

A.Laser Vs. V.Anbazhagan

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Court : Chennai

Decided On : Jan-11-2013

Judge : K.Venkataraman

Appellant : A.Laser

Respondent : V.Anbazhagan

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:

11. 01/2013 CORAM THE HON'BLE MR. JUSTICE K.VENKATARAMAN
O.A.Nos.128 and 129 of 2012 in E.L.P.No.7 of 2011 O.A. No.128 of 2012 in
E.L.P.No.7 of 2011 ----- A.LASER S/O.AASIRVATHAM
NO.12-5/92, CHOKKANATHAPURAM, IIIRD STREET, IST CROSS STREET
VILANGUDI, MADURAI DISTRICT. VS V.ANBZHAGAN S/O.VEERAN NO.7-1-
14 MURUGAN KOVIL STREET THAMARAIKULAM PERIYAKULAM TALUK
THENI DISTRICT. THE RETURNING OFFICER NO.199, PERIYAKULAM (SC
ASSEMBLY CONSTITUENCY) REVENUE DIVISIONAL OFFICER OFFICER OF
THE RDO, PERIYAKULAM M.GANAPATHY S/O.R.MALAIALAGU NO.11/19,
AMBEDKAR NAGAR VAIGAI ANAI ROAD, THENKARAI PERIYAKULAM
C.KUMARESAN S/O.CHINNCHAMY NO.256, GANDHI NAGAR COLONY
JEYAMANGALAM, PERIYAKULAM TALUK THENI DISTRICT. P. NALLUCHAMY
S/O.PERIYAKARUPPAN SOUTH STREET, GANDHI NAGAR, JEYAMANGALAM,
PERIYAKULAM N.PANDIAN S/O.C.NARAYANAN NO.2-A-D, KALIAMMAN KOIL
STREET ALLINAGARAM, THENI DISTRICT. R.ARIVALAGAN S/O.RAMASAMY

NO.94-1-58, KUNNUR POST, ANDIAPATTI TALUK THENI DISTRICT. N.KRISHNAVENI W/O.NAGAIAH NO.4/401, KALIAMMAN KOVIL STREET ALAGARSAMIPURAM, VADAGARAI PERIYAKULAM POST, THENI DISTRICT D.SANTHI W/O.A.DHANUSKODI PATTALAMMAN KOIL STREET THENKARAI PERIYAKULAM M.SELVAM S/O.M.MARIYAPPAN NO.4/245, INDIRA COLONY G.KALLUPATTI, PERIYAKULAM TALUK, THENI DISTRICT K.PALANICHAMI S/O.KAMATCHI INDIRA NAGAR, KODAIKKANAL POST, KODAIKKANAL TALUK DINDIGUL DISTRICT P.PANDIARAJAN S/O.PANDIAN DOOR NO.3-2-85 BAGAVATHY NAGAR, GENGUVARPATTY POST, PERIYAKULAM TALUK THENI DISTRICT. T.MARICHAMY S/O.THANGAVEL NO.79/1, INDIRAPURI STREET THENKARAI, PERIYAKULAM TALUK THENI DISTRICT. P.RAJAGURU S/O.PAULRASU NO.9-3-173, THIRUVALLUVAR STREET KAILASAPATTY, THAMARAIKULAM POST, PERIYAKULAM TALUK, THENI DISTRICT. O.A. No.129 of 2012 in E.L.P.No.7 of 2011 ----- A.LASER S/O.AASIRVATHAM NO.12-5/92, CHOKKANATHAPURAM, IIIRD STREET, IST CROSS STREET VILANGUDI, MADURAI DISTRICT. VS V.ANBABHAGAN S/O.VEERAN NO.7-1-14 MURUGAN KOVIL STREET THAMARAIKULAM PERIYAKULAM TALUK THENI DISTRICT. THE RETURNING OFFICER NO.199, PERIYAKULAM (SC ASSEMBLY CONSTITUENCY) REVENUE DIVISIONAL OFFICER OFFICER OF THE RDO, PERIYAKULAM M.GANAPATHY S/O.R.MALAIALAGU NO.11/19, AMBEDKAR NAGAR VAIGAI ANAI ROAD, THENKARAI PERIYAKULAM C.KUMARESAN S/O.CHINNCHAMY NO.256, GANDHI NAGAR COLONY JEYAMANGALAM, PERIYAKULAM TALUK THENI DISTRICT. P. NALLUCHAMY S/O.PERIYAKARUPPAN SOUTH STREET, GANDHI NAGAR, JEYAMANGALAM, PERIYAKULAM N.PANDIAN S/O.C.NARAYANAN NO.2-A-D, KALIAMMAN KOIL STREET ALLINAGARAM, THENI DISTRICT. R.ARIVALAGAN S/O.RAMASAMY NO.94-1-58, KUNNUR POST, ANDIAPATTI TALUK THENI DISTRICT. N.KRISHNAVENI W/O.NAGAIAH NO.4/401, KALIAMMAN KOVIL STREET ALAGARSAMIPURAM, VADAGARAI PERIYAKULAM POST, THENI DISTRICT D.SANTHI W/O.A.DHANUSKODI PATTALAMMAN KOIL STREET THENKARAI PERIYAKULAM M.SELVAM S/O.M.MARIYAPPAN NO.4/245, INDIRA COLONY G.KALLUPATTI, PERIYAKULAM TALUK, THENI DISTRICT K.PALANICHAMI S/O.KAMATCHI

INDIRA NAGAR, KODAIKKANAL POST, KODAIKKANAL TALUK DINDIGUL DISTRICT P.PANDIARAJAN S/O.PANDIAN DOOR NO.3-2-85 BAGAVATHY NAGAR, GENGUVARPATTY POST, PERIYAKULAM TALUK THENI DISTRICT. T.MARICHAMY S/O.THANGAVEL NO.79/1, INDIRAPURI STREET THENKARAI, PERIYAKULAM TALUK THENI DISTRICT. P.RAJAGURU S/O.PAULRASU NO.9-3-173, THIRUVALLUVAR STREET KILASAPATTY, THAMARAIKULAM POST, PERIYAKULAM TALUK, THENI DISTRICT. ORDER The present applications are taken out by the first respondent in the election petition in E.L.P.No.7 of 2011 to reject the election petition and to strike off paragraphs 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of the election petition for want of material facts, material particulars as scurrilous and vexatious, meant to prejudice the Court and as an abuse of the process of the Court.

2. For the sake of convenience, the applicant in both the applications is referred as Returned Candidate, the first respondent is referred as election petitioner and the other respondents are referred in their respective position.

3. The election petitioner filed the election petition to declare the election of the Returned Candidate in respect of No.199, Periyakulam (SC Assembly Constituency) held on 13.4.2011 for which results were declared on 13.5.2011, as null and void and declare the election petitioner as duly elected for the said Constituency. In the present applications, the Returned Candidate seeks to reject the election petition and to strike out the pleadings in paragraphs 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of the election petition.

4. The reasons set out in the affidavits in support of the applications for rejecting the election petition as well as to strike out the said paragraphs are as follows:- (a) The election petition deserves to be rejected at the preliminary stage itself as not maintainable on the ground that -- (i) the election petition does not contain valid verification of the pleadings as per Section 83 (1) (c) of the Representation of the People Act, 1951; (ii) the election petition does not contain material facts and full particulars constituting complete or full cause of action as required under Section 83 of the Act. (b) The entire election petition proceeds on a presumption that the Returned Candidate belongs to Christian faith relying on certain errors in his

school certificate. Nothing has been pleaded to show that the Returned Candidate professed Christian Religion on the date of nomination or election. The filing of the election petition is solely due to political rivalry and smacks of undue harassment.

(c) His parents and grandparents and their ancestors belonged to the schedule caste community of 'Samban' in Hindu religion. They had never converted to or professed any other religion, more particularly Christianity. All his family members are Hindus and belong to scheduled caste community called 'Samban'. Since his father was working in a tea plantation company under a British employer, he gave Christian names to his first few children out of his loyalty and gratitude towards a Christian Superior even though he himself belonged to Hindu scheduled caste community.

(d) When his father was alive, he had signed the transfer certificate of his younger brother Udhayasuriyan, which contains the religion and caste as Hindu Samban. His father was granted patta by the State Government in the year 1989 for a small house site in their village Govindanagaram along with other dalit families as part of a scheme meant for dalits belonging to scheduled castes. His parents were buried in the Mayanam meant for Hindu dalits in the village.

(e) Taking advantage of certain incorrect entries found in the certificates issued by the school, where the Returned Candidate and his brother studied, the election petitioner projected a false, frivolous and vexatious theory as if his religion is Christian. When the Community Certificate dated 8.3.2010 issued by the competent authority is still in force and in the absence of any material facts and particulars regarding the alleged irregularities, manipulation, deceit or fraud in obtaining the community certificate, the election petitioner cannot require this Court to make a roving enquiry about the same on mere surmises and conjectures.

(f) The Returning Officer after verifying with the Tahsildar, Madurai North and having obtained a confirmation regarding the genuineness of the community certificate dated 8.3.2010, found his nomination papers are in order and accepted the same.

(g) Both the certificates mentioned in paragraph 12, showing the Returned Candidate as a scheduled caste, though his caste is wrongly mentioned as 'Kudumban' instead of 'Samban', 'Kudumban' is also a scheduled caste. Mistakes have occurred at the hands of the school in Govindanagaram, in showing him as Christian. There is no caste system in Christianity. The averment made in paragraph 12 that he is a Christian since he

declared his religion as Christian in the application filed by him in O.A.No.1358 of 2009 in Election Petition No.2 of 2009 is not correct. The Returned Candidate has filed subsequent affidavit dated 10.6.2011 to rectify the said mistake. (h) As far as paragraph 13 is concerned, since Mr.Ganapathy has also filed an independent election petition, the averments made in this paragraph are unnecessary and not relevant. (i) Regarding the averments made in paragraphs 12, 14 and 15, the election petitioner has not disclosed any particulars or material facts to allege that the Returned Candidate was never a Hindu and was never born in or practiced or professed Hinduism. (j) Regarding paragraphs 16 to 20 and 25, on the date of filing nomination, the Returning Officer after verifying the genuineness of the community certificate, accepted his nomination. In the absence of any challenge under Section 5(1) and 100 (1) (d) (ii) of the Act, the present election petition is not maintainable. Thus, the Returned Candidate seeks to reject the election petition and to strike off the paragraphs 8, 9, 12, 13, 14, 15, 16, 17, 18, 19, 20 and 25 of the election petition.

5. A common counter affidavit was filed on behalf of the first respondent / election petitioner, wherein the following facts have been set out:- (a) The pleadings of the election petition have been duly drawn up and verified in accordance with all requirements of the Representation of the People Act and the petition contains all material facts and full particulars constituting complete and full cause of action as required under the Act. (b) The averments made in paragraphs 8, 9, 12 to 20 and 25 have been made and verified in accordance with Section 83(1)(c) of the Representation of the People Act and order VI Rule 15 C.P.C. Even assuming that there is some defect, it is a curable one and it would not require the dismissal / rejection of the election petition per se and in limine. (c) The Returned Candidate was never a Hindu. He was always a Christian. He has procured a community certificate by misrepresentation and fraud. His education and community records and those of his family members will reveal the truth. Hence, he is not qualified to contest from the Periyakulam Constituency which is reserved for scheduled caste community. (d) The election petitioner is willing and ready to discharge the onus, if any, that would be cast on him during the trial of the election petition. Whether the Returned Candidate is a Christian or a Hindu or whether he was qualified to contest or not in the election, can be decided only during trial. (e) In the school

certificates, the caste of the Returned Candidate has been mentioned as 'Kudumban' and his religion was recorded as Christian. The community of his brother A.Yesupatham has been mentioned as 'Paraiyan Christian'. Therefore, it is clear that the Returned Candidate and his family members belong to Christian Religion. In an application filed by the Returned Candidate in O.A.No.1358 of 2009 in Election Petition No.2 of 2009 before this Court, he himself has declared his religion as Christian. Therefore, the community certificate dated 8.3.2010 obtained from the Tahsildar, Madurai North is invalid and in any event, it is bound to be ignored. Thus, the counter affidavit seeks for the dismissal of both the applications.

6. On the basis of the pleadings referred to above, I have heard Ms.R.Vaigai, learned counsel appearing for the returned candidate and Mr.R.Srinivas, learned counsel appearing for the election petitioner.

7. It is the case of the election petitioner that the returned candidate was never a Hindu and he was always a Christian. He has procured a community certificate by mis-representation and fraud. His contention is that the documents filed by him pertaining to the returned candidate and those of his family members will reveal that the returned candidate is a Christian and not a Hindu and hence he is not qualified to contest the Periyakulam (SC Assembly Constituency) which is reserved for Scheduled Caste community. However, it is the case of the returned candidate that he is professing Hindu and he belongs to Scheduled Caste community and hence he is not disqualified to contest from the Periyakulam (SC Assembly Constituency) which is reserved for Scheduled Caste community.

8. It seems that the nomination of the returned candidate was opposed and objected by the election petitioner and one Ganapathy, the candidate of BJP. Both of them seems to have contended that the returned candidate is a Christian and that he does not belong to Scheduled Caste and that he is not entitled to contest from the Periyakulam (SC Assembly Constituency).

9. The returning officer, the second respondent in the election petition, in the process of scrutinising the nominations seems to have considered the objection of the election petitioner and the said Ganapathy and by order dated 29.03.2011 held

that the election petitioner and the other objector had not produced any documentary evidence in support of their objections. He also further seems to have considered the community certificate of the returned candidate, issued by the Tahsildar which revealed that the returned candidate belongs to the Scheduled Caste. Therefore, the nomination paper of the returned candidate was accepted. This fact has been admitted by the election petitioner in paragraph 8 and 9 of the election petition. After accepting the nomination of the election petitioner and after the election was over, the returned candidate came out successful in the election.

10. It is the case of the election petitioner that after the nomination has been accepted by the returning officer, he has found out that in the Government High School, Kandamanoor in Theni District, where the returned candidate has studied, his caste has been recorded as "Kudumban" and religion has not been mentioned therein. Further, it is his case that in the Kamma Charitable High School, Govindanagaram where the returned candidate has studied, his caste was recorded as "Kudumban" and his religion was recorded as "Christian". Further the community of the returned candidate's brother A.Yesupatham has been recorded by the said school as "Paraiyan Christian". Thus, it is the case of the election petitioner that the returned candidate and his family belongs to Christian religion and they are not Hindus. Further, it is stated that the election petitioner recently discovered that in the application filed by the returned candidate in O.A.No.1358 of 2009 in Election Petition No.2 of 2009, he himself has declared his religion as Christian.

11. While so, in the application to reject the election petition in O.A.No.128 of 2012, it is stated by the returned candidate that the election petition suffers from lack of material facts, material particulars and full cause of action. The onus lies heavily on the election petitioner to disclose all material facts and particulars to show that he professed Christian religion. The election petitioner has proceeded on a presumption that the returned candidate belongs to Christian faith relying on certain errors in his school records.

12. Before adverting to the rival submissions, it would be better to refer the judgements on his aspect rendered by the Hon'ble Apex Court. The learned

counsel appearing for the election petitioner relied on the following decisions to support his case. (a) In (1998) 1 Supreme Court Cases 416, Ashwani Kumar Sharma vs. Yaduvansh Singh and Others, the Hon'ble Apex Court has held that furnishing evidence in support of material facts not essential for maintainability of the election petition. Paragraph 7 of the said judgement is thus usefully extracted hereunder: "7. The High Court has held that the allegations regarding irregularities in the counting of ballot papers are not supported by adequate material or by material particulars. The High Court has further held that some imaginary figures are given in respect of alleged irregularities. The appellant has, in his verification affidavit, stated that the statements are based on information derived from his counting agents and election agents. The High Court holds that because the names of these persons are not disclosed, the allegations must be considered as vague. The High Court has further said that the basis on which the counting agents or election agents of the appellant had furnished information regarding rejection of 2500 ballot papers on the ground that the same did not bear the distinguishing mark or the signature of the Presiding Officer, has also not been furnished. However, evidence in support of the pleas which have been taken or facts which have been pleaded, cannot be confused with the concise statement of material facts which an election petition is required to set out under Section 83(1)(a). In the case of Udhav Singh v. Madhav Rao Scindia¹ this Court made a distinction between material facts and material particulars. The Court said that this distinction was important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact would lead to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off. But if material particulars are lacking, they may be supplied at a later date. Respondent 1 relies upon this distinction in support of his plea that the election petition is liable to be dismissed for non-disclosure of material facts. The election petition, however, is required to contain a concise statement of material facts, this being equivalent to a cause of action. The entire evidence in support of such material facts is not required to be set out. From the contents of the election petition, it is not possible to hold that a concise statement of material facts is not to be found in the petition. In the case of Arun Kumar Bose v. Mohd. Furkan Ansari² (AIR at p. 1314) this Court

distinguished the provision of Section 83(1)(a) from Section 83(1)(b): (SCC pp. 96-97, para

8) The scheme in Section 83(1) of the Act makes the position very clear. Clause (a) refers to general allegations and requires a concise statement of material facts to be furnished while clause (b) referring to corrupt practice requires all details to be given. In that case, the number of wrongly rejected ballot papers and the counting table numbers were given. Booth numbers were also given. Particulars of ballot papers, however, were not given as not available. It was held that pleadings set out material facts as per Section 83(1)(a). No corrupt practice was involved and Section 83(1)(b) was not attracted. Pleading was held to be adequate." (b) In (2007) 3 Supreme Court Cases 617, Virender Nath Gautam vs. Satpal Singh and Others, the Hon'ble Apex Court has held that material facts have to be distinguished from particulars or *facta probantia* which refer to details in support of the material facts. Full particulars are required to be set forth in respect of corrupt practices when alleged in the election petition. But in the absence of allegations of corrupt practice, facts in the nature of evidence by means of which material facts are to be proved need not be set out in the election petition. (c) In (1999) 3 Supreme Court Cases 737, V.S.Achuthanandan vs. P.J.Francis and Other, the Hon'ble Apex Court has held that material facts are primary facts disclosing some cause of action. These facts have to be specifically pleaded and failure to do so will result in rejection of the election petition. However, the defects in material particulars can be cured at a later stage by amendment and the election petition cannot be dismissed in limine on the ground of such defects. (d) Yet another decision relied on by the learned counsel appearing for the election petitioner is reported in (1973) 2 Supreme Court Cases 599, Manphul Singh vs. Surinder Singh. That is the case where the election petitioner alleged that a large number of voters who are either absentees or missing or sick in hospitals or convicts lodged in jail and deserted ladies have been impersonated by the friends and relatives of the returned candidate for whom they have all polled. The election petitioner has further alleged that a large number of Government servants numbering 158 who were not present in their respective villages and did not cast their votes in fact, have been impersonated and their votes have been polled in favour of the returned candidate. While dealing with the facts of the said case, it has been held

by the Hon'ble Apex Court that the Code of Civil Procedure applies to all trials of election petitions and to require that a party should not only state the material facts on which he relies but also state the evidence on which he relies is not a proposition which can be accepted either as correct in law or as one which justice requires. The evidence by which they are to be proved, if included in the election petition, it would be directly contrary to the provisions of law. Paragraph 7 of the said judgement is usefully extracted here under: "7. The earlier part of the Rule, it would be noticed, is similar to clause (1)(a) of Section 83. The Code of Civil Procedure applies to all trials of election petitions and to require that a party should not only state the material facts on which he relies, which the respondent had done more than amply in this case, but also that he should state the evidence on which he relies is not a proposition which can be accepted either as correct in law or as one which justice requires. The evidence by which they are to be proved, if included in the election petition, as contended by Mr Garg, it would be directly contrary to the provisions of law. Most of the decisions which he cited were cases where a general recount was asked for and there was no evidence to establish that the counting already made was defective or not reliable. In some cases except vague and general allegations nothing else had been stated. It is in such cases that this Court held that the party should not be allowed the opportunity of a roving and fishing inquiry. But this Court has also always reiterated that for the purpose of doing justice even a general recount can be ordered if the circumstances demanded. That is why in the face of the extreme care with which the election petition in this case has been drawn up and the very minute details given in it we do not consider that any of the decisions of this Court relied upon by Mr Garg are to the point and have not referred to them. As we have already indicated, one rarely comes across an election petition giving such minute details and there is nothing more that the petitioner could have done except to state the evidence by which the material facts are to be proved." (e) Yet another decision relied on by the learned counsel appearing for the election petitioner is reported in CDJ 200.MHC 1222.Sanniyasi vs. Srinivasan and others. In the said decision, this Court while dealing with the election to the town panchayat has held that in the case of allegations of corrupt practice, since they are in the nature of criminal charges, particulars in detail are required so that the returned candidate may know

the case he has to meet. However, if a ground that the returned candidate suffer from any disqualification is raised therein, minute details are not necessary. Paragraph 24 of the said judgement is usefully extracted here under: "24. The relevant section, Section 259 makes a clear distinction between want of qualification / disqualification on the one side and a corrupt practice on the other. In the case of allegations of corrupt practice since they are in the nature of criminal charges indeed particulars in detail are required so that the returned candidate may know the case he has to meet - there cannot be a fishing and roving enquiry. The pleadings in an election petition alleging corrupt practice are treated differently would be evident from the fact that such an election petition has additionally to be accompanied by an affidavit in Form 25 prescribed by Rule 94-A of the Conduct of Election Rules, 1961 in support of the allegations of such corrupt practice and the particulars thereof. The Supreme Court has in *R.P.Moidutty v. P.T.Kunju Mohammad* (2000 1 SCC

481) observed as follows: The legislature has taken extra care to make special provision for pleadings in an election petition alleging corrupt practice. Thus there is always a line to be drawn when the pleadings relate to corrupt practice. Not a single authority has been cited at the bar where the election petition was dismissed in limine on the ground of inadequacy of material facts set out when it came to the returned candidate suffering from any disqualification. However in a case where disqualification of the candidate concerned is pleaded minute details are not necessary. As has been stated in *Azhar Hussain's case supra*, material facts are facts which if established would give the petitioner the relief asked for and the test required to be answered is whether the Court could have given a direct verdict in favour of the election petitioner in case the returned candidate had not appeared to oppose the election petition on the basis of the facts pleaded in the petition. In the instant case, it is specifically stated that the revision petitioner suffered from disqualification that he had a subsisting contract, no doubt, in the Public Works Department. It was not necessary to have been more specific. The revision petitioner admits that he had a Government contract but then it was not a subsisting one." (f) Yet another decision relied on by the learned counsel appearing for the election petitioner is reported in (2004) 1 Supreme Court Cases 46, *Regu Mahesh alias Regu Maheswar Rao vs. Rajendra Pratap Bhanj Dev and*

another, wherein the Hon'ble Apex Court has held that obtaining false caste certificate for contesting from a reserved constituency does not constitute corrupt practice. Hence, the election petition containing such allegation cannot be dismissed on ground of non-compliance with Section 83(1)(b) of the Representation of People Act, 1951.

13. Thus, in the judgements referred to above, the Hon'ble Apex Court has held, (i) If general allegations are made in the election petition, Clause (a) of Section 83(1) of the Act requires only a concise statement of material facts in the election petition. Only if corrupt practice is a ground in the election petition, it requires all details as per Clause (b) of Section 83(1) of the Act. (ii) The entire evidence in support of the material facts need not be set out in the election petition, in the absence of allegations of corrupt practice. (iii) If a ground that the returned candidate suffers from disqualification is raised in the election petition, minute details are not necessary. (iv) If material particulars are lacking in the election petition, it can be supplied at a later stage.

14. While carefully considering the provisions of the Act and scrutinising the position of law laid by the Hon'ble Apex Court, it has to be seen whether the Election Petitioner satisfies the requirement of the Act and the judgements of the Hon'ble Apex Court on this aspect. Before advertng to the same, it would be useful to extract Clause 1 of Section 83 of the Act and the same is set out 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." Clause (1)(a) of

Section 83 of the Act contemplates that the election petition shall contain a concise statement of material facts. Clause (1)(b) requires full details of corrupt practice, in case corrupt practice has been alleged in the election petition. Even in the judgements referred to above, it has been held so.

15. In the above backdrop, it has to be seen what is the allegation made in the election petition by the election petitioner. The election petitioner does not allege corrupt practice against the returned candidate. But his allegation is that the returned candidate suffers from disqualification, since he does not belong to Hindu Scheduled Caste community and hence, he cannot contest in a Reserved constituency. Therefore, it is sufficient if the election petitioner in his petition gives a concise statement of material facts and he need not give full particulars.

16. Now let us see what are the concise statement made by the election petitioner.

17. It is the case of the election petitioner that the returned candidate belonged to Kudumban Community and his religion is Hindu. In support of his contentions, he had placed few statement in his election petition. They are, (a) In the school certificate of the returned candidate issued by Government High School, Kandamannur, Theni district, his caste has been mentioned as Kudumban and the religion was not mentioned. (b) In the Kamma Charitable High School, Govindanagaram, Theni District, where the returned candidate studied, his caste has been referred as "Kudumban" and his religion has been mentioned as "Christian". (c) The community of the returned candidate's brother A.Yesupatham has been recorded in the said school as "Paraiyan Christian". (d) In the application filed by the returned candidate in O.A.No.1358 of 2009 in Election Petition No.2 of 2009, he himself has declared his religion as "Christian". (e) The returned candidate who is aged about 62 years has obtained a certificate from the Tahsildar few days prior to his filing of nomination that he belonged to Scheduled Caste community which cannot be relied.

18. On the other hand, it is contended on the other side that the school records of the returned candidate or his brother will not be a conclusive proof to show that the returned candidate is professing Christianity. It is further stated that the returned candidate is a born Hindu and professing only Hinduism. It is further contended

that though the returned candidate in his application in O.A.No.1358 of 2009 in Election Petition No.2 of 2009 has declared that he belonged to "Christian" religion, realising the mistake, later an application was filed to delete the same. Hence, summing up, it is contended that the Election Petitioner has not made out any case. It is also contended that material facts and full particulars were not stated.

19. However, I am of the considered view that, since the election petitioner has made concise statement regarding disqualification of returned candidate with some material as required under Clause (1)(a) of Section 83 of the Act, the further probe over the same have to be tested only at the time of trial and the same does not require to be considered at the threshold itself. Hence, the contention raised in this regard by the learned counsel appearing for the returned candidate is liable to be rejected. I am making it very clear that this finding arrived at by me is only for the purpose of the disposal of the present applications and it cannot be considered as a final conclusion, which could be arrived at only after the trial. On analysing both oral and documentary evidence in both sides, a just conclusion has to be arrived at later.

20. The learned counsel appearing for the returned candidate relied on the decision reported in (1968) 2 SCR 80.: AIR 196.SC 929.Laxman Siddappa Naik vs. Kattimani Chandappa Jampanna and Others. That is the case where the election petition was filed challenging the election of the returned candidate on the ground that the returned candidate belong to "Bedar" community which is not a tribal community. While dealing with the same, the Hon'ble Apex Court has held that once the nomination papers was accepted, the burden must be assumed again by the party challenging the fact that a candidate belonged to a particular community. If prima facie evidence had been led by the election petitioner the burden might have shifted to the candidate but as he led no evidence whatever he must obviously fail. Finally on evidence, the Hon'ble Apex Court came to the conclusion that there was no evidence to prove that the returned candidate do not belong to the tribal community. Paragraph 10 of the said judgement which was emphasised by the learned counsel appearing for the returned candidate is usefully reproduced here under: "10. An election is something which cannot be

readily set aside. There must be proof and convincing proof that a person is not properly chosen to fill a particular seat. Mere suspicion or surmise is not sufficient after the Returning Officer accepts a candidature and the candidate is chosen in the election. Once a community has gone to the polls and the voters have exercised their franchise it is necessary for an election petitioner to show that the candidate is not entitled to the seat. In other words, the burden originally lies on the election petitioner and he cannot succeed unless he discharges that burden. The High Court recognized that there was no evidence in the case but went into the matter from a different angle and attempted to contradict the Presidential Order which it was not entitled to do." 21. Thus, in the above referred case, the Hon'ble Apex Court came to the conclusion that the election petitioner did not produce any documents to show that the returned candidate do not belong to a tribal community. Secondly, on a full-fledged trial, such conclusion has been arrived at. In the given case on hand, the election petitioner relying on certain documents filed the election petition questioning the election of the returned candidate. At the initial stage itself, the same cannot be thrown out without full-fledged trial. Hence, the said judgement may not come to the rescue of the returned candidate.

22. Yet another decision relied on by the learned counsel appearing for the returned candidate is reported in (1972) 1 Supreme Court Cases 214, Hardwari Lal vs. Kanwal Singh. That is the case where the election petitioner alleged corrupt practice against the returned candidate. Hence, in paragraph 16 of the said judgement, it has been held as follows: "16. It has to be noticed that the different expressions obtaining, procuring, abetting or attempting to obtain or procure are various forms of corrupt practices. It has to be found as to whether the allegation of obtaining assistance amounts to an allegation of fact. It will be well settled that general expressions like fraudulently, negligently or maliciously in pleadings do not amount to any allegation of fact. A fact is after all not a mere word." 23. In the given case on hand, no corrupt practice has been pleaded by the election petitioner. The election petitioner has pleaded only about the disqualification of the returned candidate and hence, only a concise statement on material facts alone is sufficient as required under Clause (1)(a) of Section 83 of the Act.

24. Therefore, in my considered view, if corrupt practice was a ground to set at naught the election of the returned candidate, full particulars of corrupt practice such as the names of the parties alleged to have committed such corrupt practice and the date and place of occurrence shall be set out as required under the above provision. In the given case on hand, since the only ground that has been raised was that the returned candidate do not belong to the Hindu Scheduled Caste community and he belong to Christian religion, there need be no further particulars required apart from the plea taken by the election petitioner and the documents relied on by him. It would be far fetching to state that the election petitioner should also state the evidence on which he relies for his contentions. If this is accepted, it would be directly contrary to the provisions of Section 83(1)(a) and (b) of the Representation of People Act, 1951. As per Section 83(1)(a), the election petition shall contain a concise statement of the material facts on which the petitioner relies, which in my considered opinion has been full filled by the election petitioner.

25. Yet another decision relied on by the learned counsel appearing for the returned candidate is reported in (1984) 2 Supreme Court Cases 91, Kailash Sonkar vs. Smt.Maya Devi. Paragraphs 28 and 51 of the said judgement on which much reliance was placed are usefully extracted here under: "28. The question that arises for consideration is whether the loss of the caste is absolute, irrevocable so as not to revive under any circumstance? In considering this question the courts have gone into the history of the caste system and have formulated the following guiding principles to determine this question: (a) Where a person belonging to a scheduled caste is converted to Christianity or Islam, the same involves loss of the caste unless the religion to which he is converted is liberal enough to permit the converttee to retain his caste or the family laws by which he was originally governed. There are a number of cases where members belonging to a particular caste having been converted to Christianity or even to Islam retain their caste or family laws and despite the new order they were permitted to be governed by their old laws. But this can happen only if the new religion is liberal and tolerant enough to permit such a course of action. Where the new religion, however, does not at all accept or believe in the caste system, the loss of the caste would be final and complete. In a large area of South and some of the North-Eastern States it is not unusual to find persons converted to

Christianity retaining their original caste without violating the tenets of the new order which is done as a matter of common practice existing from times immemorial. In such a category of cases, it is obvious that even if a person abjures his old religion and is converted to a new one, there is no loss of caste. Moreover, it is a common feature of many converts to a new religion to believe or have faith in the saints belonging to other religions. For instance, a number of Hindus have faith in the Muslim saints, Dargahs, Imambadas which becomes a part of their lives and some Hindus even adopt Muslim names after the saints but this does not mean that they have discarded the old order and got themselves converted to Islam. (b) In all other cases, conversion to Christianity or Islam or any other religion which does not accept the caste system and insists on relinquishing the caste, there is a loss of caste on conversion.

51. On a full and complete appraisal of the oral and documentary evidence, the following conclusions are inevitable: (1) That the respondent was born of Christian parents and was educated in various schools or institutions where she was known as a Christian, (2) That 3-4 years before the election, the respondent was reconverted to Hinduism and married Jai Prakash Shalwar, a member of the Katia caste, and also performed the Shudhikaran ceremony, (3) That she was not only accepted but also welcomed by the important members, including the President and Vice-President, of the community, (4) There is no evidence to show that there was any bar under the Christian religion which could have prevented her from reconvert herself to Hinduism, (5) That there was no evidence to show that even her parents had been Christian from generation to generation." 26. In the above referred case, the returned candidate who was born of Christian parents, reconverted to Hinduism and married a member of a Katia (Scheduled Caste) and also performed the Shudhikaran ceremony. Hence, on facts, it was held that the returned candidate therein, on the date of filing of nomination cannot be held to be a member of Katia Caste. Hence, the said judgement also may not come to the rescue of the returned candidate.

27. Yet another decision relied on by the learned counsel appearing for the returned candidate is reported in (2004) 1 Supreme Court Cases 429, Ajay Kumar Poeia vs. Shyam and Others. That is the case where the election petitioner did not

raise any material facts that the returned candidate was not a member of Scheduled Caste. Hence, the said judgement also may not come to the rescue of the returned candidate.

28. Yet another decision relied on by the learned counsel appearing for the returned candidate is reported in (2005) 5 Supreme Court Cases 46, Harmohinder Singh Pradhan vs. Ranjeet Singh Talwandi and others. Paragraph 13 of the said judgement on which much emphasis was placed is usefully extracted here under: "13. There is yet another reason why the averments made in the election petition are deficient. The appeals are said to have been made by certain religious leaders. A distinction has to be drawn between an appeal simpliciter to vote or to refrain from voting made by religious leaders which may benefit any particular candidate and an appeal to vote or to refrain from voting on the ground of religion emanating from religious leaders and attributable to the candidate within the meaning of Section 123(3). The former is not vulnerable while the latter is. All that the election petition alleges is that certain religious leaders, held in reverence by the voters, issued an appeal to vote in favour of Respondent 1. The appeals forming the gravamen of the charge of corrupt practice do not carry in them the element of an appeal to vote for any person on the ground of religion." 29. As stated already, the allegations pertaining to corrupt practice was not the ground on which the election petition was filed. Therefore, the particulars given by the election petitioner is sufficient to get along with the trial. Therefore, the said judgement also may not come to the rescue of the returned candidate.

30. Learned counsel appearing for the returned candidate relied on the decision of the Honble Apex Court reported in (2001) 8 Supreme Court Cases 233 Hari Shanker Jain vs. Sonia Gandhi. That is the case where the election of Mrs.Sonia Gandhi to Amethi Parliamentary Constituency was challenged by the unsuccessful candidate. In the said election petition, the returned candidate Mrs.Sonia Gandhi filed an application under Order VI Rule 16 C.P.C. and under Order 7 Rule 11 C.P.C. The question that was raised in the said application was, whether the returned candidate was a citizen of India and was qualified to contest the election. Paragraphs 21, 23, 24, 25, 26, 29 and 30 were emphasized by the learned counsel appearing for the returned candidate.

31. However, I am of the considered view that the said judgment may not come to the rescue of the returned candidate for the following reasons:- (a) Even in the said judgment, the Honble Apex Court has held that presumption about the certificate of citizenship issued under Section 5 of the Citizenship Act, 1955 is rebuttable and not conclusive. Paragraph 21 of the said judgment is usefully extracted hereunder:- " 21. A certificate of citizenship issued under Section 5 of the Act is a statutory certificate issued by a statutory authority. A presumption of validity and regularity attaches with such certificate. Under Section 114 Illustration (e) of the Evidence Act, 1872 the court may presume that official acts have been regularly performed. A presumption attaching with the certificate is available to be drawn to the effect that the prescribed authority issuing the certificate was competent to do so and that it had satisfied itself as to the existence of such facts as would entitle the applicant (that is, the respondent herein) to issuance of such certificate and that the application for the issuance of certificate filed by the applicant was in order. The presumption exists though it is rebuttable and not conclusive." In the case on hand, the returned candidate obtained community certificate just before the election. In view of the same, the plea that was taken by the election petitioner that the returned candidate is a Christian and not a Hindu has to be tested only at the time of trial and it cannot be thrown out at the threshold. (b) In para 23 of the said judgment, which was emphasized by the learned counsel appearing for the returned candidate, it has been held by the Honble Apex Court that only if material facts have not been stated, the election petition can be thrown out at the threshold. Paragraph 23 is thus, usefully extracted hereunder:- "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 Code of Civil Procedure, 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 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*, *Jitendra Bahadur Singh v. Krishna Behari*.) 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 negative fact, if necessary. In *V.S. Achuthanandan v. P.J.*

Francis 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 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. " In the given case on hand, if the election petition is read as a whole, in my considered view, it contains material facts. Hence, the same cannot be thrown out at the threshold. (c) In paragraph 24 of the said judgment, it has been held by the Hon'ble Apex Court that the plaint shall disclose cause of action. As far as the present election petition is concerned, a whole reading of the same, will disclose that there exists a cause of action to file the election petition. (d) It has been held in paragraph 26 of the said judgment that the election petitioner, who has to build a case that the respondent therein could not have cancelled the renounced citizenship and become a citizenship of India when she applied for and was issued certificate of citizenship under Section 5(1)(c) of the Citizenship Act, has made only bald allegations without any basis. However, the said position is not prevalence in the election petition presented by the election petitioner. (e) In paragraph 30 of the said Judgment, it has been held that no foundation has been laid in the pleadings by stating all relevant material facts enabling the Court to enter into examining such a plea of far-reaching consequences and implications. As already pointed out, that is not the case as per the reasons given above.

32. Yet another decision that was relied on by the learned counsel appearing for the returned candidate is reported in 2012 (3) CTC 67.P.Chidambaram vs. R.S.Raja Kannappan. That is the case where Mr.P.Chidambaram, the then Home

Minister, now Finance Minister of India, in an election petition filed by one R.S.Raja Kannappan, challenging the election of Mr.P.Chidambaram, has filed an application in A.No.3428 of 2011 to reject the election petition under Order 7 Rule 11 C.P.C. and also under Order 6 Rule 16 C.P.C., to strike out the pleadings. I have struck off paragraphs 4 and 5 of the said election petition. The reason being, that the allegations therein were unsupported by any document. However, in the present case on hand, as stated already, prima facie, I am satisfied that the election petitioner has made out a case and material facts have been stated with particulars, which can be tested only at the time of trial.

33. The decision reported in (2010) 9 Supreme Court Cases 712 M.Chandra vs. M.Thangamuthu and another, was relied on by the learned counsel appearing for the returned candidate to support the case of the returned candidate. That is the case, where it came before the Honble Apex Court after full-fledged trial. Further more, the returned candidate therein relied on the conversion certificate and it has been found by the Honble Apex Court that the same demonstrates that the returned candidate successfully proved her claim of reaffirmation of Hindu faith by undergoing rituals of conversion in Arya Samaj. It has been further held that the evidence given by the returned candidate that her father was a Christian, her mother was an Hindu and she practiced Hinduism throughout her life was consistent and reliable. In the case on hand, the election petition is yet to see the trial. Paragraph 50 of the said judgment is usefully extracted hereunder:- " 50. On a careful perusal of the judgment in Nimmaka case, it is possible to distinguish the present case on the basis of the facts and circumstances. In the abovementioned case, which the High Court has relied upon, there was no conversion from one religion to another. The question was whether the person belongs to Kshatriya caste or a Scheduled Tribe. The question related to castes within a religion as opposed to the present case, where there has been conversion from one religion to another. Therefore, the reasoning given by the High Court to reverse and discharge the burden of proof is erroneous and the burden of proof should lie on the election petitioner to prove that the appellant still professes Christianity." 34. Paragraphs 62 and 76 of the said judgment were emphasized by the learned counsel appearing for the returned candidate and the same are extracted hereunder:- " 62. Another important evidence which the election petitioner has

taken aid of is the birth register of the children of the appellant for the year 1997, where the name of the father of the child has been described as Soosaimanickam and the name of the mother has been described as Glory and the religion shows Christianity. All the relevant entries were listed in Ext. P-10. In his testimony, Mr M.K. Rajendran, PW 4. Deputy Tahsildar, Periyakulam, Theni District clearly states that none of the entries in the Ext. P-10 register have been entered on the reporting of births by the parents. This is a very important admission on the part of the witness as this indicates that may be not many people had the knowledge of the conversion of the appellant and her husband. The entry cannot be relied upon by Respondent 1 as it is mainly based on hearsay knowledge; because of the fact that the parents had themselves not reported the birth of the child. In the present case, the child birth was reported by the Village Head Nurse. She also states that she knows neither Soosaimanickam nor Glory.

76. Reliance placed on the birth records, entries in the telephone application and voters' list cannot be the sole ground for proving that the appellant is professing Christianity. As stated above, the records could have been made by people other than the appellant or her husband. As far as the birth register is concerned, it is clear that the birth was reported not by the parents, but the Village Head Nurse. Similarly, it is very likely that after her conversion, the appellant never went ahead and changed the name appearing in the voters' list. Also it is not mentioned in the voters' list as to what religion the appellant professes. " In the said paragraphs, it has been held by the Hon'ble Apex Court that the entries have been made not at the instance of the parents, but the child birth was reported by Village Head Nurse. The full-fledged evidence was available therein to come to such a conclusion.

35. Again paragraph 77 of the said judgment was emphasized by the learned counsel appearing for the returned candidate, which is re-produced hereunder:-
"77. There is a common pattern arising that all the witnesses of the election petitioner as well as the original Respondent 2 are affiliated to the rival party DMK in some capacity or the other as opposed to the appellant who represented the AIADMK Party. The election petitioner has relied heavily on the testimony of the witnesses Mrs Deivathai, T.P. Paulasamy and Rajaiya to prove that the appellant continues to profess Christianity. However, the testimonies of all the three

witnesses are highly contradictory and hearsay. All the three witnesses have come to know about the religion of the appellant and her husband from other people. Admittedly, none of them have come in close contact with the appellant, the appellant's husband and both their families in any form. They have not produced any proof or document to prove that the appellant professes Christianity. " The above extracted portion will clearly show that after the entire evidence was over, the matter was decided by the High Court, which came to be decided before the Honble Apex Court. The witnesses therein deposed something, which was not within their knowledge, which was not accepted by the Honble Apex Court. As stated already, the present election petition is yet to see the trial. Therefore, I am of the considered view that when a reading of the whole election petition discloses cause of action and material facts and particulars have been given, the same cannot be thrown out at the threshold and the veracity of the statements made thereunder has to be seen after the entire evidence is over.

36. One more submission that has been made on the side of the returned candidate is that there is a lack of cause of action. In my considered view, a reading of the entire election petition shows that the election petitioner has raised cause of action. In the judgement reported in (1994) 2 Supreme Court Cases 392, Mohan Rawale vs. Damodar Tatyaba alias Dadasahed and Others, the Hon'ble Apex Court in paragraph 10 has held as follows: "10. We may take up the last facet first. As Chitty, J.

observed, There is some difficulty in affixing a precise meaning to the expression discloses no reasonable cause of action or defence. He said: In point of law ... every cause of action is a reasonable one. (See Republic of Peru v. Peruvian Guano Co.)¹ A reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleading are considered. But 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. The implications of the liability of the pleadings to be struck out on the ground that it discloses no reasonable cause of action are quite often more known than clearly understood. It does introduce another special demurrer in a new shape. The failure of the

pleadings to disclose a reasonable cause of action is distinct from the absence of full particulars. The distinctions among the ideas of the grounds in Section 81(1); of material facts in Section 83(1)(a) and of full particulars in Section 83(1)(b) are obvious. The provisions of Section 83(1)(a) and (b) are in the familiar pattern of Order VI, Rules 2 and 4 and Order 7, Rule 1(e) Code of Civil Procedure. There is a distinction amongst the grounds in Section 81(1); the material facts in Section 83(1)(a) and full particulars in Section 83(1)(b)." 37. In the present case on hand, as stated already, the election petitioner has come up with the election petition alleging that the returned candidate do not belong to the Hindu Scheduled Caste community and he has produced some documents to substantiate his case. Hence, I am of the considered view that the election petitioner has made out cause of action which has to be considered only at the time of trial. One thing to say that there is no cause of action and another to say that there is lack of cause of action. In the case on hand, none prevails.

38. One more ground that was raised by the learned counsel appearing for the returned candidate is that the election petitioner has not verified the averments made in paragraphs 8, 9, 12 to 20 and 25 in accordance with Section 83(1)(c) of the Act r/w order 6 Rule 15 C.P.C. The averments made in paragraph 5 of the counter is reproduced hereunder:- 5. I submit that all the averments in paras 8, 9, 12 to 20 and 25 have been made and verified in accordance with section 83(1)(c) of the Representation of the People Act and Order VI Rule 15 of the CPC. Hence the election petition is not bound to be rejected. I submit without prejudice to the above contention that even assuming without admitting that there is some defect in verification of pleadings as contemplated u/s 83(1)(c) of the Representation of the People Act or order VI Rule 15 CPC, it is a curable and would not require the dismissal / rejection of the election petition persee and in limine.

39. Before advertng to the said contention, it would be useful to extract Section 83(1)(c) of the Act and the same is extracted hereunder:- " 83. Contents of Petition:- (1) An election petition (a) (b) (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." As per the said provision, the election petition shall be signed by the election petitioner and verified in the manner laid down in

the Code of Civil Procedure, 1908 for verification of the pleadings. Proviso to the said clause reads as follows:- 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.

40. Order 6 Rule 15 C.P.C. deals with verification of pleadings and it reads as follows:- 15. Verification of pleadings:- (1) Save as otherwise provided by any law for the time being in force, every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other person proved to the satisfaction of the court to be acquainted with the facts of the case. (2) The person verifying shall specify, by reference to the numbered paragraphs of the pleading, what he verifies of his own knowledge and what he verifies upon information received and believed to be true. (3) The verification shall be signed by the person making it and shall state the date on which and the place at which it was signed."

41. The election petitioner in the verification column of the election petition, has stated as follows:- VERIFICATION I, the petitioner, V.Anbzhagan S/o.Veeran, Hindu, aged about 42 years, No.7-1-4, Murugan Kovil Street, Thamaraiikulam, Periyakulam Taluk, Theni District, do hereby declare and verify that what are stated in the above paragraphs 5 to 16 are based my knowledge and what is stated in paras 17 to 19 are based on advise of my counsel and I believe all of them are true.

42. Apart from the said verification, the election petitioner has also filed a verification affidavit, which is extracted hereunder:- VERIFICATION AFFIDAVIT OF V.ANBZHAGAN under section 83 (1) (c) of the R.P.Act, 1951. I, the petitioner, V.Anbzhagan S/o.Veeran, Hindu, aged about 42 years, No.7-1-4, Murugan Kovil Street, Thamaraiikulam, Periyakulam Taluk, Theni District now having come over to Chennai, do hereby solemnly affirm and state as follows:- 1. That I am the petitioner herein and have filed this election petition seeking to declare the Assembly election result declared on 13.5.2011 and the 1st respondent returned as elected, be set aside as null and void.

2. I have filed the petition and to hereby declare and verify that what are stated above in paragraphs 5 to 16 are based my knowledge and what is stated in paras 17 to 19 are based on advise of my counsel and I believe all of them to be true.

3. I hereby declare and verify that the 17 documents filed along are true copies of the originals and believed to be true and verify the same. Thus, he has verified that paragraphs 5 to 16 are based on his knowledge and what is stated in paragraphs 17 to 19 are based on the advise of his counsel and he believes all of them to be true.

43. In (2004) 1 Supreme Court Cases 46 Regu Mahesh alias Regu Maheswar Rao vs. RAjendra Pratap Bhanj Dev and another, the Honble Apex Court, in paragraph 9, has held as follows:- "9. As sub-rule (2) of Rule 15 prescribes, a person making a verification is required to specify by reference to the numbers of paragraphs of the pleadings what he believes on his own knowledge, and what he reveals upon information received and believed to be true. This, admittedly, has not been done in the present case. " 44. In paragraph 16 of the said judgment, their Lordships have relied on the decision reported in AIR 195.SC 31.State of Bombay v. Purushottam. Paragraph 16 is extracted hereunder:- " 16. The Constitution Bench in State of Bombay v. Purushottam noted as follows: (AIR p. 319, para

16) The verification however states that everything was true to the best of his information and belief. We point this out as slipshod verifications of this type might well in a given case lead to a rejection of the affidavit. Verification should invariably be modelled on the lines of Order 19 Rule 3 of the Civil Procedure Code, whether the Code applies in terms or not. And when the matter deposed to is not based on personal knowledge the source of information should be clearly disclosed. We draw attention to the remarks of Jenkins, C.J.

and Woodroffe, J.

in Padmabati Dasi v. Rasik Lal Dhar and endorse the learned Judges' observations.

45. In (2012) 5 Supreme Court Cases 511 P.A.Mohammed Riyas vs. M.K.Raghavan and others, which was relied on by the learned counsel appearing for the election petitioner, in paragraphs 43, 44, 46 and 47, it has been held as follows:- "43. What is important is the proviso which makes it clear that where the election 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 and the schedule or annexures to the petition shall also be signed by the petitioner and verified in the same manner as the petition. In other words, when corrupt practices are alleged in an election petition, the source of such allegations has to be disclosed and the same has to be supported by an affidavit in support thereof.

44. In the present case, although allegations as to corrupt practices alleged to have been employed by the respondent had been mentioned in the body of the petition, the petition itself had not been verified in the manner specified in Order 6 Rule 15 of the Code of Civil Procedure. Sub-section (4) of Section 123 of the 1951 Act defines corrupt practice and the publication of various statements against the appellant which were not supported by affidavit could not, therefore, have been taken into consideration by the High Court while considering the election petition. In the absence of proper verification, it has to be accepted that the election petition was incomplete as it did not contain a complete cause of action.

46. Mr Venugopals submission that, in any event, since the election petition was based entirely on allegations of corrupt practices, filing of two affidavits in respect of the selfsame matter, would render one of them redundant, is also not acceptable. As far as the decision in F.A. Sapa case³ is concerned, it has been clearly indicated that the petition, which did not strictly comply with the requirements of Section 83 of the 1951 Act, could not be said to be an election petition as contemplated in Section 81 and would attract dismissal under Section 86(1) of the 1951 Act. On the other hand, the failure to comply with the proviso to Section 83(1) of the Act rendered the election petition ineffective, as was held in Hardwari Lal case¹³ and the various other cases cited by Mr P.P. Rao.

47. In our view, the objections taken by Mr P.P. Rao must succeed, since in the absence of proper verification as contemplated in Section 83, it cannot be said that the cause of action was complete. The consequences of Section 86 of the 1951 Act come into play immediately in view of sub-section (1) which relates to trial of election petitions and provides that the High Court shall dismiss the election petition which does not comply with the provisions of Section 81 or Section 82 or Section 117 of the 1951 Act. Although Section 83 has not been mentioned in sub-section (1) of Section 86, in the absence of proper verification, it must be held that the provisions of Section 81 had also not been fulfilled and the cause of action for the election petition remained incomplete. The petitioner had the opportunity of curing the defect, but it chose not to do so. " In the said decision, the Honble Apex Court has held that when the election petitioner alleges corrupt practice, the election 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 and the schedule or annexure to the petition shall also be signed by the election petitioner and verified in the same manner as the petition. The above extracted verification in the election petition and the verification affidavit filed by election petitioner, satisfy the requirement under Section 83(1)(c) of the Act.

46. In this connection, it would be useful to refer the judgment reported in (2012) 7 Supreme Court Cases 788 Ponnala Lakshmaiah vs. Kommui Pratap Reddy and others, which was cited by the learned counsel appearing for the election petitioner. Paragraphs 9, 22 and 31 of the said judgment are usefully extracted hereunder:- " 9. We may also gainfully refer to the decision of this Court in H.D. Revanna v. G. Puttaswamy Gowda where this Court held that an election petition can be dismissed for non-compliance with Sections 81, 82 and 117 of the Representation of the People Act, 1951 but it may also be dismissed if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. A defect in the verification of the election petition or the affidavit accompanying the election petition was held to be curable, hence, not sufficient to justify dismissal of the election petition under Order 7 Rule 11 or Order 6 Rule 16 CPC. The following passage in this regard is instructive: (SCC p. 223, para

14) 14. the relevant provisions in the Act are very specific. Section 86 provides for dismissal of an election petition in limine for non-compliance with Sections 81, 82 and 117. Section 81 relates to the presentation of an election petition. It is not the case of the appellant before us that the requirements of Section 81 were not complied with. Sections 82 and 117 are not relevant in this case. Significantly, Section 86 does not refer to Section 83 and non-compliance with Section 83 does not lead to dismissal under Section 86. This Court has laid down that non-compliance with Section 83 may lead to dismissal of the petition if the matter falls within the scope of Order 6 Rule 16 or Order 7 Rule 11 CPC. Defect in verification of the election petition or the affidavit accompanying the election petition has been held to be curable and not fatal.

22. Even otherwise the question whether non-compliance with 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. 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 with 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.

31. Suffice it to say, that in the absence of any provision making breach of the proviso to Section 83(1) a valid ground of dismissal of an election petition at the threshold, we see no reason why the requirement of filing an affidavit in a given format should be exalted by a judicial interpretation to the status of a statutory mandate. A petition that raises triable issues need not, therefore, be dismissed simply because the affidavit filed by the petitioner is not in a given format no matter the deficiency in the format has not caused any prejudice to the successful

candidate and can be cured by the election petitioner by filing a proper affidavit. "

47. In view of the above stated position, I am of the considered view that the contention raised by the learned counsel appearing for the returned candidate that the election petitioner has not verified the averments set out in the election petition in accordance with Section 83(1) (c) of the Act r/w Order 6 Rule 15 C.P.C. and hence, the election petition has to be dismissed at threshold is untenable.

48. For all the reasons stated above, I am of the considered view that the returned candidate has not made out any case to reject the election petition filed by the election petitioner and to strike off the pleadings made in paragraphs 8, 9, 12 to 20 and 25 of the election petition for the reasons set out by the returned candidate in his application. In fine, both the applications stand dismissed. sbi pgp

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