

T.Malaravan vs A.S.Maheswari on 20 December, 2007

Equivalent citations: AIR 2008 (NOC) 1319 (MAD.)

Author: M.Chockalingam

Bench: M.Chockalingam

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 20-12-2007
CORAM
THE HONOURABLE MR.JUSTICE M.CHOCKALINGAM
O.A.Nos.1029 and 1090 of 2007
in
Election Petition No.11 of 2006

T.Malaravan

.. Applicant in
both applications

vs

A.S.Maheswari

.. Respondent in
both applications

O.A.No.1029 of 2007 filed under Order VI Rule 16 of CPC praying to strike off paragraphs
O.A.No.1090 of 2007 filed under Order XIV Rule 8 of O.S. Rules sections 86 and

For Petitioner : Mr.T.V.Ramanujam
Senior Counsel
for Mr.S.Mukunth

For Respondent ; Mr.A.Thiagarajan
Senior Counsel
for Mr.M.Kamalanathan

COMMON ORDER

Election Petition No.11/2006 has been filed by the respondent herein seeking a declaration that the election of the returned candidate namely the first respondent therein, the applicant herein, from

105 Coimbatore West Constituency is void and bad in law. Now, the instant original applications have been filed by the first respondent in the election petition seeking to strike off the pleadings in paragraphs 9 to 14 of the election petition for want of material facts and particulars and also consequentially reject the election petition for want of cause of action.

2.The case of the applicant who is the first respondent in the main election petition, is that the election petition has got to be rejected for non-disclosure of any cause of action nor it give raise to any triable issues; that the averments made in paragraphs 9 to 13, do not create or give raise to any cause of action to file the election petition; that the entire pleadings in the election petition does not disclose any cause of action; that no triable issues are noticed, and hence, the election petition is liable to be rejected in limine.

3.It is the further case of the applicant that the election petition filed by the respondent herein does not conform to the provisions of Section 83 of the Representation of People Act, 1950 (hereinafter referred to as R.P. Act); that the election petitioner has challenged the election of the applicant herein who is the first respondent therein, on the ground that he has given wrong particulars regarding his education; that he had given a false declaration that he had studied for 10 years in the Cuddalore Municipal Higher Secondary School whereas the school had classes during the relevant time only from 6th to 11th Standard; that he had offered money in the guise of self help groups; that he had paid money to each of the electorates and also to self help groups; that as far as the first allegation was concerned, according to the averments found in the election petition, the enquiries made by the election petitioner with the Cuddalore Municipal Higher Secondary School had shown that the applicant has not studied in the said school from 1954 to 1963, and further during that relevant time, the school had only classes from VI to XI, and thus, the declaration made by the applicant herein, is false and misleading, and hence, the election of the applicant herein, the successful candidate, is void; that even the statement made in the main election petition for two allegations seeking a declaration that the election was void, is not a corrupt practice; and that under the circumstances, the election petition cannot be maintained on these two allegations.

4.It is further contended that the other two grounds on which the election of the applicant herein is sought to be set aside are that he had tried to bribe the electorate directly and through self help groups, and he had also offered to women self help groups; that the mere reading of paragraph 12 of the election petition alleging corrupt practice would clearly disclose that there are only allegations made without any basis except for making wild statements that money was offered to women self help groups through electorate and self help groups; but, no details as to the date, place or persons indulging in such acts are mentioned, and thus, the averments in the election petition do not satisfy the requirements under Sec.83(1)(b) of the R.P. Act to call it as corrupt practice, and hence, on that ground also, the election petition is liable to be dismissed.

5.The applicant's further case is that Sec.100 of the R.P. Act provides the ground for declaring an election to be void and furnishing of a wrong statement does not constitute a ground for declaring any election void; that as regards the ground of corruption, Sec.100 read with Sec.83(1)(b) of the R.P. Act clearly shows that the instant case does not come within the ambit of the above provisions, and therefore, the election petition filed by the respondent is liable to be rejected in limine.

6.The applicant would further aver that apart from the above, the election petition is liable to be dismissed on the ground that the respondent has not made out any cause of action; that the election petition is also not as per the prescribed format; that the entire election petition is based on presumptions and vague allegations not supported by any material facts; that it was only to tarnish the image of the applicant herein; that the election petition is nothing but an abuse of process of Court, and hence, an order striking off the paragraphs 9 to 14 for want of material facts and particulars and also rejecting the election petition has got to be made since it does not make out any cause of action.

7.The respondent herein, who has challenged the election of the applicant herein, has filed a counter affidavit stating that the applicant who received the summons in September 2006, has taken one year time to make these two applications before this Court; that it is pertinent to point out that the applicant has not even filed the objections to the main election petition; that the application has been filed under Order VI Rule 16 which enables to take proceedings to strike out the pleadings which are unnecessary, scandalous, frivolous, vexatious or which may tend to prejudice or embarrass or delay the fair trial or otherwise an abuse of the process of the Court; but, the deponent of the affidavit who is the applicant, has miserably failed to aver to satisfy the aforesaid requirements, and thus, the applications are devoid of merits; that the averment that the election petitioner has not complied with Sec.83(2) of the R.P. Act is totally incorrect; that the election petitioner has stated in paragraph 10 the necessary details with regard to the false statement made by the applicant as far as the educational qualifications is concerned; that the election petitioner has specifically averred that the applicant has furnished false information regarding his educational qualifications, and after thorough enquiry with the school authorities, the said averments were made; that the election petitioner has filed necessary documents to that effect, and thus, the requirement of Sec.83(2) of the R.P. Act is thoroughly satisfied; that the required facts in the form of affidavit had also been furnished; that whether such a statement is right or wrong; false or misleading have to be decided only during the trial, and the same cannot be decided in an application and that too in an application filed under Order VI Rule 16 CPC; that in paragraph 2 of the affidavit, the election petitioner specifically averred that the applicant herein has offered to women self help groups; that it is a matter to be decided in trial of the main election petition; that the election petitioner has also clearly averred about the events that took place; that they were also by a written communication brought to the notice of the State Election Commissioner on 5.5.2006; that those facts have got to be proved by adducing evidence at the time of the trial; that it is not correct to state that the events, the details and the persons are not stated in the main election petition; that those averments cannot be decided by way of an application; that the conduct of the applicant herein during and before the election certainly would constitute the corrupt practice, and the same cannot be decided in an application; that it is not correct to state that there is no cause of action; that the same is totally incorrect and false; that the averments made in the election petition, are neither based on presumptions nor vague allegations are made; that it is not the intention of this respondent to tarnish the image of the applicant; but, her endeavour is to bring the real facts before the Court; that the applicant has not even filed the written statement; that only thereafter, this respondent will be in a position to weigh the strength of the allegations, and hence, the averments are simply void, and a futile attempt has been made by the applicant to prevent this respondent from agitating her rights before the Court; that the applicant has not made out any prima facie case

for striking off the pleadings in paragraphs 9 to 14 of the election petition for want of particulars or to reject the election petition for want of cause of action, and hence, both these applications have to be dismissed.

8. When the matter is taken up for enquiry, the learned Senior Counsel for the election petitioner would submit that the election petitioner has no objection for striking off the paragraph 12 wherein the election is sought to be set aside on the ground of alleged corrupt practice.

9. Advancing his arguments on the applications seeking to strike off the pleadings in paragraphs 9 to 14 of the election petition for want of necessary particulars and also to reject the election petition since it does not make out a cause of action, the learned Senior Counsel Mr.T.V.Ramanujam would submit that the election petition is filed under Sections 100(i)(b), 100(i)(d), 101 and 123 of the R.P. Act; that all the allegations found in paragraphs 9 to 11 and 13 are as vague as it could be; that the first allegation is that the applicant herein, who was a Mayor of Coimbatore, has resigned his post on 31.3.2006; but, he continued to occupy the quarters allotted to him, and he continued to reside therein without vacating the quarters, and in doing so, there was a malifide intention, and the applicant herein wantonly stayed over there in order to conveniently influence the people of Coimbatore west; that Sec.123(2) of the R.P. Act speaks of the undue influence as a corrupt practice; that according to the said provision, any direct or indirect interference or attempted interference on the part of the candidate or his agent or of any other person with the consent of the candidate or his election agent with the free exercise of any electoral right, provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who (ii) induces or attempts to induce a candidate or an elector to believe that he, or any person in whom he is interested, will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause; that what are all merely stated in the election petition is that he was occupying the quarters in order to conveniently influence the people of the constituency; but, this averment, at no stretch of imagination, could be taken as undue influence in order to term it as a corrupt practice as understood under Sec.123(2) of the R.P. Act; that the same does not make out any cause of action; and that apart from that, it does not satisfy Sec.83 of the R.P. Act which mandates that an election petition should contain a concise statement of the material facts on which the election petitioner relies.

10. Added further the learned Senior Counsel that the election petitioner has also challenged the election on the ground of corrupt practice; but, no specific instances or particulars as to the alleged corrupt practice as required under Sec.83(b) of the R.P. Act, is also given in the entire election petition; that Sec.83(b) mandates that an election petition must contain the full particulars of any corrupt practice 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; that the election petition does not contain any particulars of any corrupt practice as required under Sec.83, and hence, it would be quite clear that not only it does not satisfy the requirements of the provision which mandates the requisite pleading, but also it does not make out any cause of action on that ground to declare the election as void.

11.Added further the learned Senior Counsel that the election is sought to be set aside, as could be seen from the averments, on the grounds of improper acceptance of the nomination and also by the non-compliance with the provisions of the Constitution or the provisions of the R.P. Act or any Rules or orders made under this Act; that it is averred in the main election petition that the successful candidate has given a false declaration stating that he has studied upto SSLC, and he has also studied for 10 years in the Cuddalore Municipal Higher Secondary School, and on enquiry, the said declaration given by the successful candidate, was found to be false and misleading; that the successful candidate while he made the declaration, has placed the correct facts; that even assuming such a declaration was incorrect, it cannot be a ground for declaring the election to be void; that there is no improper acceptance of the nomination for the simple reason that the educational qualification of the candidate is not a decisive or a material fact; that it is not necessary that the declaration should contain the educational qualification; that there is no non-compliance of the provisions of the Constitution or the Representation of People Act or any other Rules or orders; that even assuming that such incorrect information was placed, it does not constitute a cause of action; that so long as the election petitioner is unable to show any cause of action, the election petition is liable to be rejected in limine; that there is nothing for the successful candidate to undergo the ordeal of enquiry on vague and thoroughly vexatious allegations; that Sec.33-A of the R.P. Act, which speaks of the right to information, requires that the candidate or his proposer, as the case may be, should, at the time of delivering to the returning officer the nomination paper under sub-section (1) of section 33, also deliver to him an affidavit sworn by the candidate in a prescribed form verifying the information specified in sub-section (1); that it is true that Sec.33-A does not speak about any educational qualification; that under Sec.36(2) of the R.P. Act, a duty is cast upon the returning officer to examine the nomination papers and he should decide the objection which might be made to any nomination and might either on such objection or on his own motion, after such summary enquiry, if any, as he thought necessary, reject any nomination on the specific grounds made therein; that it is made clear that there has been a failure to comply with any of the provisions of Section 33 or Section 34; and that neither Section 33 nor Section 34 speaks about any educational qualification.

12.Relying on a decision of the Apex Court reported in (2003) 4 SUPREME COURT CASES 399 (PEOPLE'S UNION FOR CIVIL LIBERTIES V. UNION OF INDIA), the learned Senior Counsel would submit that the Apex Court has held "Viewed from any angle, the information regarding educational qualifications is not a vital and useful piece of information to the voter, in ultimate analysis. At any rate, two views are reasonably possible. Therefore, it is not possible to hold that Parliament should have necessarily made the provision for disclosure of information regarding educational qualifications of the candidates. The failure to provide for disclosure of educational qualification does not, in practical terms, infringe the freedom of expression."

13.The learned Senior Counsel brought to the notice of the Court a decision of the Allahabad High Court (Lucknow Bench) reported in MANU/UP/0002/2007 (DR.SUBRAMANIAN SWAMY V. THE ELECTION COMMISSION OF INDIA AND OTHERS) and would submit that in fact the requirement of giving educational qualifications also was imposed through circular of the Election Commission, but even if there is some inaccuracy in furnishing educational qualification, there is no provision in the Representation of Peoples Act or Rules for criminal prosecution, and thus, the

requirement of the circular does not form the statutory requirement under the Act, and was certainly out of the scope and certainly does not come within the ambit of Section 125-A and even if there was a violation, it did not make a candidate liable for prosecution, and thus, the furnishing of incorrect educational qualification did not come within the ambit of any penal provision of the Act.

14.The learned Senior Counsel placed reliance on a decision of the High Court of Bombay reported in MANU/MH/0651/2007 (KRISHNA V. SATISH). The learned Senior Counsel would submit that the Supreme Court in Peoples Union for Civil Liberties V. Union of India MANU/SC/0234/2003 in para No.76 observed that the Election Commission is required to revise its instructions in the light of the directions issued in Union of India V. Association for Democratic Reforms MANU/SC/0394/2002 and accordingly, the Election Commission of India issued a revised directions in March 2003 by which it has been clarified that the earlier directions contained in para No.14(4) of the order dated 28.6.2002 in so far as verification of assets and liabilities by means of summary inquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the judgment of the Supreme Court dated 13.3.2003; and that applying the test laid down by the Supreme Court in Bengal Immunity Company's case, the Bombay High Court has taken the view in that case that furnishing incomplete information or suppressing material information in the affidavit by the successful candidate does not entail the consequence of rejection of his nomination paper.

15.Pointing to the paragraph 17 of the order of the Election Commission of India dated 27.3.2003, the learned Senior Counsel would submit that it was made clear by the Election Commission itself that for the removal of doubt, it was clarified that the earlier directions contained in paragraph 14(4) of the earlier order dated 28.6.2002 in so far as verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information is not enforceable in pursuance of the order dated 13.3.2003 of the Apex Court, and thus, it would be quite clear that if there was any wrong information or suppressing of the material information, it cannot be viewed seriously to reject the nomination paper; that under such circumstances, it cannot be stated that either the acceptance of the nomination was improper, or the election petitioner had made the necessary averments and requisite particulars to constitute any cause of action, and hence, the pleadings in paragraphs 9 to 14 have got to be struck out, and also since there is no cause of action shown in the election petition, it has got to be rejected.

16.Contrary to the above contentions, the learned Senior Counsel for the respondent, who is the election petitioner, Mr.A.Thiagarajan would submit that though the election is challenged on the grounds of improper acceptance of the nomination and corrupt practice, the election petitioner has no objection for striking off the pleadings in the main election petition in respect of the alleged corrupt practice; but, necessary particulars and averments as required under Sec.83 of the R.P. Act are given; that Sec.83 of the R.P. Act provides that the election petition must contain a concise statement of the material facts; that the election petitioner has specifically averred that while the applicant herein, who is the first respondent in the main election petition, filed the affidavit, he has given false and misleading information as if he has passed SSLC and also studied for 10 years in the Cuddalore Municipal High Secondary School; that the election petitioner has also specifically

averred that the communications were also made to the educational authorities and reply was also received to the effect that the applicant herein did not study in that institution at all; that not only the particulars necessary are given in the main election petition, but also necessary documents have also been filed; that the Apex Court while disposing of the Civil Appeal No.7178/2001 and other connected proceedings reported in (2002) 5 SUPREME COURT CASES 294 (UNION OF INDIA V. ASSOCIATION FOR DEMOCRATIC REFORMS AND ANOTHER), has directed the Election Commission to call for an affidavit by issuing necessary order in exercise of its powers under Article 324 of the Constitution of India from each candidate seeking election to Parliament or a State Legislature furnishing therein information on the five aspects as stated therein, including the educational qualification of the candidate, following which Sections 33-A and 33-B were introduced to the R.P. Act, which came to be challenged before the Supreme Court; that while the validity of Sec.33-A was upheld, Sec.33-B was found to be bad; that following the decision of the Apex Court on 30.3.2003, an order came to be passed by the Election Commission on 27.3.2003; that by that order, the Election Commission prescribed the format for an affidavit which the candidates have to file along with the nomination papers furnishing the information directed to be disclosed by the Apex Court in its orders dated 2.5.2002 and 13.3.2003; and that the said order would refer both the decisions of the Apex Court made on 2.5.2002 and 13.3.2003.

17.The learned Senior Counsel would further add that the original order of the Supreme Court that the affidavit should contain the educational qualification of the candidate also was not deleted; that the Supreme Court issued directions to the Election Commission to call for affidavit from the candidates while they file nomination papers including the particulars as to the educational qualification only with a view to inform the voter to know whether the candidate had got sufficient educational qualification and whether he is a fit person to be elected or not, and hence, the first respondent in the main election petition while he filed the affidavit he has given false information as to his educational qualification and despite the objections made, his nomination was accepted, and hence, it was an improper acceptance of the nomination; that even in the order passed by the Election Commission on 27.3.2003, it is made clear that the Election Commission in exercise of the powers under Article 324 of the Constitution has to call for the affidavits from the candidates on the five aspects including the educational qualification of the candidate; that in the instant case, paragraph 17 of the said order relied on by the first respondent in the main election petition, was only in respect of furnishing wrong information or suppressing the material information in respect of the assets; that it was also made clear that the candidate must comply with all other requirements as spelled out earlier, which would include the educational qualification also; that when the election petitioner has challenged the election on the specific ground of improper acceptance of nomination and specific averments have been made, there is a cause of action available which could not be decided in an application like this; that the question as to whether the first respondent in the main election petition has given a false declaration in the affidavit when he filed the nomination or not has got to be decided only by adducing evidence in the course of the trial, and thus, there is a triable issue in the instant case, and both the applications have got to be dismissed.

18.The Court paid its anxious consideration on the submissions made and looked into all the materials available.

19. The election petitioner has challenged the election of the applicant herein who was declared elected from 105 Coimbatore West Constituency in the election that took place on 8.5.2006 on the ground of corrupt practice as averred in paragraph 12 of the petition and also influenced the people of the Constituency as averred in paragraph 9 and also on the ground of improper acceptance of the nomination by giving a declaration as to his educational qualification which was known to him as false and misleading. Pending the election petition, the returned candidate has made these two applications one to strike out the pleadings under Order VI Rule 16 of C.P.C. and the other to reject the election petition under Order VII Rule 11(a) of C.P.C. stating that the election petition does not show any cause of action or any triable issue. Hence, the question that would arise for consideration before this Court would be whether the pleadings of the election petitioner in paragraphs 9 to 14 are to be struck out and also whether the election petition requires rejection for want of cause of action and a triable issue. In considering such a preliminary objection whether it requires rejection under Order VII Rule 11, the test should be whether any relief as prayed for could be granted in favour of the election petitioner if the averments made in the election petition were proved to be true. Hence, it has to be necessarily found out whether those averments in the election petition disclosed a cause of action or a triable issue, and the Court should not probe into the facts on the basis of the controversy raised by the parties. It would be more apt and appropriate to reproduce the decision of the Supreme Court reported in 1986 (SUPP) SCC 315 (AZHAR HUSSAIN V. RAJIV GANDHI) as to when and under what circumstance the Court could exercise its powers to summarily dismiss the election petition. The Apex Court has held thus:

"11. In view of this pronouncement there is no escape from the conclusion that an election petition can be summarily dismissed if it does not furnish cause of action in exercise of the powers under the Code of Civil procedure. So also it emerges from the aforesaid decision that appropriate orders in exercise of powers under the Code of Civil Procedure can be passed if the mandatory requirements enjoined by Section 83 of the Act to incorporate the material facts in the election petition are not complied with. This Court in Samant case has expressed itself in no unclear terms that the 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. So also in Udhav Singh case the law has been enunciated that all the primary facts which must be proved by a party to establish a cause of action or his defence are material facts. In the context of a charge of corrupt practice it would mean that the basic facts which constitute the ingredients of the particular corrupt practice alleged by the petitioner must be specified in order to succeed on the charge. Whether in an election petition a particular fact is material or not and as such required to be pleaded is dependent on the nature of the charge levelled and the circumstances of the case. All the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Section 83(1)(a). An election petition therefore can be and must be dismissed if it suffers from any such vice. The first ground of challenge must therefore fail.

12. Learned counsel for the petitioner has next argued that in any event the powers to reject an election petition summarily under the provisions of the Code of Civil Procedure should not be exercised at the threshold. In substance, the argument is that the court must proceed with the trial, record the evidence, and only after the trial of the election petition is concluded that the powers under the Code of Civil Procedure for dealing appropriately with the defective petition which does not disclose cause of action should be exercised. With respect to the learned counsel, it is an argument which it is difficult to comprehend. The whole purpose of conferment of such powers is to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the court and exercise the mind of the respondent. The sword of Damocles need not be kept hanging over his head unnecessarily without point or purpose. Even in an ordinary civil litigation the court readily exercises the power to reject a plaint if it does not disclose any cause of action. Or the power to direct the concerned party to strike out unnecessary, scandalous, frivolous or vexatious parts of the pleadings. Or such pleadings which are likely to cause embarrassment or delay the fair trial of the action or which is otherwise an abuse of the process of law. An order directing a party to strike out a part of the pleading would result in the termination of the case arising in the context of the said pleading. The courts in exercise of the powers under the Code of Civil Procedure can also treat any point going to the root of the matter such as one pertaining to jurisdiction or maintainability as a preliminary point and can dismiss a suit without proceeding to record evidence and hear elaborate arguments in the context of such evidence, if the court is satisfied that the action would terminate in view of the merits of the preliminary point of objection. The contention that even if the election petition is liable to be dismissed ultimately it should be so dismissed only after recording evidence is a thoroughly misconceived and untenable argument. The powers in this behalf are meant to be exercised to serve the purpose for which the same have been conferred on the competent court so that the litigation comes to an end at the earliest and the concerned litigants are relieved of the psychological burden of the litigation so as to be free to follow their ordinary pursuits and discharge their duties. And so that they can adjust their affairs on the footing that the litigation will not make demands on their time or resources, will not impede their future work, and they are free to undertake and fulfil other commitments. Such being the position in regard to matter pertaining to ordinary civil litigation, there is greater reason for taking the same view in regard to matters pertaining to elections. So long as the sword of Damocles of the election petition remains hanging an elected member of the legislature would not feel sufficiently free to devote his whole-hearted attention to matters of public importance which clamour for his attention in his capacity as an elected representative of the concerned constituency. The time and attention demanded by his elected office will have to be diverted to matters pertaining to the contest of the election petition. Instead of being engaged in a campaign to relieve the distress of the people in general and of the residents of his constituency who voted him into office, and instead of resolving their problems, he would be engaged in campaign to establish that he has in fact been duly elected. Instead of discharging his

functions as the elected representative of the people, he will be engaged in a struggle to establish that he is indeed such a representative, notwithstanding the fact that he has in fact won the verdict and the confidence of the electorate at the polls. He will have not only to win the vote of the people but also to win the vote of the court in a long drawn out litigation before he can wholeheartedly engage himself in discharging the trust reposed in him by the electorate. The pendency of the election petition would also act as a hindrance if he be trusted with some public office in his elected capacity. He may even have occasion to deal with the representatives of foreign powers who may wonder whether he will eventually succeed and hesitate to deal with him. The fact that an election petition calling into question his election is pending may, in a given case, act as a psychological fetter and may not permit him to act with full freedom. Even if he is made of stern mettle, the constraint introduced by the pendency of an election petition may have some impact on his subconscious mind without his ever being or becoming aware of it. Under the circumstances, there is greater reason why in a democratic set-up, in regard to a matter pertaining to an elected representative of the people which is likely to inhibit him in the discharge of his duties towards the nation, the controversy is set at rest at the earliest, if the facts of the case and the law so warrant. Since the court has the power to act at the threshold the power must be exercised at the threshold itself in case the court is satisfied that it is a fit case for the exercise of such power and that exercise of such powers is warranted under the relevant provisions of law. To wind up the dialogue, to contend that the powers to dismiss or reject the election petition or pass appropriate orders should not be exercised at the stage of final judgment after recording the evidence even if the facts of the case warrant exercise of such powers, at the threshold, is to contend that the legislature conferred these powers without point or purpose, and we must close our mental eye to the presence of the powers which should be treated as non-existent. The court cannot accede to such a proposition. The submission urged by the learned counsel for the petitioner in this behalf must therefore be firmly repelled."

20. In the instant case, though the election petitioner has sought for a declaration of the applicant successful candidate as void on two grounds, the learned Senior Counsel for the election petitioner stated that the election petitioner is not pressing the ground of corrupt practice as stated in paragraph 12 of the election petition. Hence, it becomes necessary whether the striking out of the pleadings of the other paragraphs namely 9, 10, 11, 13 and 14 has to be ordered and whether the averments in the petition do not make out any cause of action or constitute a triable issue in the instant case. Under Order VI Rule 16 of C.P.C., the Court may at any stage of the proceedings order to strike out or amend any matter in any pleading which might be unnecessary, scandalous, frivolous or vexatious or which might tend to prejudice, embarrass or delay the fair trial of the suit or which is otherwise an abuse of the process of the Court. Viewed from the above provision, as far as the averments in paragraphs 9, 10, 11 and 13 are concerned, it cannot be stated that the averments found therein could be ordered to be struck out on the grounds that they are unnecessary, scandalous, frivolous or vexatious or which might tend to prejudice, embarrass or delay the fair trial of the suit. If the averments do not satisfy the legal requirements either, or do not

make out a cause of action as a whole taken or there is no triable issue, those pleadings cannot but be termed as an abuse of process of Court. Hence, it becomes necessary to consider the next question whether the election petition requires an order of rejection since it does not disclose a cause of action or does not make out a triable issue.

21. Section 100 of the Representation of the People Act, 1950, enumerates grounds for declaring the election to be void. The election petitioner seeks a declaration of the first respondent the successful candidate in the main election petition as void and illegal on the ground of improper acceptance of the nomination and also by reason of the non-compliance with the provisions of the Constitution or of the R.P. Act or of any Rules or orders made under the Act. Speaking as to the contents of an election petition, Sec.83 of the R.P. Act mandates that it should contain a concise statement of the material facts, and it 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 it 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. A distinction could be drawn as to the material facts in Sec.83(1)(a) and full particulars in Sec.83(1)(b). The lines of distinction are in short, but one of degree, and the lines of distinction are not sharp. The material facts as employed in Sec.83(1)(a) are those facts which should a party rely upon and which if he does not prove, he would fail at that time. The purpose of the material facts in the context of the need to give the opponent sufficient details of the charge set up against him and to give him a reasonable opportunity to meet the same. Whether in an election petition a particular fact is a material fact or not depends upon the circumstances attendant over the said case.

22. The election petitioner has averred that though the first respondent in the election petition resigned his post as a Mayor on 31.3.2006, he continued to occupy the quarters allotted to the Mayor and thus, he was staying over there and using the cellphone, landline phone and other facilities availed by the Mayor, and thus, by wantonly staying over in the Mayor's quarters, he has conveniently influenced the people of Coimbatore West, and the election petitioner has termed this as corrupt practice. The corrupt practice is defined in Sec.123 of the R.P. Act where sub section (2) enumerates the instances of undue influence. But, what are all contained in the election petition is that "the first respondent wantonly stayed back in the Mayor's quarters in order to conveniently influence the people of Coimbatore of West". This averment is not only vague, but also it cannot be termed as undue influence so as to call it as a corrupt practice as defined under Sec.123 of the RP Act. Under such circumstances, at no stretch of imagination, this could constitute a triable issue or make out a cause of action.

23. The second ground on which the election of the first respondent in the main election petition and the applicant herein is challenged is improper acceptance of the nomination of the petitioner. It would be more apt and appropriate to reproduce paragraphs 10, 11 and 13 as follows:

"10. The first respondent has given a declaration before the 16th Respondent that he studied upto SSLC in the Municipal Higher Secondary School, Cuddalore. The Petitioner during the first week of June 2006 came to know that the first Respondent

had not studied at all in the Municipal Higher Secondary School, Cuddalore. Therefore the petitioner vide her letter dated 9th June 2006 had requested the District Educational Officer as well as the Head Master of Cuddalore Municipal Higher Secondary School to furnish her the details with respect to the 1st respondent's educational qualification. At this juncture, the petitioner submits that the original name of the first respondent is T.Thangavelu and hence the petitioner had requested vide the above letters whether T.Malaravan alias T.Thangavelu son of Thayumanavarsamy studied in the above said school. Whereas the District Educational Officer, Cuddalore vide his letter dated 9.6.2006 replied that there are no records to show that T.Thangavelu s/o Thayumanavarsamy had studied in the said school from 1954 to 1963. The petitioner again wanted confirm whether the 1st respondent had studied in the name of Malaravan, son of Thayumanavarsamy. Therefore the petitioner had sent another letter dated 14.6.2006 to the District Educational Officer, Cuddalore with a copy to the Head Master of Municipal Higher Secondary School, Cuddalore requesting them to issue a Certificate whether any student studied in the said school in the name of T.Malaravan, son of Thayumanavarsamy from 1954 to 1963. Once again the District Educational Officer of Cuddalore vide his letter dated 16.6.2006 has replied that none had studied in the said school in the name of T.Malaravan s/o Thayumanavarsamy from 1954 to 1963. The above Certificates issued by the Head Master of Municipal Higher Secondary School, Cuddalore and the District Educational Officer, Cuddalore go to prove that the 1st respondent did not study at all in the said school from 1954 to 1963 as declared by him in his nomination. Therefore the 1st respondent had given a false and misleading declaration while filing his nomination. He had not annexed any certificate with respect to his educational qualification from the Municipal Higher Secondary School, Cuddalore or from any other School to support his claim regarding educational qualification. Though the 1st respondent is an illiterate, he has falsely mentioned in his nomination paper that he has studied upto SSLC in the Municipal Higher Secondary School, Cuddalore only to boost up his image which otherwise amounts to undue influence. Further he has given in the declaration that he studied for 10 years in the Cuddalore Municipal Higher Secondary School. Whereas during the relevant time, the School had classes only from VI Std to XI Std. Therefore the declaration is highly false and misleading.

11.The petitioner states the above two incidents will amply prove that the 1st respondent has given a false and misleading declaration to the State Election Commission, namely the 16th respondent. The above incidents will clearly indicate that the 1st respondent had adopted corrupt practice in the election held in May 2006.

13.The petitioner prays that the papers of nomination of the 1st respondent Malaravan as a candidate of All India Anna Dravida Munnetra Kazhagam for 105 Coimbatore West Constituency may be declared as void and bad in law for improper acceptance of his nomination papers to contest from 105 Coimbatore West,

Tamilnadu Legislative Assembly and also for suppression of real facts. The petitioner reiterates that the 1st respondent has wantonly and willfully given a false statement in Form-I along with his election papers as though he has studied upto SSLC between the years 1954-1963 at Municipal Higher Secondary School, Cuddalore. Though the 1st respondent had not crossed the elementary education, i.e. while he has not even passed V Standard, he has deliberately deceived the innocent voters of Coimbatore, West Constituency by fraudulently mentioning that he has studied upto SSLC in Municipal Higher Secondary School, Cuddalore, that too while the educational qualification is not mandatory for the contestants. Further, while campaigning on 6/5/2006 at Ashok Nagar - 42nd Division, at Gandhi Park Roundtana - 51st Division, at R.S. Puram, Annapoorna Corner - 49th Division, at Ukkadam Bus Stand - 41st Division, at Iqbal Thidal - 39th Division and at Selvapuram Housing Unit - 53rd Division and also in so many other places, the 1st Respondent mentioned that he is also well educated and that he has passed SSLC in 1963 itself which is equivalent to today's degree courses and that he can very well cater the needs of educated mass and hence the educated public should vote for him. As majority people of Coimbatore city and especially Coimbatore West are literates and in order to impress upon the literates of Coimbatore West, the 1st respondent has indulged in furnishing such false and fraudulent information in the nomination and while campaigning as well. Therefore the 16th Respondent ought not to have entertained the nomination of 1st respondent and thus ought to have summarily rejected his nomination. Therefore the election of the 1st respondent is null and void. Hence this petition."

24.The above according to the election petitioner would constitute the ground for declaring the election to be void on the ground of improper acceptance of the nomination. A real test for considering a preliminary objection as one made by the successful candidate should be whether any relief as prayed for could be granted in favour of the election petitioner if the averments made in the election petition were proved to be true. If this test is applied, the Court is afraid whether it can agree with the case of the election petitioner that there is a cause of action made out on the above averments and also a triable issue whether the election of the successful candidate is void and invalid and liable to be set aside by improper acceptance of his nomination. Sec.100 of the RP Act where the grounds for declaring the election to be void are enumerated. Sec.100(1)(d) reads that the result of the election insofar as it concerns a returned candidate has been materially affected (i) by improper acceptance of any nomination. In the entire averments made in the election petition as to the improper acceptance of the nomination as could be seen above, nowhere the election petitioner has pleaded that the result of the election insofar as it concerns the first respondent in the main election petition has been materially affected by improper acceptance of his nomination. What are all stated after making the averments as to the alleged declaration of the first respondent in the main election petition as to the educational qualification that they were highly false and misleading as stated in paragraph 13 is that "Therefore, the 16th respondent ought not to have entertained the nomination of the first respondent and thus, ought to have summarily rejected the nomination. Therefore, the decision of the first respondent is null and void." Further in the relief clause it is stated "to declare the election of the returned candidate i.e. The 1st respondent herein as void and bad in law for improper acceptance of his nomination papers to contest from 105 Coimbatore West

Constituency by the 16th respondent." Except these averments nowhere the petitioner has averred that by the improper acceptance of the nomination of the first respondent in the main election petition whereby he has made the alleged declaration which, according to the election petitioner, is false and misleading, it has reflected in the election or the result of the election insofar as it concerns the returned candidate has been materially affected. Under the circumstances, now the election petitioner cannot be allowed to plead or add such improper acceptance of the nomination. Thus, the election petitioner though has averred that there was an improper acceptance of the nomination but has failed to aver about the other part.

25. When a challenge is made on the ground of improper acceptance of the nomination of the returned candidate, law would require not only the material facts which, according to the election petitioner, constituted improper acceptance of the nomination of the returned candidate, but also how it reflected or caused the result of the election insofar as it concerns a returned candidate has been materially affected. In the absence of such a pleading in that regard, the election petitioner cannot put forth any evidence in that regard. Thus, this Court is able to notice that there is a thorough lack of pleading in that regard. Hence, the election petitioner can adduce evidence only on the allegations regarding the declaration given by the returned candidate which, according to him, would constitute the improper acceptance of nomination. But, the election petitioner cannot adduce evidence as to how it reflected or caused the result of the election insofar as it concerns the returned candidate has been materially affected. The pleading put forth by the election petitioner even if proved to be true, she cannot sustain the grounds that the election is void on the ground of improper acceptance of the nomination.

26. Insofar as the other contention that the applicant herein while he furnished the affidavit containing the declaration along with the nomination papers, has not complied with the required provisions of law, though attractive at the first instance, it does not stand the scrutiny of law for the reasons stated infra. As could be seen from the averments, the election petitioner who seeks the election of the returned candidate as void and invalid has alleged that the returned candidate is an illiterate; but, he has given a false affidavit at the time of filing the nomination stating that he has passed SSLC, and he has also studied for 10 years in the Municipal Higher Secondary School at Cuddalore, and the election petitioner on correspondence came to know that the returned candidate had not studied in that school at any point of time, and thus, the declaration given by him was false and misleading even to his knowledge, and thus, the affidavit furnished by him was false, and he has violated the legal requirements as found in Sec.100(1)(d)(iv) of the RP Act. While disposing of the appeal in *Union of India Vs. Association for Democratic Reforms* in CA 7178/2001 and other connected proceedings, the Supreme Court issued a direction to the Election Commission to call for the information on affidavit by issuing necessary order as a necessary part of his nomination furnishing therein information on the five aspects in relation to his/her candidature, which would include the educational qualification of the candidate. In exercise of its powers under Article 324 of the Constitution of India, the Election Commission in view of the most efficacious manner of implementing the order of the Supreme Court, passed orders to amend the forms of the nomination papers and accordingly requested the Government to suitably amend the said forms. Following the same, there was a promulgation. Sections 33-A and 33-B and 125-A were inserted in the R.P. Act. Challenging the introduction of these provisions, the Association for Democratic Reforms and

Peoples Union for Civil Liberties filed writ petitions before the Supreme Court whereby a judgment dated 13.3.2003, was made declaring Sec.33-B as illegal, null and void and further directed that the right to information provided for by the Parliament made in Sec.33-A in regard to the pending criminal cases and past involvement in such cases is reasonably adequate to safeguard the right to information vested in the voter/citizen. Consequent upon the same, the Election Commission issued revised instructions to ensure the implementation of Sec.33-A. The Election Commission also issued a fresh order on 27.3.2003, whereby it was stated that every candidate should furnish full and complete information in regard to all the five aspects specified by the Supreme Court, by way of an affidavit, and the non-furnishing of the affidavit by any candidate should be considered to be a violation of the order of the Supreme Court, and the nomination of the candidate concerned shall be liable to rejection by the Returning Officer at the time of the scrutiny of the nomination for such non-furnishing of the affidavit. It was also made clear that the directions in paragraph 14(4) insofar as the verification of assets and liabilities by means of summary enquiry and rejection of nomination paper on the ground of furnishing wrong information or suppressing material information should not be enforced.

27.Now, in the instant case, admittedly, an affidavit was filed by the returned candidate with regard to all the five matters including his educational qualification. The election petitioner has come forward with the case to state that knowing fully well the returned candidate has given false and misleading information with regard to his educational qualification. Needless to say that the ground of filing the false affidavit by the returned candidate is not a corrupt practice within the meaning of Sec.123 of the Act. Sec.100(1)(d) refers to non-compliance of the provisions of the Constitution or of the Act of 1951 or of any Rules or orders made under that Act. To invoke that ground, however what is required to be alleged is that the result of the election insofar as it concerns the returned candidate has been materially affected by such act whether referable to clause (i) or clause (iv) in Sec.100(1)(d). The material facts to disclose cause of action for invoking the said ground, would also require allegation of filing the false affidavit with intent to materially affect the result of the election. The election of the returned candidate can be declared void in terms of Sec.100(1)(d) of the R.P. Act only if it were to be asserted that, in fact, because of the false affidavit filed by the returned candidate, the result of the election was materially affected and provide for material facts as to in what manner the election has been materially affected. Needless to say the election petition lacks pleading in respect of the above.

28.Law mandates that the grounds for declaring the election to be void must strictly conform to the grounds mentioned in Sec.100 of the Act. A duty is cast upon the Court to appraise whether the election petitioner has made necessary averments on the grounds on which he seeks to void the election of the returned candidate. It is absolutely necessary that the election petitioner to specifically plead that the election insofar as it concerns the returned candidate has been materially affected by the non-compliance of the provisions of the Act or the Rules made thereunder. Needless to say in a case like this, the election petitioner who challenged the election shall positively prove that the result of the election of the returned candidate has been materially affected by the non-compliance of the provisions of the Act. For doing so, law would expect the necessary averments and requisite pleadings which the election petition lacks in this case. Hence, in view of the pleadings in the election petition which lack on all the above aspects, the election petitioner

cannot say that there exists a cause of action or a triable issue on which a trial could be conducted.

29. In a case like this, the only triable issue which could be whether the election of the returned candidate can be declared as void and invalid on the ground that the result of the election of the returned candidate has been materially affected by the improper acceptance of his nomination. It can be well stated that on the pleadings available, no such triable issue could be framed. Now, at this juncture, it is to be pointed out that all the facts which are essential to clothe the petition with complete cause of action must be pleaded and failure to plead even a single material fact would amount to disobedience of the mandate of Sec.83(1)(a), and hence, the election petition suffers from any such vice. On that ground, the election petition has got to be rejected.

30. For the reasons stated above, both these applications are, accordingly, ordered. No costs. Consequently, election petition is rejected.

nsv/