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GOVERNMENT OF TAMIL NADU
2013

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No. 242]

CHENNAI, TUESDAY, AUGUST 27, 2013
Aavani 11, Vijaya, Thiruvalluvar Aandu-2044

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGMENT OF THE HIGH COURT OF MADRAS
IN ELECTION PETITION No. 1 OF 2012.

No.SRO G-16/2013.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated: 26th July 2013, [4 Shravana, 1935 (Saka)] is published:—

No. 82/TN-LA/1/2011:—In pursuance of Section 106 (b) of the Representation of the People, Act, 1951 (43 of 1951), the Election Commission hereby publishes the Judgment of the High Court of Madras, dated 6-11-2012 in Election Petition No. 1 of 2012.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Wednesday, the 6th day of November 2012

THE HON'BLE Mr. JUSTICE K. VENKATARAMAN

Election Petition No. 1 of 2012

ELP. No. 1 of 2012

T. Pandiarajan,
son of Thangaiyan,
No. 4/1142, West Street,
Thirunaraiyur Panchayat,
Nachiyar Koil Post,
Kumbakonam Taluk,
Thanjavur District—*Petitioner.*

Versus

1. Chezhan Kovi,
No. 5, Keelatheru Rajanganallur,
Vilanathan Kandam,
Kumbakonam Taluk.
2. Rajavelu. K,
1280, Kuppamkulam,
Sakkottai Post,
Kumbakonam Taluk.
3. Rajasekar. J,
Manavelitheru,
Keeranur,
Paruthicheri (PO),
Kumbakonam Taluk.
4. Elangovan. S,
12/1B-1, Agarathirukolakka Street,
Thempathi Sirkali (PO)-609 110,
Nagapattinam District.
5. Elangovan. A,
1-17-A1, Keelatheru,
Madagu Salai,,
Mullangudi Post,
Thiruvudaimaruthur Taluk.

6. Elaiyaraja. V,
Alagirinathan Pettai,
Anakudi Post-612 105,
Thiruvudaimaruthur Taluk.
7. Kudanthari Arasan,
541, Kamarajar Nagar,
New Street, Melakaveri,
Kumbakonam-612 002.
8. Subash Chandra Bose. T,
228, Moopakoil,
Adidraavidar Theru,
Sesambadi,
Kumbakonam Taluk.
9. Ravichandran. S,
1/90, North Street,
Vadakattalai,
Thirunaraiyur,
Nachiyarkoil Post,
Kumbakonam Taluk.
10. The Returning Officer,
170, Thiruvudaimaruthur,
Assembly constituency (S.C)
Thanjavur.
11. District Election Officer,
The District Collector, Thanjavur,
Thanjavur.—*Respondents*.

The Election Petition praying that this Hon'ble Court be pleased to (i) a declaration to declare the election of first respondent is void (ii) declare the Petitioner has been validly elected to 170 Thiruvudaimaruthur Constituency in Tamil Nadu Assembly Elections 2011 held on 13-4-2011 (iii) for costs of this Petition.

The above election petition coming on this day before this court for hearing in the presence of Mr. B.R.Ramesh Bapu Advocate for the Election Petitioner and of Mr.P. Kumaresan advocate for the 1st respondent herein and upon reading the Petition of T. Pandiarajan, filed herein and the order date 6-11-2012 made in O.A. No. 727/2012 to reject the Election Petition and the same was allowed by this Court.

This court made the following order:—

The election petitioner has come up with the present election petition for a declaration to declare that the election of the first respondent is void and to declare that the petitioner has been validly elected to 170, Thiruvudaimaruthur Constituency in Tamil Nadu Assembly Elections 2011 held on 13-04-2011.

4 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

2. During the pendency of the election, Petition, the returned candidate viz., Chezian Govi, the first respondent in the election petition, has filed an application in O.A. No. 727 of 2012 to reject the election petition and the same was allowed by this Court by an order dated 6-11-2012 stating that the election petitioner has not made out any prima facie case in his favour.

3. In view of the same, the present Election Petition stands dismissed However, no order as to costs.

WITNESS THE HON'BLE THIRU M. YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 6TH DAY OF NOVEMBER 2012.

Sd/-
Assistant Registrar
(Original Side-II)

(CERTIFIED TO BE TRUE COPY)

Dated this the 10th day of June 2013.

— Sd/- —

Court Officer (O.S)

From 25th day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format

ELP. No. 1 of 2012

Order

Dated: 6-11-2012

THE HON'BLE MR. JUSTICE
K. VENKATARAMAN

FOR APPROVAL: 29-1-2013

APPROVED ON: 30-1-2013

Copy to:
Mr. M.R. Raghavan,
Standing Counsel for
Election:

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Wednesday, the 6th day of November 2012

THE HON'BLE MR. JUSTICE K. VENKATARAMAN

O.A.No.727 OF 2012

In

Election Petition No. 1 of 2012

ELP. No. 1 of 2012

T. Pandiarajan,
son of Thangaiyan,
No.4/1142, West Street,
Thirunaraiyur Panchayat,
Nachiyar Koil Post,
Kumbakonam Taluk,
Thanjavur District.—*Petitioner.*

Versus

1. Chezhian Kovi,
No. 5, Keelatheru Rajanganallur,
Vilanthan Kadam,
Kumbakonam Taluk.
2. Rajavelu. K,
1280, Kuppamkulam,
Sakkottai Post,
Kumbakonam Taluk.
3. Rajasekar. J,
Manavelitheru,
Keeranur
Paruthicheri (PO),
Kumbakonam Taluk.
4. Elangovan. S,
12/1B-1, Agarathirukolakka Street,
Thenpathi Sirkali (PO)-609 110,
Nagapattinam District.

- 5, Elangovan. A,
1-17-A1, Keelatheru,
Madagu Salai,
Mullangudi Post,
Thiruvudaimaruthur Taluk.
6. Elaiyaraja. V,
Alagirinathan Pettai,
Anakudi Post - 612 105,
Thiruvudaimaruthur Taluk.
7. Kudanthari Arasan,
541, Kamarajar Nagar,
New Street, Melakaveri,
Kumbakonam-612 002.
8. Subash Chandra Bose. T,
228, Moopakoil,
Adidraavidar Theru,
Sesambadi,
Kumbakonam Taluk.
9. Ravichandran. S,
1/90, North Street,
Vadakattalai,
Thirunaraiyur,
Nachiyarkoil Post,
Kumbakonam Taluk.
10. The Returning Officer,
170, Thiruvudaimaruthur,
Assembly Constituency (S.C)
Thanjavur.
11. District Election Officer,
The District Collector, Thanjavur,
Thanjavur.—*Respondents*

OA.Nos. 727 of 2012

Chezhian Kovi,
No.5, Keelatheru Rajanganallur,
Vilanthan Kandan,
Kumbakonam Taluk.

— Applicant / 1st Respondent

Versus

1. T. Pandiarajan,
son of Thangaiyan,
No.4/1142, West Street,
Thirunaraipur Panchayat,
Nachiyar Koil Post,
Kumbakonam Taluk,
Thanjavur District.

—1st Respondent/Petitioner.

2. Rajavelu. K,
1280, Kuppamkulam,
Sakkottai Post,
Kumbakonam Taluk.
3. Rajasekar. J,
Manavelitheru,
Keeranur,
Paruthicheri (PO),
Kumbakonam Taluk.
4. Elangovan. S,
12/1B-1, Agarathirukolukka Street,
Thenpathi Sirkali (PO)-609 110,
Nagapattinam District.
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1-17-A1, Keelatheru,
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Mullangudi Post,
Thiruvudaimaruthur Taluk.
6. Elaiyaraja. V,
Alagirinathan Pettai,
Anakudi Post-612 105,
Thiruvudaimaruthur Taluk.
7. Kudanthari Arasan,
541, Kamarajar Nagar,
New Street, Melakaveri,
Kumbakonam-612 002.
8. Subash Chandra Bose. T,
22-B, Moopakoil,
Adidraividar Theru,
Sesambadi,
Kumbakonam Taluk.

9. Ravichandran. S,
1/90, North Street,
Vadakattalai,
Thirunaraiyur,
Nachiyarkoil Post,
Kumbakonam Taluk.
10. The Returning Officer,
170, Thiruvudaimaruthur,
Assembly Constituency (S.C)
Thanjavur.
11. District Election Officer,
The District Collector, Thanjavur,
Thanjavur.

—Respondent 2 to 11

The Original Application Praying that this Hon'ble Court be pleased to reject the Election Petition No. 1 of 2012 in limine.

That the above Original Application coming on this day along with the Election Petition No.1 of 2012 in the presence of Mr. P. Kumaresan, advocate for the applicant/1st respondent and of Mr.B.R Ramesh Bapu, advocate for the 1st respondent / Election Petitioner, herein and upon reading the Judges summon and affidavit of Chezhan Kovi and the Counter affidavit of T. Pandiarajan, filed herein and this court is of the view that the Election Petitioner, has not made out any Prima Facie case against the returned candidate and the election petition that has been filed by the election petitioner on presumption and surmises cannot be entertained by this Court. The election petitioner has filed the election petition in a lethargic manner without taking serious note of the provisions of the Act, and though exemplary costs has to be awarded for filing such an Election Petition, this Court refrains from imposing heavy costs on the election petitioner,

It is ordered as follows:—

That the Election Petition No.1 of 2012 be and is hereby rejected.

WITNESS THE HON'BLE THIRU M. YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 6TH DAY OF NOVEMBER 2012.

Sd/-

*Assistant Registrar
Original Side-II*

(Certified to be true copy)

Dated this the 10th day of June 2013.

Sd/-

Court Officer (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

OA. Nos. 727 of 2012.

in

ELP.No.1 of 2012

Decreetal Order

Dated 6-11-2012

The Hon'ble MR. Justice

K. VENKATARAMAN

FOR APPROVAL: 29-1-2013

APPROVED ON: 30-1-2013

Copy to:

Mr. M.R. Raghavan,
Standing Counsel for
Election.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Wednesday, the 6th day of November 2012

THE HON'BLE MR. JUSTICE K. VENKATARAMAN

O.A.NO.726 OF 2012

In

Election Petition No. 1 of 2012

ELP. No. 1 of 2012

T. Pandiarajan,
son of Thangaiyan,
No. 4/1142, West Street,
Thirunaraiyur Panchayat,
Nachiyar Koil Post,
Kumbakonam Taluk,
Thanjavur District.

—*Petitioner.*

Versus

1. Chezhian Kovi,
No. 5, Keelatheru Rajanganallur,
Vilanthan Kadam,
Kumbakonam Taluk.
2. Rajavelu. K,
1280, Kuppamkulam,
Sakkottai Post,
Kumbakonam Taluk.
3. Rajasekar. J,
Manavelitheru,
Keeranur
Paruthicheri (PO),
Kumbakonam Taluk.
4. Elangovan. S,
12/1B-1, Agarathirukolakka Street,
Thenpathi Sirkali (PO)-609 110,
Nagapattinam District.

5. Elangovan. A,
1-17-A1, Keelatheru,
Madagusalai,
Mullangudi Post,
Thiruvudaimaruthur Taluk.
6. Elaiyaraja. V,
Alagirinathan Pettai,
Anakudi Post - 612 105,
Thiruvudaimaruthur Taluk.
7. Kudanthari Arasan,
541, Kamarajar Nagar,
New Street, Melakaveri,
Kumbakonam-612 002.
8. Subash Chandra Bose. T,
228, Moopakoil,
Adidraavidar Theru,
Sesambadi,
Kumbakonam Taluk.
9. Ravichandran. S,
1/90, North Street,
Vadakattalai,
Thirunaraiyur,
Nachiyarkoil Post,
Kumbakonam Taluk.
10. The Returning Officer,
170, Thiruvudaimaruthur,
Assembly Constituency (S.C)
Thanjavur.
11. District Election Officer,
The District Collector, Thanjavur,
Thanjavur.—*Respondents*

OA.No.727 of 2012

Chezhian Kovai,
No.5, Keelatheru Rajanganallur,
Vilanthan Kandan,
Kumbakonam Taluk.

—Applicant / 1st Respondent

Versus

1. T. Pandiarajan,
son of Thangaiyan,
No. 4/1142, West Street,
Thirunaraiyur Panchayat,
Nachiyar Koil Post,
Kumbakonam Taluk,
Thanjavur District.
1st Respondent/ Election Petitioner.
2. Rajavelu. K,
1280, Kuppamkulam,
Sakkottai Post,
Kumbakonam Taluk.
3. Rajasekar. J,
Manavelitheru,
Keeranur,
Paruthicheri (PO),
Kumbakonam Taluk.
4. Elangovan. S,
12/1B-1, Agarathirukolukka Street,
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Nagapatinam District.
5. Elangovan. A,
1-17-A1, Keelatheru,
Madagusalai,
Mulangudi Post,
Thiruvudaimaruthur Taluk.
6. Elaiyaraja. V,
Alagirinathan Pettai,
Anakudi Post - 612 105,
Thiruvudaimaruthur Taluk.
7. Kudanthari Arasan,
541, Kamarajar Nagar,
New Street, Melakaveri,
Kumbakonam-612 002.
8. Subash Chandra Bose. T,
228, Moopakoil,
Adidraavidar Theru,
Sesambadi,
Kumbakonam Taluk.

9. Ravichandran. S,
1/90, North Street,
Vadakattalai,
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10. The Returning Officer,
170, Thiruvidaimaruthur,
Assembly Constituency (S.C)
Thanjavur.
11. District Election Officer,
The District Collector, Thanjavur,
Thanjavur. .. *Respondent*

The Original Application praying that this Hon'ble Court be pleased to reject the Election Petition No. 1 of 2012 in limine.

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This Court made the following order:—

The present application is taken out to reject the election petition.

2. For the sake of convenience, the applicant will be referred as the returned candidate, the first respondent as the election petitioner and the other respondents as per their status in the election petition.

3. The Election Petitioner has filed the Election Petition under Section 80-A, 81 to 84 r/w Section 100(1) (b), Section 101 and Section 123(1)(A)(b) of the Representation of the People Act, 1951 (herein after called as the Act).

4. The said election Petition was filed questioning the election of the Returned candidate in the Tamil Nadu Assembly General Elections to 170, Thiruvidai Maruthur SC Assembly Constituency. The election Petitioner was the candidate of the AIADMK, whereas the returned candidate belongs to the DMK party.

5. The grounds on which the election petition was filed are set out in paragraph 8 of the election Petition.

6. In the ground no. (a) to (c) of the election Petition, it is stated as follows:

“(a) FIR was registered in Crime No. 93/11 dated 09-04-2011 under Section 171E IPC at 11.30 P.M. by the Flying squad for the constituency alleged to have recovered Rs.1400/- from voters Jayalatchumi, Vikayalatchumi, Kanthimathi and Muthulatchumi of Kilaveedi, Thirumangalakudi.

(b) The 1400 Rs. notes and thin numbers were recorded by the Special Squad and signed by the officer also supported by “Dina Malar”, “Thinathanthi Tamil Daily” at 09-04-2011 Publications;

(c) The complaints given to the Squad and authorities of Election Commission stating that each voter was given 200 rupees went unheeded by

no action or reply by the poll Authorities.”

7. As regards the seizing of a sum of Rs.1,400/- from the voters Jayalatchumi, Vikayalatchumi, Kanthimathi and Muthulatchumi of Kilaveedi, Thirumangalakudi are concerned and also as regards the allegation regarding the complaints given to the Squad and authorities of Election Commission about the distribution of a sum of Rs.200/- to each of the voters are concerned, unless otherwise the election petitioner comes with a plea that the voters have been paid by the returned candidate or his election agent or by any other person with the consent of the returned candidates or his election agent, he cannot be succeeded in alleging corrupt practice against the returned candidate. In this connection, it would be useful to refer clause (b) of clause (1) of Section 100 of the Act which is usefully reproduced here under:

“100. Grounds for declaring election to be void.—[(1) Subject to the provisions of sub-section (2), if [the High Court) is of opinion-

(a).....

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent; or”

8. In the said ground raised by the election petitioner to set at naught the election of the returned candidate, nowhere it has been pleaded that the voters have been paid money by the returned candidate or his election agent or at least with their consent. In view of the above stated position, I am of the considered view that the election petition is liable to be dismissed as regards the filing of the same under section 100 (1) (b) of the Act. Further more, merely because an FIR has been registered against the third parties and money has been recovered from the voters, it may not be a ground to set at naught the election of the returned candidate, unless otherwise it has been pleaded that the corrupt practice has been committed by the returned candidate or his election agent or by any other person with their consent.

9. Hence, the aforesaid grounds raised in the election petition, viz., ground no. (a) to (c) is liable to be rejected in limine.

10. The next ground on which the election petition was filed is set out in ground no. (d) and (e) which are reproduced here under:

“(d) The respondents 10 and 11 will have to produce this Honorable Court as to why EVS Machines in Booth Numbers 21,27,87, 102, 120, 138, 170 & 214 were shown as invalid and how it has got repaired by whom when the proof of repairs were not done in the presence of the petitioner and agents.

(e) The complaint that control under No.L.12866 in EVM machine in Booth Nos.120 and 136 are one and same and it was not having different numbers. The petitioners still do not know.”

11. Even the said grounds taken in the election petition have to be thrown out at the initial stage itself for the following reasons:

(a) No document has been filed before this Court to establish the said allegations.

(b) The election petitioner who could have made a complaint at the initial stage itself on the said allegations, failed to make any complaint to the election officer or the returning officer and for the first time he has made such allegation in the election petition.

(c) The allegations are vague, without any material facts and material particulars.

12. In this connection it would be useful to extract Section 83 of the Act.

“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.”

13. The said provision amply makes it clear that the election petition not only shall contain a concise statement of material facts on which the petitioner relies but also shall set out full particulars of corrupt practice which the election petitioner alleges. In the case on hand, as stated already, the ground no. (d) and (e) are made without any material facts and particulars. A vague allegation made like this cannot be entertained.

14. The next ground on which the election petition was filed is set out in ground no. (f) and the same is reproduced here under:

“(f) The petitioner alleges manipulation of voting and changes were made to favour the first respondent and AIADMK votes went to DMK under the guise of repairs which will be more than 2,000 votes in favour of AIADMK.”

15. As regards the said ground is concerned, except saying that the returned candidate had manipulated the voting, no material facts or particulars have been given. Here again, the election petitioner has not complied with the requirements of Section 83 of the Act. As stated already, a vague allegation in this regard will not constitute a reason for filing the election petition and it will constitute a reason for setting aside the election of the returned candidate.

16. The next ground on which the election petition was filed is set out in ground nos.(g) and (h) which are reproduced here under:

“(g) The 10th respondent will have to explain why the EVM's Video DVD does not correspond to the tables for which it is meant for example the Table No.4 Video have to show Table No.4. But DVD shows 10th Table for the concerned booth. The 10th respondent will have to demonstrate the difference.

(h) The petitioner alleges manipulation in respect of Booth No. 214 when the Control Number is different in form 20.”

17. As regards the said grounds are concerned, no corrupt practice has been urged against the returned

Candidate and only a vague reference about the same has been made. Here again, the election petitioner has not filed the election petition as required under Section 83 of the Act. The petitioner who has to establish the corrupt practice against the returned candidate has made a vague reference about the action of the 10th respondent without any material facts and particulars, which cannot be entertained. The election petitioner has not substantiated the allegations as required under the Act. No documents has been filed to substantiate the allegations made in the election petition.

18. Further, on a fair reading of the entire election petition, it is evident that there are no fundamental facts or primary facts constituting material facts supported by all particulars, substantiating the allegations made in the election petition. In the absence of such material facts, this Court is of the view that there is no cause of action at all for filing the election petition and hence, it has to be rejected in limine under Order 7 Rule 11 CPC.

19. The election petition has been filed on frivolous grounds and no conscious and unambiguous grounds have been pleaded. The petitioner cannot have the luxury of proceeding with the trial. He cannot require this Court to make a rowing enquiry about the allegations made in the election petition on mere surmises and conjunctions.

20. **In (2006) 13 Supreme Court Cases 353 – Sathi Vijay Kumar V. Tota Singh and others**, the Hon'ble Apex Court held in paragraphs 33, 34, and 55 as follows:-

"33. At the same time, however, it cannot be overlooked that normally a court cannot direct parties as to how they should prepare their pleadings. If the parties have not offended the rules of pleadings by making averments or raising arguable issues, the court would not order striking out pleadings. The power to strike out pleadings is extraordinary in nature and must be exercised by the court sparingly and with extreme care, caution and circumspection (vide Roop Lal Sathi V. Nachattar Singh Gill: K.K. Modi V.K.N. Modi, United Bank of India V. Naresh Kumar)"

34. More than a century back, in Knowles V. Roberts Bowen, L.J. said:

"It seems to me that the rule that the Court is not to dictate to parties how they should frame their case, is one that ought always to be preserved sacred. But that rule is, of course, subject to this modification and limitation, that the parties must not offend against the rules of pleading which have been laid down by the law; and if a party introduces a pleading which is unnecessary, and it tends to prejudice, embarrass and delay the trial of the action, it then becomes a pleading which is beyond his right. It is a recognized principle that a defendant may claim ex-debito justitiae to have the plaintiff's claim presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict even to severity in taking care to prevent pleadings from degenerating into the old oppressive pleadings of the Court of Chancery".

"55. In our opinion, the High Court was not right in deleting the above para relying on Shivcharan and Santosh Yadav. Neither of the above cases related to striking out pleadings. What was held by this Court in those cases was that when an election petitioner alleges that there was improper acceptance of nomination paper of some candidate and had the said illegal acceptance been not allowed, the voters would have voted in favour of the petitioner, the burden of proof was on the election petitioner. This Court observed that though it was very difficult for the election petitioner to prove such fact, nonetheless, the onus was on him and he had to discharge it. We are here not at the stage of trial but only at the stage of pleadings. The ratio laid down in the above cases, therefore, in our considered opinion, has no application in the case on hand and the High Court was wrong in invoking the law laid down in the aforesaid decisions."

21. **In (2012) 4 Supreme Court Cases 194 – Jitu Patnaik V. Sanatan Mohakud and others**, the Hon'ble Apex Court, in paragraphs 43 to 46, has held as follows:-

“43. Order VI Rule 2 of CPC, to the extent it is relevant, reads as under:

2. Pleading to state material facts and not evidence.— (1) Every pleading shall contain, and contain only, a statement in a concise form of the material facts on which the party pleading relies for his claim or defense as the case may be, but not the evidence by which they are to be proved .

(2)

(3)

44. Section 83(1)(a) of the 1951 Act is as follows:

83. Contents of petition.—(1) An election petition—(a) shall contain a concise statement of the material facts on which the petitioner relies;

45. A bare perusal of the above provisions would show that the first part of Order VI Rule 2, CPC is similar to clause 1(a) of Section 83 of the 1951 Act. It is imperative for an election petition to contain a concise statement of the material facts on which the election petitioner relies. What are material facts? All basic and primary facts which must be proved at the trial by a party to establish the existence of cause of action or defence are material facts. The bare allegations are never treated as material facts. The material facts are such facts which afford a basis for the allegations made in the election petition. The meaning of ‘material facts’ has been explained by this Court on more than one occasion. Without multiplying the authorities, reference to one of the later decisions of this Court in *Virender Nath Gautam V. Satpal Singh and others* shall suffice.

46. In *Virender Nath Gautam*, this court referred to the case of *Philipps V. Philipps and Others* and the subsequent decision in *Bruce V. Odhams Press Limited* that referred to *Philipps* and observed in paragraphs 34 and 35 (Pg. 629) of the Report as follows:

“34. A distinction between ‘material facts’ and ‘particulars’, however, must not be overlooked. ‘Material facts’ are primary or basic facts which must be pleaded by the plaintiff or by

The defendant in support of the case set up by him either to prove his cause of action or defense. ‘Particulars’, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving distinctive touch to the basic contours of a picture already drawn so as to make it full, more clearer and more informative. ‘Particulars’ thus ensure conduct of fair trial and would not take the opposite party by surprise.

35. All ‘material facts’ must be pleaded by the party in support of the case set up by him. Since the object and purpose is to enable the opposite party to know the case he has to meet with, in the absence of pleading, a party cannot be allowed to lead evidence. Failure to state even a single material fact, hence, will entail dismissal of the suit or petition. Particulars, on the other hand, are the details of the case which is in the nature of evidence a party would be leading at the time of trial.”

22. In (2001) 8 Supreme Court Cases 233 Hari Shanker Jain Vs. Sonia Gandhi, the Hon'ble Apex Court in paragraphs 23, 24 and 33 has held as follows:-

"23. Section 83(1) (a) of RPA, 1951 mandates that an election petition shall contain a concise statement of the material facts on which the petitioner relies. By a series of decisions of this Court, it is well settled that the material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words, they must be such facts as would afford a basis for the allegations made in the petition and would constitute the cause of action as understood in the 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. Commission 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 Sing 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 established existence of a cause of action. Failure to plead "material facts" is fatal to the election petition and no amendment of the pleadings is permissible to introduce such material facts after the time-limit prescribed for filing the election petition.

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

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33. without further burdening this Judgment by dealing with each and every other averment made in the two election petitions, it would suffice to say that we have carefully read each of the two election petitions and heard each of the two election petitioners (appellants) in very many details especially on the aspect of the election petitions suffering from the vice of not satisfying the mandatory requirement of pleading material facts as required by Section 82 (1) (a) of RPA, 1951 and we are satisfied that the two election petitions do not satisfy the requirement statutorily enacted and judicially explained in umpteen number of decisions. The petitions are hopelessly vague and completely bald in the allegations made, most, of which could not possibly be within the personal knowledge of the petitioners but still verified as "true" to their knowledge, without

indicating the source. Such pleadings cannot amount to disclosing any cause of action and are required to be rejected dismissed under Order 7 Rule 11 CPC."

23. Thus, the provisions of the Representation of the people Act and the dictum laid down by the Hon'ble Apex Court makes it clear that the election petition shall contain a concise statement of material facts on which the election petitioner relies and also the material particulars. If material facts and particulars are not found, the election petition shall be dismissed.

24. Therefore, considering the totality of the circumstances referred to above, I am of the considered view that the election petitioner has not made out any prima facie case against the returned candidate and the election petition that has been filed by the election petitioner on presumption and surmises cannot be entertained by this Court. The election petitioner has filed the election petition in a lethargic manner without taking serious note of the provisions of the Act.

25. Hence, the application filed by the returned candidate in O.A. No. 727 of 2012 to reject the election petition is liable to be allowed and accordingly allowed. Though exemplary costs has to be awarded for filing such an Election Petition, this Court refrains from imposing heavy costs on the election petitioner.

WITNESS THE HON'BLE THIRU M. YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 6TH DAY OF NOVEMBER 2012.

Sd/-

ASSISTANT REGISTRAR

Original Side-II

/CERTIFIED TO BE TRUE COPY/

DATED THIS THE 10TH DAY OF JUNE 2013.

COURT OFFICER (OS)

From 25th day of September 2008 the Registry is issuing Certified copies of the Orders/Judgments/Decrees in this format.

CD-28/01/2013

O.A. No. 727 OF 2012

In

ELP. No. 1 OF 2012

ORDER

DATED: 6/11/2012

THE HON'BLE MR. JUSTICE

K. VENKATARAMAN

FOR APPROVAL : 29/01/2013

APPROVED ON: 30/01/2013

Copy to:

Mr. M.R. Raghavan

Standing Counsel for Election.

Sd.....

*Assistant Registrar,
Original Side-II.*

(By Order)

TAPAS KUMAR,
*Principal Secretary,
Election Commission of India.*

Secretariat,
Chennai-600 009,
August, 2013.

PRAVEEN KUMAR,
*Chief Electoral Officer and
Principal Secretary to Government.*

/True Copy/