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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 27.03.2025

Pronounced on : 21.04.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

O.A.No. 100 of 2025

IN

E.L.P.No. 3 of 2024

Navaskani. K

... Applicant/1st Respondent

Vs

1. O.Panneerselvam

... 1st Respondent/Petitioner

2. Sivanandam. N

3. Jayaperumal. P

4. Abubakkar Sithick. J,

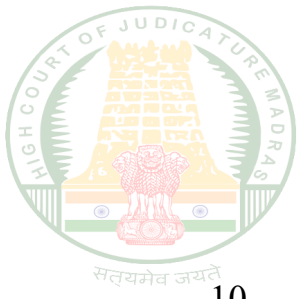
5. Dr.Chandra Prabha Jeyapal

6. Selvaraj. G

7. Parirajan.C

8. Manivasagam. S

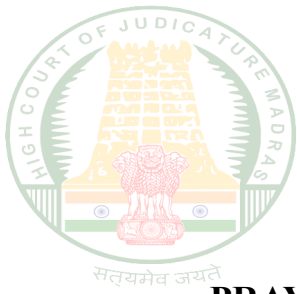
9. Kannadhasan. R



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10. Sasikani. K
11. Sathuragiri. K
12. Saleem
13. Sikkandar.B
14. Sivashankar. N
15. Senthilmallar.K
16. Nawaskhan
17. Panchavarnam. V
18. Panneerselvam.O
19. Pannerselvam. O
20. Panneerselvam. O
21. Panneerselvam. O
22. Pannir Selvam.M
23. Muvith Kumar. N
24. Vignesh. V
25. Thiru.B. Vishnuchandran

... Respondents 2 to
25/Respondents 2 to 25



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PRAYER: Appeal filed under Order VII Rule 11 of CPC read with Order XIV Rule 8 of OS Rules seeking to reject the Election Petition filed in Election Petition No. 3 of 2024.

For Appellant : Ms. Chithra Sampath
Senior Advocate
for Mr.T.S.Baskaran

For 1st Respondent : Mr. Jayant Bhushan
Senior Advocate
for Ms.P.Rajalakshmi

ORDER

This application has been filed by the first respondent in the Election Petition under Order VII Rule 11 of CPC seeking rejection of the Election Petition.

2. It must be pointed out that the specific sub-provision under Order VII Rule 11 of CPC had not been stated and it is to be presumed that the petitioner seeks an order to reject the Election Petition on all the grounds stated therein namely that it does not disclose any cause of action, that the relief claimed is under valued, that though the relief is properly valued, the plaint had been presented on paper insufficiently

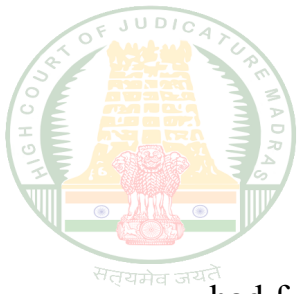


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stamped, that the plaint is barred by law and is also not in compliance with the provisions as introduced in the CPC Amendment Act 2002.

3. In order to maintain clarity, the petitioner herein would be termed as the Returned Candidate though he is the first respondent in the Election Petition and the first respondent herein would be termed as the Election petitioner.

4. In the affidavit filed in support of the Judges Summons, it had been alleged that the value of the property purchased by the Returned Candidate was more than his known sources of income and that an enhanced value had been given for an immovable property and that the son of the Returned Candidate could not have extended a loan of Rs.91,75,000/- which is far in excess of his known sources of income and that the Returned Candidate had not disclosed his remuneration as Director from S.T. Courier Private Ltd., and had not disclosed about the loan extended by him to S.T. Courier Private Ltd., and that he had not disclosed that he was also a Director in Madras Media (P) Ltd., and that he had declared a larger shareholding in Pelita Nasi Kandar (P) Ltd., and



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had further suppressed that he was a Director in that company and that he had failed to disclose the remuneration received by his son as Director of Franch Express Courier Private Ltd., and that he had not disclosed his salary from Franch Express Courier Private Ltd., and that his son was a Director in Tradygo Link (LLP) to avoid disclosure of remuneration received by his son and that he had suppressed a lease deed under which he was getting rental income and that he was the owner/ trustee of the said property.

5. It had been contended that these allegations in the Election Petition would not fall under the scope of Section 100(1)(d)(i) and (iv) of the Representation of People Act 1950. It had been further stated that the Election Petition should be rejected for want of material facts. It had been further contended that all the allegations raised in the Election Petition are baseless and that the Returned Candidate had disclosed every material and substantial fact of his assets and income. Claiming that the Election Petition is devoid of material facts and that therefore, there was no cause of action for maintaining the Election Petition, it had been claimed that this Court should reject the Election Petition presumably under Order VII Rule 11(a) CPC.



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6. A counter affidavit had been filed by the Election Petitioner wherein it had been asserted that the Election Petition is maintainable and that there existed cause of action to file the same and that the allegations raised do disclose a cause of action. It had been stated that specific allegations of suppression of income, assets, liabilities and the posts held by the petitioner had been raised and that such suppression had materially affected the result of the election. It had been further stated that if the facts stated in the Election Petition are substantiated then it would constitute grounds to declare the election void. It had been further stated that the Election Petition is not barred by any law. It was not a frivolous application but based on material facts which can be established during the course of trial. It had therefore been contended that this petition should be dismissed.

7. Heard arguments advanced by Ms. Chithra Sampath, learned Senior Counsel for Mr.T.S.Baskaran, learned counsel for the Returned Candidate and Mr.Jayant Bhushan, learned Senior Counsel for Ms.P.Rajalakshmi, learned counsel for the Election Petitioner.



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8. It is the contention of Ms. Chithra Sampath, learned Senior Counsel that the Election Petition having been filed under Section 100(1)(d)(i) and under Section 100 (1)(d)(iv) had not disclosed any cause of action and is bereft of material facts. Learned Senior Counsel contended that the Election Petition had been filed on presumptions and assumptions. The allegation that the son of the petitioner had advanced loan beyond his known sources of income is a bald allegation and stated without reference to the income tax returns filed by the son. The learned Senior Counsel was emphatic in her assertion that the Election Petitioner cannot introduce additional documents during the course of trial. She pointed out that the statements made in the Election Petition do not fall within the ambit of Section 100(1)(d)(i) or under Section 100 (1)(d)(iv) of the Representation of People Act 1950.

9. The learned Senior Counsel argued that the pleadings are bereft of facts to show as how the allegations had materially affected the results of the election. The learned Senior Counsel further argued that documents required to substantiate the allegations have not been filed



and contended that the Election Petition should be rejected as it would be an exercise in futility if the parties were directed to go to trial.

10. Mr. Jayant Bhushan, learned Senior Counsel however contested the points put forth and stated that the trial has not yet commenced and that the statements made in the Election Petition could be substantiated only during the course of trial. Learned Senior Counsel further stated that the Election Petitioner must be given an opportunity to substantiate the allegations made. The learned Senior Counsel pointed out that at this juncture, the Court must only examine the statements made in the Election Petition and presume that every statement is correct and put proof of such statements to test during the course of trial. The allegations of suppression can be established only during the course of trial. The learned Senior Counsel further argued that if the affidavit filed by the Returned Candidate before the Returning Officer had been rejected as being bereft of material details, then it would certainly have changed the course of the election. The learned Senior Counsel pointed out that therefore, the Election Petition cannot be rejected at this preliminary stage that the Election Petitioner must be afforded an opportunity to substantiate the allegations.



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11. I have carefully considered the arguments advanced and perused the materials on record.

12. The Returned Candidate and the Election Petitioner were the main contesting candidates in the Ramanathapuram Parliamentary Constituency in the 18th Lok Sabha Elections for which the Election Commission of India had issued notification on 20.03.2024 specifying the last date for submission of nomination as 27.03.2024, and the date of screening of the nomination as 28.03.2024. The elections were held on 19.04.2024. The Returning Officer declared the results on 04.06.2024. It was declared that out of the total votes of 11,03,558 polled, the Returned Candidate had obtained 5,09,664 while the Election Petitioner had secured 3,42,882.

13. In the Election Petition, it had been stated that there was suppression / misrepresentation of material facts in the affidavit filed by the Returned Candidate before the Returning Officer. The following allegations were detailed :



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(i) The claim of the Returned Candidate that he had received loan of Rs.91,75,000/- from his son when the total income of the son for the previous five financial years 2018-2019 / 2022-2023 was less than Rs.20/- lakhs;

(ii) The Returned Candidate had not disclosed that he was a Director of named Private Limited Companies and since he had not disclosed that fact, he had also not disclosed the remuneration received by him from the said Private Limited Companies.

14. It has to be examined whether these allegations require the parties to go through the ordeal of trial or whether the Election Petition should be rejected holding that the said allegations are vague and baseless and do not disclose any cause of action.

15. The Election Petition had been filed under Section 100(1)(d)(i) and 100(1)(d)(iv) of the Representation of People Act, 1950. The said provisions are as follows:-



100. Grounds for declaring election to be void.—

(1) Subject to the provisions of subsection (2) if the High Court is of opinion—

(a)

(b)

(c)

(d) that the result of the election, in so far as it concerns a returned candidate, has been materially affected—

(i) by the improper acceptance or any nomination, or

(ii)

(iii)

(iv) by any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act,

the High Court shall declare the election of the returned candidate to be void.

16. The Election Petitioner had contended that the Returned Candidate had failed to disclose that he was a Director in the named Private Limited Companies and that he had received remuneration from those companies. It had been contended that this non-disclosure was a deliberate suppression of a material fact.



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17. This assertion, even if denied requires deep consideration.

They can be examined only on the basis of documents. Any document produced will have to cross the tests of admissibility, relevancy and proof.

18. The allegation could easily be verified by examining the documents of the named Companies. The Election Petitioner had alleged that the Returned Candidate had not disclosed that he was a Director of the named Companies and had also not disclosed the remuneration received in his capacity as Director. If these facts are found to be true and further found that they had not been stated in the affidavit filed by the Returned Candidate before the Returning Officer, then an issue would arise for determination, whether the nomination itself was properly filed and received. This requires an opportunity to be granted to both sides to put forward their case. I hold that the allegations cannot be brushed away, but put to test during the course of trial. I therefore hold that the Election Petition cannot be rejected on this issue.

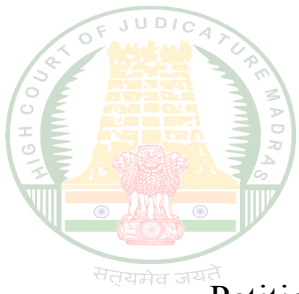


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19. A further allegation had been raised that the Returned Candidate had received a loan of Rs.91,75,000/- from his son while a perusal of the affidavit filed by him before the Returning Officer, reflect that the son in his income tax returns filed for the preceeding five financial years had declared a total income of just around less than 20/- lakhs. An allegation had therefore been raised that the declaration in the affidavit that the petitioner had obtained loan is false and as a matter of fact, improbable.

20. This is an assertion of a fact. This fact can be adjudicated as probable or improbable only on analysis of oral and documentary evidence adduced during the course of trial.

21. The learned Senior Counsel for the Returned Candidate pointed out that the Election Petitioner had not filed the income tax returns of the son. Those documents could always be summoned not only by the Election Petitioner but also by the Returned Candidate himself if he wants to disprove the said allegation raised in the Election



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Petition. Therefore, no conclusion could be reached on the basis of mere statements and counter statements as to how the returned candidate could have received a loan of Rs.97/- lakhs from his son, who had declared an income of less than 20/- lakhs in the past 5 years.

22. Again I hold that this issue requires the procedure of trial to be undergone by the parties before a decision could be arrived on the veracity of this claim in the Election Petition.

23. The learned Senior Counsel for the Returned Candidate had placed reliance on the Judgment reported in **(2012) 3 SCC 314 [Mangani Lal Mandal Vs. Bishnu Deo Bhandari]**. Paragraph No. 11 is as follows:-

“11. A mere non-compliance or breach of the Constitution or the statutory provisions noticed above, by itself, does not result in invalidating the election of a returned candidate under Section 100(1)(d)(iv). The sine qua non for declaring the



*election of a returned candidate to be void on the ground under clause (iv) of Section 100(1)(d) is **further proof of the fact that such breach or non-observance has resulted in materially affecting the result of the returned candidate. In other words, the violation or breach or non-observation or non-compliance with the provisions of the Constitution or the 1951 Act or the rules or the orders made thereunder, by itself, does not render the election of a returned candidate void Section 100(1)(d)(iv). For the election petitioner to succeed on such ground viz. Section 100(1)(d)(iv), he has not only to plead and prove the ground but also that the result of the election insofar as it concerned the returned candidate has been materially affected. The view that we have taken finds support from the three decisions of this Court in: (1) **Jabar Singh v. Genda Lal** [AIR 1964 SC 1200 : (1964) 6 SCR 54] ; (2) **L.R. Shivaramagowda v. T.M. Chandrashekar** [(1999) 1 SCC 666] ; and (3) **Uma Ballav Rath v. Maheshwar Mohanty** [(1999) 3 SCC 357] . ”***

[Emphasis Supplied]

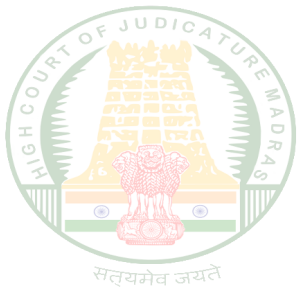


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24. The Hon'ble Supreme Court had held that further proof would be required and such proof can be adduced only during the course of trial.

25. Reference had also been made to the Judgment reported in **2024 SCC OnLine SC 509 [Karim Uddin Barbhuiya Vs. Aminul Haque Laskar and Others]** wherein in paragraph No. 24 it had been held as follows:-

“24. As stated earlier, in Election Petition, the pleadings have to be precise, specific and unambiguous. If the allegations contained in Election Petition do not set out grounds as contemplated in Section 100 and do not conform to the requirement of Section 81 and 83 of the Act, the Election Petition is liable to be rejected under Order VII, Rule 11 of CPC. An omission of a single material fact leading to an incomplete cause of action or omission to contain a concise statement of material facts on which the Election petitioner relies for establishing a cause of action, would entail rejection of Election Petition under Order VII Rule 11 read with Section 83 and 87 of the RP Act.”



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26. In the instant case, the Election Petitioner has raised two specific allegations, that the loan claimed to have been paid by the son to the Returned Candidate is improbable and that the Returned Candidate had suppressed material facts relating to the positions held and the remunerations received. These allegations can be examined only during the course of trial.

27. The learned Senior Counsel for the Election Petitioner placed reliance on the Judgment reported in **2012(3) CTC 673 [P.Chidambaram Vs. R.S.Raja Kannappan and others]**. It had been held in paragraph Nos.32.1, 32.2, 32.3 and 33 as follows:-

“32.1. Thus, a plaint could be rejected only on the following three major grounds, namely,

(a) if it does not disclose any cause of action,

(b) if proper Court fee has not been paid and even after the Court directs payment of the same, the required Court fee has not been paid,

(c) if it is barred by any law.

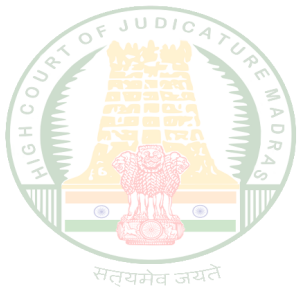


32.3. In the judgment reported in 2003 (1) **Supreme Court Cases 557, Saleem Bhai vs. State of Maharashtra**, the Hon'ble Apex Court has held that for the purpose of deciding the application filed under Order VII Rule 11 CPC, the averments in the plaint alone are germane and the plea taken by the defendant in the written statement would be wholly irrelevant at that stage.

33. An application under Order VII Rule 11 CPC for rejecting the plaint (here the Election Petitioner) who knocks the door of Court of Justice, which is a drastic relief sought against the Election Petitioner. The same has to be exercised cautiously and with utmost care. **An Election Petition could be dismissed by applying the said provision only, if there is total lack of facts with lack of materials and particulars. ”**

[Emphasis Supplied]

28. The allegations raised in the Election Petition in the instant case cannot be brushed away as being bereft of facts or material particulars. The allegations merit deeper examination.



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29. I hold that the issues whether the Returned Candidate had actually received loan from his son and whether the son had the source to advance the loan or whether the Returned Candidate was a Director or not of the named Private Limited Companies are issues which can be determined only on examination of documents. Those documents can be considered as evidence only when they pass the tests of admissibility, relevancy and proof. They can be subjected to such tests only during the course of trial. The veracity of the documents can be determined only when they are produced through witnesses. It must be examined whether the witnesses who are marshalled to speak about them withstand cross examination or welter under cross examination. This requires a trial process.

30. I hold that there is cause of action for filing the Election Petition.

31. This Petition filed under Order 7 Rule 11 CPC presumably under Rule 11(a) CPC will have to fail. The parties must be granted an opportunity to put forward their views by grazing the witness box. It



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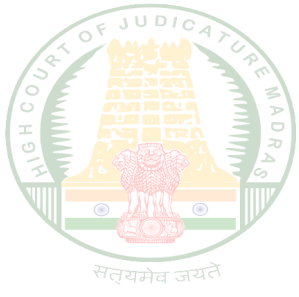
would not be an exercise in futility but rather it would be a venture to discover the correct facts.

32. This Original Application stands dismissed. No order as to costs.

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21.04.2025

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21

C.V.KARTHIKEYAN, J.

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Pre-Delivery Order made in

O.A.No. 100 of 2025

IN

E.L.P.No. 3 of 2024

21.04.2025

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