



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 09.04.2025

PRONOUNCED ON: 07. 07.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

Natham R.Viswanathan ...Applicant in O.A.Nos.9 and 10 of 2022

Vs

1. M.A.Andiambalam
2. P.Andisamy
3. R.A.Saranraj
4. Dr.V.Sivasankaran
5. N.Raja
6. V.Vembarasan
7. A.Karnan
8. C.Gurusamy
9. M.Xavier Joseph Kennedy
- 10.K.Dhandapani
- 11.A.Balasubramani
- 12.K.Murugesan
- 13.S.Jeyakumar



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

14.R.Jaya Bal

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

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

17.The District Collector cum District Returning Officer,
Dindigul District,
Tamil Nadu 624 004.

18.The Returning Officer,
131-Natham Assembly Constituency,
Natham Taluk, Dindigul District,
Tamil Nadu 624 401.

19.DRO cum Election Nodal Officer,
131-Natham Assembly Constituency,
District Collector Office,
Dindigul, Tamil Nadu 624 004

... Respondents



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

Prayer in O.A.No.9 of 2022: Original Application filed Order XIV Rule 8 of O.S.Rules read with Rule 3 of Madras High Court Election Petition 1967 and Order VI Rule 16 of C.P.C 1908 praying to strike off the paragraph Nos.10 to 21, 23 to 31 of the Election Petition No.11 of 2021.

Prayer in O.A.No.10 of 2022: Original Application filed Order XIV Rule 8 of O.S.Rules read with Rule 9 of Madras High Court Election Petition 1967 and Order VII Rule 11 of C.P.C 1908 praying to reject the Election Petition No.11 of 2021.

For Applicant : Mr.C.Manishankar, senior counsel
in both O.As for Mr.S.K.Rameshwar

For Respondent-1 : Mr.Richardson Wilson
in both O.As

COMMON ORDER

O.A.Nos.9 and 10 of 2022 filed in E.P.No.11 of 2021 are the applications placed for the consideration of this Court.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

2. O.A.No.9 of 2022 is an application filed to strike off paragraphs Nos. 10 to 21 and 23 to 31 in E.P.No.11 of 2021. O.A.No.10 of 2022 is filed to reject the election petition.

3. It would make useful reading to set out the facts in the election petition and the original applications which are common for both applications in order to appreciate the grievance of the applicant who is the 1st respondent in the election petition.

Facts narrated in the Election Petition:

4. The election petition has been filed to declare the election of the 1st respondent who is the applicant in the original applications to the 131-Natham Assembly Constituency in Tamil Nadu on 02.05.2021 as illegal and void ab initio and to declare the petitioner as the duly elected candidate.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

5. The schedule for the 2021 elections were as follows:

Commencement of Nominations	12.03.2021
Last date for filing Nominations	19.03.2021
Date for scrutiny of nominations	20.03.2021
Last date for withdrawal of candidatures	22.03.2021
Date of poll	06.04.2021
Date of counting and declaration of results	02.05.2021

6. The election of the 1st respondent is sought to be set aside on the ground that the 1st respondent had indulged in corrupt practice and had violated the election Rules during the campaigning.

7. The 1st respondent / election petitioner has set out, under various heads the reasons why he seeks to have the election of the applicant/1st respondent declared as null and void and the facts are being culled out, briefly, under each of the heads. The parties are referred to as the election petitioner and the 1st respondent. The



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

following are the grounds challenging the election of the 1st

Respondent:-

(i) Suppression of material facts in Form-26

It is the case of the election petitioner that while the 1st respondent was serving as a Minister for Electricity, Prohibition and Excise, for the State of Tamil Nadu for the period 2011-2016, he lived in an accommodation provided by the Government. However, this fact was not only suppressed in Form-26 affidavit but as against the Column in which the particulars pertaining to Government accommodation for the last 10 years were asked, the respondent had denied being in a Government accommodation. This statement is totally false since between 2011 and 2016 he had been occupying the Bungalow at NB.No.18(Vaigai) at Greenways Road, Adyar, Chennai. That apart, it is also the case of the election petitioner that the 1st



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

respondent has suppressed the details of the immovable assets. As against an extent of 1.48.0 hectares in S.No.630/1,Punnampatti Village, Natham Taluk, Dindigul District, patta stands in the name of the 1st respondent. However, the 1st respondent has declared only an extent of 0.85.0 hectares (split as 0.48.0 hectares and 0.37.0 hectares respectively) to be his assets which is a clear case of suppression. The Chief Election Agent of the petitioner had lodged a complaint with the 18th respondent in this regard which was not taken into consideration.

ii) Expenditure for flex boards, wall paintings etc. of AIADMK symbols, names etc.,

The election petitioner would submit that the 1st respondent has spent over a sum of Rs.1,75,00,000/- towards the flex boards, wall paintings etc in 48 panchayats spread over 500 villages. However, the 1st respondent has accounted only for a sum of Rs.85,600/ for buying



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

and fixing flag poles and Rs.40,000/- towards the wall paintings and flex boards. The election petitioner would submit that several F.I.Rs were lodged in this regard. He would contend that the 1st respondent is therefore guilty of being involved in a series of offences under the Tamil Nadu Open Places (Prevention of Disfigurement) Act, 1959 and violation of Model Code of Conduct.

(iii) Issuance of Pamphlets and Booklets not accounted for:

The election petitioner would submit that the 1st respondent had printed over 28 different types of glossy colour pamphlets and booklets, which were distributed to the voters of the constituency during their campaign in March and April 2021. However, the expenses for printing these pamphlets have not been accounted for. It is the contention of the election petitioner that over a sum of Rs. 3,36,00,000/- would have been incurred as expenses for printing and



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

issuance of pamphlets to the voters. The election petitioner has in very great detail set out the particulars of each of these pamphlets in the election petition. His contention is that these amounts have not been accounted for.

iv)Bribing the voters:

It is the contention of the election petitioner that the 1st respondent through his agents and party workers have spent huge sums of money to bribe the voters. It is his case that the money was put into the Aarathi plates which were taken to greet the 1st Respondent. This kind of bribing of voters took place on 14.03.2021 and 15.03.2021 and on various dates in March and April 2021, a sum of Rs.500/- was given for every Aarathi plate and a total sum of Rs.25,00,000/- has been spent under this head. This according to the petitioner has materially affected the election. It is contended by the petitioner that not only the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

new voters but also the members of the Women Self Help Groups were bribed by giving a sum of Rs.10,000/- to the head of each group numbering over 926. That apart, sarees each worth Rs.2,000/- were given to 9500 women towards which the 1st respondent would have incurred a total expenditure of Rs.2,82,60,000./-. The petitioner has also given a list of witnesses who have witnessed the bribery.

v) Unaccounted expenditure suppressed intentionally contrary to the register of Shadow Observation Officer:

The petitioner's contention is that the Shadow Observation Officer has submitted a statement of expenditure incurred by the 1st respondent which shows a sum of Rs.33,46,521 having been spent between 14.03.2021 and 01.04.2021. However in the statement of expenditure submitted by the 1st respondent only a sum of Rs.13,93,786/- was recorded that too for the period between 18.03.2021 and 04.04.2021. The Shadow Observation Officer has not

10/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

maintained the register properly. Therefore, he would submit that the 1st respondent is guilty of misusing his power. The Former Chief Minister of Tamil Nadu, Mr.Edapadi K.Palaniswamy had campaigned on behalf of the 1st respondent on 24.03.2021 for which huge expenditure had been incurred. That apart, star campaigners also campaigned for and on behalf of the petitioner for which also huge sums of money has been spent on fuel, car and tempo rents, food expenses, generators, special campaigning vans etc. According to the petitioner, a sum of Rs.88,77,000/- including the daily expenses had been incurred during the visit of Former Chief Minister. The petitioner has given a break-up of the expenditure incurred by the 1st respondent, totalling to a sum of Rs.20,77,000/-. That apart, an additional expenses of Rs.68,00,000/- for car rental and daily batta had been incurred by the 1st respondent. These expenditure have not been accounted for. This according to the petitioner has materially affected his election.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

vi) Campaigning in the last 48 hours prior to polling

(a) The petitioner would submit that on 04.04.2021 and 05.04.2021, the 1st respondent along with his party workers had done door to door campaigning in various parts of the constituency and had distributed bribes to the voters who were assembled there to the tune of Rs.1000 per voter. The petitioner would submit that such bribe has been given to nearly 2,30,000 voters to the tune of Rs.23,00,00,000. This Act had materially affected the election of the 1st respondent and decreased the chances of the petitioner to win the election. The details of the persons who had witnessed the distribution of cash to voters between 04.04.2021 and 05.04.2021 have been set out by the petitioner in his election petition. The petitioner would further argue that despite the fact that the date of polling was fixed on 06.04.2021, the 1st respondent campaigned 48 hours prior to the voting on 04.04.2021 and 05.04.2021. This renders the election void.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

(b) In addition to the above, the 1st respondent is guilty of distributing liquor bottles worth Rs.150/- each on 05.04.2021 between 07.00 pm and 10.00 pm throughout the constituency at Kaasampatti, Serveedu, Aavichipatti and other villages to over 15,000 male voters. The distribution of liquor bottles is an illegal gratification which attracts the provision of Section 135-C of The Representation of the People Act, hereinafter referred to as “RP Act”. The expense incurred in this regard is over a sum of Rs.22,50,000/-. The act of the 1st respondent is a violation of the Model Code of Conduct and has materially affected the election of the 1st respondent. Here again, the petitioner has set out the details of the witnesses to these incidents.

c) Another complaint against the 1st respondent is that though the 1st respondent is mandated to maintain a separate and correct account relating to expenditure incurred by him and his agents with regard to



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

the election and to submit the same before the District Election Officer, he had breached this requirement. The 1st respondent has in his report not given the details about booklets, sarees and other illegal gratification which have been described in detail in the election petition. It is the contention of the petitioner that as per Rule 90 of the Conduct of Election Rules, 1961(hereinafter referred to as “Election Rules), the maximum expenditure for a candidate participating in the Assembly Elections in Tamil Nadu is Rs.30,80,000/- as per the revised notification. The petitioner has given details of those expenditures incurred by the 1st respondent in the election petition which amounts to Rs.34,26,93,736/- and this excess expenditure has been suppressed by the 1st respondent.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

vii) Causing disturbances to the meetings, campaigns of the rival candidate.

The petitioner would submit that the 1st respondent, his son and party workers had caused disturbances to the meetings held by the petitioner at Aiyyapatti and Sethur villages. He would further submit that he and his party workers were not allowed to campaign in Veerasinampatti village, on 26.03.2021 at 12.20pm, Ayyapatti village on 30.03.2021 at 4.00 and in Sethur Village on 29.03.2021 at 10.50am since 500 AIADMK party workers had gathered around the petitioner's van and had created nuisance. This has materially affected the election of the 1st respondent. The petitioner would also accuse that the 1st respondent by misusing his position by engaging the services of government servants to secure votes for him. The drivers of various depots in the constituencies, employees of the co-operative bank, teachers, Government Schools etc., were roped in to campaign for the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

1st respondent. The petitioner would contend that the 1st respondent had indulged in large scale corrupt activities and violations, all of which has been detailed above. Therefore, he would submit that the election of the 1st respondent is vitiated and liable to be set aside. The petitioner having secured the next highest number of votes has to be declared as the successful candidate.

Facts contained in the affidavit filed in support of the Original

Application:-

8. The 1st respondent on entering appearance in the above matter has come forward to file two applications, namely O.A.Nos.9 and 10 of 2022. As stated supra, a common affidavit has been filed and the grounds on which the above applications have been filed are briefly set out herein below in point form.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

i) The alleged charges of corrupt practices which has been lodged by the petitioner has to be specific and proved beyond a reasonable doubt.

ii) The petition does not provide details as to the specific ground under Section 100 of RP Act that was sought to be invoked.

iii) The election petition has not made out any cause of action.

iv)The petition does not conform to the provision of Section 83(1)(b) of the R.P. Act as it does not contain the full particulars.

v) The allegations regarding Form-26 affidavit was already raised as objections during the scrutiny and the same has been rejected.

(In this regard, the petitioner's contention was that a **“No Due Certificate”** in respect of the Government accommodation was not



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

provided). The petitioner has suppressed this fact in his election petition.

vi) As regards the wall paintings, the 1st respondent has himself stated that a sum of Rs.5,31,050/- has been incurred by him. Therefore, it impliedly means that the other paintings have not been authorized by him. He would further submit that out of 713 pictures that have been taken out by the 1st respondent only 15 pictures have been shown. That apart, many of these pictures pertain to the earlier local body election. The compact disc is an electronic document which is not admissible in evidence without a certificate under Section 65B(4) of the Evidence Act.

vii) The allegation that the 1st respondent had authorized the pasting of posters, flex boards and advertisements by persons is wrong and doubtful. The registering of F.I.Rs by itself is not evidence.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

viii) The 1st respondent would further submit that pamphlets, booklets, posting of pictures on whatsapp have not been done by him and the pamphlets carry the name of one P.Venkatesh of Battalagundu who was campaigning for the AIADMK party in general. The said Venkatesh, belonged to Nilakottai Constituency and not Natham Constituency. The pamphlets which were printed at the behest of the 1st respondent have been accounted for in his election expenditure account statement.

ix) The 1st respondent would submit that the total number of voters in the Natham Constituency is only 2.85 lakhs and therefore, it is absurd to state that 28 lakhs pamphlets had been printed and distributed. The details of the persons to whom the 1st respondent had a given bribes, pamphlets etc have not been mentioned and there is not even a bald allegation in this regard. That apart, there is no passing

19/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

reference to any violation of Section 77 of the Act.

x) The Compact Disc which has been produced to show that Rs.500 was kept in Aarathi plate does not feature the 1st respondent. The complaint that has been lodged by the party workers would state that money was placed in Aarathi plates at the time of campaigning.

xi) As regards the calculation of the expenditure, the 1st respondent would submit that he has calculated the expenses from 18.03.2021 to 04.04.2021 and has incurred only Rs.21,28,406/- whereas the Shadow Observation Officer has calculated the expenses starting from 14.03.2021. The calculation can only commence from 18.03.2021 which is a day before the last date for filing the nominations. Further, not a single document has been produced to support the election expenditure.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

xii) The 1st respondent would submit that the petitioner has come to Court on a totally imaginary case. The sum of Rs.88,77,000/- is an imaginary expenditure which has not been incurred by the 1st respondent. The allegation regarding campaigning for the last 48 hours before the election does not attract the Model Code of Conduct or Section 126 of the RP Act, since Section 126 only prohibits any person from convening, holding, attending, joining or addressing any public meeting. Door-to-door campaigning has not been prohibited by the Election Commission.

Counter of the 1st respondent/Election petitioner:

9. The response to the applications is herein below also set out in point form:

(i) The applications are nothing but a written statement to the election petition.

21/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

(ii) The election petition discloses sufficient cause of action as well as material fact and makes out all the ingredients required in an election petition.

(iii) The paragraphs that are sought to be struck off contain the material facts to prove the various violations and offences.

(iv) Court should only look into the contents of the election petition and not the defence.

(v) The particulars contained in the election petition can be decided only after the full fledged trial and not at the stage of seeking rejection under Order VII Rule 11 or Order VI Rule 16 CPC.

(vi) A mere perusal of the contents of the application will clearly demonstrate that contentious issues have been raised which require trial.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

(vii) The averments in the paragraphs that are sought to be struck off satisfies the requirements of various provisions of the R.P Act and therefore cannot be rejected at the threshold. That apart, the election petitioner has also given the details of the witnesses who have witnessed the corrupt practices that the 1st respondent has indulged in and they have to be examined to prove the same.

(viii) As regards the election expenditure, the petitioner has clearly set out the details of the expenditure and he must be given an opportunity to prove the same.

Therefore the petitioner prayed for the dismissal of the applications.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

Submissions:-

10. This Court would rely upon the written submissions submitted by both learned counsels which is an extract of the oral submissions made before this Court. Mr.C.Manishankar, Senior Counsel made the submissions on behalf of the Counsel for the 1st respondent/Applicant and Mr.Richardson Wilson for the Election Petitioner/1st respondent.

11. It is the contention of the applicant / 1st respondent that the election petition has been filed on the ground that the 1st respondent had indulged in corrupt practices. The election petition has been filed under various sections of the RP Act read with Election Rules. The 1st respondent seeks to strike off portions of the pleadings and also to reject the election petition. The following are the relevant dates for considering the applications.

24/77



WEB COPY

Commencement of Nominations	12.03.2021
Nomination filed by the election petitioner	17.03.2021
Nomination filed by the 1 st respondent	18.03.2021
Last date for filing of the nominations	19.03.2021
Date of poll	06.04.2021
Date of counting and declaration of results	02.05.2021

12. The 1st respondent had secured 1,07,762 votes and the election petitioner had secured 95,830 votes. The 1st respondent has sought for rejection of the election petition and the striking off paragraphs Nos. 10 to 21 and 23 to 31 in the election petition on the following primary grounds.

- a) Suppression of facts in Form-26
- b) Offences relating to election expenditure
 - i) Non-disclosure of election expenditure
 - ii) Excessive expenditure incurred over the prescribed limit.
- c) Bribery of voters



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

d) Disturbance caused during the election meeting and campaigning.

A) Suppression of facts in Form-26

(i) Giving false information on the outstanding dues by not submitting a “No Due Certificate”.

(ii) A false statement has been made regarding the Government accommodation inasmuch as the 1st respondent has stated that he was not occupying a Government accommodation for the period of 10 years prior to the election petition whereas he had been occupying a Government quarter from 2011 to 2016.

(iii) The difference in the measurement of the land in S.No.630/1.



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

(iv) The learned senior counsel would submit that the pleading with reference to the suppression of material facts in the nomination paper should have been specifically pleaded as contemplated under Section 100(1)(d) of RP Act which constitutes a ground for maintaining these applications. In this regard, it is the argument of the learned senior counsel that even according to the election petitioner they had on the date of the scrutiny of nominations tabled their objections to the nomination given by the election petitioner stating that there was a suppression of facts in the nomination paper regarding the fact that the 1st respondent had not disclosed the details of his having occupied Government Bungalow between 2011 and 2016. This objection was rejected by the 18th respondent. However, the election petitioner has nowhere in the election petition stated about the rejection of his objection or why the representation / objection made by him has been rejected by the Returning Officer. This fact has been suppressed



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

as this would clearly prove that the said complaint has been addressed at the earliest. This is clearly a case of suppression. He would submit that the pleadings do not disclose that the alleged omission is of a substantial nature and that its non disclosure has impacted the voters' decision. The pleadings also do not state as to how the non disclosure has materially affected the election. Therefore, it is the contention of the 1st respondent that no ground under Section 100(1)(d) of the RP Act has been made out. In this context, reliance has been placed on the judgement of the Hon'ble Supreme Court reported in **2023 SCC Online SC 573 [Kanimozhi Karunanidhi Vs Santhana Kumar]** . Reference was made to paragraph Nos.31 and 32. He would submit that all non-disclosure irrespective of their gravity and impact would not automatically amount to a defect of a substantial nature thereby materially affecting the result of the election. In support of this argument, he would refer to the judgment of the Hon'ble Supreme



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

Court reported in *(2024) 4 SCR 384 [Ref Karikho Kri Vs Nuney tayang & Another]*. He has relied on paragraphs Nos.40, 42 to 44 and 50 of the said judgment.

B) Offence related to Election Expenditure:

The learned senior counsel would submit that a sum of Rs.1,75,00,000/- was incurred for wall paintings and flex boards, a further sum of Rs.3,36,00,000/- was incurred for printing and circulating one Lakh copies of 28 coloured glossy pamphlets and Rs.75,00,000/- was incurred for printing and circulating booklets. All these expenses were not disclosed by the election petitioner. These statements have been made in paragraph Nos.13 and 19 of the election petition. Further, the allegation that after incurring such a huge expense the 1st respondent has accounted only for a sum of Rs.85,600/- for paying and fixing flag poles and Rs.40,000/- towards the wall

29/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

paintings and flex board are false and unbelievable and cannot be accepted at face value since the expenses as set out by the election petitioner are imaginary and not substantiated by proof. The expenditure that has been submitted by the 1st respondent has been accepted by the Returning Officer and therefore, it cannot be stated that the same is imaginary and unbelievable.

C) Excessive expenditure incurred over the prescribed limit:

(i) The 2nd ground that has been raised under the heading of offence relating to election expenditure is the excessive expenditure incurred. The 1st respondent would submit that as against the sums of money actually incurred which have been set out in paragraphs 13 and 19 of the Election Petition, he has submitted the expenditure to the tune of Rs.13,93,786/- for the period 18.03.2021 to 04.04.2021 which is even less than the expenditure submitted in the report of the Shadow Observation Officer between the period 14.03.2021 to 01.04.2021.

30/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

The learned senior counsel would submit that the Shadow Observation Officer's report has not been filed into Court and it is merely a statement made by the election petitioner. The election expenditure has to be calculated from 18.03.2021, the date on which the candidate has submitted his nominations and not from 14.03.2021 as set out in the Shadow Observation Officer's report. A further statement has been made that the Shadow Observation Officer has not maintained the register properly between 02.04.2021 to 04.04.2021 on account of the influence exerted by the party who was a leading party then. This statement is also not backed by proof.

(ii) The 1st respondent would contend that the election petitioner has not pleaded the material facts nor provided the material particulars as set out in Sections 100(1)(b) of the RP Act. He would further submit the two booklets which have been referred to in paragraphs 18 of the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

election petition are printed and published by his party, setting out the various schemes and election manifesto. That apart, nowhere in the pleadings has it been stated as to where these booklets have been circulated. He would further submit that much reliance need not be placed upon the F.I.Rs as the same does not prove the nexus between the persons against whom F.I.Rs have been filed and the 1st respondent. The expenditure which had been incurred for bringing in the Former Chief Minister to canvass for the 1st respondent is exempted under Section 77(1) of the RP Act, as it is expenditure incurred by the leaders of the party for election campaign.

(iii) The learned senior counsel would point out that the pleadings do not state that it is the 1st respondent who had incurred the expenditure or that the applicant had authorized any other person to incur expenditure or that the applicant has undertaken the liability to



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

reimburse the amount. Without proper pleadings and just based on bald and general statements, the same would not constitute an offence. Further, without proving that the 1st respondent has authorized the expenditures incurred by other persons it can only be presumed that the expense had been incurred only by a third party and not the 1st respondent and therefore it does not fall within the ambit of Section 123(6) of the R.P. Act. In support of this argument, the 1st respondent would rely upon the judgment in ***Kamalnath Vs Sudesh Verma [(2002) 2 SCC 410]***.

iv) Even assuming that the pleadings in paragraph No.28 regarding the failure to maintain proper accounts are established, it would still not amount to a corrupt practice since the election petitioner has not pleaded as to how this non disclosure has directly impacted the election and an reported judgment of the Delhi High Court in ***ELP***



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

4/2022 [*Ramesh Kumar Khatri Vs Durgesh Pathak*] was pressed into service by the learned counsel for the applicant / 1st respondent.

D: Bribery of Voters

(i) The third ground which has been raised by the election petitioner is bribing of voters. The allegations of bribery are twofold.

1. Bribing individual voters
2. Bribing of the leaders of Women Self Help Groups.

In connection with this, the averment contained in the election petition is that a sum of Rs.500/- was placed on Aarathi plates when voters took Aarathi for the 1st respondent. Further, it is alleged that a sum of Rs.10,000/- was paid to the leaders of Women Self Help Groups and that nearly 9500 women received sarees worth a sum of Rs.2,000/ each. A compact disk, not accompanied by Section 65B certificate, was played in open Court. The learned senior counsel would submit that



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

this video does not show the presence of the 1st respondent when the Aarathi is being taken and amounts placed in the plates. Further, the election petitioner has not pleaded as to how amounts allegedly given to heads of the Women Self Help Groups have changed hands with the members of the self help groups.

(ii) The other allegation under this head is door-to-door campaigning and the supply of alcohol bottles on the eve of the election i.e 04.04.2021 and 05.04.2021. These allegations have not been set out cogently by the petitioner in his pleadings nor has any evidence been provided in support of the same. The learned senior would submit that mere furnishing of a list of witnesses would not prove the allegation. The learned senior counsel would rely upon the judgment reported in **2023 SCC OnLine SC 679 [Senthil Balaji Vs A.P.Geetha]** in support of his argument that a mere production of a CD



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

without furnishing a certificate cannot be a ground for proving the allegation. He would rely upon another judgment of the Hon'ble Supreme Court reported in ***(2009)9 SCC 310 [Anil Vasudev Salgaonkar vs Naresh Kushali Shigaonkar]***.

(iii) Another ground on which the election petition is sought to be struck off is the allegation that the 1st respondent's agents with his consent, knowledge and direction, had disturbed the meeting in various villages. The learned counsel would submit that the allegation that the 1st respondent had utilized the services of Government servants has not been properly pleaded nor any evidence given in this regard. The pleadings do not specify the mode of assistance allegedly taken from the Government servants by the petitioner, the extent to which such assistance has been taken and all forms or acts pertaining to such assistance has not been made out. Therefore, it is the contention of the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

1st respondent that the election petition has to be rejected in toto and in case, this Court is of the opinion that the election petition cannot be rejected in its entirety then the allegation with reference to the above referred grounds have to be necessarily struck off.

13. Per contra, Mr.Richardson Wilson, learned counsel for the respondent/election petitioner, at the outset would submit that the 1st respondent has not made out any grounds as required under the provisions of Order 7 Rule 11 of C.P.C for rejecting the plaint/election petition. He would submit that going by dicta of Order 7 Rule 11 C.P.C the averments in the petition has to be read as a whole and cannot be read selectively to determine whether there is a cause of action. The entire plaint averments alone has to be taken into consideration and presumed to be true. The defence at this stage is immaterial. Further, only the documents accompanying the plaint /



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

petition can be looked into and no other documents can be looked into for the purpose of rejecting the plaint / petition. It has to be deduced from the plaint averments that the petitioner would be entitled to a decree. Therefore, he would submit that what falls for the consideration of the Court in this regard is to decide if the averments in the election petition are taken to be true, would the election of the applicant/1st respondent be liable to be set aside. If the answer to the question is in the affirmative then the petition cannot be rejected summarily. The learned counsel would submit that a mere perusal of the arguments made by the learned senior counsel for the 1st respondent would clearly show that the arguments are made on merits of the case which ultimately has to be decided after the evidence is let in. A reading of the election petition indicates that illegal acts and corrupt practices that have been committed by the 1st respondent. The petitioner has clearly pleaded a cause of action for continuing with the election



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

petition. He would submit that the 1st respondent has no answer as to why he has not disclosed the occupation of a Government Bungalow by him which is a mandatory disclosure in the nomination form. Similarly, the concealment of ownership of an agricultural land is also a deliberate case of suppression. These are the factors that have to be dealt with during evidence and trial.

14. With reference to the 2nd ground, i.e, excessive expenditure. It is the contention of the election petitioner that they can substantiate the allegations and if the petition is rejected at this stage, the petitioner will not be in a position to prove the same. That apart, the argument advanced by the 1st respondent that the expenses incurred towards engaging the star candidate for campaigning has to be excluded as a whole, is contrary to the provisions set out in explanation to Section 77(1) of the RP Act. Therefore, even in the case of star candidates,



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

only the expenditure incurred on account of travel or transport is excluded whereas the other expenses incurred for organizing meeting, road shows, like stage, mike, audio systems, flags poles etc., are not excluded under Section 77(1) explanation. The permitted expenditure for the constituency under Rule 90 of the Election Rules is fixed at Rs.30,80,000/-. and the expenditure in excess of this, is a corrupt practice as provided under Section 77(3) read with Section 123(6) of the RP Act. Once again the parties have to go for trial to enable the 1st respondent to prove his election.

15. The pleadings relating to bribery of voters can be decided based on the evidence that has to be let in to substantiate the same only at the time of trial. The petitioner has, in detail, set out the acts of bribery and given a list of witnesses in the election petition. Therefore, he would submit that no grounds have been made for summarily



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

rejecting the petition.

16. As regards the argument relating to the striking of pleadings, the learned counsel would submit that the pleadings have to be struck off only if it does not disclose a cause of action. The parameters under which petition / plaint can be rejected under Order VII Rule 11 is different from the parameters for striking of the pleadings as set out in Order VI Rule 16 C.P.C. The jurisdiction of a Civil Court to strike off the pleadings at any stage can be exercised only under the following circumstances; where the pleadings:-

- a) are unnecessary, scandalous, frivolous or vexatious or*
- b) tend to prejudice, embarrass or delay the fair trial of the suit, or*
- c) Otherwise is an abuse of the process of the Court.*



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

17. Another ground under which the pleading can be struck off is abuse of process of the Court. The Judgment of ***K.K.Modi Vs K.N.Modi and Others (1998) 3 SCC 573*** has been relied upon by the learned counsel for the election petitioner where the Hon'ble Supreme Court has held that an abuse of process of court could be in the form of a re-litigation / re-adjudication, frivolous or vexatious pleadings or if it is contrary to justice and public policy. It is the contention of the learned counsel that none of these ingredients have been made by the 1st respondent. The 1st respondent has not demonstrated as to how the pleadings in the election petition are unnecessary, scandalous, frivolous or vexatious. They have also not been in a position to point out the allegation which would prejudice, embarrass or delay fair trial of the election petition. Section 83 of the RP Act provides that an election petition should contain a concise statement of the material facts on which the petitioner relies and where the allegation of corruption is set

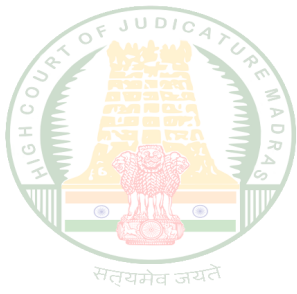


O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

out. Section 83(b) provides that as full a statement as possible of the names and parties alleged to have been committed such corrupt practice and the date and place of the commission of each practice set out. In the instant case, the election petition has in very great detail described the form of bribery and also given the list of witnesses who have seen the distribution of illegal gratification. Therefore, the provisions of Section 83 of the R.P. Act has been complied with. No doubt, the allegations have to be ultimately proved. However, this would arise only at the stage of trial. Therefore, the learned counsel would submit that the 1st respondent has not made out any case either for striking of the pleadings or for rejecting the petition. He would rely upon the following judgments in support of his arguments.

<i>(1982) 3 SCC 487</i>	<i>Roop lal Sathi Vs Nachhattar Singh Gill</i>
<i>(2007) 3 SCC 617</i>	<i>Virender Nath Gautam Vs Satyapal Singh</i>
<i>(1999) 3 SCC 267</i>	<i>[D.Ramachandran Vs R.V.Janakiraman]</i>
<i>(2015) 8 SCC 331</i>	<i>P.V.Guru Raj Rreddy Vs P.Neeradha Reddy</i>



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

<i>(1982) 3 SCC 487</i>	<i>Roop lal Sathi Vs Nachhattar Singh Gill</i>
<i>(2018) 14 SCC 1</i>	<i>Madiraju Venkata Ramana Raju VS Peddireddigari Ramachandra Reddy</i>
<i>2023 SCC Online SC 1612</i>	<i>Eldeco Housing & Industries Ltd. Vs Ashok Vidyarthi</i>
<i>(2018) 11 SCC 780</i>	<i>Sejal Glass Ltd. Vs Navilan Merchants (P) Ltd</i>
<i>(2006) 13 SCC 353</i>	<i>Sathi Vijay Kumar Vs Tota Singh</i>
<i>(1998) 1 SCC 416</i>	<i>Ashwani Kumar Sharma Vs Yaduvansh Singh</i>
<i>(2003) 11 SCC 448</i>	<i>Bidesh Singh Vs Madhu Singh</i>
<i>ELP No.4 of 2019</i>	<i>P.Milany Vs S.Arumugam and 17 others</i>
<i>(2017) 2 SCC 487</i>	<i>Mairembam Prithiviraj Vs Pukhrem Sharathandra Singh</i>

18. With reference to Order VI Rule 16 C.P.C, the learned counsel would rely upon the judgment of Privy Council ***[Davy Vs Garrett]***. To counter the argument made by the 1st respondent regarding the disclosure of assets, he would rely upon the judgment reported in ***(2002) 5 SCC 294[Union of India Vs Association for Democratic Reforms]***



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

19. Therefore, it is the contention of the learned counsel for the 1st respondent that no grounds for striking nor for rejecting the plant have been made out and accordingly, both O.A.s have to be discussed.

Discussions:

20. The 1st respondent has moved these applications for striking of certain portions of election petition and also to reject the election petition.

21. The grounds primarily on which these applications are sought to be pressed into service by the 1st respondent is that the pleading, with reference to each of the acts giving rise to the cause action for filing the election petition, does not conform to the provisions of R.P Act particularly Sections 100(1) (b), 100(1) (d), 77(1) 123(6), 83 and Rule 90 of the Election Rules. Since the

45/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

applications revolve around these provisions, it would make useful reading to extract the following provisions.

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-

(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

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-

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



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

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

(ii) *by any corrupt practice committed in the interests of the returned candidate 6 [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.]

Section 77: Account of election expenses and maximum thereof

(1) *Every candidate at an election shall, either by himself or by his election agent, keep a separate and correct account of all expenditure in connection with the election incurred or authorised by him or by his*



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

election agent between [the date on which he has been nominated] and the date of declaration of the result thereof, both dates inclusive.

Section 123: . Corrupt practices.

The following shall be deemed to be corrupt practices for the purposes of this Act:—

(6) The incurring or authorising of expenditure in contravention of section 77.

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



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

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.

Rule 90: Maximum election expenses

The total of the expenditure of which account is to be kept under section 77 and which is incurred or authorized in connection with an election in a State or Union territory



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

mentioned in column 1 of the Table below shall not exceed

(a) in any one parliamentary constituency of that State

or Union territory, the amount specified in the

corresponding column 2 of the said Table; and

(b) in any one assembly constituency, if any, of the

State or Union territory, the amount specified in the

corresponding column 3 of the said Table.

It is therefore the contention of the applicant that the election petition does not contain either the concise statement of the material facts on which the petitioner relies or the full particulars of the corrupt practice, together with the names of the parties who have committed the corrupt practice, as also the date and place of commission of such acts. That apart, he would also contend that nowhere on a reading of the election petition, has it been made out that the acts alleged have been committed with the consent of the election petitioner or his election agent; that the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

election petitioner has not been able to establish through his pleadings that, by reasons of these acts, the election has been materially affected.

22. It is an admitted fact that, in order to consider these applications, this Court is only bound to look into the election petition and the documents accompanying the petition. The election petition has been filed challenging the election of the 1st respondent on the ground that he has committed acts of suppression, corruption, spent excessively for the election without accounting for the same and violating the election Rules, thereby causing disturbances to the meetings and campaign of the 1st respondent. If the averments contained under each of the heads were to be examined, it is clearly evident that the election petitioner has set out, in a concise form, the material facts in connection with the act alleged and has also set out the acts of suppression / corrupt practices with the list of witnesses in some



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

cases. This fact can be confirmed on a *prima-facie* perusal of the election petition, particularly the averments contained under the various heads under which the election of the 1st respondent is sought to be set aside. With reference to the suppression of material facts in Form-26, the election petitioner has set out that the petitioner has not declared that he was occupying a Bungalow allotted by the Government in his Form-26 application. This allegation has to be proved through evidence. The election petitioner has also set out the details of the Bungalow that the 1st respondent was occupying within a period of 10 years prior to the date of election. Under the very same heads, the election petitioner contended that the 1st respondent has deliberately reduced the extent of land owned by him in Punnampatti Village, Natham Taluk, Dindigul District, in proof of which the election petitioner had given details about the patta number as also the extent shown under the patta. Therefore, the 1st ground on which the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

election is sought to be set aside does contain the material facts and the details of the suppression. Therefore, the petitioner has clearly set out the cause of action for seeking to set aside the election of the 1st respondent.

23. As regards the excess expenditure involved for the flex boards, wall paintings of the party symbol, names and paintings of the leaders, the election petitioner has given the details of the villages where these wall paintings etc., have been put up giving the details of the extent, number and the rate in respect of these paintings. These are statements which can be substantiated only during the trial. The election petitioner has set out these details in a tabulated form. That apart, F.I.Rs have been lodged in this regard and the election petition contains details of these F.I.Rs which have also been filed as documents. Therefore, the election petitioner has set out the material



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

facts and the violation of the procedure / provisions of the Act that the 1st respondent had indulged in. Therefore, it cannot be stated that there are no material facts pleaded in this regard.

24. Coming to the next contention regarding the issuance of pamphlets and booklets which have not been accounted in the election expenditure of the 1st respondent, the petitioner has, in paragraphs 18 and 19, given details of the booklets that have been printed and he has also set out in extenso the contents of each of these booklets. The petitioner has stated that a sum of Rs.3,36,00,000/- had been expended by the 1st respondent towards the cost of printing and circulating the pamphlets. The election petitioner has stated that about 28,00,000 pamphlets have been distributed. This statement has been refused by the 1st respondent. Therefore, the petitioner should be given an opportunity to substantiate their contentions through evidence.

54/77

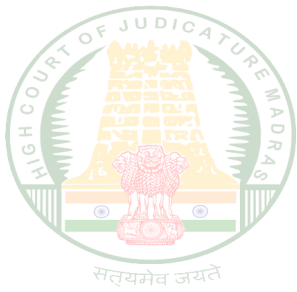


O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

Therefore, it cannot be said that there are no pleadings regarding this ground. Once again, it has to be reiterated that this statement contained in the petition has to be proved and the same can be done during the trial. Therefore, the application cannot be rejected at the threshold.

25. The next issue regarding the bribing the voters has been detailed in paragraphs 20 and 21 of the election petition, along with the names of voters who have witnessed the same. The 1st respondent would seek to strike off these contentions on the ground that there is nothing to show that the 1st respondent had indeed bribed the voters and the contents of the election petition also do not make out the same. They would rely upon a clipping showing money being put in the Aarathi plates and the 1st respondent going on a door-to-door campaign. While the 1st respondent would submit that the video clipping showing the amounts placed in the Aaarathi plate does not

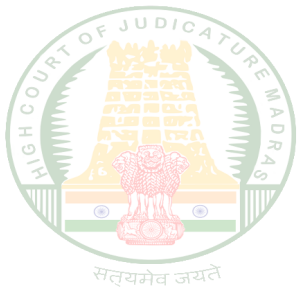


O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

show the presence of the 1st respondent and the video showing the petitioner campaigning does not indicate the date or time of the campaign to link it to the election in question, however it is their pleading that these acts have been done upon the instructions and consent of the 1st respondent. Once again, the allegation and counter allegation need to be proved through evidence. The issue of corruption of voters hits at the very heart of democracy and therefore, cannot be considered lightly either for setting aside the election petition or for ignoring the allegation made by a rival party. Therefore, these allegations cannot also be struck off at the threshold.

26. The next issue with reference to the unaccounted expenditure also needs to be proved by the election petitioner, particularly when he has come forward to give details of the expenses and amounts incurred for the same. The election petitioner has clearly set out the details of



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

the expenditure in a tabulated form and the same has to be ultimately proved by him. The 1st respondent, who has come forward to state that he has incurred a much lesser expenditure, should also substantiate the same. Therefore, the election petitioner should be afforded an opportunity and if at the threshold the election petition is rejected or the averments struck off, he would become remedyless.

27. The next offence that has been pleaded is the fact that the 1st respondent has been campaigning during the last 48 hours immediately before the polling date and also the fact that voters had been bribed during the last minute campaigning. The petitioner has given details of voters who have received money and the members of the 1st respondent's party who have paid the sum. The election petitioner should be permitted to substantiate the allegation made by him and therefore even on this ground, the averments relating to the same

57/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

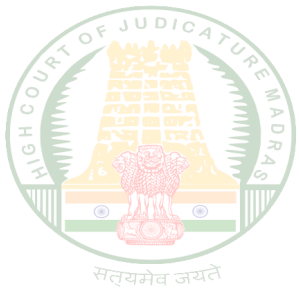
WEB COPY

cannot be struck off at the threshold. The election petitioner has also given details of the witnesses. The last ground on which the election of the 1st respondent is sought to be set aside has also been set out in detail in paragraph Nos.29 and 30 of the election petition, with the names of individuals who have received money and the witnesses to the same.

28. In all, a comprehensive reading of the election petition *prima-facie* shows that the election petitioner has not only provided the concise statement of material facts but has also given the details of each of these offences. Therefore, the 1st ground on which the election petition is sought to be rejected cannot be countenanced.

29. The next ground on which the election petition is sought to be rejected is that the petitioner has not stated as to how these offences has materially affected the voting. If the election petitioner is able to establish that, by reason of the corrupt practice of bribing the voters,

58/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

heavy election expenditure over and above the sanctioned limit, the voter has been influenced into casting his votes for the 1st respondent, it would definitely constitute a corrupt practice by reason of which the election of the 1st respondent has to necessarily be set aside and these acts have materially affected the voting. This has to be proved by the petitioner and he must be given an opportunity to prove the same. Therefore, on this ground also, the election petition cannot be rejected at the threshold.

30.Let us now analyze the judicial precedents with reference to the above grounds on which the election petition is sought to be set aside. Without being repetitive, the grounds of challenge are 2 fold:-

(a) The contents of the election petition does not contain the material facts as subscribed under the Representation of People Act, giving a cause of action; and

59/77

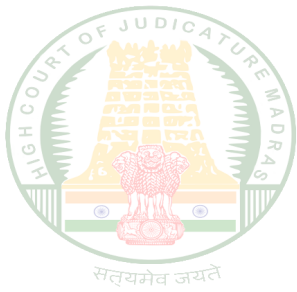


O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

(b) The election petitioner has not made out a case that the acts alleged has materially altered the voting.

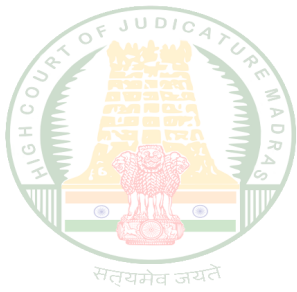
31. In the judgment, the Hon'ble Supreme Court reported in **1986 (SUPP) SCC 315 (Azhar Hussain v. Rajiv Gandhi)**, the issue that engaged the attention of the court was whether the dismissal of an election petition on the ground that it did not comply with the mandatory requirement to furnish material facts and particulars enjoined by Section 83 of the Act and did not disclose a cause of action was right. The Bench had observed that the result of an ***“election is subject to judicial scrutiny and control only with an eye on two ends.”*** First, to ascertain the ***“true”*** will of the people, and second, to ensure that only those persons who are eligible and qualified under the Constitution obtain the representation. They had held as follows with reference to lack of pleadings:



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

“22. The principle laid down is that the pleading in regard to matters where there is scope for ascribing an alleged corrupt practice to a returned candidate in the context of a meeting of which dates and particulars are not given would tantamount to failure to incorporate the essential particulars and that inasmuch as there was a possibility that witnesses could be procured in the context of a meeting at a place or date convenient for adducing evidence, the High Court should not even have permitted evidence on that point. In other words, no amount of evidence could cure the basic defect in the pleading and the pleading as it stood must be construed as one disclosing no cause of action. In the light of the aforesaid principle laid down by the Supreme Court which has held the field for more than 15 years, the High Court was perfectly justified in reaching the conclusion called into question by the appellant.”

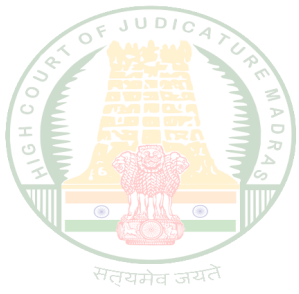


O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

If this dicta is telescoped to the facts of the instant case it can be seen that the election petitioner has given the details of the acts complained of, the list of witnesses, and the dates. These details have to ultimately stand the test of scrutiny during trial and therefore cannot be thrown out at the threshold. In the above referred case, the Hon'ble Supreme Court had observed that there were no particulars given in the Election Petition as to who had committed the acts alleged, whether it was authorised by the returned candidate, the dates on which the acts complained of has taken place etc whereas, as already stated, such averments find place in the instant Election Petition.

32. In the judgement reported in **2023 SCC OnLine SC 57 (Kanimozhi Karunanidhi v. A. Santhana Kumar)** , the Hon'ble Supreme Court had, referring to the 3 Judge Bench judgement of the Hon'ble Supreme Court in **Hari Shanker Jain vs Sonia Gandhi**



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

reported in (2001 (8) SCC 233), discussed what constitutes material facts as follows:

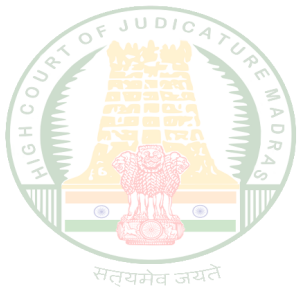
"23. Section 83(1)(a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the Civil Procedure Code, 1908. The expression "cause of action" has been compendiously defined to mean every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of court. Omission of a single



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of the party is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. (See Samant N. Balkrishna v. George Fernandez [(1969) 3 SCC 238: (1969) 3 SCR 603], Jitendra Bahadur Singh v. Krishna Behari [(1969) 2 SCC 433].) Merely quoting the words of the section like chanting of a mantra does not amount to stating material facts. Material facts would include positive statement of facts as also positive averment of a of a negative fact, if necessary. In V.S. Achuthanandan v. P.J. Francis [(1999) 3 SCC 737] this Court has held, on a conspectus of a series of decisions of this Court, that material facts are such preliminary facts which must be proved at the trial by a party to



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

establish existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

24. It is the duty of the court to examine the petition irrespective of any written statement or denial and reject the petition if it does not disclose a cause of action. To enable a court to reject a plaint on the ground that it does not disclose a cause of action, it should look at the plaint and nothing else. Courts have always frowned upon vague pleadings which leave a wide scope to adduce any evidence. No amount of evidence can cure basic defect in the pleadings."

The reason as to why **“material facts”** needed to be pleaded is to



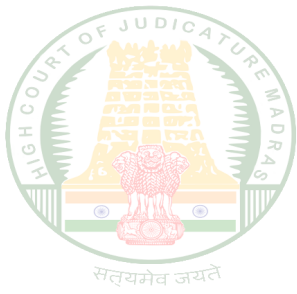
O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

enable the opposite party to know the case that he has to meet. The election petitioner in the instant case cannot be accused of not having put the 1st respondent on notice about his case. This fact is evident from a mere reading of the common affidavit filed in support of the application for striking off pleadings and for rejection of the petition. The affidavit is more in the form of a counter/written statement to the election petition.

33. The Hon'ble Supreme Court in the decision reported in **(1999) 3 SCC 737, (V.S. Achuthanandan vs P.J. Francis & Anr)** had observed that:

“An election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. Further, material facts are such primary facts which must be proved at the trial by



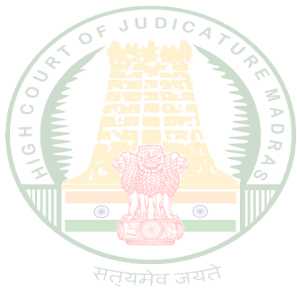
O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

a party to establish existence of a cause of action. It has also observed that so long as the claim discloses some cause of action or raises some questions fit to be decided by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out”

34.Further, in another judgement of the Hon’ble Supreme Court reported in **(2018) 14 SCC 1 (Madiraju Venkata Ramana Raju v. Peddireddigari Ramachandra Reddy)**, the Bench has observed as follows:

“38. It is well settled that the election petition will have to be read as a whole and cannot be dissected sentence-wise or paragraph-wise to rule that the same does not disclose a cause of action. Cause of action embodies a bundle of facts which may be necessary for the plaintiffs to prove in order to get a relief from the



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

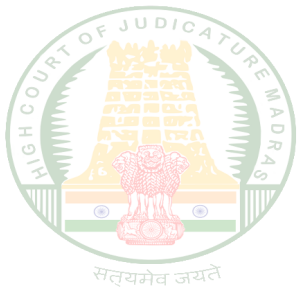
WEB COPY

Court. The reliefs claimed by the appellant are founded on grounds inter alia ascribable to Section 100(1)(d)(i). Further relief has been claimed to declare the appellant as having been elected under Section 101 of the 1951 Act. The cause of action for filing the election petition, therefore, was perceptibly in reference to the material facts depicting that the nomination form of Respondent 1 was improperly accepted by the Returning Officer.”

It has also to be borne in mind that a plaint cannot be rejected in part, and if the plaint is sustainable even on one ground, it cannot be rejected.

35. In the case of ***Sejal Glass Ltd. v. Navilan Merchants (P) Ltd., reported in (2018) 11 SCC 780*** the Hon'ble Supreme Court held as follows:

68/77

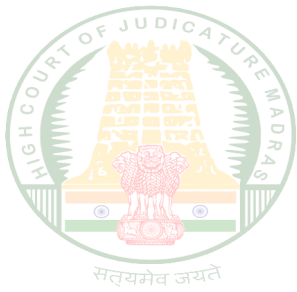


O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

“3.....What is important to remember is that the provision refers to the "plaint" which necessarily means the plaint as a whole. It is only where the plaint as a whole does not disclose a cause of action that Order 7 Rule 11 springs into being and interdicts a suit from proceeding.

4. It is settled law that the plaint as a whole alone can be rejected under Order 7 Rule 11. In Maqsud Ahmad v. Mathra Datt & Co. [Maqsud Ahmad v. Mathra Datt & Co., 1936 SCC OnLine Lah 337: AIR 1936 Lah 1021], the High Court held that a note recorded by the trial court did not amount to a rejection of the plaint as a whole, as contemplated by the CPC, and, therefore, rejected a revision petition in the following terms: (AIR p. 1022 para 4: SCC OnLine Lah para 4)



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

4. ... *There is no provision in the Civil Procedure*

Code for the rejection of a plaint in part, and

the note recorded by the trial court does not,

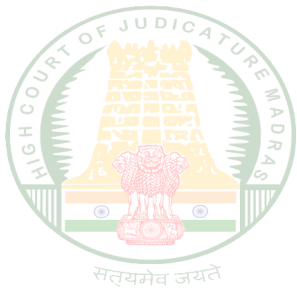
therefore, amount to the rejection of the plaint

as contemplated in the Civil Procedure Code.”

36. As already observed, from a reading of each of the grounds raised for setting aside the election of the petitioner, it is seen that the election petitioner has given the details which has also been countered by the 1st Respondent in his affidavit filed in support of the applications now under the consideration of this court.

37. Coming to the 2nd ground that there are no allegations that the acts of the 1st Respondent has materially altered the voting, may not be entirely correct as the election petitioner in respect of some grounds has averred that the act has materially altered the voting.

70/77



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

38. In the judgement ***Karikho Kri v. Nuney Tayang, (2024) 4 SCR 384***, the Hon'ble Supreme Court had discussed the issue of acceptance of nomination being improper and therefore materially affects the result of the election. In Paragraph No. 29, it has been held as follows:

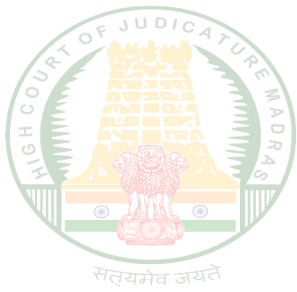
“29. Coming to the next ground, if the acceptance of a nomination is found to be improper and it materially affects the result of the election in so far as the returned candidate is concerned, Section 100(1)(d)(i) of the Act of 1951 would come into play. It would be appropriate and apposite at this stage for us to take note of precedential law on this point. In Vashist Narain Sharma v. Dev Chandra⁷, a 3-Judge Bench of this Court noted that the burden of proving that the improper acceptance of a nomination has materially affected the result of an election would arise in



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

one of three ways : (i) where the candidate whose nomination was improperly accepted had secured less votes than the difference between the returned candidate and the candidate securing the next highest number of votes, (ii) where the person referred to above secured more votes, or (iii) where the person whose nomination has been improperly accepted is the returned candidate himself. It was held that in the first case the result of the election would not be materially affected because if all the wasted votes were added to the votes of the candidate securing the next highest votes, it would make no difference to the result and the returned candidate would retain the seat. However, in the other two cases, the result may be materially affected and insofar as the third case is concerned, it may be readily conceded that such would be the conclusion.”



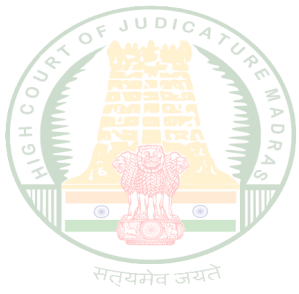
O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

They had finally held as follows:

33. Ergo, if acceptance of the nomination of the returned candidate is shown to be improper, it would automatically mean that the same materially affected the result of the election and nothing more needs to be pleaded or proved. However, whether acceptance of the nomination of Karikho Kri was actually improper is the main issue that requires to be addressed by us.

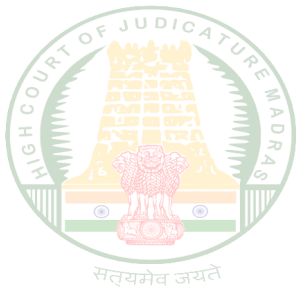
34. We may also take note of curial wisdom on the issue as to what would be the defects that would taint a nomination to the extent of rendering its acceptance improper. In Resurgence India v. Election Commission of India¹², a 3-Judge Bench of this Court observed that if the Election Commission accepts nomination papers in spite of blank particulars therein, it would directly violate the fundamental right of the citizen to know the criminal antecedents, assets, liabilities and educational



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

qualifications of the candidate. It was observed that accepting an affidavit with such blanks would rescind the verdict in Union of India v. Association for Democratic Reforms¹³. In effect, the Bench held that filing of an affidavit with blank particulars would render the affidavit nugatory. In Kisan Shankar Kathore (supra), the issue before this Court was whether non-disclosure of certain government dues in the nomination would amount to a material lapse impacting the election of the returned candidate. On facts, this Court found that the non-disclosure of electricity and municipal dues was not a serious lapse as there was a dispute raised in the context thereof. Having said so, this Court clarified that it would depend upon the facts and circumstances of each case as to whether such non-disclosure would amount to a material lapse or not. This Court, however, found that there were, in fact, material lapses by the returned candidate, inasmuch as he had failed to disclose the bungalow



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

standing in the name of his wife and also a vehicle owned by her. Further, he had also failed to disclose his interest/share in a partnership firm which amounted to a very serious and major lapse. The observations of this Court, in the context of improper acceptance of his nomination, are of relevance:

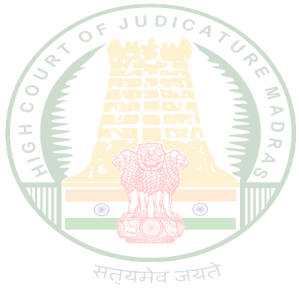
39. Therefore, from a complete and comprehensive reading of the election petition and the documents accompanying it, I see no reason to strike off the pleadings or reject the petition.

40. Consequently, O.A. No. 9 and 10 of 2022 in Election Petition No. 11 of 2021 stands dismissed. No costs. Post the election petition for filing written statement on 31.07.2025.

07.07.2025

Index: Yes/No
Speaking order/non-speaking order
srn

75/77



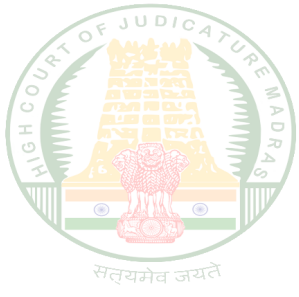
O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

WEB COPY

To

1. The Chief Election Commissioner,
Election Commission of India,
Nirvachansadan, Ashoka Road,
New Delhi 110 001.
2. The Chief Electoral Officer,
Election Commission of India,
Public (Elections) Department,
Secretariat, Fort St. George,
Chennai 600 009.
3. The District Collector cum District Returning Officer,
Dindigul District,
Tamil Nadu 624 004.
4. The Returning Officer,
131-Natham Assembly Consituency,
Natham Taluk, Dindigul District,
Tamil Nadu 624 401.
5. The DRO cum Election Nodal Officer,
131-Natham Assembly Consituency,
District Collector Office,
Dindigul, Tamil Nadu 624 004

76/77



WEB COPY



O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

P.T.ASHA.,

srn

O.A.Nos.9 and 10 of 2022
in E.L.P.No.11 of 2021

07.07.2025

77/77