

Anitha Radhakrishnan Vs. Pr.Manoharan

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Court : Chennai

Decided On : Sep-16-2013

Judge : K.Ravichandrabaabu

Appellant : Anitha Radhakrishnan

Respondent : Pr.Manoharan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

16. 09/2013 CORAM THE HON'BLE MR.JUSTICE K.RAVICHANDRABAABU
OA.748 of 2012 AND O.A.No.5 of 2013 in E.L.P.No.8 of 2011 ANITHA
RADHAKRISHNAN VS PR.MANO HARAN FOR PETITIONER : RAVICHANDRAN
FOR RESPONDENT : NOTAVAILABLE

ORDER

: O.A.No.748 of 2012 and O.A.No.5 of 2013 in E.L.P.No.8 of 2011
K.RAVICHANDRABAABU,J.

The applicant herein is the first respondent in the above election petition and the returned candidate. He has filed the application in O.A.No.748 of 2012 to reject the election petition under Order 7 Rule 11 CPC and other in O.A.No.5 of 2013 to permit him to produce the documents annexed therewith. The Election Petitioner in E.L.P.No.8 of 2011 is the first respondent in both these applications.

2. The election petitioner filed the above election petition seeking for declaration of the returned candidate viz., the applicant in these applications, from Thiruchendur Assembly Constituency in the election held on 13.4.2011 as void; for ordering re-scrutiny of the voting results recorded in the 210 electronic voting machines used for counting in the above said Assembly Constituency; for ordering repolling of 891 postal ballot papers ; to declare the election petitioner as duly elected member of the Tamil Nadu Legislative Assembly from the above said Constituency and for payment of costs and for other suitable reliefs.

3. The case of the election petitioner in the election petition is briefly stated as follows:- 3.1. He was one among the contesting candidates in the Tamil Nadu Assembly Elections 2011 in No.215, Tiruchendur Assembly Constituency in the elections held on 13.4.2011. The total number of voters in the Constituency were 1,89,951. He contested as a candidate belonging to All India Anna Dravida Munnetra Kalagam (AIADMK) with two leaves symbol. The first respondent (the applicant in both these applications) contested as a candidate of Dravida Munnetra Kalagam (DMK) with Rising Sun symbol. Right from the date of acceptance of nomination papers, the first respondent (the applicant in these applications) had distributed by himself and through his election agent and his party workers, lot of freebies to the voters with the sole object of attracting and inducing them to vote in his favour . The petitioner also learnt from his party workers that the first respondent has given donations to religious institutions, with the object of inducing a particular section of voters to vote in his favour. The petitioner presented a complaint in person on 8.4.2011 to the Election Observer of the said constituency and also to the District Election Officer, Tiruchendur, the Superintendent of Police, Tuticorin and the Returning Officer, Thiruchendur. Copies of the said complaint were also sent through fax to the Chief Election Commissioner, New Delhi and the State Election Commissioner. 3.2. The polling took place on 13.4.2011 by using 210 electronic voting machines at 210 polling booths. A total number of 1,45,351 votes were polled. The Returning Officer has not kept the postal papers (covers) received by him in safe custody until the commencement of the votes. No records with break up details of the postal ballot papers have been maintained by the Returning Officer. After the election was held on 13.4.2011, the first respondent, (the applicant in these applications) collected

almost all the postal ballot papers from the eligible voters with their signatures alone through his agents by bribing the eligible voters. Thereafter, the first respondent (the applicant herein) endorsed the tick marks in the postal ballot papers through his agents and got them attested by three or four attestors only. A verification of the said ballot papers would prove that the ink used by the voters for affixing their signatures and the ink used for making the tick marks are different and that would clearly establish the corrupt practice. Thus, the postal votes polled in favour of the first respondent (applicant herein) cannot be taken into account.

3.3. The provisions contained in Rule 23(6) of the Conduct of Election Rules, 1961 have not been properly complied with by the Returning Officer. These failures on the part of the election officer have materially affected the result of the election. The counting of postal ballot paper votes was not done as provided under Rule 54A of the said Rules. The covers in Form 13C were not shown to the counting agent of the election petitioner before they were opened for verification. Thus, the mandatory provisions contained in Rule 54A (4) were not followed during the counting of postal ballot papers. The Returning Officer did not scrutinise the declaration in Form 13A contained in each cover. Thus, the Rule 54(A)(3) of the said Rules was not complied with. The petitioner gave a complaint in writing to the Returning Officer. In addition to that, he also brought to his knowledge of the irregularity in counting of the votes at Booth No.93. But his complaint was rejected by the Returning Officer at the instance of the first respondent (applicant herein) without assigning valid reasons and thus it has materially affected the result of the election.

3.4. The authentication of the postal ballot papers were not verified with the prescribed register. The postal ballot papers were not issued to the voters as per Rule 23 of the Conduct of Election Rules, 1961. Similarly the recording of vote was not done and the elector has not signed the declaration as per Rule 24 of the said Rules. As per the instructions issued, the postal ballot papers should be in pink colour whereas some of the postal ballot papers were in other colour. The return of postal ballot papers is not in accordance with Rule 27 of the said Rules.

3.5. When the electronic voting machine for Booth No.93 was taken for counting it was found that the button meant for closing the voting was not operated and his objections raised to the counting of the votes polled through the said machine was rejected by the Returning Officer without any justifiable grounds. Two other

electronic voting machines were found not working at the time of counting. The first respondent (the applicant herein) has spent more than the permitted amount of Rs.16 lakhs and thus has concealed very many expenses incurred by him.

4. On these grounds as stated supra, the election petitioner sought the relief in the election petition. 5 . The first respondent (the applicant herein) in the election petition filed a counter and denied the averments made therein. Since the present applications are filed one for seeking rejection of the election petition and other for seeking leave to permit production of the documents viz., i) copy of the Election Petition No.8 of 2011; (ii) copy of the affidavit filed with the election petition; (iii) Document No.1 filed along with the election petition and (iv) Document No.2 filed along with the election petition, I am not traversing to the various contentions raised in the counter affidavit filed in the original election petition. As the applicant herein, who is the first respondent in the election petition, has filed the present application seeking for rejection of the election petition, I consider that it is enough to traverse with the allegations made in the affidavit filed in support of the application in O.A.No.748 of 2012 seeking for rejection of the Election Petition under Order 7 Rule 11 CPC and the counter filed to the said application for the purpose of deciding these applications.

6. For the sake of convenience, let me call the applicant in O.A No.748 of 2012 and 5 of 2013 as the applicant and the first respondent in these applications as the election petitioner or petitioner. O.A.No.748 of 2012 7. The applicant filed the above application No.748 of 2012 for rejection of the election petition on the following reasons:- 7.1. The election petition has been filed without following the mandatory provisions contained in the Madras High Court Election Petition Rules 1967 and the provisions contained in the Representation of the People Act. The election petitioner has not attested every copy of the election petition and every annexure to the election petition under his own signature as a true copy. As per Rule 9(a) of Madras High Court Election Petition Rules 1967 and Section 81(3) of the Representation of the People Act, every copy of election petition and every annexure to the same shall be attested by the petitioner as a true copy. Since the copies served on the applicant do not bear any signature of the petitioner acknowledging his attestation as true copy, the petitioner has not followed the

provisions under Rule 83(b) of the Representation of the People Act. No triable issues could be framed from the averments of the election petition. The allegation contained in the election petition are not specific but only vague and baseless. The petitioner has not filed any affidavit to support his allegation of corrupt practices. No specific averments have been made as to what are the corrupt practice adopted; by whom it was adopted; when and how it was adopted. 7.2. The allegation of distribution of freebies is an absolute false allegation and the petitioner omitted to mention any details with regard to date of distribution of the alleged freebies and by whom those freebies were distributed. These allegations were stated to have been made from the hearsay of the party workers of the election petitioner and nothing is mentioned about from whom, the petitioner came to know of the alleged distribution of freebies. Likewise the allegation of giving donations to religious institutions is also very vague without mentioning any date and from which person the petitioner came to know those information and to whom it was donated. Since these allegations were made without any substance, it is liable to be struck down. To the knowledge of the applicant, no complaint was made by the petitioner to any person about the conduct of the applicant till the completion of election. Even assuming that he made a complaint, the copy of the complaint enclosed along with the election petition does not disclose anything about the distribution of cash or other things by the applicant or by his agent or relatives except with some vague allegations as if the applicant was planning to distribute money in the last 5 days before election . 7.3. All accounts of the election expenditure of the applicant were already submitted to the Election Commission. The petitioner made false and frivolous allegations without any substance or basis and without mentioning as to what are the expenses which are concealed in the accounts submitted by the applicant and how much is the amount spent over and above the permitted amount and where from he got such particulars regarding the alleged over expenditure etc. Thus, these vague allegations are liable to be rejected. 7.4. The postal ballot papers and covers were under the safe custody of the election officers and were opened only in the presence of the counting agents and as such the election officers have scrupulously followed the election norms. The allegation that the applicant collected all the postal ballot papers from the eligible voters with their signature

alone is a false allegation. No complaint was made with regard to the procedure followed by the election officers by any of the candidates or their agents till the declaration of the results. 7.5. The allegation with regard to the postal ballot papers are very vague as it does not contain the details as to when and by whom the ballot papers were collected ; what was the corrupt practice and what was the bribe and to whom it was given . The petitioner attributed corrupt practice on the applicant only on the basis of the alleged rumors from his so called agents without specifically stating any other details. The allegation with regard to the ink used by the voters in the postal ballot papers is yet again a false allegation. All votes polled in favour of the applicant are genuine votes. To the knowledge of the applicant, the Election Officers have been strictly following all the rules and regulations. Maintenance of records for postal ballots are the matters concerned with the election officers with which the first respondent has no role to play. Even assuming without admitting that the allegations levelled are to be true, the irregularities alleged against the election officers in maintaining the records cannot be considered to be a corrupt practice attributable to the applicant. 7.6. The counting were done as per the rules and regulations and the allegations that the cover in Form 13-C were not shown to the counting agent of the election petitioner is absolutely false. The election petitioner does not state anything about on what basis he came to the conclusion that all the rejected ballot papers were procured by the applicant by adopting corrupt means. No complaint was filed by the petitioner either against the agent of the applicant or about the counting of the votes in Booth No.93. The petitioner has not mentioned as to which agent collected the postal votes for the applicant and from whom he collected the votes. The petitioner has not mentioned about what was the irregularities in issuing the ballot papers. 7.7. Likewise, the petitioner has not given the details with regard to the alleged violation of Rule 24. The petitioner merely states that the postal ballot papers were not in pink colour and does not state in what colour they were issued and therefore the allegations are without any particulars. The petitioner failed to mention on what basis he came to the conclusion that the Returning Officer has not verified the authenticity of the postal ballot papers. With regard to the allegation made in respect of the voting machine for booth No.93, it is made without any basis and to the knowledge of the applicant neither there was any

objection nor rejection by the Returning Officer till the declaration of the results.

8. The election petitioner opposed the said application and filed a counter affidavit, wherein it is stated as follows:-

8.1. The election petition was filed by the petitioner accompanied by copies of the election petition attested under his own signature as true copies to be served on all the respondents. Along with the election petition, the petitioner also filed copies of the documents filed in support of the election petition attested under his own signature as true copies to be served on all the respondents. Even assuming without admitting that the copies of the election petition and the documents have been filed without his signature as true copies, the first respondent has not shown the nature of the prejudice caused to him.

8.2. The petitioner filed the affidavit to support his allegation of corrupt practice along with the election petition before the Court. Regarding corrupt practices adopted by the applicant, the election petitioner has made extensive averments in the election petition and only during the trial he would be able to prove the same by adducing oral and documentary evidence. The election petitioner had given the particulars of freebies distributed by the applicant. His party workers and other independent witnesses are ready to depose the truth before the Court at the time of trial.

8.3. On hearing from his party workers that the applicant / by himself and through his relatives was planning to distribute money to the voters on the night hours between 2 a.m. to 5 a.m. on the last five days, the election petitioner had presented a complaint in person on 8.4.2012 before the Observer. The copy of the said complaint was submitted to the Superintendent of Police, Tuticorin, the District Election Officer and the Returning Officer. Further copy was sent to the Chief Election Commissioner, New Delhi and the State Election Commissioner through fax on 8.4.2011 and the said complaint would reveal the corrupt practice adopted by the applicant. The applicant had spent more than the permitted amount of Rs. 16 lakhs and concealed very many expenses incurred by him and the same can be established only at the time of trial.

8.4. Counting of postal votes was not done on 13.5.2011 at 8 a.m. as prescribed under Rule 54A (1) of the said Rules and the same was counted after counting the votes from electronic voting machines which is contrary to the Rules. The applicant collected almost all the postal ballot papers from the eligible voters with their signature alone through his agents by corrupt practice of bribing those voters and later endorsed the tick

marks in the postal ballot papers through his agents and got them attested through only three or four attestors. Verification of the ink used by the voters and the ink used for marking the tick marks in the postal votes would establish the corrupt practice adopted by the applicant. The said allegation made by the petitioner can be proved only at the time of trial by adducing evidence. 8.5. The allegation made by the petitioner that the election Officers have not strictly followed all the rules and regulations for the conduct of the election including that are to be followed for postal ballots has to be established only at the time of the trial . Moreover no counter affidavits have been filed by the election officers in this case and as such it cannot be decided either way without adducing evidence in this regard during trial. The averments made in paragraph 15, 16,17,18,20 to 22 would be proved only during the trial . The allegations contained therein are matters for trial. The election petitioner as far as possible have made specific averments as regards corrupt practice adopted by the applicant and the manner in which the postal ballot papers were cast and counted. The allegations made by the applicant for rejection of the election petition can be gone into only at the time of trial wherein the election petitioner can lead evidence to support his plea of corrupt practice adopted by the applicant. The merits or otherwise of the election petition cannot be gone into in this application without due trial therefor. The applicant failed to apply for rejection of the election petition immediately after the receipt of the notice served in the election petition and has preferred after a lapse of one year which is not maintainable.

9. The learned counsel Mr.Ravichandran, appearing for the applicant submitted as follows:- 9.1. The election petitioner raised mainly two grounds for challenging the election of the applicant herein viz., that the applicant committed corrupt practice during the election and that the postal ballot papers were not cast in accordance with law. There was no cause of action for filing the election petition on these grounds as no material particulars are available in the election petition while making such allegations. The mandatory provisions under the Representation of People Act 1950 have not been complied with. Form 25 has not been filed in accordance with law. Three affidavits have to be filed by the election petitioner viz., (1) for election petition (2) for annexures and schedules and (3) in Form 25. The election petitioner filed only one affidavit along with the election petition. After

commencement of the trial he filed other two affidavits. The election petition does not contain material facts with regard to the corrupt practices. In the absence of material facts and particulars with regard to the alleged corrupt practices, the mandatory requirement under Section 83 has not been complied with. 9.2. The complaint dated 8.4.2011 referred to by the petitioner as Document No.1 would show that the allegation is that the applicant had only plans to distribute money. No FIR was filed. No currency was seized and there are no material particulars. It is also not stated by the election petitioner as to how he came to know about the allegations made in Document No.1. Section 83(c) contemplates verification as per CPC and the affidavit must be filed in support of the pleadings. Form 25 is contemplated under Rule 94-A. Form 25 requires specification of corrupt practices both by his own knowledge and on information. If the details are not available, then it cannot be called as Form 25. Even the annexures and schedules are to be verified like the election petition. There is violation of procedure contemplated under Section 83(1). Regarding the allegation with regard to the postal ballot papers the petitioner has not disclosed as to how he got the knowledge of this allegation. No complaint was filed at the time of counting. The allegations made will not come within the parameters of Section 100. 9.3. The petitioner has not given the details regarding the deposit of the sum of Rs. 2000/-. The affidavit filed along with the election petition dated 27.6.2001 served on the applicant is not in conformity with Section 83(1) as no attestation or oath Commissioner's signature and seal is found. Thus, the affidavit is not in accordance with Form 25. The copy served on the applicant does not contain the details about the swearing of the affidavit. While the affidavit says paragraphs 6, 11 to 16 and 18 to 25 are with knowledge and information; election petition says only on information from workers. Therefore, the election petition referred to in the affidavit is not the one filed before the Court. The election petitioner has not filed the chalan depositing the sum of Rs.2,000/- along with the election petition . As the copy of the said chalan has not been served on the first respondent the election petition has to be rejected. 9.4. The learned counsel for the applicant in support of his submissions relied on the following decisions:- 1. M.Karunanidhi Vs. H.V.Handa and Others (AIR 1983 SC558 2. Ravinder Singh Vs. Janmeja Singh and Others (AIR 2000 SC3026 3. V.Narayanaswamy Vs. C.P.Thirunavukkarasu (AIR 2000 SC694 4.

P.Chidambaram Vs. R.S.Raja Kannappan (2012 (3) CTC673 5. Dr. Shipra Vs. Shantilal Khoiwal (AIR 1996 SC1691 6. Jagat Kishore Prasad Narain Singh Vs. Rajendra Kumar Poddar and others (AIR 1971 SC342 7. Sharif-ud-Din Vs.Abdul Gani Lone (AIR 1980 SC303 8. Amarendra Kumar Amar alias Dr.Amar Vs. V.Sharad Yadav (AIR2002 Patna 102) 9. Aeltemesh Rein Vs. Chandulal Chandrakar and Others (1981 (2) SCC689.

10. P.A.Mohammed Riyas Vs. M.K.Raghavan and Others (2012 (5) SCC511 10. Per contra, the learned counsel Mr.V.Raghavachari appearing for the election petitioner/ first respondent in these applications submitted as follows:- 10.1. In so far as the complaint of non-filing of three affidavits together is concerned, the election petitioner filed two Applications in No.1025 and 1026 of 2012 seeking for permission to file those two affidavits before this Court and the same were allowed on 8.2.2013. The said order was passed by this Court as the first respondent in the election petition had given no objection for receiving those two affidavits. Therefore, the first respondent cannot be permitted to raise an objection now on that score. All the documents including copies were duly served on the applicant. All the documents were duly signed by the petitioner including the one which were marked as true copies. Affidavit was filed in respect of certain allegations which are made regarding corrupt practice . What the law requires is only to file an affidavit supporting the allegation of Corrupt practice. Affidavit should be filed containing two aspects 1. Source of Information.

2. Within the knowledge . Not necessarily every allegation made in the petition should also find a place in the affidavit. Hence Objection cannot be raised by the other side. The petitioner has set out in detail as regards the corrupt practice. 680 votes were polled in favour of successful candidate. 45 votes were polled in favour of the petitioner. Total votes polled in favour of the petitioner were 68101. Total votes polled in favour of the Returned candidate were 68741 and the difference is

640. Fraud was played in respect of postal ballots.' 10.2. The learned counsel also submitted that the petitioner has made substantial allegations from para 11 onwards till para 23 only as regards postal ballots. The applicant / first respondent has filed a counter wherein he did not deny that. In para 14 the petitioner has

specifically stated that 3 or 4 attestors alone have signed all the ballot papers which have been filed by the applicant/1st respondent. The petitioner has stated that as per instructions issued, the postal ballot papers should be in pink colour whereas some of the postal ballot papers were in other colour. 10.3. Returning Officer is not a necessary party. O.A.Nos. 964 and 966 of 2012 were allowed by this Court for deleting the Returning Officer. The petitioner has filed an affidavit. Law does not require repetition of what has been said in the election petition. In terms of Form 25 only the petitioner has filed the affidavit. The petitioner has also stated that freebies had been given, money has been distributed; votes have been secured by wrongful means. On those allegations evidence is warranted which can be done only during the trial. The details as required under Section 83(1) of the said Act have been pleaded by the election petitioner. Cause of action had been disclosed in the Election Petition. Hence, the election petition need not be rejected under Order 7 Rule 11 CPC. 10.4. Learned counsel for the election petitioner in support of his submissions relied on the following decisions:-

1. Michael B.Fernandes Vs. C.K.Jaffar Sharief and Others (AIR 2002 SC1041

2. P.Chidambaram Vs. R.S.Raja Kannappan (2012

(3) CTC673

3. Fizal Vs. Ussainar Kunhi (2003

(2) KLT268)

4. Kalyansingh Chauhan Vs. Joshi (2011

(1) KLT SN60SC)

5. K.Muraleedharan Vs. V.V.Raghavan (1999

(2) KLT377

6. K.M.Mani Vs. P.J.Antony and Others (AIR 1979 SC234

7. Bhikaji Keshao Joshi and Another Vs. Brijlal Nandilal Biyani and Others (AIR 1955 SC610

8. 2012

(7) SCC788(Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Others)

11. Heard the learned counsels on either side. I have given careful consideration to the pleadings of the respective parties and the arguments advanced on their behalf. The point for consideration in this application is as to whether the election petition is liable to be rejected under Order 7 Rule 11 CPC on the grounds stated in the application.

12. The above application is filed under Order 7 Rule 11 CPC for rejecting the election petition on the grounds set out in the application. Order 7 Rule 11 CPC deals with rejection of plaint and the same is extracted hereunder: Rejection of plaint.- The plaint shall be rejected in the following cases:- (a) where it does not disclose a cause of action; (b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so; (c) where the relief claimed is properly valued, but the plaint is written upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so; (d) where the suit appears from the statement in the plaint to be barred by any law; (e) where the plaint was not filed in duplicate; (f) where the plaintiff fails to comply with the provisions of Rule 9 Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff) 13. Thus, as per Order 7 Rule 11 CPC, the plaint shall be rejected by the Court only under the circumstances stated therein and not otherwise. In so far as the present case is concerned, sub clause (a) of Order 7 Rule 11 CPC is said to be attracted. According to the applicant, the election petition does not disclose a cause of

action. Though, the code of Civil Procedure has not defined the term ".cause of action"., it has been dealt with by the Courts and explained as to what constitutes 'the cause of action' in very many cases.

14. I can straight away refer to one of such decision of the Apex Court reported in 2007 (11) SCC335(Alchemist Ltd., and Another Vs. State Bank of Sikkim and Others) wherein the expression ".cause of action". came up for consideration and interpretation by the Apex Court. In the said decision, at paragraph Nos. 20 to 22, it has been held as follows:- ".20. It may be stated that the expression 'cause of action' has neither been defined in the Constitution nor in the Code of Civil Procedure, 1908. It may, however, be described as a bundle of essential facts necessary for the plaintiff to prove before he can succeed. Failure to prove such facts would give the defendant a right to judgment in his favour. Cause of action thus gives occasion for and forms the foundation of the suit.

21. The classic definition of the expression 'cause of action' is found in *Cooke v. Gill*, (1873) 8 CP107:

42. LJ PC98 wherein Lord Brett observed: ". 'Cause of action' means every fact which it would be necessary for the plaintiff to prove, if traversed, in order to support his right to the judgment of the court"..

22. For every action, there has to be a cause of action. If there is no cause of action, the plaint or petition has to be dismissed.". (emphasis supplied) 15. Again at paragraph Nos. 25 and 37 of the same decision, the Apex Court has further held as follows:- ".25. The learned counsel for the respondents referred to several decisions of this Court and submitted that whether a particular fact constitutes a cause of action or not must be decided on the basis of the facts and circumstances of each case. In our judgment, the test is whether a particular fact(s) is (are) of substance and can be said to be material, integral or essential part of the lis between the parties. If it is, it forms a part of cause of action. If it is not, it does not form a part of cause of action. It is also well settled that in determining the question, the substance of the matter and not the form thereof has to be considered.

37. From the aforesaid discussion and keeping in view the ratio laid down in catena of decisions by this Court, it is clear that for the purpose of deciding whether facts averred by the petitioner-appellant, would or would not constitute a part of cause of action, one has to consider whether such fact constitutes a material, essential, or integral part of the cause of action.". (emphasis supplied)

16. Thus, from the above decision of the Apex Court in respect of the expression ".cause of action "., it could be seen that it is nothing but a bundle of essential facts necessary for the plaintiff to prove. Not only those facts must be essential, but it should also be material and integral so as to form part of cause of action. Needless to say that essential facts means, facts with specific particulars or specific details. A statement of facts may be general in nature. Unless such statement also contains the material particulars with specific details, it cannot be said that those facts give rise a cause of action. A vague or generalised statement cannot be construed as a material fact in the absence of specification of the same with details.

17. Going by the provision of Order 7 Rule 11 CPC and keeping in mind the above decision of the Hon'ble Supreme Court, let me consider the present application to find out as to whether the applicant has made out a case for rejection of the election petition.

18. On a careful analysis of the allegations made in the application, it is seen that the applicant seeks to reject the election petition on the grounds, which are briefly stated as follows:- (a) The mandatory provisions under Madras High Court Election Petition Rules 1967 and the Representation of People Act were not followed. (b) Copies of election petition and its annexures served on the applicant were not attested as true copies by the election petitioner and therefore there is a violation of Rule 9(a) of Madras High Court Election Petition Rules 1967 and Section 81(3) of the Representation of People Act. (c) The allegations contained in the election petition were vague and not specific and therefore no triable issues could be framed. (d) Supporting affidavit on the allegation of corrupt practices was not filed by the election petitioner. (e) No specific averments and details were given with regard to the allegation of distribution of freebies and donations. (f) The election petitioner has not made any allegation of distribution of cash to the voters.

On the other hand, the averment was in respect of the alleged intended action of the returned candidate to distribute cash to the voters. Thus, in the absence of actual commission, the election petition cannot be maintained. Even in respect of alleged intention of distributing cash to voters, no specific details were given. (g) The election petitioner has not given specific details with regard to the so called excess expenses met out by the returned candidate beyond the permitted limit. Thus, based on mere vague allegation of excess expenses, the election petition cannot be proceeded with. (h) Regarding the postal ballot papers, the election petitioner has made only vague averments without any details and specific allegations. (i) Maintenance of records even assuming to be irregular or improper, the same cannot be attributed to the first respondent. (j) The election petitioner has not given the details of colour in which the postal ballot papers were issued except by saying it was not in pink colour. (k) Regarding the allegation of rejected ballot papers, the election petitioner has not given any details. (l) Regarding the mal-functioning of electronic voting machine at Booth No.93, no complaint was given by anybody till the declaration of results.

19. Before considering the rival contentions, let me first consider the case laws on this aspect. 19.1 Recently, the Hon'ble Supreme Court in a decision reported in 2012 (7) SCC788(Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Others) has considered the issue with regard to the maintainability /preliminary objection raised in an election petition. After an elaborate discussion of the law on the subject and upon discussing various case laws of the Apex Court, commencing from the year 1964, Their Lordships have observed that the Courts need to be cautious in dealing with the dismissal of the petitions at the threshold and exercise their powers of dismissal only in cases, where even on a plain reading of the petition no cause of action is disclosed. 19.2. It is further observed therein that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. It is observed therein that the format of the affidavit is at any rate not a matter of substance and the absence of an affidavit or an affidavit in the form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so. The Apex Court has also observed that there is no dilution

of the obligation on the part of the election petitioner to discharge his onus by proving the allegation made by him in the election petition, merely because the Court refuses to dismiss a petition at the threshold. The relevant paragraphs 16,17,18,22 and 28 are extracted hereunder:- 16. We need only emphasise that the burden which lies on an election petitioner to prove the allegations made by him in the election petition whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no dilution of that obligation when the court refuses to dismiss a petition at the threshold. All that the refusal to dismiss the petition implies is that the appellant has made out a case for the matter to be put to trial. Whether or not the petitioner will succeed at the trial remains to be seen till the trial is concluded. Even so on a somewhat erroneous understanding of the law settled by this Court, the successful candidates charged with commission of corrupt practices or other illegalities and irregularities that constitute grounds for setting aside their elections seek dismissal of the petitions in limine on grounds that are more often than not specious, in an attempt to achieve a two fold objective. First, it takes a chance of getting the election petition dismissed on the ground of it being deficient, whether the deficiency be in terms of non-compliance with the provisions of Sections 81, 82 & and; 117 of the Act or on the ground that it does not disclose a cause of action. The second and the more predominant objective is that the trial of the election gets delayed which in itself sub-serve the interests of the successful candidate. Dilatory tactics including long drawn arguments on whether the petition discloses a cause of action or/and whether other formalities in the filing of the petition have been complied with are adopted with a view to prevent or at least delay a trial of the petition within a reasonable time frame.

17. While a successful candidate is entitled to defend his election and seek dismissal of the petition on ground legally available to him, the prolongation of proceedings by prevarication is not conducive to ends of justice that can be served only by an early and speedy disposal of the proceedings. The Courts have, therefore, to guard against such attempts made by parties who often succeed in dragging the proceedings beyond the term for which they have been elected. The Courts need to be cautious in dealing with requests for dismissal of the petitions at

the threshold and exercise their powers of dismissal only in cases where even on a plain reading of the petition no cause of action is disclosed. Beyond that note of caution, we do not wish to say anything at this stage for it is neither necessary nor proper for us to do so.

18. Mr. Rao next argued that the election petition was liable to be dismissed also on the ground that the same was not accompanied by an affidavit which the election petitioner was obliged to file in terms of proviso to Section 83 (1) of the Act. He urged that the use of the word shall in the proviso made it mandatory for the petitioner to support the averments in the election petition with an affidavit in Form 25 prescribed under Rule 94 (A) of the Conduct of Election Rules, 1961. Inasmuch as an affidavit had not been filed in the prescribed format, the election petition, argued Mr. Rao, was no election petition in the eye of law and was, therefore, liable to be dismissed in limine. Reliance in support of his submissions was placed by Mr. Rao upon the decisions of this Court in *M. Kamalam v. Dr. V.A. Syed Mohammed* (1978) 2 SCC659 *R.P. Moidutty v. P.T. Kunju Mohammad* (2000) 1 SCC481 *V. Narayanswamy v. C.P. Thirunavukkarasu* (2000) 2 SCC294 *Kamalnath v. Sudesh Verma* (2002) 2 SCC410 *Mithilesh Kumar Pandey v. Baidyanath Yadav & Ors.* (1984) 2 SCC1 *Ravinder Singh v. Janmeja Singh* (2000) 8 SCC191 *Ram Sukh v. Dinesh Aggarwal* (2009) 10 SCC541
..... 22 . Even otherwise the question whether non-compliance of the proviso to Section 83 (1) of the Act is fatal to the election petition is no longer res-integra in the light of a three-Judge Bench decision of this Court in *Sardar Harcharan Singh Brar v. Sukh Darshan Singh & Ors.* (2004) 11 SCC196 In that case a plea based on a defective affidavit was raised before the High Court resulting in the dismissal of the election petition. In appeal against the said order, this Court held that non-compliance with the proviso to Section 83 of the Act did not attract an order of dismissal of an election petition in terms of Section 86 thereof. Section 86 of the Act does not provide for dismissal of an election petition on the ground that the same does not comply with the provisions of Section 83 of the Act. It sanctions dismissal of an election petition for non-compliance of Sections 81, 82 and 117 of the Act only. Such being the position, the defect if any in the verification of the affidavit filed in support of the petition was not fatal, no matter the proviso to Section 83(1) was couched in a mandatory form.

28. The decisions relied upon by Mr. Rao do not in terms deal with a comparable situation to the one this Court was dealing with in Sardar Harcharan Singh Brars case (supra). The format of the affidavit is at any rate not a matter of substance. What is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter in a form other than the one that is stipulated in the Rules. The absence of an affidavit or an affidavit in a form other than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is cured by the election petitioner by filing a proper affidavit when directed to do so.".

19.3. In a recent decision reported in 2012 (3) CTC673 P.Chindambaram Vs. R.S.Raja Kannappan), a learned Judge of this Court, while considering similar application filed under Order 7 Rule 11 CPC seeking for rejecting the election petition, has held as follows:

15. The next contention raised on behalf of the applicant was that the Election Petitioner does not satisfy the requirements of Section 83 of the Representation of Peoples Act, 1951. 15.1. Before, advertent to the said contention, it would be useful to extract the said provision which is usefully extracted here under:#83. Contents of petition:- (1) An election petition-- (a) shall contain a concise statement of the material facts on which the petitioner relies; (b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and (c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings: Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof. (2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.". 15.2. The said provision contemplates that the Election Petition shall contain certain statement of material facts on which the Election Petitioner relies, by giving full particulars of corrupt practice, including the full statement as far as possible about the names of the parties alleged to have committed such corrupt practice, the date and place of commission of each such

practice. 15.3. In the case on hand, the Election Petitioner, as referred earlier, referred about the various corrupt practice caused by the applicant, the name of the persons who have indulged in such corrupt practice, the vehicles in which the named persons came and distributed the money and the date and place when and where it was distributed. Further more, the above referred provision clearly spells out that the Election Petition shall contain full particulars of any corrupt practice including a full statement, as far as possible the names of parties alleged to have committed such corrupt practice and the date and place of such practice. A reading of the entire election petition would disclose that not only the election petitioner has raised several grounds but also had set out in detail about the incidents. It requires a detailed trial. At this juncture, it cannot be said that it does not disclose cause of action or material facts and full particulars of corrupt practice was not alleged. The pleadings made in the Election Petition has to be substantiated by letting in evidence along with the substantial documentary evidence. At this stage, to say that the pleadings do not disclose any material facts, material evidence or that it lacks material facts or evidence cannot be accepted. If there is total failure to mention about the corrupt practice without mentioning the date, place and the persons who have indulged in the said corrupt practice, one can understand that the Election Petition does not disclose anything to substantiate the corrupt practice adopted by the applicant.". (emphasis supplied) 19.4. In the decision reported in AIR 2000 SC3026(Ravinder Singh Vs.Janmeja Singh and others) the Apex Court has held as follows:- ".10. Proviso to Section 83(1) of the Act lays down, in mandatory terms, that where an election petitioner alleges any corrupt practice, the election petition shall also be accompanied by an affidavit, in the prescribed form, in support of the allegations of such practice and the particulars thereof. The affidavit, which has been filed in support of the election petition, does not at all deal with the charge of bribery falling under Section 123 (1) of the Act. Leaving aside the questions that the affidavit is not even in the prescribed form - Form 25. of the conduct of Election Rules, the allegations of corrupt practice made in the election petition are not supported by the otherwise defective affidavit either. All the names of the informants which have been given in the affidavit relate to the corrupt practice under Section 123(4) and the affidavit in this respect is a verbatim reproduction of

the verification clause of the election petition concerning corrupt practice under Section 123(4). No name of any informant has been mentioned in respect of the allegations of corrupt practice under Section 123(1) in the affidavit. In the absence of the requisite affidavit filed in support of the allegation of corrupt practice under Section 123(1) of the Act, as detailed in the election petition, no issue could be raised for trial.

11. Section 83 of the Act is mandatory in character and requires not only a concise statement of material facts and full particulars of the alleged corrupt practice, so as to present a full and complete picture of the action to be detailed in the election petition but under the proviso to Section 83(1) of the Act, the election petition levelling a charge of corrupt practice ".is required, by law, to be supported by an affidavit ".in which the election petitioner is obliged to disclose his source of information in respect of the commission of that corrupt practice. The reason for his insistence is obvious. It is necessary for an election petitioner to make such a charge with full responsibility and to prevent any fishing and roving enquiry and save the returned candidate from being taken by surprise, in the absence of proper affidavit, in the prescribed form, filed in support of the corrupt practice of bribery, the allegation pertaining thereto, could not be put to trial the defect being of a fatal nature.". 19.5. In the decision reported in AIR 2000 SC694(V.Narayanaswamy Vs. P.Thirunavukkarasu) the Apex Court has held as follows:- ".24. It will be thus seen that an election petition is based on the rights, which are purely the creature of statute, and if the statute renders any particular requirement mandatory, the court cannot exercise dispensing powers to waive non-compliance. For the purpose of considering a preliminary objection as to the maintainability of the election petition the averments in the petition should be assumed to be true and the court has to find out whether these averments disclose a cause of action or a triable issue as such. Sections 81, 83(1)(c) and 86 read with Rule 94-A of the Rules and Form 25 are to be read conjointly as an integral scheme. When so read if the court finds non-compliance it has to uphold the preliminary objection and has no option except to dismiss the petition. There is difference between ".material facts". and ".material particulars".. While the failure to plead material facts is fatal to the election petition the absence of material particulars can be cured at a later stage by an appropriate amendment. ".Material

facts". mean the entire bundle of facts, which would constitute a complete cause of action and these must be concisely stated in the election petition, i.e., clause (a) of sub-section (1) of Section 83. Then under clause (b) of sub-section (1) of Section 83 the election petition must contain full particulars of any corrupt practice. These particulars are obviously different from material facts on which the petition is founded. Charge of corrupt practice being quasi-criminal in nature the court must always insist on strict compliance with the provisions of law. In such a case it is equally essential that the particulars of the charge of allegations are clearly and precisely stated in the petition. 19.6. In the decision reported in 2011 (11) SCC786(Kalyan Singh Chouhan Vs. C.P.Joshi), the Apex Court has held as follows:- 17. During the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue

18. In *Gajanan Krishnaji Bapat & Anr. v. Dattaji Raghobaji Meghe & Ors.*, AIR 1995 SC2284 this Court held that the court cannot consider any fact which is beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality the result of the election has been materially affected.

19. Pleadings and particulars are required to enable the court to decide the rights of the parties in the trial. Thus, the pleadings are more to help the court in narrowing the controversy involved and to inform the parties concerned to the question in issue, so that the parties may adduce appropriate evidence on the said issue. It is settled legal proposition that ".as a rule relief not founded on the pleadings should not be granted.". Therefore, a decision of a case cannot be based on grounds outside the pleadings of the parties. The pleadings and issues are to ascertain the real dispute between the parties to narrow the area of conflict and to see just where the two sides differ.

20. This Court in *Ram Sarup Gupta (dead) by L.Rs. v. Bishun Narain Inter College & Ors.*, AIR 1987 SC1242 held as under: ".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 such a case it is the duty of the court to ascertain the substance of the pleadings to determine the question."

21. This Court in *Bachhaj Nahar v. Nilima Mandal & Ors.* , AIR 2009 SC1103 held as under: ".The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the pleadings, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue..... Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief. The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc.". 19.7. In another decision reported in 2009 (10) SCC541(*Ram Sukh Vs. Dinesh Aggarwal*), the Apex Court held at paragraphs 8 , 12 and 13 as follows:- 8. It is also well settled that the success of a candidate who has won at an election should not be lightly interfered with and any petition seeking such interference must strictly conform to the requirements of the law. Nevertheless, it is also to be borne in mind that one of the essentials of the election law is to safeguard the purity of the election process and, therefore, the courts must zealously ensure that people do not get elected by flagrant breaches of that law or by indulging in corrupt practices, as enumerated in the Act.

12. It is evident that controversy in this appeal lies in a narrow compass. It revolves around the ambit of Section 83 of the Act. The point for consideration is

whether the election petition lacked ".material facts". required to be stated in the election petition in terms of Section 83(1) of the Act and if so, could it be dismissed summarily without trial?. As already noted, it is mandatory that all ".material facts". are set out in an election petition and it is also trite that if material facts are not stated in the petition, the same is liable to be dismissed on that ground alone. Therefore, the question is as to whether the election petitioner had set out ".material facts". in his petition?.

13. The phrase ".material facts". has neither been defined in the Act nor in the Code and, therefore, it has been understood by the courts in general terms to mean the entire bundle of facts which would constitute a complete cause of action. In other words, ".material facts". are facts upon which the plaintiff's cause of action or defendant's defence depends. (See: Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu & Ors. (2004) 7 SCC181. Broadly speaking, all primary or basic facts which are necessary either to prove the cause of action by the plaintiff or defence by the defendant are ".material facts".. Material facts are facts which, if established, would give the petitioner the relief asked for. But again, what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down."

20. Thus, from the above decision of the Apex Court, it could be seen that it is mandatory for the election petitioner to state all ".material facts". in the election petition. It is also seen that the words ".material facts". are the facts upon which the plaintiff's cause of action or the defendant's defence depends. The Apex Court has also observed that all primary or basic facts which are necessary either to prove the cause of action or defence are material facts.

21. A careful perusal of all the above referred decisions would show that the election petition is not an action at common law, nor in equity and it is a statutory proceeding to which only those rules which the statute makes would apply. Therefore, the party who files an election petition must plead material facts and adduce evidence to substantiate the same. In the Kalyan Singh Chouhan's case the Hon'ble Supreme Court has categorically observed that the Court must be satisfied that a prima facie case is established and the material facts and full

particulars have been pleaded stating the irregularities. Thus, the party has to make proper pleadings and establish by adducing evidence that by particular illegality or irregularity the result of the election has been materially affected. Keeping these general proposition of law laid down by the Apex Court in mind, let me consider as to whether the pleadings in the election petition disclose the material facts thereby giving rise a cause of action to the election petitioner to file the said election petition against the returned candidate.

22. It is important to note at this juncture that defending the election petition on merits is one thing and questioning the same at its threshold by seeking for its rejection under Order 7 Rule 11 CPC is another thing. Both contests are not certainly in the same footing. As already stated supra, what is to be seen for rejecting the election petition is as to whether the applicant who seeks for its rejection has made out a case under Order 7 Rule 11 CPC. Thus, in this case, it has to be seen as to whether the election petition discloses a cause of action or not. Existence or disclosure of a cause of action has to be gathered from the facts and circumstances pleaded in the petition. Needless to say that such facts and circumstances should be pleaded not with vague averments, but with material details and particulars. If no material particulars are furnished, any amount of vague allegation of corrupt practice cannot be gone into and taken for trial as no amount of evidence can be let in or looked into in the absence of the material pleadings. It is also held by the Apex Court in Kalyan Singh Chouhan's case, that during the trial of an election petition, it is not permissible for the Court to permit a party to seek a roving enquiry. In the very same decision, the Apex Court has referred to its earlier decision reported in 2008 (17) SCC491(Bachhaj Nahar Vs. Nilima Mandal) wherein it was held that the object and purpose of the pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. In the very same Bachhaj Nahar's case , the Apex Court has further observed that the object and purpose of pleadings are also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration. It is further held therein that no amount of evidence , on a plea which is not put forward in the pleadings can be looked into to grant any

relief.

23. Keeping these settled principles of law in my mind, let me now consider the pleadings in the election petition as hereunder. 23.1. At paragraph 6 of the election petition, the election petitioner has contended that the first respondent/ returned candidate by himself and through his election agent and his party workers had distributed lot of freebies to the voters either by way of cash or by way of various objects and materials. It is also further stated therein that the returned candidate has given donations to religious institutions like Churches like Meignanapuram, Puinnakayal and Manapadu and the Hindu temples at various places in the constituency. Thus, the election petitioner has made two sets of allegations in these paragraph, one is with regard to the distribution of freebies to the voters and the other is with regard to the donations given to the religious institutions. 23.2. In so far as the allegation with regard to the distribution of freebies to the voters is concerned, except by making a vague allegation, the election petitioner has not given any material particulars and details as to whom those freebies were given. Though it is stated that the first respondent himself distributed such freebies, there is no specific details of the recipients of the same except by vaguely stating ".the voters".. It is not the case of the election petitioner nor it is so averred in the election petition that the returned candidate had distributed freebies to all the voters. When that being so, the election petitioner should furnish specific details with dates and events as well as the names of persons, who said to have received those freebies from the returned candidate. It is also stated that apart from the returned candidate, his election agent and party workers also distributed freebies to the voters. Here again, no specific details are given about the names of those agents and party workers who have allegedly distributed the freebies. Likewise, except saying the voters as recipients, the election petitioner has not given specific name and the details with dates and events. Thus, in my considered view, the allegation made with regard to the distribution of freebies at paragraph 6 is undoubtedly a vague allegation without material particulars and consequently the same would not give a cause of action for the election petitioner to file the election petition. 23.3. In so far as the allegation of giving donations to religious institutions is concerned, it is the contention of the petitioner that he had learnt from his party workers and general public that the returned candidate had given donations to

those religious institutions. There is no material particulars or averments as to from whom or exactly from which person he learnt the said information. It is again to be noted that except saying that donations were given by the returned candidate to religious institutions like churches at Meignanapuram, Punnakayal and Manapadi and the Hindu temples at various places in the constituency, the election petitioner has not given material details viz., who actually received the donations and the names of the Church or the Hindu temples which allegedly received the donations. Those averments so made cannot be construed as giving any material particulars with regard to the alleged distribution of donations by the returned candidate. Thus, in my considered view, the particulars given at paragraph 6 are not sufficient to hold a trial since those particulars are without any material details and consequently the opposite party viz., the returned candidate would not be in a position to place the evidence appropriately to the issues before the Court and to defend his case. As already observed by the Apex Court, no amount of evidence on a plea that is not put forward in the pleadings can be looked into to grant any relief. A vague pleading is as good as no pleading at all. Thus, I am of the view that paragraph 6 in the election petition is liable to be rejected. 24.4. In paragraph No.7 of the election petition , it is alleged that the election petitioner came to know from his party workers and the voters that arrangements were being made by the returned candidate, his election agent and his relatives to distribute cash to the voters as a bribe. Though the election petitioner has stated in the very same paragraph that he has presented a complaint on 8.4.2011 to the Election Observer, the Superintendent of Police, Tuticorin and also to the District Election Officer, Tiruchchendur, the fact remains that he has only stated in the election petition that the returned candidate was preparing to distribute cash to voters. Thus, it is clear from such averment that the returned candidate has not in fact distributed cash to the voters. Even according to the election petitioner, he made a complaint to the officials and the Police only to prevent distribution of cash to the voters. Therefore, according to the election petitioner, the alleged preparation to distribute cash is a corrupt practice. Even to establish such allegation, the petitioner has not stated with details as to who are the actually intended recipients except by saying that the voters as the proposed recipients. It is also not stated with names and details of the election agent , relatives of the returned candidate,

who, according to the election petitioner, attempted to distribute cash to the voters. Thus, such general averments contained at paragraph 7 is first of all an allegation of an attempted corrupt practice and not with actual commissioning of the same and even for establishing such attempted corrupt practice no material particulars with details are furnished by the election petitioner. Hence, I am of the view that paragraph 7 of the election petition also does not disclose the cause of action and consequently, the same is liable to be rejected. 24.5. The averments contained in paragraph Nos. 11 to 22 are with regard to the allegations in respect of casting of votes through postal ballot papers. A perusal of the pleadings made in those paragraphs would disclose that the election petitioner has made serious allegations that the Returning Officer has not kept the postal papers received by him in safe custody until the commencement of the votes; that the returned candidate collected all the postal ballot papers from the eligible candidates with their signatures alone through his agents by corrupt practice of bribing the eligible voters; that the returned candidate later endorsed the tick marks in the postal ballot papers through his agent and got them attested by only three or four attestors ; that different ink was used for making the tick marks in the postal ballot votes; that no record as provided under Rule 23 of the Conduct of Election Rules 1961 have been prepared and maintained by the Returning Officer; that counting of postal ballot papers was not done as per Rule 54A of the said Rules; that covers in Form -13 C were not shown to the counting agent of the election petitioner before they were opened for verification; that mandatory provisions contained in Rule 54A (4) were not followed; that the Returning Officer had not complied with the provisions relating to the declaration form contained in each ballot paper and the counting of the postal ballot papers was not done in accordance with the provisions of law; that the election petitioner came to know about the irregularity from his agent Mr. Ashok and consequently he gave a complaint in writing to the Returning Officer; that the Returning Officer rejected the complaint given by the petitioner without assigning valid reasons; that the authentication of the postal ballot papers were not verified with the register maintained; that the postal ballot papers were not issued to the voters as per Rule 23 and recording of vote was not done and the elector has not signed the declaration as per Rule 24 of the said Rules; that the colour of the postal ballot

papers which should be in pink colour as per paragraph 4.3 of the instructions issued by the Election Commission of India and in accordance with Rule 22 of the Conduct of Election Rules, 1961, was in different colour in respect of some of the postal ballot papers contrary to the said Rules; that the Returning Officer has not verified the authenticity of the postal ballot papers in correspondence with the Register maintained with regard to the postal ballot papers. 24.6 A perusal of the pleadings made under paragraphs 11 to 22 would disclose that the petitioner has furnished the material details and particulars with regard to the allegations made by him in respect of casting of votes through postal ballot papers. He has specifically made an allegation that the returned candidate collected almost all the postal ballot papers from the eligible candidates with signatures of those persons alone and later endorsed tick marks in the postal ballot papers through his agent and got them attested by only three or four attestors. It is also specifically alleged that different ink is used in the postal ballot papers one for making the entries and other for making the tick mark against the candidate name. As the petitioner has also alleged the violations of the Rules 23(6); 54A(4) ; 22, 27, 23 and 24 with specific averments , I am of the view that the details furnished by the petitioner in these paragraphs have disclosed the cause of action to maintain the election petition. Certainly triable issues would emerge from these averments. 24.7 At this juncture, it is to be noted that the learned counsel Mr.V.Raghavachari appearing for the election petitioner / first respondent in this application contended that 680 postal ballots were polled in favour of the successful candidate and 45 postal ballots were polled in favour of the election petitioner. The total votes polled in favour of the election petitioner were 68,101, while the total votes polled in favour of the returned candidate were 68741 and therefore the difference was only 640 votes. Thus, he contended that the postal votes played as the deciding factor of the election result as the returned candidate was polled with 680 postal votes. He, thus, contended that the postal ballots played the crucial part in the declaration of election. 24.8. Thus, from the contentions raised by the learned counsel, it could be seen that the allegation made in respect of the postal ballot papers and the allegation made against the manner of casting of such postal ballots are certainly matters which disclose the cause of action leading for a trial in this election petition. I am of the firm view that the contentions raised in the election petition at

para 11 to 22 are with material particulars and details thereby disclosing the cause of action for filing the election petition and therefore the election petition is maintainable and cannot be rejected based on the averments contained at paragraphs 11 to 22 are concerned. 24.9. In so far as the averments contained in the election petition with regard to the discrepancy in the colour of the postal ballot papers is concerned , it is the categorical assertion of the election petitioner that it was not in pink colour. According to the rules, the election petitioner contends, that it should be in pink colour. Therefore, the said contention of the election petitioner is with certain material particulars and therefore the said allegation made in the election petition cannot be rejected at this stage as not giving cause of action. 24.10. In so far as the paragraphs 8 to 10 are concerned, they furnish only factual details without making any allegation and therefore they cannot be rejected. 24.11. While considering paragraph 23 of the election Petition, it is seen that it deals with an allegation with regard to the electronic voting machine at Booth No.93 by contending that the button meant for closing the voting was not operated and that the election petitioner's objection to the counting of the said machine was rejected by the Returning Officer. I am of the view that this paragraph contains the material particulars more particularly if it is read along with the averments contained at para 17 and gives a cause of action for the election petitioner to file the election petition. 24.12. In paragraph 24, the election petitioner has stated that two other electronic machines were found not working at the time of counting without furnishing any other details. Thus, in the absence of any other specific details, the allegation made in paragraph 24 is liable to be rejected as it does not disclose a cause of action. 24.13. In paragraph 25, the election petitioner has stated that the returned candidate has spent more than the permitted amount of Rs. 16 lakhs and has concealed very many expenses incurred by him during the election in the accounts submitted to the Election Commission. Though the petitioner stated that the returned candidate has spent more than the permitted amount, he has not stated any other details as to how much is the excess amount spent by the returned candidate ; how much is the amount concealed towards expenses incurred by him and what are the expenses met out by the returned candidate which are concealed by him while submitting the accounts to the Election Commission. Those material particulars with details are totally absent. In my considered view,

making an allegation of excess expenses without furnishing any material particulars cannot give rise a cause of action to the election petitioner to proceed against the returned candidate on this ground. Therefore, the averments at paragraph 25 have to be rejected.

25. No doubt, the learned counsel for the applicant relied on the decision of the Apex Court reported in AIR 1983 SC558(M.Karunanidhi Vs. H.V.Hande and Others) to contend that non-supply of copy of the chalan proving the deposit of a sum of Rs. 2,000/- along with the election petition is fatal and therefore the election petition has to be rejected. In my considered view, this issue cannot be raised as a ground for rejection of an election petition under Order 7 Rule 11 CPC. It may be an issue for trial. Mere non-furnishing of a copy of the chalan cannot be construed as a ground for the applicant to file this application. A perusal of the above said decision of the Apex Court would also show that that was not a decision in respect of rejection of an election petition under Order 7 Rule 11 CPC . He further relied on the decision reported in AIR 1996 SC1691 Dr. Shipra Vs. Shantilal) to contend that the concept of substantial compliance cannot be extended to vital omission. He further relied on AIR 1971 SC342(Jagat Kishore Prasad Narain Singh Vs. Rajendra Kumar Poddar) to contend that non-supply of true copies to the applicant is fatal. The other decision reported in AIR 1980 SC303(Sherif-ud-Din Vs.Abdul Gani) was relied on by him to contend that copies of the documents furnished should be attested by the election petitioner.

26. In my considered view, the issues raised and considered in all the above decisions relied on by the learned counsel for the applicant are in fact considered in the recent decision of the Apex Court reported in 2012 (7) SCC788(Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Others) which has been discussed in detail supra. It is the categorical observation of the Apex Court therein that dismissal of the election petition at the threshold has to be made only when the election petition does not disclose cause of action even on a plain reading of the same. In so far as non-compliance with certain technical requirements, the Apex Court has held that what is important and at the heart of the requirement is whether the election petitioner has made averments which are testified by him on oath, no matter and the absence of an affidavit or an affidavit in the form other

than the one stipulated by the Rules does not by itself cause any prejudice to the successful candidate so long as the deficiency is curable.

27. More over, in a further recent decision of the Apex Court as discussed supra made in Neena Vikram Verma case, defect in the verification of the election petition is held to be a curable defect. Further, it is to be noted that the Apex Court in the other recent decision made in G.M.Siddeshwar case as discussed supra has also held that merely because the affidavit was defective, it cannot be said that the petition filed is not an election petition as understood by the Representation of the People Act, 1951. Thus, the Apex Court has held that as long as there is substantial compliance with the statutory form of the affidavit, there is no reason to summarily dismiss an election petition on this ground. In the very same decision it is also held that an election petition cannot be summarily dismissed under Section 86 of the Representation of People Act for non-compliance with the provisions of Section 83 thereof.

28. Therefore, considering all the above recent decisions of the Apex Court, the contention of the applicant with regard to the alleged violation of mandatory provisions under the Madras High Court Election Petition Rules 1967 and Representation of People Act, cannot be sustained as a ground for rejecting the election petition Under Order 7 Rule 11 CPC.

29. The other contention raised by the applicant is that the mandatory provisions under the Madras High Court Election Petition Rules 1967 and the Representation of People Act were not followed. In my considered view such contention cannot be raised as a ground to reject the election petition. As already discussed supra, the rejection of the election petition can be made by the Court only when it attracts any one of the circumstances contemplated under Order 7 Rule 11 CPC. In so far as the present case is concerned, admittedly the applicant is trying to project his case by relying upon the circumstances contemplated under sub-clause (a) of Order 7 Rule 11 CPC by contending that the election petition does not disclose a cause of action. In my considered view, the allegation with regard to the violation of the mandatory provisions under the Madras High Court Election Petition Rules and the Representation of People Act are matters which could be decided only after the

trial and hence they cannot be termed as a ground under sub-clause (a) of Order 7 Rule 11 CPC. Therefore, the contention of the applicant in this aspect is liable to be rejected.

30. Whether there is a violation of mandatory provision is certainly a question of fact and law that requires to be considered and decided only after a trial and not at the threshold by considering the application for rejection of the plaint.

31. The other contention raised by the petitioner is that copies of election petition and its annexures served on the applicant were not attested as true copies by the election petitioner. This, again is another issue which has to be considered only at the time of hearing of the election petition and not for deciding the application filed under Order 7 Rule 11 CPC. In fact, the Apex Court, in a recent decision reported in 2013(4) SCC776(G.M.Siddeshwar Vs. Prasanna Kumar) has held at paragraphs 39, 44 and 52 as follows:- "

39. Undoubtedly, Section 86 of the Act makes no reference to Section 83 thereof and so, prima facie, an election petition cannot be summarily dismissed under Section 86 of the Act for non-compliance of the provisions of Section 83 thereof. This was briefly adverted to in Hardwari Lal v. Kanwal Singh, (1972) 1 SCC214 but that was in the context of dismissal of the election petition under the provisions of the CPC. The contention urged in Hardwari Lal was to the effect that since Section 83 of the Act does not find a mention in Section 86 thereof, an election petition could not be summarily dismissed for non-compliance of Section 83. A three-judge Bench of this Court held that since an election petition is required to be tried as nearly as possible in accordance with the procedure applicable under the CPC to the trial of suits, an election petition could nevertheless be dismissed if it did not disclose a cause of action.

44. The issue having been considered several times by this Court must now be allowed to rest at that.

52. The principles emerging from these decisions are that although non-compliance with the provisions of Section 83 of the Act is a curable defect, yet there must be substantial compliance with the provisions thereof. However, if there

is total and complete non-compliance with the provisions of Section 83 of the Act, then the petition cannot be described as an election petition and may be dismissed at the threshold."

32. Thus, it is manifestly clear that when there is a substantial compliance with the provisions of Section 83 of the Representation of People Act then an election petition cannot be summarily dismissed under Section 86 of the said Act. Moreover, it is also observed by the Apex Court that non-compliance of the provisions of Section 83 is a curable defect. Thus, when the defect as pointed out by the applicant is a curable defect, then the election petition cannot be rejected. At any event, in my considered view this cannot be a ground under Order 7 Rule 11 CPC to reject the election petition since such curable defect cannot be construed as not giving or disclosing a cause of action to the election petitioner. Therefore, this contention of the applicant is also not maintainable.

33. Further, the Apex Court in a recent decision reported 2013 (5) SCC673(Neena Vikram Verma Vs. Balmukund Singh Gautam and Others) has held at paragraph 32 as follows:- ".32. With reference to the observations in paragraph 47 of the judgment in the case of P.A. Mohammed Riyas (supra), we may note that way back in the case of Murarka Radhey Shyam Ram Kumar Vs. Roop Singh Rathore and Anr. reported in AIR 1964 SC1545a Constitution Bench of this Court has in terms held that a defect in the verification in the matter of Election Petition can be removed in accordance with the principles of CPC, and that it is not fatal to the Election Petition. This decision has been referred and followed by this Court time and again."

34. In fact, it is admitted by the applicant that copies of the election petition and its annexures served on him were signed by the petitioner himself . His grievance is that it was not attested as true copies by the election petitioner. Signing of the copies by the petitioner himself is much more a valid and authentic document than the attested copies. When the election petitioner himself has signed the copies and served on the applicant, then, in my considered view, there cannot be any complaint of violation of Rule 9 (a) of the Madras High Court Election Petition Rules 1967 and Section 81(3) of the Representation of People Act. Even

assuming such requirement of attesting of those copies as true copies is mandatory, still the same being a curable defect, this ground is also not available for rejecting the election petition.

35. The next contention raised by the applicant that the supporting affidavit on the allegation of corrupt practice was not filed by the election petitioner. In fact, this contention cannot be raised by the applicant any more in view of the fact that by an order dated 8.2.2013 made in O.A.Nos. 1025 and 1026 of 2012, this Court permitted the election petitioner to file the other two affidavits . Such order in fact came to be passed by this court especially by taking note of the fact that the applicant herein had given no objection for allowing those applications. Therefore, having given consent for allowing those applications and when this Court has passed an order on 8.2.2013 allowing the election petitioner to file the other two affidavits and consequently when the election petitioner has also filed those two affidavits, the applicant cannot raise the very same issue in this application to reject the election petition. Therefore, he is barred from raising such objection. At any event, this cannot be raised as a ground for rejecting the election petition as the said defect, even assuming to be subsisting, is a curable one.

36. At this juncture, it is to be noted that rejecting an election petition under Order 7 Rule 11 CPC is an action or decision at the threshold. Hence, what is to be seen is as to whether the requirements under Order 7 Rule 11 CPC are strictly attracted or not. For such purpose, merits of the matter which are contentious in nature or any other technical defects or errors which are curable in nature cannot be construed as not giving the cause of action to the election petitioner. Therefore, the applicant is not justified in raising these grounds to reject the election petition. Rejecting the election petition under Order 7 Rule 11 CPC is one thing and dismissing the election petition after trial on merits is another thing. Both stand on different circumstances and footing. While the former is the decision made on the consideration of mere pleading of the election petitioner only for the purpose of finding out as to whether such pleading discloses cause of action, or not, the latter is a decision made after consideration of rival pleadings of the parties and conducting of full fledged trial.

37. Mr.V.Raghavachari, learned counsel for the election petitioner though relied on very many decisions as referred to above, the decision reported in 2012 (7) SCC788(Ponnala Lakshmaiah Vs. Kommuri Pratap Reddy and Others) has covered the issue in all aspects, which I have already discussed supra. Therefore, the other decisions having been rendered in earlier point of time, I am not referring the same to avoid multiplication of the decisions.

38. In view of the above discussion of facts and law, the application in O.A.No.748 of 2012 is disposed of as follows:- (a) The averments contained in paragraph Nos. 6, 7, 24 and 25 of the Election Petition do not disclose a cause of action to maintain the election petition and thus, they are rejected as not maintainable under Order 7 Rule 11 CPC . (b) The averments contained in all other paragraphs disclose a cause of action for maintaining this election petition and hence the election petition is held maintainable based on the averments contained in those paragraphs.

39. Accordingly, the application in O.A.No.748 of 2012 is partly allowed only in respect of paragraphs 6, 7, 24 and 25 and rejected in so far as all other paragraphs of the election petition are concerned. O.A.No.5 of 2013 40. This application is filed seeking for leave to produce the following documents. 1) Copy of the Election Petition No.8 of 2011, 2) Copy of the Affidavit filed with the Election Petition No.8 of 2011, 3) Document No.1 filed along with the Election Petition No.8 of 2011 and 4) Document No.2 filed along with the Election Petition No.8 of 2011 40.1. These documents were sought to be filed only for the purpose to contend that those documents were not verified by the election petitioner as per the provisions of the Representation of People Act. Since these documents are only the documents annexed with the election petition and served on the applicant, no prejudice would be caused to the other side, if this application is allowed. In any event, as the contentions of the applicant in respect of these documents were already dealt with and decided while disposing of O.A.No.748 of 2012, no separate discussion is required in this application and accordingly the same is allowed.

16-09-2013

Index:Yes/No

Internet:

Yes/No

krr/

K.RAVICHANDRABAABU,J.

kr/ Pre-Delivery order in O.A.No.748 of 2012 and O.A.No.5 of 2013 in E.P.No.8 of 2011 Dt. 16 9. 2013

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