District - 638052.
4. Nandhakumar.C.K.
S/o.Lt.A.Chinnasamy,
Old No.23, New No.49,

Tashkent Street,
Perundurai,
Erode District - 638052.

5. Shankarsamy,
S/o.Periyamarannaicker,
114, Arugampalayam,
Pappampalayam post,
Uthukuli taluk,
Tiruppur District – 638 752.
6. Thambi,
S/o.Mahali,
19, Thalakaraipudur,
Perundurai taluk,
Erode District.
7. The Returning Officer,
No.103, Perundurai Assembly Constituency
cum District Supply Officer,
Namakkal District.
8. Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Fort St.George Secretariat,
Chennai - 600 009. ...Respondents

O.A.No.711 of 2021:

Jayakumar
S/o.P.C.Subramani,
2/14, Shanmugapuram,
Ponmudi post,
Perundurai Taluk,
Erode District. ... Applicant/1st Respondent

-VS-

1. KKC.Balu,
S/o. Chenniappan,

685, Chennimalai Road,
Perundurai Taluk,
Erode District.

Petitioner

... 1st Respondent/Election

2. Thoppu venkatachalam @ N.D.Venkatachalam,
S/o. Deivasigamani Gounder,
14/186, Thoppupalayam,
Perundurai Post,
Erode District.
3. C. Loganathan,
S/o. P.Chinnasamy,
2/100, Nalligoundanpalayam Pirivu,
Ingur, Perundurai Taluk,
Erode District - 638052.
4. Nandhakumar.C.K.
S/o.Lt.A.Chinnasamy,
Old No.23, New No.49,
Tashkent Street,
Perundurai,
Erode District - 638052.
5. Shankarsamy,
S/o.Periyamarannaicker,
114, Arugampalayam,
Pappampalayam post,
Uthukuli taluk,
Tiruppur District – 638 752.
6. Thambi,
S/o.Mahali,
19, Thalakaraipudur,
Perundurai taluk,
Erode District.
7. The Returning Officer,
No.103, Perundurai Assembly Constituency
cum District Supply Officer,
Namakkal District.

8. Chief Electoral Officer of Tamil Nadu,
Public (Elections) Department,
Fort St.George Secretariat,
Chennai - 600 009. ...Respondents

This Original Application praying that this Hon'ble Court be pleased to strike out Paragraph Nos.6 to 17 of the Election Petition in Election Petition No.5 of 2021.

The above Original Application having been heard on 18/02/2022 in the presence of Mr.B.Arvind Srevatsa, advocate for the Applicant/1st Respondent herein; and Mr.N.R.Elango, Senior Counsel for Mr.K.Sasindran, Advocate for the 1st Respondent/Election Petitioner; and upon reading the Judge's Summon, Affidavit of S.Jayakumar and Counter filed by K.K.C.Balu filed herein; 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:-

Original Application No.711 of 2021, has been filed under Order VI Rule 16 of the Code of Civil Procedure, 1908, (hereinafter referred to as 'CPC') to strike off Paragraphs Nos.6 to 17 in the Election Petition in E.L.P.No.5 of 2021. The above application has been filed by the first respondent / returned candidate, from Perundurai Legislative Assembly constituency.

2. For the sake of convenience, hereinafter the parties will be referred to as per their array in the Election Petition.

3. The Election Petition has been filed to declare the election of the first respondent, from Perundurai Legislative Assembly constituency, in the general election held for the Tamil Nadu Legislative Assembly on 06.04.2021, in which the result has been declared on 03.05.2021, as void.

4. The case of the election petitioner is that the General Assembly Election to Tamil Nadu was held in April, 2021. The election petitioner contested from 103, Perundurai Legislative Assembly Constituency as an official candidate of Dravida Munnetra Kalzhagam (in short 'DMK') and contested in 'Rising Sun' symbol. The first respondent/returned candidate contested the election as an official candidate of Anna Dravida Munnetra Kazhagam (in short 'ADMK') in 'Two Leaves' symbol, and he was declared elected. Now challenging the said election, the present election petition has been filed on the ground that, randomization of Electronic Voting Machines (EVMs) were not properly done and there are several discrepancy in the EVMs, Control Units and the VVPAT machines. The serial numbers found therein do not match with the list issued by the 7th respondent Returning

Officer, there is no proper security in the strong-room where EVMs were stored, some civilians were also found roaming near the strong-room. Even though, it was reported to the 7th respondent, no action has been taken. In the Form 17-C issued to the petitioner, serial number of control unit were found mismatched. When the ambiguity was taken up with the Election Observer, the Election was stopped and declaration in Form - 20 was also kept in suspense. The election petitioner has also given particulars of as many as 81 polling stations where there is serial number are mismatching with that of the particulars contained in Form 17-C. According to the petitioner, total votes polled in the disputed Control Units comes to 28,706 votes, whereas, the first respondent / returned candidate was declared elected with a margin of 14,507 votes. When the election petitioner asked for recounting of votes in the disputed Control Units, it was negatived and the results were declared, which materially after the election of the first respondent.

5. Now, the first respondent has filed the present application seeking to strike off the pleadings in paragraphs 6 to 17, on the ground that averments are vague and lacking in material particulars and it only further delay a fair trial. According to the first respondent, all the above paragraphs are unnecessary and frivolous and hence they are liable to be struck off.

6. I have heard Mr.B.Arvind Srevatsa, learned counsel appearing for the first respondent/returned candidate and Mr.N.R.Elango, learned senior counsel appearing for the election petitioner and also perused the materials available on record carefully.

7. Before dealing with the respective contentions of the learned counsel for the parties, it would be useful to refer to the relevant provisions of CPC, and the Representation of People Act.

8. Order VI CPC, speaks about pleadings generally. Order VI Rule 2 speaks about material facts to be stated in the pleadings, which reads as follows:

"Order VI Rule 2. *Pleading to state material facts and not evidence.—*

(1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved.

(2) Every pleading shall, when necessary, be divided into paragraphs, numbered consecutively, each allegation being, so far as is convenient, contained in a separate paragraph.

(3) Dates, sums and numbers shall be expressed in a pleading in figures as well as in words."

9. Order VI Rule 16 CPC, deals with striking of pleadings, which reads as follows:

"Order VI Rule 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, of

(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 "

10. Section 83 of the Representation of People Act, deals with the contents of an election petition and Section 100 of the Act, speaks about the grounds for declaring an election as void. Sections 83 and 100 of the Act are extracted below:

"Section 83. *Contents of petition.—*

(1) An election petition—

(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

* * *

Section 100. *Grounds for declaring election to be void.—*

(1) Subject to the provisions of sub-section

(2) if the High Court is of opinion—

(a) that on the date of his election a

returned candidate was not qualified, or was disqualified, to be chosen to fill the seat under the Constitution or this Act or the Government of Union Territories Act, 1963 (20 of 1963); or

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or

(c) that any nomination has been improperly rejected; or

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

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent, or

(iii) by the improper reception, refusal or rejection of any vote or the reception of any vote which is void, or

(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, the High Court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the High Court, a returned candidate has been guilty by an agent, other than his election agent, of any corrupt practice but the High Court is satisfied—

(a) that no such corrupt practice was committed at the election by the candidate or his election agent, and every such corrupt practice was committed contrary to the orders, and without the consent, of the candidate or his election agent;

(b) Omitted

(c) that the candidate and his election agent took all reasonable means for preventing the commission of corrupt practices at the election; and

(d) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents then the High Court may decide that the election of the returned candidate is not void."

11. A combined reading of the above provisions, makes clear that the averments contained in the election petition which do not disclose the cause of action are liable to be struck off and Order VI Rule 16 CPC, and empowers the Court to strike out pleadings if it is unnecessary, scandalous,

frivolous or vexatious or tends to prejudice, embarrass or delay fair trial of the election petition. The cause of action in questioning the validity of election must relate to the grounds specified in Section 100 of the Act and if the allegations contained in the election petition do not conform to the requirement of Sections 81 and 83 of the Act, then the pleadings are liable to be struck off under Order VI Rule 16 CPC.

12. The Hon'ble Supreme Court in ***Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi*** reported in ***1987 (Supp) SCC 93*** in paragraphs 8 and 11 has held as follows:

"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.

* * *

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."

13. What are the material facts which requires to be pleaded in the election petition as contemplated under Section 83(1)(a) of the Act has been considered in a number of decisions by the Hon'ble Supreme Court as well as this Court. The material facts on which the petitioner relies in the election petition are the primary or basic facts which are necessary to prove the cause of action by the plaintiff or the defendant and the material facts should establish the relief asked for. Whereas, material particulars on the other hand are details in support of the material facts pleaded by the parties. The failure to plead material facts is fatal to the election petition, whereas all the material particulars need not be set out in the pleadings.

14. The Hon'ble Supreme Court in *Virender Nath Gautam Vs. Saptal Singh and Others* reported in *(2007) 3 SCC 617* has held in paras 50 and 51 as follows:

"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 issue, but only relevant facts required to be proved at the trial in order to establish the fact in issue.

51. In our considered opinion, material facts which are required to be pleaded in the election petition as required by Section 83(1) of the Act read with Order 7 Rule 11(a) of the Code have been pleaded by the election petitioner, cause of action has been disclosed in the election petition and, hence, the petition could not have been dismissed by the High Court. The impugned order of the High Court suffers from infirmity and cannot be sustained."

15. It is also settled that, by the averments or raising arguable issues in the pleadings, the parties have not offended the rules of pleadings, the

Court would not strike off the pleadings and the power to strike off the pleadings is extraordinary in nature and must be exercised by the Courts with caution. The Hon'ble Supreme Court in ***Sathi Vijay Kumar Vs. Tota Singh*** reported in (2006) 13 SCC 353 has held in paras 33 and 34 as follows:

"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."

16. Further, the Hon'ble Supreme Court in ***Udhav Singh Vs. Madhav Rao Scindia*** reported in (1977) 1 SCC 511 has held in para 41 as follows:

"41. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars". Clause (a) of sub-section (1) corresponds to Order 6 Rule 2, while clause (b) is analogous to Order 6 Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. 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 6 Rule 16 of the 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 the case of a petition suffering from a deficiency of material particulars the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation."

17. With this background, now let us consider whether the averments contained in the election petition is lagging in material facts, it fails to make out a cause of action, and the pleadings are not necessary and

frivolous which tend to delay the trial, ultimately warranting striking off from the election petition.

18. The first respondent sought for striking off paragraph Nos.6 to 17 from the election petition.

(i) Paragraphs 6, speaks about randomization of EVMs within the constituency, which was objected by the election petitioner and other respondents. According to the election petitioner, the randomization of the EVMs within the constituency is not permissible and against the procedure to be followed for randomization. The learned counsel appearing for the first respondent would submit that, no particulars have been given regarding which are the EVMs are not properly randomised and the objections raised by the election petitioner were not mentioned, hence the averment is very vague and without any material particulars and the paragraph is liable to be struck off. The main allegation in the election petition is that there are discrepancy in the Serial number in the Control Unit and VVPATs and particulars of which have been given in the subsequent paragraphs and therefore, the paragraph cannot be considered as unnecessary.

(ii) So far as para 7, of the election petition is concerned, it speaks about the discrepancy in the EVMs, Control Unit and VVPAT machines and the particulars of which have been given in subsequent paragraphs, hence it

also cannot be considered as unnecessary or frivolous or vague.

(iii) Paragraph 8, speaks about the safety and security of the strong room. According to the election petitioner, strong room was not properly sealed and protected. Though the issue was raised with the Returning Officer, no action has been taken. This paragraph also cannot be considered as unnecessary or scandalous, which will prejudice or embarrass the first respondent/returned candidate and delay the trial.

(iv) Paragraphs 9 and 10, speaks about some particulars sought by the petitioner's Chief Election Agent on 28.04.2021 and copies of representation are annexed in the election petition, and this averment is supported by documents and it need not be struck off.

(v) Paragraph 11, relates to the security provided for the strong room and this issue was also taken up with the Returning Officer, and this is one of the allegations in the election petition and this paragraph also cannot be considered as an unnecessary or frivolous.

(vi) Paragraph 12, relates to video graphing of senior citizens aged more than 80 years for which the election petitioner raised objection with the Returning Officer and finally the Returning Officer directed the election petitioner to approach the 8th respondent Chief Electoral Office of Tamil Nadu, which is supported by documents and therefore, this para also cannot be considered as vague or unnecessary.

(vii) Paragraphs 13 and 14 deals with the objection raised by the election petitioner regarding the mismatch of Control Unit numbers with that of Form 17-C issued by the Returning Officer, and on the objection raised by the election petitioner, the counting was stopped and it is an admitted fact and these facts are supported by documents. These allegations are to be proved in trial. Thus, it cannot be considered as an attempt to delay the trial and it need not be rejected.

(viii) Paragraph 15, gives the particulars of discrepancies in the Control Unit and VVPAT machines in respect of 81 polling stations. The discrepancies are with regard to the actual serial number available in the Control Unit and VVPAT machine with that of the serial numbers given in Form 17-C in respect of 81 polling stations, these details are material facts, and full particulars are given by the petitioner and it cannot be treated as vague or unnecessary.

(ix) Paragraph 16, speaks about the votes secured by both the election petitioner and the first respondent, which is an admitted fact and it need not be struck off.

(x) Paragraph 17, speaks about the request made by the petitioner seeking recounting, which was refused by the 7th respondent, it is also an admitted fact and it need not be struck off.

19. Considering all these circumstances, the paragraphs which are

sought to be struck off cannot be stated to be unnecessary or tend to prejudice or embarrass or tend to cause any delay in disposal of the election petition. That apart, it is not offending the Rules of Pleadings and hence the said paragraphs need not be struck off invoking the provisions of Order VI Rule 16 CPC.

20. In the result, this Court finds no merit in this application and consequently this application deserves only to be dismissed and accordingly dismissed. No costs.

WITNESS, THE HON'BLE MR.JUSTICE MUNISHWAR NATH BHANDARI, CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 4TH DAY OF MARCH 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
14/03/2022

OA.NO.711 OF 2021
in
ELP.NO.5 OF 2021

ORDER
DATED: 04/03/2022

THE HON'BLE MR. JUSTICE
V. BHARATHIDASAN

FOR APPROVAL:15/03/2022

APPROVED ON :15/03/2022