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E.L.P.No.4 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 23.06.2026

PRONOUNCED ON : 07.07.2026

Coram:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

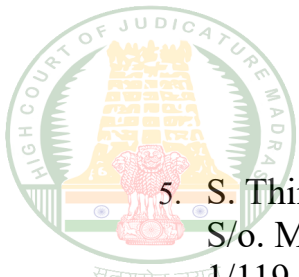
E.L.P.No.4 of 2021  
and O.A.Nos.675, 741, 742 of 2021 & 751 of 2023

V.Ramu  
S/o. Mr. N.B.Varadharajalu,  
No.3/6, Kalleri, Gandhinagar, Kondasamudram,  
Gudiyattam.

..Petitioner(s)

Vs

1. Duraimurugan  
S/o. Mr.Duraisamy,  
No.7, 5th East Coast Road,  
Gandhi Nagar, Vellore 632 006.
2. K. Raja  
S/o. Mr. Kuppan,  
No.24, Ambedkar Street, Kalinjur, Gandhi  
Nagar, Vellore 632 006.
3. K.P. Arumugam  
S/o. Mr. Ponurangam,  
824, Bajanai Kovil Street, Kangeyanellore,  
Vellore 632 006.
4. M. Sudharsan  
S/o. Mr. G. Manikannan,  
No.22, Narayanaswamy, First Street, Pennathur,  
Vellore 632 006.



E.L.P.No.4 of 2021

5. S. Thirukkumaran  
S/o. Mr. Sampath  
1/119, Bajar Street, Lalapet, Walaja, Ranipet  
632 405.

6. A.S. Raja  
S/o. Mr. A.Sagadeva  
No.27/25, Gejaraja Mudaliyar Street,  
Dharapadavedu, Katpadi 632 007.

7. R.S. Sridhar  
S/o. Mr. K.R. Subramaniam,  
No.1, Kalarmedu Street, Pallikuppam  
Village(Post), Katpadi 632 007.

8. J. Anandhi  
D/o. Mr. Jayaseelan,  
13, Budder Street, Thiruvallur Nagar, Katpadi,  
Vellore - 632 007.

9. P. Dhanajayan  
S/o. Mr. Parthasarathi Naidu,  
5/24, Ramar Kovil Street, Athingavariyur,  
Ponnai 632 514.

10.R. Baskaran  
S/o. Mr.K. Ramasami,  
No.2/16, 16th East Cross Road, Gandhi Nagar,  
Katpadi Vellore 632 006.

11.Raman  
S/o. Mr. Ramasami  
No.166, Valluvar Street, Viruthampet, Gandhi  
Nagar, Vellore 632 006.

12.K. Ramu  
S/o. Mr. Kandaswamy  
1/124, Pillaiyar Koil Street, Kugaiyanellore 0  
Post, Thiruvallur, Katpadi Taluk, Vellore  
District 632 515.



E.L.P.No.4 of 2021

13.D. Ramu

S/o. Mr. Durai

No.42, Kasthuri Bai Street, Dharapadaveedu,  
Vellore 632 006.

14.V. Vinayagam

S/o. E.Vijiyan,

No.29/A, Small Street, Vallimalai, Katpadi,  
Vellore District 632 520

15.The Returning Officer

No.40, Katpadi Assembly Constituency,  
Special Deputy Collector, Vellore District.

..Respondent(s)

**Prayer :** Election Petition is filed under Sections 80, 80A, 81, 82, 83, 84, 98(b)(c) r/w Section 100, 100(i)(d)(iii), 100(1)(d)(iv) and 101 of the Representation of the People Act, 1951, read with the Conduct of Election Rules, 1961 and the Madras High Court (Election Petitions) Rules, 1967, to (a) Declare the election of the Returned candidate namely Mr.Duraimurugan, the 1st Respondent in No. 40, Katpadi Assembly Constituency to be void. (b) Order reverification and re-count of all votes polled by postal Ballots in No.40, Katpadi Assembly Constituency (c) Order re-count of all votes polled by Electronic Voting Machines covered under Polling Station Nos.14, 110A (W), 215A(W), 219 and 180M in No.40, Katpadi Assembly Constituency. (d) Declare the Petitioner as the returned Candidate for No.40, Katpadi Assembly Constituency for the Tamil Nadu Assembly Elections, 2021 (e) Direct the Respondents to pay the cost of this Election Petition.

For Petitioner : Mr.B.Arvind Srevatsa

For Respondents

For R1 : Mr.Richardson Wilson  
For M/s. Wilson Associates

For R2 to R14 : No appearance

For 15 : Mr.Niranjan Rajagopalan  
For M/s.G.R. Associates



E.L.P.No.4 of 2021

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## ORDER

This Election Petition has been filed by the petitioner to declare the election of the Returned Candidate namely Mr.Duraimurugan, the first Respondent herein, in No.40, Katpadi Assembly Constituency to be void and to order reverification and re-count of all votes polled by postal Ballots in No.40, Katpadi Assembly Constituency and Order re-count of all votes polled by Electronic Voting Machines covered under Polling Station Nos.4, 110A (W), 215A(W), 219 and 180M in No.40, Katpadi Assembly Constituency and to declare the petitioner as the Returned Candidate for No.40, Katpadi Assembly Constituency for the Tamil Nadu Assembly Elections, 2021 and for the cost of this Election Petition.

2. The election petition has been filed alleging that the petitioner contested for the post of Member of Legislative Assembly (hereinafter referred to as “MLA”) in the Assembly Election, 2021, in No.40 Katpadi Assembly Constituency, as per the election notification dated 26.02.2021 issued by the Election Commission of India. The petitioner contested as a candidate of All India Anna Dravida Munnetra Kazhagam political party under the symbol of “two leaves”. The first respondent also contested in the same assembly election for the post of MLA as a candidate of Dravida Munnetra Kazhagam under the symbol of “rising sun”. The election was held on 06.04.2021 and the votes polled by Electronic Voting Machine (hereinafter

Page 4 of 34



E.L.P.No.4 of 2021

referred to as “EVM”) and by postal ballot counted on 02.05.2021. After completion

of counting, the first respondent was declared as elected candidate by the election

officer on 02.05.2021. As per the certificate, he had secured 85,140 votes and the

petitioner had secured 84,394 votes. The total number of votes in the said

constituency are 2,48,567 in which, polled votes are 1,86,763. Therefore, the first

respondent was declared as elected candidate by a margin of 746 votes.

3. The petitioner challenged the election of the first respondent herein under Sections 100(1)(d)(iii), 100(10(d)(iv) and 101 of the Representation of People Act, 1951 (hereinafter referred to as “RP Act”) read with the Conduct of Election Rules, 1961 (hereinafter referred to as “Rules”) on the grounds as follows :-

(i) The declaration of the election of the first respondent has been materially affected by improper reception of votes which are void by postal votes and by non compliance with the provisions and law.

(ii) The counting of votes was in direct violation of and non-compliance of the provisions and law. The counting process was not conducted in the manner as envisaged and mandated under the Rules, thereby materially affecting the result of the election of the first respondent.

(iii) The counting of votes polled by EVM in the 349 polling stations in Katpadi assembly constituency were counted in 26<sup>th</sup> round. However, the fifteenth respondent viz., the Returning Officer failed to conduct the counting of postal votes



E.L.P.No.4 of 2021

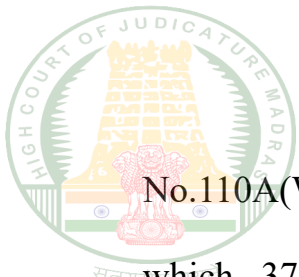
in accordance with the RP Act and Rules and failed to refer the Handbook for Returning Officer issued by the Election Commission of India.

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4. The learned counsel appearing for the petitioner submitted that the counting of votes was commenced at 8.00 a.m., and was completed at about 8.30 p.m. However, it was not done in accordance with the Rule 54-A of the Rules, thereby materially affecting the result of the election of the first respondent. The Returning Officer failed to verify the postal votes as per the procedure prescribed in Rule 54-A of the Rules. The counting of EVMs were not conducted as per the Rule 66-A, 55-C and 56-C of the Rules. EVMs of polling station in 4, 15A(W), 19M, 110A(W), 180M were not counted. The petitioner raised objection for non-counting of the above mentioned five EVMs. However, the Returning Officer refused to consider the objection raised by the petitioner. Further, the Returning Officer failed to receive the written complaint lodged by the petitioner.

4.1. He further submitted that in round 25, the petitioner had secured 82,793 votes and the first respondent had secured 82,447 votes and the petitioner was leading by 346 votes. Thereafter, the counting of above mentioned EVMs were taken up in round 26. Total number of votes counted in round 26 is 1804 in which, the petitioner had secured 882 votes and the first respondent had secured 796 votes. At that juncture, the Returning Officer failed to count the EVM in polling station

Page 6 of 34



*E.L.P.No.4 of 2021*

No.110A(W) and informed that the total number of postal votes are 3349 out of

which, 37 votes were polled in NOTA. In the above postal votes, the petitioner

WEB COPY

secured 719 votes and the first respondent had secured 1897 votes. Therefore, the

Returning Officer without counting the EVM in the polling station No.110A(W),

declared the first respondent as elected candidate. Therefore, the Returning Officer

ought to have ordered re-count of the postal votes and to count the votes polled in

polling station No.110A(W) in accordance with Rules.

5. While pending the Election Petition, the first respondent filed two applications in O.A.Nos.741 & 742 of 2021. The application in O.A.No.741 of 2021 has been filed to strike of the paragraph Nos.11 to 34 in the election petition in E.L.P.No.4 of 2021 and the application in O.A.No.742 of 2021 has been filed to reject the above election petition.

6. Though the first respondent filed those applications, the learned counsel appearing for the first respondent submitted that the election petition itself shall become infructuous since the term of the assembly for which the election in question was conducted has now expired. Hence, nothing survives in the election petition and it is liable to be dismissed as infructuous, when the election petition is not filed on the ground of any corrupt practice against the elected candidate. But the above election petition has been filed on the ground of improper reception of votes which are void,

*Page 7 of 34*



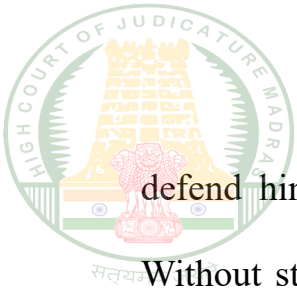
*E.L.P.No.4 of 2021*

refusal of accepting the representation and non compliance of provision of the Constitution of India or the Act or to any Act or Orders made under the Act.

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6.1. In respect of the rejection of election petition is concerned the learned Counsel for the first respondent submits that, the averments contained in the election petition are wholly vague and bereft of materials to meet the requirements under Sections 81, 83, 86 and 100 of the RP Act. It does not disclose any cause of action and no material facts have been pleaded as such, no ground is made out to assail the first respondent election. There is absolutely no allegations as against the first respondent who contested in the election and also returned as elected as MLA. The petitioner raised grounds only as against the Returning Officer that too challenging the counting process. It was further alleged that the counting was done without following the RP Act, Rules, Constitution of India and the orders of the Election Commission of India under the RP Act. Therefore, there is no cause of action or ground described to attract any material defects. Therefore, the election petition is liable to be rejected. Without any material facts, the petitioner simply avers that the first respondent election is materially affected by the improper reception of votes by postal votes which are void and by non compliance with the provisions of the law, Rules and orders passed by the Election Commissions of India. When the petitioner makes allegations, it must state the full material facts relating to the averments and allegations raised in the election petition in order to enable the successful candidate to

*Page 8 of 34*



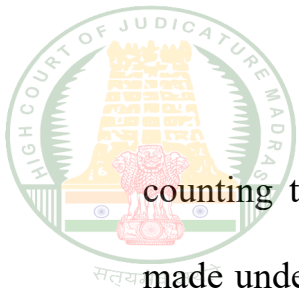
*E.L.P.No.4 of 2021*

defend himself and further to weed out vexatious and frivolous election petition.

Without stating any reasons, the petitioner simply avers that the Returning Officer failed to follow any law and rules. Further the petitioner failed to avert the specific violation of any law and rule or any order passed by the Election Commission of India.

6.2. He further submitted that the petitioner failed to object on the date of counting itself about the non-counting of EVM in polling station No.110A(W) and the irregularities while counting the postal votes. After declaration of results, the petitioner had sent a complaint that too by registered post after the period of 13 days. Therefore there is absolutely no cause of action to file this election petition. Further the petitioner failed to state what was the violation, which rule was violated, what time the violation occurred, how many postal covers were not scrutinized properly, what were their serial numbers etc. Therefore, the allegations were made without any material.

6.3. He also submits that the election petition itself has been filed under Sections 100, 100(1)(d)(iii), 100(10)(d)(iv) and 101 of the Representation of People Act. If the election petition is filed on the ground of corrupt practice then the election petition would survive even after the expiry of term of MLA. When the election petition is filed on other grounds such as improper reception of votes, refusal of re-



E.L.P.No.4 of 2021

counting the votes and non compliance of provision of the Act, Rules and orders

made under the Act, it cannot be sustained after the expiry of term. In support of his

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contention, he relied upon several judgments of the Hon'ble Supreme Court of India and this Court.

7. Per contra, the learned counsel appearing for the petitioner submitted that though the term of the assembly had expired, the election petitioner cannot be construed as infructuous. As the first respondent was elected as the Returned Candidate, he is entitled to all the benefits that applies to a MLA. Further, the election petition has been filed for declaration of election of the first respondent as void. Therefore, though the term of the assembly got expired, the petition will survive so as to prevent the elected candidates who were elected through wrongful means from wrongfully enjoying the benefits that applies to a MLA. The election petition has been filed and the averments disclose the cause of action and other non-compliance of the requirements mandated under the provisions of Act and Rules. The counting of EVMs were not conducted as per the Rule 66-A, 55-C and 56-C of the Rules and the counting of votes had been conducted in violation of mandatory provision of the Act and Rules. As a result, the election itself is materially affected insofar as the returned candidate viz., the first respondent in the election petition. Even while counting the postal votes, the petitioner raised specific objection that the postal votes had not been counted in accordance with the Rules since, the postal ballot cover did not contain the

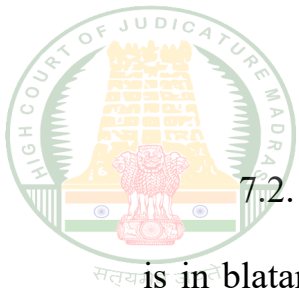


*E.L.P.No.4 of 2021*

sale of the gazetted officer. Therefore, the said votes ought to have been declared as void and ought not to have been counted.

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7.1. The counting of vote was scheduled to be conducted in 25 rounds. However, the EVMs in the polling station Nos.4, 15A(W), 19M, 110A(W) and 180M were not counted for the reason best known to the Returning Officer and it is in violation of the Act and the Rules. In fact, the petitioner was personally present in the counting hall at the time of counting of votes and raised objection for violation of Rule 56-D. However, the objection was denied by the Returning Officer and the Returning Officer refused to receive any written complaint. In round No.25, the petitioner had secured 82,793 votes and the first respondent had secured 82,447 votes. In round No.26, as per the Rules, the remaining EVMs were taken up for counting and 1804 votes were counted in which, the petitioner had secured 882 votes and the first respondent had secured 796 votes. Even then, the Returning Officer failed to count the votes polled in the polling station No.110A(W). It is clear violation of Rule 66A of the Rules. Though the petitioner repeatedly requested to re-count the postal votes and count the EVM pertaining to polling station No.110A(W), the Returning Officer failed to consider the request and declared the results by declaring the first respondent as a Returned Candidate for the Katpadi Assembly Constituency.



E.L.P.No.4 of 2021

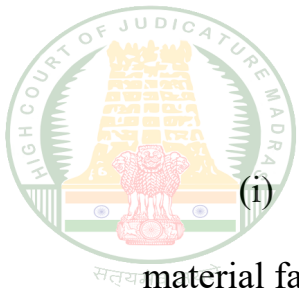
7.2. He further submitted that the counting of votes conducted on 02.05.2021

is in blatant non-compliance of the provision under Sections 100, 100(1)(d)(iii) and 100(1)(d)(iv) of the RP Act and the Rules. Therefore the non-compliance has materially affected the result of the election of the petitioner. Therefore, the serious lapses in the counting process and non compliance of Rule 54-A of the Rules, had materially affected the results of the election. At the same time, though the terms of the assembly got expired, the election petition would still survive insofar as the other benefits to the MLA are concerned and as such it cannot be said that the election petition is infructuous. Therefore, the election petition is very much maintainable and there is absolutely no ground to reject the same. Even assuming that the petitioner failed to avert any material fact, the election petition is very much maintainable since it has been filed on the grounds under Sections 100, 100(1)(d)(iii), 100(1)(d)(iv) and 101 of the RP Act and those grounds do not require any material fact. In support of his contention, he relied upon the judgment of this Court and the Hon'ble Supreme Court of India.

8. Heard the learned counsel appearing on either side and perused the material placed before this Court.

9. On the basis of the documents available on records and on the submissions made on either side, the following points are arose for consideration :-

Page 12 of 34



E.L.P.No.4 of 2021

(i) Whether the election petition is liable to be rejected for the want of material facts?

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(ii) Whether the election petition has become infructuous, since the period of term of assembly of the year 2021 got expired?

10. Admittedly, the election petition has been filed under Sections 100, 100(1)(d)(iii), 100(1)(d)(iv) and 101 of the RP Act and it is not filed for any corrupt practice committed by the returned candidate or his agent or any other persons associated with him. The crux of the allegations are that the Returning Officer failed to count the EVMs for the polling station in Nos. 4, 15A(W), 19M, 110A(W) & 180 M. Further the Returning Officer did not count the postal votes properly as per the Rules. Though the petitioner raised objections and requested for re-counting of postal votes, the Returning Officer refused to receive his complaint and failed to re-count the postal votes.

Issue No.1:-

11. On perusal of the averments made in the election petition, the petitioner failed to provide any material fact insofar as the allegations of improper counting of postal votes. The petitioner also failed to provide the number of postal votes which were allegedly not counted and failed to provide any material in respect of the postal votes which were allegedly not containing the seal of the gazetted officer. Though the

Page 13 of 34



E.L.P.No.4 of 2021

petitioner averred that he had given written complaint to the Returning Officer during the counting of votes, in order to substantiate the same no material evidence was produced by the petitioner before this Court. The petitioner failed to produce any complaint lodged before the Returning Office on the date of counting of votes.

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12. The counting of votes was held on 02.05.2021. On the same day, the first respondent was declared as Returned Candidate for the Katpadi Constituency as MLA in the year 2021. No complaint was lodged on the date of counting of votes. But the petitioner lodged complaint only on 15.05.2021 i.e., after a period of 13 days from the date of declaration of the Returned Candidate. Further, the petitioner also failed to produce any acknowledgment to show that the petitioner submitted complaint on 15.05.2021 to the authority concerned. It shows that only for the purpose of filing this Election Petition, the petitioner had sent a representation to the authority concerned on 15.05.2021 that too by registered post. Therefore, the averments made in the election petition are vague, bald and bereft of material facts.

13. Further, the Election Petition is not concised with the Section 83 of the RP Act. It is relevant to extract the provision under Section 83 of the RP Act, hereunder :-

*“83. Contents of petition.— (1) An election petition—  
(a) shall contain a concise statement of the material facts on*



which the petitioner relies;

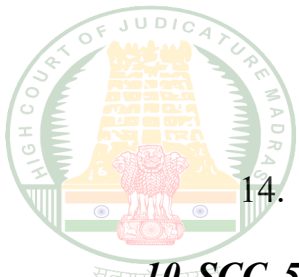
(b) shall set forth full particulars of any corrupt practice that the petitioner alleges, including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(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.”

Thus it is clear that the election petition shall contain concise statement of the material facts on which the petitioner relies upon to challenge the election in question. Though the election petition has not been filed on the ground of corrupt practice, it shall contain concise statement of the material facts. However, this election petition does not disclose any material particulars with regard to postal votes which were objected by the petitioner with regards to absence of gazetted officer's seal. The petitioner failed to aver the number of votes which were not containing the seal of the gazetted officer and the total number of votes which are liable to be rejected. Therefore, the election petition itself doesn't disclose any cause of action to file the election petition to challenge the election of the first respondent.



14. In this regard, it is relevant to rely upon the judgment reported in (2014)

10 SCC 547 in the case of **C.P.John Vs. Babu M.Palissery & ors.**, in which the

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Hon'ble Supreme Court of India held as follows:-

*“18. When we read Section 83, the substantive part of Section 83(1) consists of three important elements, namely, that an Election Petition should contain a concise statement of material facts which an election petitioner relies upon. The emphasis is on the material facts which should be stated in a concise form. Under Section 83(1)(b) it is stipulated that the Election Petition should set forth full particulars of any corrupt practice which is alleged by the petitioner. A reading of the said sub-clause 83(1)(b) is to the effect that such particulars should be complete in every respect and when it relates to an allegation of corrupt practice it should specifically state the names of the parties who alleged to have committed such corrupt practice and also the date and place where such corrupt practice was committed. In other words, the particulars relating to corrupt practice should not be lacking in any respect. One who reads the averments relating to corrupt practice should be in a position to gather every minute detail about the alleged corrupt practice such as the names of the persons, the nature of the alleged corrupt practice indulged in by such person or persons, the place, the date, the time and every other detail relating to the alleged corrupt practice.*

*19. To put it differently, when the Election Petition is taken up for consideration, the Court which deals with such an Election Petition, should be in a position to know in exactitude as to what is the corrupt practice alleged as against the parties without giving any*



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room for doubt as to the nature of such allegation, the parties involved, the date, time and the place etc. so that the party against whom such allegation is made is in a position to explain or defend any such allegation without giving scope for any speculation. In that context, both Sections 83(1)(a) and (1)(b) and the proviso play a very key role since the election petitioner cannot simply raise an allegation of corrupt practice and get away with it, inasmuch as the affidavit to be filed in respect of corrupt practice should specifically support the facts pleaded, as well as, the material particulars furnished. Rule 94A of the Rules in turn stipulates that the affidavit should be in the prescribed Form 25 and should be sworn before the Magistrate of 1st class or a notary or the Commissioner of Oaths and makes it mandatory for the election petitioner to comply with the said requirement statutorily. The format of the affidavit as prescribed in Form No.25 elaborates as to the requirement of specifically mentioning the paragraphs where the statement of facts are contained and also the other paragraphs where material particulars relating to such corrupt practices are alleged. It also mentions as to which of those statement of facts and material particulars are based on the personal knowledge of the election petitioner and such of those statements and particulars that are made based on the information gained by the election petitioner.

20. Therefore, a conspectus reading of Section 83(1)(a) read along with its proviso of the Act, as well as, Rule 94A and Form No. 25 of the Rules make the legal position clear that in the filing of an Election Petition challenging the successful election of a candidate, the election petitioner should take extra care and leave no room for doubt while making any allegation of corrupt practice indulged in by



E.L.P.No.4 of 2021

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*the successful candidate and that he cannot be later on heard to state that the allegations were generally spoken to or as discussed sporadically and on that basis the petition came to be filed. In other words, unless and until the election petitioner comes forward with a definite plea of his case that the allegation of corrupt practice is supported by legally acceptable material evidence without an iota of doubt as to such allegation, the Election Petition cannot be entertained and will have to be rejected at the threshold. It will be relevant to state that since the successful candidate in an election has got the support of the majority of the voters who cast their votes in his favour, the success gained by a candidate in a public election cannot be allowed to be called in question by any unsuccessful candidate by making frivolous or baseless allegations and thereby unnecessarily drag the successful candidate to the Court proceedings and make waste of his precious time, which would have otherwise been devoted for the welfare of the members of his constituency. Therefore, while deciding the issue raised, we wish to keep in mind the above lofty ideas, with which the provisions contained in Section 83(1) read along with Section 86 came to be incorporated while deciding this appeal.”*

15. The phrase “material facts” has been defined neither in the Act nor in the Code. Therefore, it has been understood in general terms to be the entire bundle of facts which would constitute a complete cause of action. Therefore, compliance of the Section 83 of the RP Act is mandatory which requires first a concise statement of material facts and then the fullest possible particulars. The omission of even a single material fact shall lead to an incomplete cause of action and statement of claim

Page 18 of 34



*E.L.P.No.4 of 2021*

becomes bad. The function of particulars is show in a full picture of the cause of

action so that the opposite party can understand the case he will have to meet. Further

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the material facts and particulars are distinct matters. The material facts will mention statements of facts and particulars will set out the names of persons with date, time and place. Therefore, the election petition is liable to be dismissed for violation of mandatory provision under Section 83(1)(a) of the RP Act.

16. The petitioner averred that counting of votes was not conducted in accordance with Act, Rules and orders. However, the petitioner failed to state the irregularities and who committed them. Further, whether the Returned Candidate had any knowledge about the same or the role played by him in the alleged irregularities was not clearly stated by the petitioner. In fact, during the process of counting, the counting agents of all the candidates, election observer and also the Returning Officers were very much present to ensure that the counting process is done in accordance with law. There is no piece of evidence available on record to show that on the date of counting, the petitioner raised any objection with regard to the allegation that the counting was not done properly and some of the postal votes did not contain the gazetted officer's seal and that it should be rejected. Therefore, all the allegations are vague, bald and bereft of material facts and particulars.



*E.L.P.No.4 of 2021*

17. Further the petitioner averred that the postal votes were not counted in

accordance with Rule 54-A of the Rules, thereby materially affecting the results of

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the election. This averment is also bald since, since the election petitioner reveal in

certainity that the Returned Candidate had knowledge or role in the alleged

irregularities. The petitioner further alleged that EVMs were not counted in polling

station Nos.4, 15A(W), 19M, 110A(W) & 180M. Except the polling station

No.110A(W), other polling stations EVMs were taken up for counting and the votes

were counted during the round No.2 and 18. Insofar as the polling station

No.110A(W) is concerned, it was taken up for counting in round No.11. However, it

was not counted on account of mismatch of votes. On the date of polling, after the

end of voting, when the polling officer verified the total number of votes polled in the

said EVM, in order to record the same in Form 17-C, it was found that the votes

recorded in Form 17-A and the total number of votes cast by the voters did not match.

Total number of votes polled in the said EVM was 514 votes. However, it was shown

as 564 votes. Therefore, it was noted that 50 extra votes were reflected in the EVM

and the reason for the same was due to the mock polls polled on the date of polling

before commencement of actual polling and the same was recorded as extra votes in

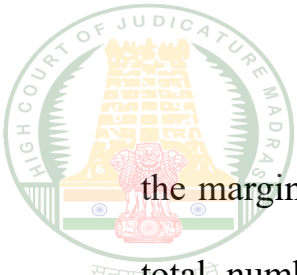
the Form 17-C. Therefore, it was not counted for the reason that the mock polling

votes were not deleted before the commencement of actual polling. After completion

of counting of EVMs, the last and final EVM to be counted was the EVM in polling

station No.110A(W). After completion of all the rounds including the postal votes,

*Page 20 of 34*



*E.L.P.No.4 of 2021*

the margin of victory between the petitioner and the elected candidate was 764. The

total number of votes polled in the polling station No.110A(W) was 514, after

deducting the 50 votes polled during the mock polling. The victory margin was more

than the votes recorded in polling station No.110A(W) and therefore, the said EVM

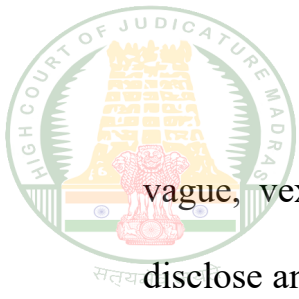
was not taken up for counting as per the instructions issued by the Election

Commission of India dated 21.05.2019.

18. On perusal of the notification issued by the Election Commission of India dated 21.05.2019, it is revealed that if the winning margin is more than the total votes polled in a polling station the results will be declared without counting the votes polled in such polling station. The said EVM in polling station No.110A(W) was not counted and as such the first respondent was declared as the Returned Candidate for the Katpadi Assembly Constituency. In fact, on the date of declaration of results, it was duly accepted by the petitioner and he failed to raise his objections therein. However, he raised his objection only on 15.05.2021 by way of representation which was sent through registered post.

19. As per the document No.4 viz., Form No.20-final result sheet, it is revealed that the votes polled in polling station Nos.4, 15A(W), 19M & 180M were counted and votes polled in polling Station No.110A(W) alone was not counted.

Therefore, the entire allegations and the averments made in the election petition are



E.L.P.No.4 of 2021

vague, vexatious, frivolous, bereft of material facts and particulars and does not

disclose any cause of action to maintain the election petition. Hence, the issue No.1 is

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answered in favour of the first respondent in the election petition.

Issue No.2:-

20. Insofar as the survival of the election petition is concerned, admittedly the period of term of assembly for which the election in question was held had expired in the month of May, 2026. When the election petition was not filed on the ground of corrupt practice as against the first respondent, the rest of the ground would be rendered infructuous because of the subsequent development such as expiry of term of assemble itself. Thereafter, fresh election has now been conducted in which, both the petitioner and the first respondent had contested in the very same constituency viz., No.40 Katpadi Assembly Constituency and both had lost in their election to the post of MLA of Tamil Nadu. Therefore, nothing survives in this election petition to proceed further since this Court is of the considered view that the election petition has become infructuous.

21. The learned counsel appearing for the first respondent relied upon the judgment reported in *(2005) 12 SCC 211* in the case of *Mundrika Singh Yadav Vs. Shiv Bachan Yadav & ors.*, in which the Hon'ble Supreme Court of India held as follows :-



E.L.P.No.4 of 2021

*“1.An election petition under Sections 80 and 80-A of the Representation I.A of the People Act, 1951 filed by the appellant was dismissed by the High Court. A perusal of the judgment of the High Court shows that the appellant had sought for the relief of re-count of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Legislative Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly is over. Fresh elections are being held. No relief can be allowed to the appellant in this appeal even if this appeal is allowed. The appeal is rendered infructuous and is dismissed accordingly.”*

Therefore, when the term of legislative assembly is over and subsequent fresh elections have been held, no relief can be allowed to the election petitioner in the election petition and this judgment duly confirms the direction of this Court.

22. It is also relevant to rely upon the judgment dated 24.06.2022, passed by this Court in E.L.P.No.17 of 2016 in the case of **B.Ramkumar Adityan Vs. Anitha R.Radhakrishnan & ors.**, which held as follows :-

*“20. Let this Court shall also consider the decisions relied on by the learned Senior Counsel for the applicant.*

*20.1.The Hon'ble Apex Court in the decision in Azhar Hussain v. Rajiv Gandhi [AIR 1986 SC 1253] has observed as under:*

*“An election petition can be and must be dismissed under the provisions of Civil Procedure Code, if the mandatory requirements enjoyed by Section 83 to incorporate the materials facts and*

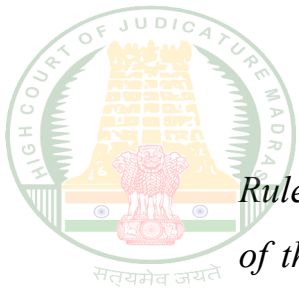


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*particulars relating to alleged corrupt practice in the election petition are not complied with. The code of Civil Procedure applies to trial of an election petition by virtue of Section 87 of the Act. Since CPC is applicable, the Court trying the election petition can act in exercise of powers of the Code including Order 6 Rule 16 and Order 7 Rule 11(a).*

*Therefore that Section 83 does not find a place in Section 86 of the Act which authorizes dismissal of election petitions in certain petitions in certain contingencies does not mean that powers under CPC cannot be exercised. An election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Civil Procedure Code and it is a settled law that omission of a single material fact would lead to an incomplete cause of action and that an election petition without the material facts relating to a corrupt practice is not an election petition at all.”(emphasis supplied)*

*20.2. In Dhartiakar Madan Lal Agarwal v. Shri Rajiv Gandhi [AIR 1987 SC 1577], the Hon'ble Supreme Court has observed as under: “8. On a combined reading of Sections 81, 83, 86 and 87 of the Act, it is apparent that those paragraphs of a petition which do not disclose any cause of action are liable to be struck off under Order VI Rule 16, as the Court is empowered at any stage of the proceedings to strike out or delete pleading which is unnecessary, scandalous, frivolous or vexatious or which may tend to prejudice, embarrass or delay the fair trial of the petition or suit. It is the duty of the Court to examine the plaint and it need not wait till the defendant files written statement and points out the defects. If the court on examination of the plaint or the election petition finds that it does not disclose any cause of action it would be justified in striking out the pleadings. Order VI*



*Rule 16 itself empowers the Court to strike out pleadings at any stage of the proceedings which may even be before the filing of the written statement by the respondent or commencement of the trial. If the Court is satisfied that the election petition does not make out any cause of action and that the trial would prejudice, embarrass and delay the proceedings, the court need not wait for the filing of the written statement instead it can proceed to hear the preliminary objections and strike out the pleadings. If after striking out the pleadings the court finds that no triable issues remain to be considered, it has power to reject the election petition under Order VII Rule 11. (emphasis supplied)*

*14. The Representation of the People Act is a complete and self contained code within which any rights claimed in relation to an election or an election dispute must be found. The provisions of the Civil Procedure Code are applicable to the extent as permissible by Section 87 of the Act. The scheme of the Act as noticed earlier would show that an election can be questioned under the statute as provided by Section 80 on the grounds as contained in Section 100 of the Act. Section 83 lays down a mandatory provision in providing that an election petition shall contain a concise statement of material facts and set forth full particulars of corrupt practice. The pleadings are regulated by Section 83 and it makes it obligatory on the election petitioner to give the requisite facts, details and particulars of each corrupt practice with exactitude. If the election petition fails to make out a ground under Section 100 of the Act it must fail at the threshold. Allegations of corrupt practice are in the nature of criminal charges, it is necessary that there should be no vagueness in the allegations so that the returned candidate may know the case he has to meet. If the*

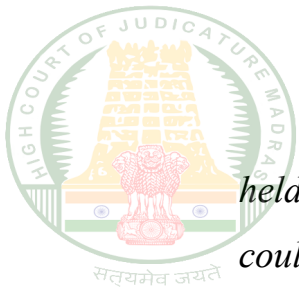


*allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry.”*

20.3. *In P.H.Pandian v. P.Veldurai and Others [(2013) 4 SCC 685] the Hon'ble Supreme Court observed as under: “It is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence. Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation of the People Act, 1951, it would only be of an academic interest.” (emphasis supplied)*

20.4. *Following the aforesaid decisions, a learned Single Judge of this Court in ELP.No.7 of 2011 dated 27.04.2016 [V.Anbazhagan v. A.Laser and Others] has elaborately observed as under:*

*“50. In Mundrika Singh Yadav vs. Shiv Bachan Yadav and others ((2005) 12 SCC 211), an election petition under Sections 80 and 80-A of the Representation of the People Act, 1951 filed by the appellant was dismissed by the High Court. In the above said election petition, the appellant had sought for the relief of recount of ballot papers. The High Court on trial found a case in that regard having not been made out. The election to the Bihar State Assembly forming subject-matter of the election petition was held in the year 2000. The term of the Legislative Assembly was over. Fresh elections were being*



held. Under these circumstances, the Apex Court has held that no relief could be allowed to the appellant in this appeal even if this appeal is allowed. The appeal was rendered infructuous and was dismissed accordingly.

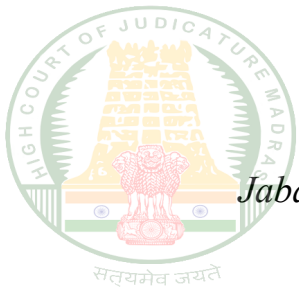
51. In *P.H. Pandian vs. P. Veldurai and another*((2013) 14 SCC 685), an appeal under Section 116-A of the Representation of the People Act, 1951 was filed questioning the judgment and order made by this Court in the election petition in ELP.No.1 of 1996 on 29.12.1999.

52. In this case, the Apex Court has observed that though fresh elections have since been held to Tamil Nadu Legislative Assembly and to an extent this appeal has been rendered infructuous, the manner in which the election petition was dealt with by the High Court causes us concern and that necessitates our making reference to some salient facts.

53. Ultimately, the Apex Court has observed that it is a settled practice of Supreme Court not to pronounce upon matters which are only of an academic interest. Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence.

Even if the appellant was to succeed on the issue that the returned candidate had a subsisting contract with the Panchayat Union and the State Government and was, therefore, disqualified to be chosen for the seat under Section 9-A of the Representation of the People Act, 1951, it would only be of an academic interest.

54. In *Shankar Pendaam vs. Smt. Jyoti Dhurve* (Judgment delivered on 18.7.2014 by the High Court of Madhya Pradesh,



*Jabalpur Bench in the Election Petition No.45 of 2009).*

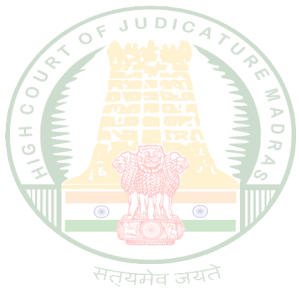
55. *In this case, the election petition was filed by the petitioner therein under Section 80 read with Section 81 of the Representation of the People Act, 1951 for declaring the election of the respondent to be void.*

56. *This case is an identical one to that of the present case on hand. During the course of arguments of the learned Senior Counsel, who was appearing on behalf of the respondent before the Jabalpur Bench of Madhya Pradesh High Court had submitted that the said election petition had become infructuous because the term of the respondent had come to an end by efflux of time on 16th May, 2014 and thereafter, general elections had also taken place in May, 2014 and the respondent had already been elected from the same constituency of Lok Sabha. Thus, the grounds taken in this election petition have been rendered of academic importance and the academic questions should not ordinarily be decided by the Courts.*

57. *It was further submitted that this election petition had not been filed by the petitioner on the ground of corrupt practice. Therefore, it was urged that the election petition might be dismissed as infructuous.*

58. *The learned Senior Counsel had made reference to the following decisions of the Apex Court:- a. Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi (1987 (Supp) SCC 93). b. Sushma Swaraj vs. Raj Kumar Patel in SLP (Civil) No.2951 of 2014 decided on 5.5.2014.*

59. *Having taken into consideration of the related facts and circumstances, the learned Single Judge of the Jabalpur Bench of Madhya Pradesh High Court has observed as under:-*



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*“Considering the fact that the tenure of the respondent has already come to an end by the efflux of time and the matter has been rendered of academic importance. In view of the aforesaid discussion and in the light of the aforesaid decision of Apex Court in Dhartipakar Madan Lal Agarwal vs. Rajiv Gandhi (supra) and Sushma Swaraj vs. Rajkumar Patel (supra), I am of the considered view that nothing further survives in this matter. This petition has become infructuous, same is hereby dismissed as having been rendered infructuous.”*

60. *In a case between Chandra Mohan Shukla and Anil Dhirubhai Ambani and 11 others in the Election Petition No.6 of 2004 decided by the Lucknow Bench of High Court of Judicature at Allahabad, Mr. Anupam Mehrotra, learned counsel for the respondents had raised a preliminary objection with submission that keeping in view of the fact that election petition challenging the same election has been dismissed by this Court and also since the term of elected representation of the Rajya Sabha has expired, petition should be dismissed as infructuous.*

61. *It was also submitted that the court should not adjudicate an academic issue and in any case the petitioner shall not be entitled for any benefit.*

62. *The learned Single Judge of the said High Court, has observed as under:-*

*“22. Keeping in view the submission made by learned counsel for the parties it appears that whenever in a petition, which includes election petition, the relief claimed with regard to main issue involved becomes redundant or infructuous then for other relief courts may exercise its discretion and may not proceed further in case right of the*



plaintiff or dependent satisfied or no grievance remained pending against defendant or respondents because of the change of circumstances. Court may use its discretion to drop the proceeding and may not proceed further in a matter even if, some relief of academic nature stand survive... ” (emphasis supplied)

21. The decisions cited supra lay down the following principles:

(i) An election petition without the material facts relating to a corrupt practice is not an election petition at all ;

(ii) An election petition can be and must be dismissed under the Civil Procedure Code, if the mandatory requirements enjoyed by Section 83 of RP Act, 1951 to incorporate the material facts and particulars relating to alleged corrupt practice in the election petition are not complied with;

(iii) If the allegations are vague and general and the particulars of corrupt practice are not stated in the pleadings, the trial of the election petition cannot proceed for want of cause of action. The emphasis of law is to avoid a fishing and roving inquiry;

(iv) Once the charge of corrupt practice fails, rest of the appeal would be rendered infructuous because fresh elections have already taken place and the old Assembly is no longer in existence.

22. ....

## CONCLUSION

23. Now coming back to the present case on hand, as discussed in the earlier paragraphs, the respondent/election petitioner has not specifically alleged corrupt practice under Section 123 of the RP Act, 1951 in the election petition. The respondent/election petitioner is unable to make out any allegation of corrupt practice directly in the election petition and as a Law Graduate and a Voter of the



E.L.P.No.4 of 2021

*Tiruchendur Assembly Constituency, he has made a faint attempt indirectly by taking the plea of undue influence by way of non-disclosure of material information. Therefore, this Court has come to the conclusion that there is no specific allegation of corrupt practice in the election petition. As held by the Hon'ble Apex Court in Azhar Hussain case (cited supra), an election petition without the material fact relating to a corrupt practice is not an election petition at all. Hence, question No.1 is answered in favour of the applicant.*

#### **QUESTION NO.2**

*24. Once the charge of corrupt practice fails, the election petition would be rendered infructuous, because fresh elections have already taken place and the old Assembly is no longer is in existence [P.H. Pandian case (cited supra)]. In the case on hand, the old Assembly is no longer is in existence, as the term of office has come to an end and fresh elections were held for the 16th Tamil Nadu Legislative Assembly on 06.04.2021, in which the applicant has been elected as a Member of Legislative Assembly, representing No.215, Tiruchendur Constituency. In the light of the decision in P.H.Pandian case, the Election Petition is liable to be dismissed as infructuous. Hence, question No.2 is answered accordingly.”*

The above judgment is squarely applicable to the case on hand. The old assembly is no longer in existence, since the term of office had already expired and subsequently, a fresh election had been held for the 17<sup>th</sup> Tamil Nadu Legislative Assembly on 23.04.2026 in which, both the petitioner as well as the first respondent had contested and lost in the post of MLA in the assembly constituency of Katpadi. Accordingly, the issue No.2 is also answered in favour of the first respondent in the election petition.



E.L.P.No.4 of 2021

**Conclusion :-**

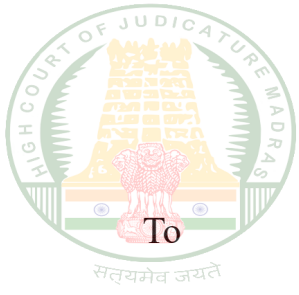
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23. In view of the above discussions, the Original Applications in O.A.No.741 of 2021 stands closed and O.A.No.742 of 2021 stands allowed. Consequently, the Election Petition stands dismissed as infructuous. The connected Original Applications in O.A.Nos.675 of 2021 & 751 of 2023 are closed. There shall be no order as to costs.

07.07.2026

Index : Yes/No  
Neutral citation : Yes/No  
Speaking/non-speaking order

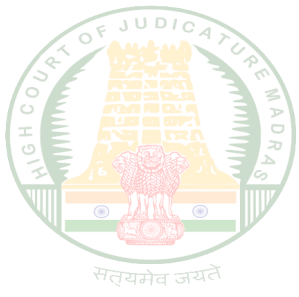
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*E.L.P.No.4 of 2021*

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To  
The Returning Officer,  
No.40, Katpadi Assembly Constituency,  
Special Deputy Collector, Vellore District.



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*E.L.P.No.4 of 2021*

**G.K.ILANTHIRAIYAN, J.**

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ORDER IN  
E.L.P.No.4 of 2021  
and O.A.Nos.675, 741, 742 of 2021 & 751 of 2023

07.07.2026

*Page 34 of 34*