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O.A.No.8 of 2022

IN THE HIGH COURT OF JUDICATURE OF MADRAS

RESERVED ON : 01.09.2022

PRONOUNCED ON : 18.10.2022

CORAM:

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.A.No.8 of 2022
in
Election Petition No.9 of 2021

Ashok Kumar.K

Vs.

... Applicant

1.T.Senguttuvan

2.Chandramohan.K.M

3.Tamilselvan.S.

4.Ameenulla

5.Sasikumar.K.S.

6.Nirandari.V.

7.Ravishankar

8.Ruthramani.T



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9.Vijayakumar.R

10.TVS.Gandhi

11.Kumaresan.M

12.Gopinath.M.

13.Sakthi.K

14.Sivan.C

15.The Election Commission of India
Represented by its Chief Election Commissioner
Nirvachan Sadan,
Ashoka Road, New Delhi 110 001.

16.The Chief Electoral Officer,
Tamil Nadu Election Commission of India
Public (Elections) Department,
Secretariat, Fort St. George, Chennai – 600 009.

17.The District Collector cum District
Returning Officer, District Collector Office,
Krishnagiri District,
Tamil Nadu – 635 001.

18.The Returning Officer
53, Krishnagiri Assembly Constituency,
Krishnagiri Taluk Krishnagiri District,
Tamil Nadu – 635 122.

19.G.Karpagavalli

...Respondents



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Prayer: Judges Summon filed under Order XIV Rule 8 of Original Side read with Order VII Rule 11 of the Code of Civil Procedure, 1908, to reject the petition bearing number Election Petition No.9 of 2021 filed under Section 80 of Representation of Peoples Act before this Court.

For Applicant	:	Mr.V.Ayyathurai Senior Counsel
For Respondent 1	:	Mr.Richardson Wilson for M/s.P.Wilson Associates

ORDER

The 1st respondent in an Election Petition has filed the above application to reject the Election Petition.

2. Before proceeding to consider the rejection application, it would be necessary to briefly set out the facts that had culminated in



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the filing of the Election Petition. The 1st respondent herein belongs to the Dravida Munnetra Kazhagam and had contested in the General Election to the legislative assembly that was held on 06.04.2021. The applicant herein had also contested the said election and he was declared elected by a margin of 794 votes. The applicant herein had in all secured 96,050 votes. The 1st respondent herein came second with a total of 95,256 votes.

3. Aggrieved by the facts that certain anomalies and corrupt practices had taken place, the 1st respondent had come forward with the instant Election Petition to declare the election of the applicant herein to No.53, Krishnagiri Assembly in the State of Tamil Nadu on 02.05.2021 as illegal, void and to set aside the same and declare the 1st respondent herein as duly elected to the said constituency.

4. The election has been challenged on the grounds, which are set out herein below:



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(a)Suppression in the Form 26 affidavit filed by the applicant, as the details of all the properties of the applicant had not been set out.

(b)Distribution of cash for votes.

(c)Usage of the Official machinery for securing maximum votes.

(d)Exceeded the maximum election expenditure.

(e)Plastering of walls of public properties with the symbol of the party, to which the applicant belonged.

(f)The improper rejection of postal ballot votes.

(g)Deficiency and irregularities in counting of votes in the EVMs.

5. The 1st respondent had entered appearance in the above petition and on 13.12.2021, he has filed an application to reject the



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Election Petition. The grounds on which the said application has been filed are as follows:

(i) Order IV Rule 2 of the Code of Civil Procedure has not been complied with since the affidavit contemplated therein has not been filed and to add to the procedural anomalies the duplicate copy of the election petition was also not filed into Court.

(ii) The election petitioner had not complied with the provisions of Section 81 of the Representation of the People's Act, 1951, herein after called the RP Act, and the Election Petition is barred by limitation. The applicant would contend that the election results have been declared on 03.05.2021 and therefore the petition ought to have been filed on or before 17.06.2021, whereas, the Election Petition has been filed only on 30.06.2021, beyond the



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period of 45 days contemplated under Section 81 (1) of the Act.

(iii) The election petition has been filed only to settle personal scores. There is absolutely no evidence or iota of truth in any of the allegations contained in the election petition. The applicant would submit that the person who is alleged to have distributed the money has now joined the 1st respondent's party.

(iv) The ingredients of Section 83 of the RP Act, has not been complied with as the allegations and contents made in the petition does not meet the requirements of Section 83 (1) (a) of the RP Act. The election petition does not contain concise statement of the material facts, which the 1st respondent relies upon.

(v) The distribution of cash is based on photographs, which has to definitely be proved by other



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concrete evidence. The applicant would state that the petition does not give names of the person who they claim had distributed the money and the persons to whom such money was distributed.

(vi)The contention that the applicant had undertaken the propaganda for the election by misusing the official machinery is totally false since the act alleged has taken place much before the election and further no complaints what so ever has been given by the 1st respondent to the Election Commission.

6. The 1st respondent / election petitioner had filed a counter inter alia contending that the applicant herein has not made out any grounds for rejecting the Election Petition and a reading of the Election petition would prima facie establish this fact.



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7. Mr.V.Ayyathurai, learned Senior Counsel appearing on behalf of the applicant would submit that the rejection of the Election Petition is primarily based on the following facts:

(a)The institution of the Election Petition does not confirm to the rules framed by the High Court or the Code of Civil Procedure.

(b)The Jurat portion of the affidavit is not in conformity to Form VIII.

8. The learned senior counsel would submit that the institution of the petition is contrary to the provisions of the Madras High Court Election Petition Rules, namely, Rule Nos.2 and 12. The learned senior counsel would submit that the petition does not confirm to the provisions of Order II Rule 2 and Rule 9 of the Original Side Rules. The Jurat portion does not say that it was read over and explained to the deponent who is a person unacquainted the English language. The



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said affidavit which verifies the Election Petition has to be in conformity to Form 8 of appendix II of the OS Rules. Therefore, the Election Petition is not maintainable.

9. With reference to the contention that the institution of the Election Petition was invalid as it does not confirm with the Rules of the Madras High Court Election Petition Rules, the applicant would submit that as per Rule 1 (1) , a duplicate copy of the petition had to be filed, which in the instant case has not been done and therefore the Election Petition has to be rejected. Therefore, the learned Senior Counsel would submit that the non-compliance of the provisions of Order IV Rule 2 of the Code of Civil Procedure would render the Election Petition invalid. In support of the above arguments, the learned senior counsel would rely upon the following Judgements.

(i)***AIR 2005 Cal 145*** – Bhakti Hari Nayak and others Vs. Vidyawati Gupta and others.



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(ii) **2021 (3) MWN (Civil) 464** – Mangalam Ammal Vs.

Jayasingh.

10. The learned senior counsel would further contend that the Form 26 affidavit which has been given by the applicant is very much in order and contains the accurate facts since the lands in question does not belong to the applicant and therefore he has not included it in the Form 26. Further, the name of the applicant does not feature in the patta granted.

11. The allegations regarding the distribution of cash for votes has not been properly explained. The particulars of the corrupt practices have not been set out in full and neither has material facts been pleaded.



12. In support of the above arguments, the learned senior counsel would rely upon the Judgement reported in **2012 (3) SCC 236 – Markio Tado Vs. Takam Sorang and others.**

13. That apart, the learned senior counsel's contention is that the corrupt practices which has been alleged are all relating to the date 04.03.2021, whereas, the nomination by the applicant was made only on 12.03.2021. The allegation that the Government machinery has been used is also totally untrue. The contention that the public places had been damaged by the applicant by painting the public walls is totally false and the photo graphs filed does not relate to current year and it appears that the date precedes the 2021 Elections. It is the further contention of the learned senior counsel that no complaints have been made before the Returning Officer in this regard and therefore is only an after thought.



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14. With reference to the tampering of EVM machines, the learned senior counsel for the applicant would contend that after every vote, the machine is reset and this has been strictly observed by all the poll booths. Further, no complaint has been made at that time. He would rely upon the following Judgements:

(i) **1986 (Supp) SCC 315** – Azhar Hussain Vs. Rajiv Gandhi.

(ii) **1980 SCC OnLine Del 169** – C.M.Stephen Vs. Sh.Atal Behari Vajpayee.

The learned senior counsel would therefore pray that the Election Petition be rejected.

15. Per contra, Mr.Richardson Wilson, appearing on behalf of the 1st respondent / Election Petitioner would submit that all the allegations are merely procedural and the defective presentation is curable. The allegations with reference to Jurat is totally unfounded. That apart, this ground has not been taken in the petition to reject the petition. The learned counsel would submit that Section 83 and 83



(2) of the Act contemplates contents of the petition. The learned counsel would rely upon the following Judgements in support of his contentions:

(i) **1998 (1) SCC 416** – Ashwani Kumar Sharma Vs. Yaduvansh Singh and others.

(ii) **1999 (3) SCC 267** – D.Ramachandran Vs. R.V.Janakiraman.

(iii) **2005 (13) SCC 511** – Harkirat Singh Vs. Amrinder Singh.

(iv) **2007 (3) SCC 617** – Virender Nath Goutam Vs. Satpal Singh.

(v) **2015 (8) SCC 331** – P.V.Guru Raj Reddy Vs. P.Neeradha Reddy.

16. The 1st respondent would contend that the provisions of Order IV Rule 2 of the Code of Civil Procedure runs contrary to the contentions made in the rejection application. Order IV Rule 2 of the Code of Civil Procedure deals with registration of suits and not filing



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of the affidavit. The 1st respondent would further submit that the provisions of Section 81 of the Act, has been complied with in letter and spirit. The Election Petition also conforms to the Madras High Court Election Petition Rules as well.

17. That apart, the issue of limitation stand saved in the light of orders of extension granted by the Hon'ble Supreme Court during the pandemic. The 1st respondent would further submit that the provisions of the Act does not contemplate that every material fact has to be pleaded. The 1st respondent would further contend that the details of the election expenditure incurred by the applicant has been clearly set out in the tabular statement in the election petition and the same is supported by material facts relating to number of the Panchayat and the area that was contested, etc.,

18. The 1st respondent would further submit that as regards distribution of cash, he has given the details in the petition to set out a



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prima facie case. The allegations contained in the Election Petition can be proved only by letting in evidence. The 1st respondent would submit that every material facts in detail does not have to be pleaded, it would suffice if they are set out briefly in the Election Petition and each of these allegations are subject to proof and therefore the Election Petition cannot be thrown out at the threshold by filing an application for rejecting the petition.

19. The learned counsel for the 1st respondent would submit that the contentions of the applicant herein that the allegation of corrupt practices like bribing the voters had taken place after the institution of the election notification and the same will be proved by the 1st respondent during the trial of the petition.

20. The learned counsel would submit that for each and every allegations, the election petitioner / 1st respondent has made out a prima facie case, which ultimately has to be proved by the 1st



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respondent. Therefore, seeking rejection of this Election Petition at the threshold would be totally unfair to the election petitioner who during the trial would prove the allegations made by him.

21. In support of the above contentions the learned counsel would rely upon the Judgements reported in **1991 3 SCC 375** – F.A.Sapa and others Vs. Singora and others and **2008 11 SCC 740** – Umesh Challiyill Vs. K.P.Rajendran. He would also rely on the Judgement reported in **2022 (3) SCC 269** – ***A.Manju Vs. Prajwal Revanna @ Prajwal.R. and others.***

22. The learned senior counsel for the applicant in reply to the arguments made on behalf of the 1st respondent would submit that once the rules prescribe that the pleadings have to be filed into the Court in a particular form, then the said provisions have to be followed in its letter and spirit. The learned senior counsel would rely



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upon the Judgement reported in *AIR 2005 Cal 145*, wherein, the learned Judges had held that the non-compliance of Rules only result in the petition being dismissed.

23. The learned senior counsel would rely upon the very same Judgement in order to buttress his contention that the affidavit seeking to verify the election petition is mandatory. The learned senior counsel would submit that the provisions of the Election Act has an overriding effect. The learned senior counsel would rely upon Section 32 (1) of the Amending Act. Therefore, since the rules have not been followed, the learned senior counsel would submit that the election petition has to be dismissed.

24. A reading of the application would clearly indicate that grounds as contemplated under Order VII Rule 11 of the Code of Civil Procedure has not been made out. Further, the application in question is drafted more in the lines of a counter to the main petition.



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25. Heard the learned counsels on both the sides and perused the papers.

26. The application for rejecting the election petition has been filed on four grounds:

(a)The provisions of Order IV Rule 2 of the CPC has not been complied with.

(b)The verifying affidavit contemplated under the Act has not been filed neither as a duplicate copy of the election petition has been filed into the Court.

(c)The provisions of Section 83 has not been complied with and the allegations made in the petition does not meet the requirements of Section 83 (1) (a).



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(d) Excessive expenditure has not been proved and the applicant does not own the property, which according to the 1st respondent has been suppressed.

27. Apart from this, no other grounds has been raised in the affidavit filed in support of the petition to reject the Election Petition. However, in the course of the argument, the learned senior counsel for the applicant has raised the ground that the Jurat portion in the affidavit filed in support of the Election Petition is not as per the requisite format. This objection has not been taken in the grounds for rejecting the election petition and has been raised for the first time in the course of the argument.

28. Considering the fact that the election petition is sought to be rejected primarily on technical grounds of non-compliance of the provisions of the Representation of People's Act, Code of Civil



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Procedure, the Original Side Rules, the Madras High Court Election Rules, etc., it would be appropriate to extract these provisions.

29. Section 81 & 83 of the Representation of People's Act would read as follows:

“81. Presentation of petitions.—(1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of section 100 and section 101 to the High Court by any candidate at such election or any elector within forty-five days from, but not earlier than the date of election of the returned candidate, or if there are more than one returned candidate at the election and the dates of their election are different, the later of those two dates.

Explanation.—In this sub-section, "elector" means a person who was entitled to vote at the election to which



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the election petition relates, whether he has voted at such election or not.

(3) Every election petition shall be accompanied by as many copies thereof as there are respondents mentioned in the petition and every such copy shall be attested by the petitioner under his own signature to be a true copy of the petition.]

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



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(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.]

30. Order VI Rule 15 of the Code of Civil Procedure prescribes the manner in which a pleading has to be verified and Sub Rule 4 therein directs the person verifying the pleadings to furnish an affidavit in support of his pleadings. Since the provisions of Section



83 (1) (c) of the Representation of People's Act, 1917, stipulates that an election petition has to be signed and verified by the petitioner in the manner prescribed under the Code of Civil Procedure, the provisions of Order VI Rule 15 of the Code of Civil Procedure will automatically become applicable to election petitions as well. Rule 33 to 44 of the Civil Rules of Practice deals with affidavits. Rule 40 deals with how an affidavit sworn or affirmed by a person who is blind / illiterate / unacquainted with the language in which the affidavit is written has to be certified by the person before whom such affidavit is sworn / affirmed. Rule 40 would read as follows:

“Blind or illiterate deponent:- *When an affidavit is sworn or a affirmed by any persons who appears to the person taking the affidavit to be illiterate, blind, or unacquainted with the language in which the affidavit is written the person shall certify that the affidavit was read, translated or explained in his presence to the deponent,*



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and that the deponent seemed to understand it and made his signature or mark in his presence, as in Form No. 15 otherwise the affidavit shall not be used in evidence:

31. Since the election petitions are taken on the file of the Original Side of this Court, the Original Side Rules would also apply to these petitions. Order II of the Original Side Rules deals with the form and presentation of proceedings. Rule 2 deals with the nature and form of proceedings and the same would read as follows:

“All affidavits, interlocutory applications and other proceedings presented to the Court shall be written, typewritten or printed fairly and legible on substantially white A4 size paper, not less than 75 GSM, or any other quality as may be prescribed from time to time, instead of green or embossed paper and separate sheets shall be stitched together bookwise. The writing or printing shall



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be on both sides of the paper and numbers shall be expressed in figures.”

32. Rule 9 deals with the verification of proceedings and the same which is more or less akin to the provisions of Rule 40 of the Civil Rules of Practice would read as follows:

“Verification of Proceedings:

9. Every proceeding which is required to be verified by a person who is unable to read and write English, shall be explained to him by an Interpreter of the High Court or a Commissioner for Oaths, or a notary appointed under the Notaries Act, 1952; or, if required to be verified at a place beyond the local limits’ of the jurisdiction of the High Court, by or before a notary appointed under the Notaries Act, 1952, or by or before the Judge of, or an officer authorized to administer oaths or take affirmations



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in, any civil or criminal Court 1[* *] within whose Jurisdiction the said place is situate. The proceeding shall be signed or marked before the person, by or before whom the explanation is made, who shall sign a certificate as in Form Nos.7 and 8 and shall affix thereto his seal if any, or the seal of the Court to which he is attached.”*

33. Form 8 of Appendix II of the OS Rules referred therein deals with the Jurat that has to be included in an affidavit signed / affirmed by a person unacquainted with the language of the affidavit / blind / illiterate. Form 8 is reproduced herein below:

“

Form 8



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ORDER II, RULE 9, AND ORDER XV, RULE 7 JURAT WHEN

DEPONENT IS UNACQUAINTED WITH THE LANGUAGE OF THE

AFFIDAVIT OR IS BLIND OR ILLITERATE

Solemnly affirmed (or sworn) at the office of the Registrar of the High Court this day of before me, the contents of this affidavit (or solemn affirmation and the exhibits therein referred to) having been first truly and audibly read over to the deponent in Tamil, he being unacquainted with English (or being blind or illiterate) who appeared Perfectly to understand the same, and made his mark thereto (or signed the Same) in my presence.



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C.D.(Deponent)
(signed)

G.H.
Commissioner for

Oath.

Seal

34. Rule 2 of the Rules of Madras High Court Election Petitions, 1967 would read as follows:

“Every Election Petition shall be in the form of an original petition, in the English language and shall be verified in the manner provided for under the Code of Civil Procedure, 1908.

Every Petition shall be either printed or typewritten neatly and legibly, on durable paper of foolscap size, with sufficient space between the lines leaving a quarter



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margin on the left and at least 4 centimeters free space on the top and bottom of each page.”

35. Rule 12 of the Rules of Madras High Court Election Petitions, 1967 would read as follows:

“Subject to the foregoing rules and to the extent they are not inconsistent with the provisions of the Act, the Rules of the High Court, 1956 (Original Side) shall, as far practicable, be observed in all Election Petitions and all applications taken in respect of them.”

36. From a reading of the aforesaid provisions what emerges is that an election petition should contain the material facts on which the election petitioner relies in a concise form. The petition has to be presented within 45 days from the date of election of the returned candidate where there are several returned candidates if their dates



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are different the last of the said dates. The petition so filed has to be verified as per the format provided in Rule 40 of the Civil Rules of Practice read with Rule 9 of Order II of the OS Rules. The format is prescribed in Form 8 of Appendix II of the OS Rules. The main ground taken for the 1st time in the arguments is that those provisions have been flouted and therefore the election petition is flawed.

37. Be that as it may, in the light of the Judgements of the Hon'ble Supreme Court reported in **1991 (3) SCC 375** – F.A.Sapa and others Vs. Singora and others, **2008 (11) SCC 740** – Umesh Challiyill Vs. K.P.Rajendran and **2022 (3) SCC 269** – A.Manju Vs. Prajwal Revanna Alias Prajwal.R and others, it does not appear to be a ground for rejecting the petition.

38. In the Judgement reported in **1991 (3) SCC 375** – F.A.Sapa and others Vs. Singora and others, the learned Judges have stated that



defect in specification is not a fatal to the case of the petitioner.

Similar issue of specification has been dealt in the Judgement reported in **2008 (11) SCC 740 – Umesh Challiyill Vs. K.P.Rajendran**. In the said Judgement, the learned Judges had observed as follows:

“20.However, in fairness whenever such defects are pointed then the proper course for the Court is not to dismiss the petition at the threshold. In order to maintain the sanctity of the election the Court should not take such a technical attitude and dismiss the election petition at the threshold. On the contrary after finding the defects, the Court should give proper opportunity to cure the defects and in case of failure to remove/ cure the defects, it could result into dismissal on account of Order 6 Rule 16 or Order 7 Rule 11 CPC. Though technically it cannot



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be dismissed under [Section 86](#) of the Act of 1951 but it can be rejected when the election petition is not properly constituted as required under the provisions of the CPC but in the present case we regret to record that the defects which have been pointed out in this election petition was purely cosmetic and do not go to the root of the matter and secondly even if the Court found them of serious nature then at least the court should have given an opportunity to the petitioner to rectify such defects.”

39. Similar view has been taken by the Bench of the Hon'ble Supreme Court in a recent case reported in **2022 (3) SCC 269 – A.Manju Vs. Prajwal Revanna Alias Prajwal.R and others**, where the issue involved was non-filing of the affidavit in Form 25. The Bench held as follows:



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“26.However, we are not persuaded to agree with the conclusion arrived at by the High Court that the non-submission of Form 25 would lead to the dismissal of the election petition. We say so because, in our view, the observations made in Ponnala Lakshmaiah case which have received the imprimatur of the three Judges Bench in G.M. Siddeshwar case appear not to have been appreciated in the correct perspective. In fact, the G.M. Siddeshwar case has been cited by the learned Judge to dismiss the petition. If we look at the election petition, the prayer clause is followed by a verification. There is also a verifying affidavit in support of the election petition. Thus, factually it would not be appropriate to say that there is no affidavit in support of the petition, albeit not in Form 25. This was a curable defect and the learned Judge trying the election petition ought to have granted



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an opportunity to the appellant to file an affidavit in support of the petition in Form 25 in addition to the already existing affidavit filed with the election petition. In fact, a consideration of both the judgments of the Supreme Court referred to by the learned Judge, i.e. Ponnala Lakshmaiah as well as G.M. Siddeshwar, ought to have resulted in a conclusion that the correct ratio in view of these facts was to permit the appellant to cure this defect by filing an affidavit in the prescribed form.

40. Therefore, the contention of the applicant that the verifying affidavit is not as per provisions contemplated in the Code of Civil Procedure / OS Rules / Madras High Court Election Petition Rules is a mere technical plea and this defect does not render the main petition invalid. Further a perusal of the Jurat in the verifying affidavit which reads as follows:



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“Solemnly affirmed that the contents of this affidavit were read over and explained in Tamil at Chennai on this the 30th day of July 2021 and signed his name in my presence”

This has been sworn before a Commissioner of Oaths who has signed it. Though the Jurat is not verbatim as per Form 8, however in substance it conveys that intent. Therefore, this Court has to necessarily reject the contentions raised by the applicant.

41. In the Judgement of the Hon'ble Supreme Court reported as ***Ram Swarup Gupta (Dead) by LRs Vs. Bishun Narain Inter College and others – 1987 (2) SCC 555***, the Hon'ble Supreme Court was considering a question as to whether necessary pleadings had been raised in the written statement as to whether the license is irrevocable while answering the same observed as follows:



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*“The question which falls for consideration is whether the respondents in their written statement have raised the necessary **pleading** that the license was irrevocable as contemplated by **Section 60(b)** of the Act and, if so, is there any **evidence** on record to support that plea. It is well settled that in the absence of **pleading, evidence**, if any, produced by the parties cannot be considered. It is also equally settled that no party should be permitted to travel beyond its **pleading** and that all necessary and material facts should be **pleaded** by the party in support of the case set up by it. The object and purpose of **pleading** is to enable the adversary party to know the case it has to meet. In order to have a fair trial it is imperative that the party should settle the essential material facts so that other party may not be taken by surprise. The **pleadings***



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*however should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hair splitting technicalities. Sometimes, **pleadings** are expressed in words which may not expressly make out a case in accordance with strict interpretation of law. In such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. It is not desirable to place undue emphasis on form, instead the substance of the pleadings should be considered. Whenever the question about lack of **pleading** is raised the enquiry should not be so much about the form of the **pleadings**, instead; the court must find out whether in substance the parties knew the case and the issues upon which they went to trial. Once it is found that in spite of deficiency in the **pleadings** parties knew the case and they proceeded to trial on those issues by producing **evidence**,*



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*in that event it would not be open to a party to raise the question of absence of **pleadings** in appeal.”*

The intent of the Jurat is to confirm that the person signing the same and who does not know the language in which it is written has been explained its contents and he has signed the same thereafter.

42. The next issue which has been raised is that the allegations does not contain material facts. That apart, particulars have not been pleaded with reference to various grounds raised in the Election Petition. However, a mere perusal of the petition as well as argument would clearly indicate that a prima facie case has been set out in the election petition which has to be necessarily substantiated by the election petitioner by adducing evidence. The election petition cannot be dismissed on the ground that full particulars have not been



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furnished in the petition since prima facie case has been made out in the pleadings.

43. It has been time and again held by the Hon'ble Supreme Court as well as by this Court that while considering the petition for rejecting the plaint / petition, the Court has to only consider the contents of the plaint / petition. If the contents therein make out a prima case for consideration, then the Court should hesitate to reject the plaint. The election petitioner / 1st respondent has sought to declare the election of the applicant herein as void on four primary grounds. For all of these grounds the 1st respondent has given a prima facie facts. Whether the same would withstand the Trial and proof is a matter that has to be considered only after the parties go to Trial. Therefore, the election petition cannot be rejected at the threshold. Therefore, the application filed by the applicant to reject the Election Petition has to necessarily rejected.



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44. Accordingly, O.A.No.8 of 2022 is dismissed. No costs.

45. The 1st respondent / applicant shall file his counter on or before 07.11.2022.

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Speaking order / Non speaking order
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