

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.Nos.805 & 806 2021

IN

ELP.No.2 of 2021

ELP No.2 of 2021:-

S.Selva Mohandas Pandian,
S/o. Mr. S. Sivanupandian,
Door No.13/176A, Selvavinayagar Puram,
Kallurani Village, Pavoorchatram,
Tenkasi District - 627 811

... Petitioner

- VS -

1. S.Palani Nadar,
S/o. Mr.P.Subbiah Nadar,
1-7-69, Middle Street,
Aladipatti, Surandai,
V.K.Pudur Taluk,
Tenkasi District - 627 811.
2. K.M. Udhayakumar,
S/o. Mr.M.Kuthalingam Thevar,
Old No.145, New No.719,
Malaiyan Street,
Tenkasi Taluk,
Tenkasi District - 627 811.
3. S. Chandrasegar,
S/o.Mr. Shanmugavel,
No.152, Amman Kovil Street,
Melagramam,
Tenkasi District - 627 811.

4. S. Sureshkumar,
S/o. Mr.C.Selvam,
North Oppanai Street,
Tenkasi Taluk,
Tenkasi District - 627 811
5. R. Selvakumar,
S/o.Mr.S.Ramasamy,
No.2/182, West Street,
R.Navaneethakrishnapuram Keelakalangal(Post),
Veerakeralampuddur Taluk,
Tenkasi District.
6. R. Thirumalaimuthu,
S/o. Mr.T.Ramasamy
14/4/3/1A, Nadar Street,
Thattankulam,
Sundarapandiapuram (Post),
Tenkasi District - 627 811.
7. S. Mohamed,
S/o. Mr.M.Sahul Hamed
31C, Jinna Nagar,
4th Street,
Puliyankudi 627 855.
8. K.Mugundhan,
S/o.Mr.K.Kalyanasundaram
4/109, Yadava Street,
Thirumalaippapuram,
Pottalpudur, Tenkasi Taluk,
Tenkasi District - 627 811.
9. R. Vincentraj,
S/o. Mr. Ramasamy Pandian
57, Melagramam,
Sundarapandiapuram,
Tenkasi Taluk,
Tenkasi District - 627 811.

- 10.M. Jeganathan,
S/o. Mr.P.V.Madasamy/ Ganapathi,
11/79, Mela Colony,
North Street, Melapavoor(Post),
Tenkasi Taluk,
Tenkasi District - 627 811.
- 11.J. Arokkiya Prabhu,
S/o. Mr. V.Jeyaraj
3/117, Vinaitheertha Nadarpatti Thippanampatti,
Tenkasi Taluk,
Tenkasi District - 627 811.
- 12.Doctor S. Karuppasamy,
S/o.Mr.T.Sonnamadan,
16/9, 17th Cross Kumaran Nagar,
Tiruchirappalli - 620 017.
- 13.A. Palanikumar,
S/o. Mr.K.Avudaiyappan
192A, Muppudathi Amman Kovil Street,
Tenkasi Taluk,
Tenkasi District - 627 811
- 14.P. Palanimurugan,
S/o. Mr. Petchi Thevar,
11/276, School Street,
Alagappapuram,
Ayyapuram (Post) Kuthukalvalasai,
Tenkasi Taluk,
Tenkasi District - 627 811.
- 15.A. Madasamy,
S/o. Mr. M. Arunachalam,
1/148, North Street,
Karuvandha, Veerakeralampudur Taluk,
Tenkasi District.
- 16.R. Ramesh,
S/o. Mr. T. Ramaiya
2/85, Middle Street,

Chettiyur Kallurani,
Pavoor Chatram - 627 808.

17.M. Reegankumar,
S/o.Mr.C.Murugan
139A, Paraiyadi Mettutheru,
Tenkasi Taluk,
Tenkasi District - 627 811.

18.The Returning Officer,
No.222, Tenkasi Assembly Constituency,
The Revenue Divisional Officer,
Tenkasi 627 811. ...Respondents

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Tenkasi District - 627 811. ... Applicant/1st Respondent

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S/o. Mr. S. Sivanupandian
Door No.13/176A, Selvavinayagar Puram,
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Tenkasi District - 627 811. ...1st Respondent/
Petitioner

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18. The Returning Officer,
No.222, Tenkasi Assembly Constituency,
The Revenue Divisional Officer,
Tenkasi - 627 811. ...Respondents/Respondents 2 to 18

OA.No.805 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to strike out pleadings in para 3,4,7,8,9,10,11,13,14 to 28 in ELP.No.2 of 2021.

OA.No.806 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to Reject the Election Petition No.2 of 2021.

The above Original Applications having been heard on 16/02/2022 in

the presence of Mr.R.Viduthalai, learned Senior Counsel for M/s.R.Revathy, K.Anusha advocates for the Applicant/1st Respondent in both Original Applications; Mr.B.Arvind Srevatsa, Advocate for the 1st Respondent/Election Petitioner in both Original Applications; Mr.R.Kumaravel, Advocate for the 5th Respondent in both Applications; Mr.Niranjan Rajagopalan for M/s.G.R.Associates, Advocate for the 18th Respondent in both Applications;and upon reading the Judges Summon, Affidavit of S.Palani Nadar filed in both Original Applications and Common Counter Affidavit of S.Selva Mohandas Pandian 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 the election petition clearly discloses a cause of action, and no ground is made out for rejecting the same invoking the provision of Order VII Rule 11 of CPC and this Court having found that no merit in both the applications and

it is ordered as follows:-

1. That the Original Application Nos.805 & 806 of 2021 in ELP.No.2 of 2021 be and are 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.805 & 806 OF 2021
in
ELP.NO.2 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)

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THE HON'BLE MR. JUSTICE V.BHARATHIDASAN

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Tenkasi District - 627 811

... Petitioner

- VS -

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S/o. Mr.P.Subbiah Nadar,
1-7-69, Middle Street,
Aladipatti, Surandai,
V.K.Pudur Taluk,
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... Applicant/1st Respondent

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Door No.13/176A, Selvavinayagar Puram,
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...1st Respondent/Petitioner

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OA.No.805 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to strike out pleadings in para 3,4,7,8,9,10,11,13,14 to 28 in ELP.No.2 of 2021.

OA.No.806 OF 2021:-

This Original Application praying that this Hon'ble Court be pleased to Reject the Election Petition No.2 of 2021.

The above Original Applications having been heard on 16/02/2022 in the presence of Mr.R.Viduthalai, learned Senior Counsel for M/s.R.Revathy, K.Anusha advocates for the Applicant/1st Respondent in both Original Applications; Mr.B.Arvind Srevatsa, Advocate for the 1st Respondent/Election Petitioner in both Original Applications; Mr.R.Kumaravel, Advocate for the 5th Respondent in both Applications; Mr.Niranjan Rajagopalan for M/s.G.R.Associates, Advocate for the 18th Respondent in both Applications;and upon reading the Judges Summon, Affidavit of S.Palani Nadar filed in both Original Applications and Common Counter Affidavit filed by 1st Respondent 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.805 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 paras 3, 4, 7, 8, 9, 10, 11, 13, 14 to 28 in the Election Petition in E.L.P.No.2 of 2021.

2. Original Application No. **806 of 2021** has been filed under Order VII Rule 11 of CPC, to reject the Election Petition in E.L.P.No.2 of 2021. The above applications have been filed by the first respondent / returned candidate, from Tenkasi Legislative Assembly constituency.

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

4. The Election Petition has been filed to declare the election of the first respondent, from Tenkasi Legislative Assembly constituency as void, to order re-verification and re-count of all votes polled by postal ballots in the above constituency, to order re-count of all votes polled by Electronic Voting Machines covered under Counting Round Nos.28, 29 and 30 in the above constituency and to declare the election petitioner as the returned candidate in the above said Assembly constituency in the general election held for the Tamil Nadu Legislative Assembly in the year 2021.

5. The brief facts leading to filing of the election petition is that, in the General Election held for the Tamil Nadu Legislative Assembly in the year 2021, the election petitioner contested from Tenkasi Legislative Assembly Constituency, representing the All India Anna Dravida Munnerta

Kazhagam (in short 'AIADMK'). The first respondent contested the election representing Indian National Congress (in short 'INC'). After conclusion of the counting of votes, the first respondent was declared, as elected and he stated to have secured 89,315 votes, whereas, the election petitioner secured 88,945 votes and the first respondent has been declared elected by a margin of 370 votes.

6. According to the election petitioner, the election of the first respondent has been materially affected by improper reception of votes, which are void and by non compliance of the provisions of the Constitution of India, Representation of People Act, 1951 (hereinafter referred to as the 'Act'), the Conduct of Election Rules, 1961 (hereinafter referred to as the 'Rules') and the orders issued by the Election Commission of India.

7. The further allegation is that, the returning officer without counting the votes polled through postal ballot, started counting of votes polled in the Electronic Voting Machines (in short 'EVM') first, and after the completion of counting of votes polled in the EVMs in round No.27, the counting of votes polled in EVMs was stopped, then only postal votes were counted, which is in violation of Rules 54-A(1) and 60 of the Rules, and there is also irregularities in receiving the postal votes. The returning officer improperly accepted the postal votes, which is not in accordance with the Rules. After completion of counting of votes in EVMs, the

election petitioner was leading by 565 votes, but after counting the postal votes the first respondent was declared as elected by a margin of 370 votes. After the counting of votes were completed, while issuing the final result in Form-20, it is shown that total number of rejected votes in postal ballot paper is shown as zero, whereas in the certified copy of the Form-20, issued later, it has been shown that 382 postal votes have been rejected. This discrepancy shows that counting was not conducted in accordance with the provisions of the Act and Rules, which materially affect the result of the election. The election petitioner has inter alia raised some other grounds also for setting aside the election.

8. Now, the first respondent has filed the present applications one to strike off the pleadings in paras 3, 4, 7, 8, 9, 10, 11, 13, 14 to 28 and another to reject the election petition, contending that some of the paragraphs in the Election Petition lacking in material particulars and not supported by any material, some of the paragraphs are vague, unnecessary and frivolous and hence they are liable to be struck off, the details of which will be discussed in the later part of this order. After striking off the said paragraphs, the remaining averments in the election petition will not constitute a cause of action to maintain the election petition and hence the election petition is liable to be rejected under Order VII Rule 11 CPC.

9. The election petitioner has filed his counter affidavit disputing all

these averments contained in the above applications and stated that all the paragraphs are necessary, and there is no reason to strike of the pleadings or to reject the plaint.

10. Mr.R.Viduthalai, learned senior counsel appearing for the first respondent would submit that, the allegations set out in the election petition are not satisfying the requirements under Section 100 of the Act, and the allegations do not conform to Sections 81 and 83 of the Act. Hence, the pleading are liable to be struck off. That apart, the election petition does not disclose the essential facts to be clothed with complete cause of action and consequently the election petition is also liable to be rejected under Order VII Rule 11 CPC.

11. Further, according to the learned senior counsel, many of the averments contained in the election petition are vague, self explanatory, unnecessary and it does not disclose the material facts as required under Section 100(1)(d)(iv) of the Act. Hence the paras mentioned in the application are liable to be struck off. According to him, in the event of these paragraphs are struck off, the remaining averments in the election petition do not constitute a cause of action, hence the entire election petition is liable to be rejected. In support of his contention, the learned senior counsel relied upon various judgments of the Hon'ble Supreme Court, which will be referred to in the later part of this order.

12. Opposing these applications, Mr.S.R.Rajagopal, learned counsel appearing for the election petitioner would contend that, the averments contained in the election petition are in conformity with Section 83 and 100 of the Act, and all the material facts have been disclosed in the election petition. According to him, all the averments are relevant for seeking a declaration under Section 101 of the Act, at any rate it cannot be termed as unnecessary, frivolous or tend to delay the trial. Further according to him, the election petitioner has narrowly lost the election with a margin of 370 votes due to the improper acceptance of postal ballots and not following the mandatory requirement for counting of postal ballots which is evident from the particulars given in Form-20, by the returning officer, which has been improperly done and all these material facts averred in the Election Petition necessary to decide these issues. All the necessary facts have been properly set out in the election petition which clearly makes out a cause of action, in such circumstances, none of the averments is liable to be struck off and the election petition is not liable to be rejected for want of cause of action. The learned counsel also relied upon number of judgments in support of his contention and the same will be dealt with in the later part of this order.

13. I have considered the rival submissions and also perused the materials available on record carefully.

14. 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 Representation of People Act.

15. 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."

16. 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 "

17. Order VII Rule 11 CPC deals with rejection of plaint, is extracted hereunder :

"Order VII Rule 11 Rejection of plaint.—

The plaint shall be rejected in the following cases:

(a) where it does not disclose a cause of action;

(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite

stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provisions of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff. "

18. 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."

19. 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, 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. After striking of the above pleadings, if the Court finds that no triable issues remain to be considered, the Court has power to reject the election petition under Order VII Rule 11 CPC. 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 and consequently the election petition is liable to be rejected under Order VII Rule 11 CPC.

20. 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."

21. 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 fact 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 and the failure to plead material facts is fatal to the election petition, whereas material particulars need not be set out in the pleadings. 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."

22. It is also settled that by making 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."

23. 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.”

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

25. The first respondent sought for striking off paragraphs 3, 4, 7, 8, 9, 10, 11, 13, 14 to 28 from the election petition.

(i) Paragraphs 3 and 4, of the election petition deals with profile of

the election petitioner regarding his party affiliations and the previous elections he has contested and declared elected. These paragraphs cannot be stated to be unnecessary or tend to prejudice or delay the fair trial and it also does not offend the rules of pleadings and hence it need not be strike of.

(ii) Para 7, of the election petition speaks about filing of nomination in the general election in the Tenkasi constituency and para 8 deals with the election notification and other particulars about first respondent. Para 9 contain general statement giving particulars about the election notification issued for the Tamil Nadu Assembly general elections and the code of conduct for the candidates. Paragraph 10 deals with the election results and the votes polled by the election petitioner and the first respondent. Paragraphs 11 and 12 speaks about the prayer sought in the election petition and the violation of the relevant provisions of the Act respectively. Paragraph 13 relates to a general averment regarding conscious statement of material facts which is being pleaded by the petitioner. All these paragraphs cannot be stated to be unnecessary or tend to prejudice, embarrass or delay the fair trial. They are all admitted statements of fact and those pleadings need not be struck off under Order VI Rule 16 CPC.

(iii) Paragraph 14, speaks about the improper reception of postal votes by the returning officer and non-compliance of the provisions of the

Constitution of India, Representation of People Act, the Conduct of Election Rules and other orders issued by the Election Commission of India. Likewise, paragraphs 15 and 16 speaks about violation of the provisions of the Act and the Rules while counting of votes and alleges that counting was not conducted in accordance with the conduct of election rules which materially affect the result of the election. Those paragraphs contain a general allegations, and the particulars of material facts on which the election is sought to be challenged and the details of the same has been given in the subsequent paragraphs. These paragraphs are only a prelude, in such circumstances, these averments cannot be considered to be unnecessary and it will in no way offend the rules of pleadings and and it need not be struck off.

(iv) Paragraph 17, in the Election Petition speaks about the counting of votes and breakup particulars of votes polled in each round, and a copy of the order providing those particulars have been marked as Document No.3. The learned senior counsel for the first respondent contended that, Document No.3 is an electronic copy issued by the Election Commission of India and it should be supported with a certificate as contemplated under Section 65(B) of the Evidence Act, without which it is not admissible in evidence, thus this pleadings should be necessarily rejected. It is disputed by the learned counsel appearing for the election petitioner that, along with

the document a certificate was also produced and admissibility of the document can be decided at the time of marking the same and on that ground the pleadings cannot be rejected. I find some force in this argument, the admissibility of any document could be decided only at the time of marking the same, and on that ground pleadings cannot be rejected.

(v) Paragraph 18, speaks about counting of postal ballot in violation of Rule 54-A of the Rules. According to the election petitioner as per the above said Rule, postal ballot should be counted at the first instance and only thereafter, votes recorded in the EVMs should be counted. However the returning officer started counting the votes polled in the EVMs first, thereafter counted the votes polled through postal ballot in violation of Rule 54-A of the Rules. According to the election petitioner, his election agent has raised objections at the time of counting, but that was not considered. This paragraph sought to be struck off on the ground that, the objections raised by the election agent was not produced along with the election petition and hence the allegation is only a vague allegation not supported by any material. This paragraph speaks about the alleged violation of Rule 54-A of the Rules, and the averment made therein is a material fact and the particulars of the same could be produced during the course of trial, hence non furnishing of the material particular cannot be a ground to strike of the averment.

(vi) Paragraph 19, speaks about counting of EVM votes and the lead established by the election petitioner. It is only an admitted fact and it need not be struck off. Paragraph 20 speaks about the counting of postal votes and in the midway of counting of votes polled in the EVMs, in violation of the Rules, which also cannot be considered as an unnecessary pleading or scandalous or vexatious.

(vii) Paragraph 21, of the election petition speaks about the total number of postal votes polled and also receipt of postal votes by the returning officer and these particulars have been detailed in this paragraph and it is an admitted fact and it need not be struck off.

(viii) So far as paragraph 22 is concerned, it deals with accepting some postal ballots, which do not contained attestation or seal of the Gazetted Officer. This para contains material particulars regarding postal votes alleged to have been improperly accepted by the returning officer and it cannot be rejected. The details of the votes received by the Returning Officer, is only a material particular, even if it is lacking, it is not a ground to strike of those pleading and therefore this para also need not be set aside as the averment contain the material facts.

(ix) Paragraph 23, deals with total number of votes secured by the election petitioner and the first respondent after conclusion of counting of votes polled in EVMs and it is also an admitted fact and need not be struck

off. Paragraph 24 also speaks about the total number of postal votes received by both the election petitioner and the first respondent, it is also an admitted fact and it need not be struck off.

(x) Paragraph 25, speaks about non compliance of the provisions of Sections 100(1)(d)(iii) and 100(1)(d)(iv) of the Act and the Rules, alleging that these provisions have not been properly followed in counting as stated in the previous paragraphs and also the violations in counting and the request for recounting of the votes polled in the EVMs and postal ballot papers. As this paragraph only deals with the request made by the election petitioner for recounting cannot be considered as an unnecessary pleading.

(xi) Paragraph 26, speaks about various complaints given by the election petitioner to the Election Commission and other authorities and the copies of the same was also produced in Document Nos.7 to 11. These averments are supported by documents to show that his grievance are not redressed by the authorities, which cannot be considered as unnecessary and it need not be struck off.

(xii) Paragraph 27, speaks about another complaint given by the election petitioner to the District Election Officer and the Returning Officer regarding violation of the provision of the Act and the Rules and a copy of the said complaint has been marked as Document No.12. It is also a material fact supported by document.

(xiii) Paragraph 28, speaks about uploading of election results by the Election Commission of India on their website in Form-20, wherein the votes polled by the election petitioner as well as the first respondent is given and a copy of Form-20 has been marked as Document No.13. Here also objection has been raised by the first respondent that it is an electronic evidence, no certificate has been produced. The learned counsel appearing for the election petitioner would submit that Form-20 has been uploaded by the Election Commission of India and it is a public document and a presumption attached to it, that apart a certificate also been produced by the election petitioner. This paragraph only states about Form-20 issued by the Election Commission of India and there can be any dispute regarding the same. Hence, this paragraph need not be struck off as it does not violate any of the provisions of Order VI Rule 16 CPC.

26. 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. The election petition clearly discloses a cause of action, and no ground is made out for rejecting the same invoking the provision of Order VII Rule 11 of CPC.

27. In the result, this Court finds no merit in both the applications and consequently both the applications 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.805 & 806 OF 2021
in
ELP.NO.2 OF 2021

ORDER
DATED: 04/03/2022

THE HON'BLE MR. JUSTICE
V. BHARATHIDASAN

FOR APPROVAL:15/03/2022

APPROVED ON :15/03/2022