
(2005) 06 MAD CK 0131

In the Madras High Court

Case No : Original Application No. 105 of 2005 in Election Petition No. 3 of 2004

P. Chidambaram

APPELLANT

Vs

Suba Karuppiah and Others

RESPONDENT

Date of Decision : 14-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 6 Rule 11, Order 6 Rule 16, Order 6 Rule 17, Order 6 Rule 2, Order 6 Rule 2(1)
Constitution of India, 1950 — Article 84
Evidence Act, 1872 — Section 78(2), 81
Representation of the People Act, 1951 — Section 100, 100(1)(b), 100(1)(d), 100(1)(d)(i), 100(1)(d)(i)(ii)

Citation : (2005) 06 MAD CK 0131

Hon'ble Judges : C. Nagappan, J

Bench : Single Bench

Advocate : G. Masilamani, for M/s. S. Silambanan and Gladys Daniel, for the Appellant; G. Masilamani for M/s. S. Silambanan and Gladys Daniel for 1st Respondent, Mr. R. Thiagarajan for 1st respondent/Election Petitioner, Mr. S. Nagarajan Respondent No. 11 and Mr. M.R. Raghavan for Respondents 12 and 13, for the Appearing Parties

Judgement

C. Nagappan, J.—Application under Order XIV Rule 8 of Original Side Rules and Rule 3 of the Rules of the Madras High Court Election Petitions 1967 read with Order VI Rule 16 and Order VII and Rule 11 C.P.C, and Sections 81(1), 83, 86 and 100(1)(d)(i)(ii) of the Representation of People Act, 1951. The first respondent in the Election Petition No. 3 of 2004 has filed the above application praying for striking out the offending paragraphs in the Election Petition and consequently dismiss the Election Petition for want of material facts, particulars, evidence, cause of action and triable issues.

2. The first respondent in this application has filed the Election Petition No. 3 of 2004 under Sections 80 and 80(A) read with Sections 100(1)(b), 100 (1)(d) and 101 of the Representation of People Act, 1951 seeking for a declaration that the election of the Returned candidate/Applicant herein as void and bad in law for

improper acceptance of his nomination papers to contest from No. 33, Sivaganga Parliamentary Constituency by the 12th respondent and also for a declaration that the election of the Returned candidate is null and void as vitiated by corrupt practices and set aside the same and consequently to declare that the next candidate, who has polled the highest number of votes, namely, the first respondent herein, as returned elected.

3. For the sake of convenience, the petitioner in the Election Petition, who is the first respondent in this application, will be referred to as the "Election Petitioner", while the applicant in this application, who is the first respondent in the Election Petition, will be referred to as the "Returned Candidate" in this Order.

4. According to the Election Petitioner, he contested from No. 33, Sivaganga Parliamentary Constituency as a candidate of the All India Anna Dravida Munnetra Kazhagam in the election conducted on 10.5.2004 and the returned candidate filed his nomination papers as the candidate of the Indian National Congress Party. The second respondent was the candidate of the Bahujan Samaj Party and respondents 3 to 11 contested the election as independents. The 12th respondent was the Returning Officer and the 13th respondent is the Election Commission of India.

5. The averments have been raised from para 5 onwards in the Election Petition and they are referred to in seriatim.

a) In paragraph No. 5, it is stated that the returned candidate was a Member of the Indian National Congress which is a recognised national political party and in 1996, he was expelled from that party, as he joined the Tamil Manila Congress (Moopanar), a recognised State Political Party and he contested the Sivaganga Parliamentary Constituency thrice, namely, in 1996, 1998 and 1999 as a candidate of the said Party and on account of difference of opinion during 2001 Assembly Elections, he was expelled from that Party and he founded the Congress Jananayaga Peravai and registered the same as a Political Party with the Election Commission of India and it is found as an un-recognised registered Political Party in Sl. No. 204 of Table No. 3 in Tamilnadu Government Gazette (Extract) Part V. Sec.4.

b) In paragraph 6, it is stated that the returned candidate was a member of Congress Jananayaga Peravai on the date of filing of his nomination and his declaration as an Indian National Congress candidate is false and the election petitioner's agent sent a written representation on 21.4.2004 to the 13th respondent requesting for furnishing of details regarding the official position of the returned candidate in Congress Jananayaga Peravai as on 20.4.2004 and there was no reply from the 13th respondent.

c) In paragraph 7, it is stated that as per law, a person could not be a member of more than one political party at a given point of time and while registering a political party, particulars regarding the names of its President, Secretary, Treasurer and other office bearers should be furnished along with an affidavit

duly signed by the President/General Secretary of the party and sworn before a First Class Magistrate/Oath Commissioner/Notary Public to the effect that no member of the organization is a member of any other political party registered with the Commission and individual affidavits from at least 100 members of the party duly sworn to the effect that the said member is a registered Elector and is not a member of any other political party should also be furnished and after registration of the political party, any change in its name, head office, office bearers, address or in any other material matters shall be communicated to the Election Commission without delay.

d) In paragraph 8, the election petitioner has averred that the returned candidate is either a founder leader or President or General Secretary of the Congress Jananayaga Peravai and if he had resigned and joined the Indian National Congress subsequently, that fact should have been informed to the 13th respondent and if it is so informed, the 13th respondent could have informed the same to the election petitioner on his request and since the 13th respondent has not replied to the request of the petitioner's election agent, it is presumed that there is no change as on 20.4.2004 in the particulars furnished by the Congress Jananayaga Peravai at the time of its registration.

e) In paragraph 9, it is further stated that during the scrutiny of nominations on 24.4.2004, the agent of the election petitioner and proposers raised serious objections before the 12th respondent seeking for rejection of the nomination of the returned candidate, but the objections came to be rejected by the 12th respondent in his proceedings dated 24.4.2004 and the agent of the election petitioner also sent a petition dated 25.4.2004 to the 13th respondent requesting it not to publish the final list of candidates and stop the election till the disposal of the petition.

f) In paragraph 10, it is averred that the 12th respondent rejected the objections without going into the root of the question and improperly accepted the nomination of the returned candidate as a valid one and the said acceptance is wrong, improper, illegal and against the spirit of the Constitution, the Representation of the People Act, 1951, the Election Symbols (Reservation & Allotment) Order, 1968, the Conduct of Election Rules, 1961 together with the periodical instructions issued by the 13th respondent.

g) The election petitioner has reproduced his objections made on his behalf to the 12th respondent on 24.4.2004 in verbatim in paragraph No. 11 and briefly they are thus. The returned candidate on the date of filing of nomination is the founder and leader of the registered unrecognized political party, namely, "Congress Jananayaga Peravai" and as per the Election Symbols (Reservation and Allotment) Order, 1968, the political parties are classified as recognized or unrecognized and among the recognized political parties, there are two categories, namely, State Party and National Party and the symbols are allotted as prescribed therein and the reserved symbol is the recognition accorded by the Election Commission to the particular political party and it is neither a

chattel owned by the party which could be bartered or sold or mortgaged or gifted nor is it available to the candidate not set up by the political party and Schedule X of the Constitution of India speaks about a candidate nominated by a political party and if a person leaves the membership of a particular party, he would be disqualified from being a Member of the House and it is an admitted fact that the returned candidate is not a member of the Indian National Congress nor can he claim that he is a member of that party and it is learnt that he filed Forms A and B as if he is a candidate set up by the Indian National Congress headed by Mrs. Sonia Gandhi and a combined reading of the provisions of the Representation of People Act, the provisions of the Election Symbols (Reservation and Allotment) Order, 1968 coupled with Schedule X of the Constitution of India would show that a candidate must be a member of a political party to qualify himself to make use of Forms A and B so as to get the reserved symbol of the said political party whose Forms A and B he files and seeking the reserved symbol in the absence of his membership, would make his nomination not a valid one. The returned candidate in all probability must be deemed only an independent candidate and if it is so, he should be proposed by at least 10 voters, which is not the case with respect to the nomination filed by him before the Returning Officer. The returned candidate is not a member of the political party, which has given Forms A and B in his favour and he has not fulfilled the formalities that are required while submitting the nomination by an independent candidate and hence his nomination has to be rejected.

h) The election petitioner has further stated in paragraph 12 that the entire election process right from the beginning to the announcement of election results is vitiated and materially affected the result of the election for the following reasons. When the returned candidate filed his nomination on 19.4.2004, he was not a member of the Indian National Congress and hence the declaration" Submitted by him was a false one and that vitiates the entire election process and it is not known as to when the returned candidate resigned from the primary membership of Congress Jananayaga Peravai and on rejoining enrolled himself as a member of the Indian National Congress. Neither he nor the 12th respondent disclosed the same to the election petitioner and the returned candidate has played a fraud on the Constitution of India and has failed to maintain the high traditions of democracy and purity of elections by misrepresenting that he is a member of the Indian National Congress and he no longer continues to be a member of Congress Jananayaga Peravai and the 13th respondent has failed in its duty to provide the requested information about the returned candidate to the petitioner"s election agent and has not complied with the various provisions of law in this regard and the improper acceptance of the returned candidate"s nomination by the 12th respondent has materially affected the election results and the polling trend and the returned candidate continues to be a member of the Congress Jananayaga Peravai as evident from the various Press releases and advertisements given out by that party upon his victory in the selection.

i) In paragraph 13, the election petitioner has once again reiterated the

averment that by the improper acceptance of the nomination of the returned candidate by the 12th respondent, the result of the election insofar as it is concerned with the returned candidate had been materially affected and there had been violations of the provisions of the Constitution of India and the Representation of the People Act, 1951 and the rules framed thereunder, the Election Symbols (Reservation & Allotment) Order, 1968 and the Conduct of the Election Rules and in view of the illegalities, the election of the returned candidate has to be declared as void and bad in law.

j) In paragraph 14, the election petitioner has further averred that the returned candidate by making a false representation in his nomination, has indulged in corrupt practice which though not per se come under the purview of Section 123 of the Representation of the People Act, 1951, by confusing the mind of electorate as being a Congressman.

k) The election petitioner, in paragraph 15 of the petition, has mentioned various dates on which cause of action arose for filing of the election petition.

6. The present Original Application has been filed by the returned candidate seeking for striking out various offending paragraphs in the Election Petition by mentioning their numbers and consequently dismiss the Election Petition for want of material facts and triable issues. Hence, it is appropriate to mention the contents of the affidavit in the same manner as stated therein.

"4. The only ground in the Election Petition is that the nomination of the returned candidate was "improperly accepted". Presumably the election petitioner seeks to invoke Section 100(1)(d)(i) of the Representation of the People Act, 1951, hereinafter referred to as the "1951 Act". In order to invoke the said ground the election petitioner should prove the following:--

(a) that the nomination paper was improperly accepted;

(b) that the said improper acceptance has materially affected the result of the election; and

(c) that the material effect on the result of the election concerns the returned candidate.

4. The presentation of the nomination papers, scrutiny, acceptance and the publication of the list of contesting candidates are dealt with in Sections 32 to 39 of the 1951 Act. Section 32 prescribes the qualifications for a person to be nominated as a candidate. Such qualifications are contained in Article 84 of the Constitution of India and in Section 4 of the 1951 Act. Once a person who possesses the aforesaid qualifications is nominated as a candidate, the nomination paper shall be scrutinized (U/S. 36) and the list of validly accepted candidates shall be prepared [U/S. 36(8)]. Thereafter a list of contesting candidates shall be prepared (U/S. 38).

5. There is no averment anywhere in the Election Petition that any of the

provisions of the Constitution of India or of the 1951 Act has been violated in the present case. There is no averment or pleading as to how the acceptance of the nomination of the applicant herein was in violation of any mandatory provision of the Constitution of India or of the, 1951 Act; nor is there any averment or pleading as to how the acceptance of the nomination was "improper". It is in the background of the absence of any relevant averment or pleading that the other averments in the Election Petition have to be examined and struck out if the said averments are irrelevant, immaterial, unnecessary, frivolous and/or vexatious.

6. The averments in paragraph 8, and in particular the averments in sub-paragraphs (b), (c) and (d), are irrelevant and unnecessary to the issues raised in the Election Petitions. There is no obligation on the part of a person/citizen to inform respondent No. 13 (Election Commission) when he has joined a political party, there is no obligation that respondent No. 13 should convey the said information to the election petitioner's agent. There is no presumption that since the election petitioner did not receive a reply, there was no change as on 20.4.2004 in the particulars furnished by the Congress Jananayaga Peravai. An enquiry into these aspects would be wholly irrelevant and immaterial to the issues raised in the Election Petition. Such an enquiry would be vexatious. Hence, the averments in paragraph 8(b) to (d) are liable to be struck out.

7. In paragraph 11 of the election petition, the election petitioner has reproduced in verbatim the objections made by him to respondent No. 12 (Returning Officer). Although those objections were rejected by the Returning Officer, since the objections have been reproduced in the Election Petition and made part of the Election Petition, the applicant submits that many of those averments are liable to be struck out on the ground that they are unnecessary, irrelevant and immaterial to the issues raised in the Election Petition. For instance the 5th bullet and the paragraph starting with the words, "It is reliably learnt that" and ending with the words "gift it to anybody or to abuse it", is liable to be struck out. The said paragraph raises no disputed question of fact or issue of law. It simply reflects the opinion of the election petitioner. No issue of fact or law can be framed on the basis of the averments in the said paragraph. Hence, the whole of the said sub-paragraph is liable to be struck out,

8. Similarly, the 8th bullet and the paragraph starting with the words, "In the case of Thiru P. Chidambaram" and ending with the words "cannot be allotted to other persons by the Returning Officer", is liable to be struck out. The said paragraph does not raise any disputed question of fact or issue of law. It simply reflects the opinion of the election petitioner. No issue of fact or law can be framed on the basis of the averments in the said paragraph. Any enquiry into the averments in the said paragraph would be wholly irrelevant and immaterial to the issues raised in the Election Petition. Hence, the whole of the said sub-paragraph is liable to be struck out.

9. Similarly, the 9th bullet and the paragraph starting with the words, "As already mentioned" and ending with the words "as a matter of adjustment or as

a matter of will", is liable to be struck out. The said paragraph does not raise any disputed question of fact or issue of law. It simply reflects the opinion and the presumptions of the election petitioner. It is not founded on any provision of the Constitution of India or of the 1951 Act. No issue of fact or law can be framed on the basis of the averments in the said paragraph. Any enquiry into the averments in the said paragraph would be wholly unnecessary and irrelevant to the issues raised in the Election Petition by the petitioner. Hence, the whole of the said sub-paragraph is liable to be struck out.

10. Similarly, the 10th bullet and the paragraph starting with the words, "If the above analogy is accepted" and ending with the words "have not been followed by the said candidate", is liable to be struck out as unnecessary and irrelevant. The said averments do not raise any disputed question of fact or issue of law. It is simply the arguments based on the election petitioner's erroneous understanding of the legal position and his presumptions. No issue of fact or law can be framed on the basis of the averments in the said paragraph. Any enquiry into the averments in the said paragraph would be wholly irrelevant and immaterial to the issues raised in the Election Petition. Hence, the whole of the said paragraph is liable to be struck out.

11. Similarly, the 13th bullet and the paragraph starting with the words, "Neither the Tenth Schedule" and ending with the words "above political gimmicks", are liable to be struck out as unnecessary and irrelevant to the issues raised in the Election Petition. The averments in the said paragraph are not founded on any provision of the Constitution of India or of the 1951 Act. They are simply the arguments based on the election petitioner's erroneous understanding of the legal position and his presumptions. The said averments do not raise any disputed question of fact or issue of law. No issue of fact or law can be framed on the basis of the averments in the said paragraph. Hence, the whole of the said sub-paragraph is liable to be struck out.

12. The averments in paragraph 12, subparagraphs (d), "(e), (g), (i), Q), (k) and (1), are liable to be struck out as unnecessary and irrelevant to the issues raised in the Election Petition. For the reasons stated already, there is no obligation to disclose any information to the election petitioner. These allegations have no foundation in law. There is no averment that any mandatory provision of law has been violated. No issue of fact or law can be framed on the basis of the said averments in paragraph 12. Hence, the aforesaid subparagraphs (d), (e), (g), (i), (j), (k) and (l), are liable to be struck out.

13. The averments in paragraph 12, subparagraphs (h) and (m) are liable to be struck out. The election petitioner has made an irresponsible allegation of fraud without giving any particulars of the alleged fraud. Under Order VI Rule 4 of the C.P.C, when a party pleads fraud, particulars of the alleged fraud shall be stated in the pleadings. Except for a bare allegation of fraud no particulars have been given. Even the allegation is based on a presumption of the election petitioner and not on the basis of any facts. There can be no enquiry into the irresponsible

and unsubstantiated allegations made by the election petitioner in sub-paragraphs (h) and (m). Any such enquiry into the averments in the said paragraph would be vexatious, and wholly irrelevant and immaterial to the issues raised in the Election Petition. Hence, the whole of sub-paragraphs (h) and (m) are liable to be struck out!

14. It is submitted that the averments in sub-paragraph (n) of paragraph 12 is liable to be struck out as unnecessary and irrelevant to the issues raised in the Election Petition. No reliance can be placed on any alleged press releases or advertisements. In any event, no connection has been alleged or established between the returned candidate (applicant herein) and the said press releases and advertisements. No enquiry can be made into the said press releases and advertisements. No issue of fact or law can be framed on the basis of the averments contained in sub-paragraph (n). Hence, the whole of the said sub-paragraph (n) is liable to be struck out.

15. It is submitted that the averments in sub-paragraph (o) of paragraph 12 is liable to be struck out as unnecessary and irrelevant to the issues raised in the Election Petition. The averments in the said sub-paragraph are not based on any facts or documents. The said averments do not raise any disputed question of fact or issue of law. No issue of fact or law can be framed on the basis of the averments in the said paragraph. Hence, the whole of the said sub-paragraph (o) is liable to be struck out.

16. It is submitted that the averments in paragraph 14 of the Election Petition are liable to be struck out. Although there is a bald allegation of corrupt practice and a reference to Section 123 of the 1951 Act, there is no averment regarding any corrupt practice or the kind of corrupt practice or the provision of law which is attracted. Corrupt practices are defined in Section 123 of the 1951 Act and in as much as there is no specific allegation of any corrupt practice within the meaning of Section 123 of the 1951 Act, there can be no enquiry into the bare allegation. Since paragraph 14 of the Election Petition contains only a bare allegation, any enquiry into the averments in the said paragraph 14 would be wholly irrelevant, immaterial and vexatious. Hence, the whole of paragraph 14 is liable to be struck out.

17. Without prejudice to the above it is respectfully submitted that the Election Petition itself is liable to be dismissed in limine for the reasons stated in paragraph 3 of the counter-statement filed by respondent No. 1 (applicant herein). Unless the Election Petition furnishes or constitutes a cause of action or ground in support of the Election Petition as required under law, the Election Petition itself is not maintainable. Since no ground of law in support of the Election Petition, as required under the 1951 Act, has been made out in the Election Petition, it is submitted that any enquiry into the Election Petition would be unnecessary, irrelevant and vexatious. Hence, the whole of the Election Petition is liable to be dismissed in limine."

7. The election petitioner has filed the counter affidavit in the Original Application reiterating what he has stated in the Election Petition and has stated that the returned candidate was a member of Congress Jananayaga Peravai on the date of filing of nomination on 19.4.2004 and admittedly, he was a member of two political parties as per his claim and as such, the nomination submitted by him is vitiated and the same should not have been accepted by the 13th respondent herein and that would vitiate the entire election process. It is further stated in the counter that the allegations contained in the Election Petition have to be substantiated by the election petitioner only at the time of trial and not at the interlocutory stage as alleged by the applicant. It is also stated in the counter that whether the returned candidate continued to be the founder leader/President of the Congress Jananayaga Peravai and when he re-joined the Indian National Congress are all matters to be considered at the time of trial and not at the interlocutory stage. According to the election petitioner, the material facts and material particulars, which are essential, would depend upon the cause of action pleaded by him and the evidence that may be led by him at the time of trial and the pleadings as set out in the Election Petition cannot be struck out or amended according to the whims and fancies of the returned candidate and it cannot be contended by the applicant that it is an abuse of process of Court. It is further stated in the counter that there is a clear distinction between the full particulars and the material facts and the Court cannot dissect pleadings into several parts and struck out a portion which does not disclose the cause of action as alleged by the applicant/returned candidate and the contention that the election petitioner has not disclosed the source of materials to substantiate the plea of corrupt practices indulged by the returned candidate would be pre-mature and the Court has to necessarily take into consideration the pleadings in entirety and it cannot be read in isolation. The election petitioner has further stated in the counter that the returned candidate has to necessarily prove and establish that he was not a member of two political parties at the time of filing of his nomination before the 13th respondent and substantiate the fact as to when he resigned the primary membership of Congress Jananayaga Peravai and relinquished his position as the Founder leader/President of that party and when he re-joined the Indian National Congress, and those matters have to be considered and decided only at the time of trial. The prayer seeking for the rejection of the Election Petition under Order VII, Rule 11(A) C.P.C on the basis that it does not disclose the cause of action cannot be considered unless the evidence, both -oral and documentary, are let in by the parties to the proceedings and not otherwise. Lastly, it is stated in the counter that the present application filed by the returned candidate is nothing but a fraudulent and vexatious attempt made with a view to avoid a fair trial with regard to the various allegations levelled against him and hence it is liable to be dismissed.

8. The returned candidate has filed a detailed reply denying the averments in the counter affidavit by stating that the allegations contained in the Election Petition do not constitute a valid cause of action as required under law and no pleadings

in the Election Petition, if proved, would vitiate the election process; it is for the election petitioner to satisfy the Court as to how the acceptance of the nomination of the returned candidate was invalid and improper, since all official acts are deemed to have been done correctly and properly; the election petitioner has not produced any valid document to prove his imaginary allegation about the membership of the returned candidate in political party or parties and further as to how and under what law it would invalidate his nomination; the burden is on the election petitioner to prove as to how the election process is violated by referring the relevant provision of laws and producing the documentary evidence therefore; the election petitioner's mere assertion that the acceptance of the nomination is contrary to laws without specifically pointing out the relevant provisions of law is untenable, since such assertion is general, vague and untenable in law; no valid document has been filed by the election petitioner to show that the returned candidate was a member of the Congress Jananayaga Peravai on 19.4.2004, i.e., on the date of nomination; the returned candidate is the best person to speak about his political affiliation and his statement and documents have been accepted by the Returning Officer; the election petitioner who alleges the contrary facts alone has to prove the allegations with documentary evidence, but has not done so; the newspaper cuttings filed by the election petitioner are inadmissible in evidence and unreliable in an election petition, since there was no authenticity for the news mentioned therein; the election petitioner is trying to convert the Election Petition into a Civil Suit under C.P.C in general, contrary to and without complying with the stringent provisions of Representation of People Act relating to Election Petition; the election petitioner is trying to make a roving enquiry which is impermissible in law; it is not correct to state that the allegations made in the Election Petition are to be tested only at the time of trial and even at the initial stage, the Court can strike out the paragraphs in the Election Petition which do not satisfy the legal requirement of the election law; the allegation that the returned candidate was originally a member of the Indian National Congress and later on, in Tamil Maanila Congress and Congress Jananayaga Peravai are general statements without material particulars and not germane to the gravamen of charge in the Election Petition; the allegation that the returned candidate continued to be the founder leader of the Congress Jananayaga Peravai on the date of filing of his nomination is denied; the returned candidate has filed this application only on the basis that there is no cause of action for the Election Petition and does not file to delay the fair trial as alleged by the election petitioner; the allegation of the election petitioner that the returned candidate was a member of the two political parties on the date of filing of his nomination is nothing but per se scandalous, fraudulent and vexatious and it is not supported by material particulars and evidence; it is not correct to state that there is a clear distinction between the full particulars and material facts and the Court cannot dissect the pleadings into several parts and to find out which part does not disclose the cause of action; the election petition cannot proceed to trial on the basis of newspaper reports, presumption, assumption only since the same

is not permissible in law; the election petitioner has not disclosed any material source, facts, particulars, documents or evidence to substantiate the plea of corrupt practices and hence the same has to be struck out; the averments in the Election Petition would not lead to any conclusion, much less to irresistible conclusion of valid cause of action even to try it and the returned candidate has placed valid material facts, circumstances and law for the rejection of the Election Petition, since after striking out the untenable portions in the Election Petition, there shall remain no relevant portion to constitute cause of action and triable issues in the Election Petition; the election petitioner cannot throw the burden of disproving his suspicion on the basis of assumption and presumption on the shoulder of the returned candidate and the averments made in the counter affidavit have to be rejected in limine; the election petitioner has attempted to seek trial in an Election Petition in respect of matters which are not triable; the election law has to be followed strictly, consequently pleadings and averments in an Election Petition which are not in consonance with the requirement of election law have to be struck out at the initial stage itself, so that the trial in the Election Petition is not clouded and miscarried otherwise than in compliance with, as required by law.

9. The first respondent alone has filed his counter in this application and the learned counsel for respondents 11 to 13 have made an endorsement that they are not filing any counter to the application. All other respondents are already set ex-parte in the main Election Petition.

10. Mr. G. Masilamani, learned Senior Counsel appearing for the applicant/returned candidate contended that the right conferred in the matter of election is not a common law right and it is only a statutory right; that the only ground alleged in the election petition is that the nomination of the returned candidate was improperly accepted invoking the provision u/s 100 (1)(d)(i) of the Representation of People Act and there is no averment or pleading as to how the acceptance of the nomination was in violation of any mandatory provision of the Constitution of India or of the Representation of People Act, 1951 and as to how the acceptance of the nomination was improper and has materially affected the result of the election and also insofar as it concerned the returned candidate and hence the said averment is frivolous and vexatious and liable to be struck out; that the first respondent/election petitioner has made irresponsible allegation of fraud without giving any particulars of the alleged fraud and any enquiry into it would be vexatious, irrelevant and immaterial; that there is a bald allegation of corrupt practice mentioned in the election petition, but there is no specific allegation of corrupt practice within the meaning of Section 123 of the Act and there can be no enquiry into the bald allegation; that the election petitioner has not filed any valid document to show that the returned candidate was a member of Congress Jananayaga Peravai on 19.4.2004 i.e., on the date of nomination and the returned candidate is the best person to speak about his political affiliation and his document and statements have been accepted by the Returning Officer and the authorised person of the Congress Party has certified about the returned

candidate and has given letter of requisition, which was accepted by the Returning Officer and the election petitioner is trying to shift the burden of proof on the shoulder of the returned candidate, which is impermissible in law and the newspaper cuttings filed by the election petitioner are inadmissible evidence and there is no authenticity for the news mentioned therein and the election petitioner is trying to make a roving enquiry, which is not permissible in law and the election petitioner is trying to convert the Election Petition into a Civil Suit under CPC in general, contrary to and without complying with the stringent provisions of the Representation of People Act relating to Election Petition; that the allegation that the returned candidate is continued to be a Founder leader of Congress Jananayaga Peravai on the date of nomination is not correct and the election petitioner has not disclosed his source of information and the material particulars with regard to the same; that the allegation of the election petitioner that the returned candidate was a member of two political parties on the date of filing his nomination, is nothing but per se scandalous, fraudulent, vexatious and unsupported by material facts and particulars or even list evidence as required in the election law; that the election petition cannot proceed to trial on the basis of newspaper reports, presumption and assumption only and the absence of material facts and material particulars and documentary evidence will suffice to strike out the unsupported averments in the election petition which are vexatious, irrelevant and immaterial and the election petitioner has not referred to any provisions of law in the election petition, disclosing any disqualification flowing from the alleged membership of political parties even if proved and the non-disclosure of the relevant provision of law is fatal to the maintainability of the election petition; that the election petition has to be dismissed in limine for want of material facts, cause of action and triable issues and that the requirement of Section 83 of the Representation of People Act is mandatory and the election petitioner has not satisfied the said requirement.

11. In support of the contention that the Representation of People Act is a self contained enactment and the election petition is neither a fundamental right nor a common law right, but only a statutory right, the learned Senior Counsel appearing for the applicant/returned candidate relied on the following decisions of the Apex Court:

- "1) N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others,
- 2) Dhartipakar Madan Lal Agarwal v. Shri Rajiv Gandhi (MR 1987 S.C. 1577).
- 3) C. Narayanaswamy Vs. C.K. Jaffer Sharief and Others,
- 4) Jaipal Singh Vs. Smt. Sumitra Mahajan and Another,

12. The following decisions of the Apex Court were also relied on by the learned Senior Counsel appearing for the applicant/returned candidate for the proposition that the portions of the election petition which do not disclose any cause of action are liable to be struck off under Order VI, Rule 16 CPC and the Court is empowered to strike out the pleading which is unnecessary, scandalous, frivolous

or vexatious and after striking out the pleadings, if there is no triable issue remains to be considered, the Court is empowered to reject the election petition under Order VI, Rule 11 CPC and there should be no vagueness in the allegation of corrupt practice and there should be a full and complete statement of material facts in the allegation of corrupt practice and the pleadings relating to it have to be scrutinized in a strict manner and to declare the election to be void u/s 100 (1) (d) of the Representation of People Act, the election petitioner has to plead and show that the result of the election insofar as it concerned to the returned candidate has been materially affected by the alleged improper acceptance of any nomination or by the alleged non-compliance with the provisions of the Act or of the Rules.

- "1) Vashit Narain Sharma Vs. Dev Chandra and Others,
- 2) Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi,
- 3) Lalit Kishore Chaturvedi Vs. Jagdish Prasad Thada and others,
- 4) Kripa Shankar Chatterji v. Gurudas Chatterjee and others MR 1995 S.C.2152.
- 5) Jagjit Singh Vs. Dharam Pal Singh and Others,
- 6) L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc.,
- 7) Sri Uma Ballav Rath Vs. Sri Maheshwar Mohanty and Others,
- 8) Santosh Yadav Vs. Narender Singh,
- 9) Saleem Bhai and Others Vs. State of Maharashtra and Others,
- 10) Jaipal Singh Vs. Smt. Sumitra Mahajan and Another,

13. The following decisions of the Apex Court were further relied on by the learned Senior Counsel appearing for the applicant/returned candidate for the proposition that a newspaper report is only a hearsay secondary evidence unless proved by evidence aliunde:

- "1 Samant N. Balkrishna and Another Vs. V. George Fernandez and Others,
- 2. Laxmi Raj Shetty and another v. State of Tamil Nadu 1988 S.C.C.(Cri) 633.
- 3. (1993) 3 SCC 151 S.A. Khan v. CH. Bhajan Lal and Anr.

14. Per contra, Mr. Thiagarajan, learned counsel appearing for the first respondent/election petitioner contended that the application is not maintainable in law and on facts and liable to be dismissed in limine; that the election of the applicant/returned candidate has to be declared as void and bad in law for the improper acceptance of his nomination, overruling the objections raised by the first respondent/election petitioner before the Returning Officer; that the returned candidate was a member of Congress Jananayaga Peravai on the date of filing of nomination on 19.4.2004 and he was a member of two political parties and as such the very nomination submitted by him is vitiated and should not

have been accepted; that the returned candidate did not possess the requisite qualification since he was the founder leader and primary member of the Congress Jananayaga Peravai at the time of filing of his nomination and the election petitioner has set out the facts and circumstances as to how there was violation of the mandatory provisions of the law and the allegations can be substantiated only at the time of trial by letting in evidence and at this stage, it cannot be said that he has not disclosed any cause of action or abused the process of Court as mentioned under Order VII, Rule 11(a) CPC; that the applicant/returned candidate had originally resigned from the Indian National Congress and joined Tamil Manila Congress, a regional outfit and it is a mystery as to when he re-joined the Indian National Congress and he had not furnished any information about that at the time of filing of his nomination as required by law and those matters have to be considered at the time of trial only; that the issue before the Court is whether the returned candidate was a member of two political parties at the time of filing of his nomination before the Returning Officer and whether the sequence of events set out in the election petition would vitiate the election process; that the particulars furnished in the election petition would amount to material facts and the election petitioner would demonstrate the cause of action at the time of trial; that the pleadings as set out in the election petition cannot be struck out as sought for unless the applicant makes out that it is an abuse of process of Court and process of law; that there is distinction between the full particulars and the material facts and the Court cannot dissect pleadings into several parts and struck out a portion which does not disclose the cause of action as alleged by the applicant; that the averment that the election petitioner has not disclosed the source of material to substantiate the plea of corrupt practice, at this stage, would be premature and the application has been filed only to mislead the Court with regard to various provisions more particularly, Sections 83(1)(a) and 86 of the Representation of People Act; that the applicant/returned candidate has not set out in detail as to how the allegations made against him are unnecessary, scandalous and frivolous or vexatious and abuse of process of Court and the plea for rejection of the election petition on the basis that it does not disclose the cause of action, is liable to be rejected and the pleadings have to be tested only at the time of trial and not at the interlocutory stage.

15. In support of his contentions, the learned counsel for the first respondent relied on various decisions of the Apex Court. In fact, some of the decisions were relied on by both sides for the propositions of law laid down therein.

16. The learned counsel for the first respondent relied on the following decisions of the Apex Court with regard to the distinction between the material facts and the material particulars and the power of Court to permit the election petitioner to furnish material particulars at a later stage and the requirement of law pertaining to the allegation of corrupt practice:

"1. Shri Udhav Singh Vs. Madhav Rao Scindia,

2. Roop Lal Sathi Vs. Nachhattar Singh,
3. Azhar Hussain Vs. Rajiv Gandhi,
4. F.A. Sapa Etc., Etc., Vs. Singora and others,
5. D. Ramachandran Vs. R.V. Janakiraman and Others,
6. V.S. Achuthanandan Vs. P.J. Francis and Another,
- 7 H.D. Revanna Vs. G. Puttaswamy and Others,
8. Mahendra Pal Vs. Ram Dass Malanger and Others,
9. Mr. V. Narayanaswamy v. Mr. C.P. Thirunavukkarasu 2000 (1) Supreme 290.
10. Regu Mahesh @ Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev and Another,
11. Ajay Kumar Poeia Vs. Shyam and Others,
12. Borgaram Deuri Vs. Premodhar Bora and Another,
13. Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others,
14. Jaipal Singh Vs. Smt. Sumitra Mahajan and Another,
15. Chandrika Prasad Yadav Vs. State of Bihar and Others,
16. Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu and Others,
17. Rupadhar Pujari Vs. Gangadhar Bhatra,
18. Liverpool and London S.P. and I Asson. Ltd. Vs. M.V. Sea Success I and Another,
19. Chandrakant Uttam Chodankar Vs. Shri Dayanand Rayu Mandrakar and Others,

17. The learned counsel for the first respondent cited some more decisions with regard to the dispute as to the symbol between two parties arising under Election Symbols (Reservation & Allotment) Order and as such they are not relevant to this application and hence they are not mentioned.

18. The law relating to election petition filed under the Representation of People Act, 1951 is well settled and the observations of Their Lordships of the Supreme Court in some of the landmark Judgments are extracted below:

"1. Dhartipakar Madan Lal Agarwal Vs. Rajiv Gandhi,

"Para 8. The first question which falls for our determination is whether the High Court had jurisdiction to strike out pleadings under O. VI, R. 16, C.P.C. and to reject the election petition under O. VII, R. 11 of the Code at the preliminary stage even though no written statement had been filed by the respondent.

Section 80 provides that no election is to be called in question except by an election petition presented in accordance with the provisions of Part VI of the Act before the High Court. Section 81 provides that an election petition may be presented on one or more of the grounds specified in S. 100 by an elector or by a candidate questioning the election of a returned candidate. Section 83 provides that an election petition shall contain a concise statement of material facts on which the petitioner relies and he shall set forth full particulars of any corrupt practice that he may allege including full statement 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. Section 86 confers power on the High Court to dismiss an election petition which does not comply with the provisions of Ss. 81 and 82 or S. 117. Section 87 deals with the procedure to be followed in the trial of the election petition and it lays down that subject to the provisions of the Act and of any rules made thereunder, every election petition shall be tried by the High Court as nearly as may be in accordance with the procedure applicable to the trial of suits under the Code of Civil Procedure, 1908. Since provisions of CPC apply to the trial of an election petition, O.VI, R. 16 and O.VI, R. 17 are applicable to the proceedings relating to the trial of an election petition subject to the provisions of the Act. On a combined reading of Ss. 81, 83, 86 and 87 of the Act, it is apparent that those paras of a petition which do not disclose any cause of action, are liable to be struck off under O.VI, R. 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 O.VI, R. 11.

Para 14. Before we consider various paras of the election petition to determine the correctness of the High Court order we think it necessary to bear in mind the nature of the right to elect, the right to be elected and the right to dispute election and the trial of the election petition. Right to contest election or to question the election by means of an election petition is neither common law nor fundamental right instead it is a statutory right regulated by the statutory provisions of the Representation of the People Act, 1951. There is no

fundamental or common law right in these matters. This is well settled by catena of decisions of this Court in N.P. Ponnuswami Vs. Returning Officer, Namakkal Constituency and Others, , Jagan Nath Vs. Jaswant Singh and Others, Jyoti Basu and Others Vs. Debi Ghosal and Others, These decisions have settled the legal position that outside the statutory provisions there is no right to dispute an election. 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 CPC are applicable to the extent as permissible by S. 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 S. 80 on the grounds as contained in S. 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 S. 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 S. 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. It is therefore necessary for the Court to scrutinize the pleadings relating to corrupt practice in a strict manner.

Para 30. The aforesaid allegations do not amount to any corrupt practice as contemplated by S. 123 of the Act. At best these allegations raise a grievance that the presiding officers did not perform their duties in accordance with law inasmuch as they failed in their duty to remove the posters and other propaganda material from the polling booth and the hand which was the election symbol of Rajiv Gandhi and the same was displayed within 100 meters of the polling booth in violation of the rules. The allegations do not make out any charge of corrupt practice. If at all the allegations could be a ground under S. 100(1)(d)(iv) of the Act for setting aside election on the ground of it being materially affected but no such plea was raised. Paras 54 to 58 do not deal with any corrupt practice."

2. L.R. Shivaramagowda, Etc. Vs. T.M. Chandrashekar Etc.,

"Para 10. That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void u/s 100(1)(d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted para 39 of the election petition which is the only relevant paragraph. One will search in vain for an averment in that paragraph that the

appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment, it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in an election petition if the election is sought to be set aside on the basis of such facts.

Para 11. This Court has repeatedly stressed the importance of pleadings in an election petition and pointed out the difference between "material facts" and "material particulars". While the failure to plead material facts is fatal to the election petition and no amendment of the pleading could be allowed to introduce such material facts after the time-limit prescribed for filing the election petition, the absence of material particulars can be cured at a later stage by an appropriate amendment. In *Balwan Singh Vs. Lakshmi Narain and Others*, the Constitution Bench held that an election petition was not liable to be dismissed in limine merely because full particulars of corrupt practice alleged were not set out. On the facts of the case, the Court found that the alleged corrupt practice of hiring a vehicle for the conveyance of the voters to the polling station was sufficiently set out in the pleading. The Court pointed out that the corrupt practice being hiring or procuring of the vehicle for the conveyance of the electors, if full particulars of conveying by a vehicle of electors to or from any polling stations were given, Section 83 was duly complied with, even if the particulars of the contract of hiring, as distinguished from the fact of hiring were not given.

Para 12. In *Samant N. Balkrishna and Another Vs. V. George Fernandez and Others*, the Court said that if the material facts of the corrupt practice are stated, more or better particulars of the charge may be given later, but where the material facts themselves are missing, it is impossible to think that the charge has been made and later amplified and that would tantamount to making of a fresh petition.

Para 16. If the above well-settled principles are applied in this case, there is no doubt whatever that the election petition suffers from a very serious defect of failure to set out material facts of the alleged corrupt practice. The defect invalidates the election petition in that regard and the petitioner ought not to have been permitted to adduce any evidence with reference to the same.

Para 16A. We have already extracted paras (f) and (g) of the affidavit filed along with the election petition. It does not disclose the source of information. Nor does it set out which part of the election petition was personally known to the petitioner and which part came to be known by him on information. Significantly, paras (a) to (e) of the affidavit state that the averments therein are true to his information. Para (f) is silent on this aspect of the matter. Para (g) refers to all the 42 paragraphs in the petition. The affidavit is not in conformity with the prescribed Form No. 25. Thus there is a failure to comply with Rule 94-A of the

Conduct of Elections Rules. It is a very serious defect which has been overlooked by the High Court."

3. Jaipal Singh Vs. Smt. Sumitra Mahajan and Another,

"Para 3. On the above pleadings, a preliminary issue was framed by the High Court - as to whether the petition lacked in material facts and did not disclose cause of action. By the impugned judgment, the High Court held that Section 83(1)(a) of the said Act mandates that an election petition shall contain a concise statement of material facts on which the petitioner relies, that in the present case, the appellant had failed to aver and plead two material facts viz. that his application for voluntary retirement was accepted by the appointing authority before the date of scrutiny and that his request for waiver of the notice period of three months was actually accepted. In the absence of disclosure of the above facts, the High Court dismissed the election petition.

Para 7. Section 83 deals with contents of petition. It states that an election petition shall contain a concise statement of material facts, on which the petitioner relies and shall state full particulars of any corrupt practice which petitioner alleges and which shall be signed by him and verified in the manner laid down in the Code of Civil Procedure. In the case of *Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others*, it has been held that the Order VI, Rule 2(1) of CPC deals with basic rule of pleadings and declares that the pleadings has to state material facts and not the evidence; that there is a distinction between "material facts" and "particulars" and the words "material facts" show that the facts necessary to formulate a complete cause of action must be stated. Omission of single material fact leads to an incomplete cause of action and consequently, the plaint becomes bad. The distinction between "material facts" and "particulars" was brought by Scott, L.J. in *Bruce v. Odhams Press Ltd.* (1936) 1 KB 697 in the following passage:-

"The cardinal provision in Rule 4 is that the statement of claim must state the material facts. The word "material" means necessary for the purpose of formulating a complete cause of action; and if any one "material" statement is omitted, the statement of claim is bad: it is "demurrable" in the old phraseology, and in the new is liable to be "struck out" under R.S.C. Order XXV, Rule 4 (see *Philipps v. Philipps* (1872) 4 QBD 127: or "a further and better statement of claim" may be ordered under Rule 7. The function of "particulars" under Rule 6 is quite different. They are not to be used in order to fill material gaps in a demurrable statement of claim - gaps which ought to have been filled by appropriate statements of the various material facts which together constitute the plaintiff's cause of action. The use of particular is intended to meet a further and quite separate requirement of pleadings, imposed in fairness and justice to the defendant. Their function is to fill in the picture of the plaintiffs cause of action with information sufficiently detailed to put the defendant on his guard as to the case he had to meet and to enable him to prepare for trial."

Para 8. The above dictum of Scott, L.J. in Bruce's case (supra) has been quoted with approval by this Court in the case of Samant N. Balkrishna and Another Vs. V. George Fernandez and Others,

Para 9. As to what is the material fact has to be decided in the present case, in the context of the election petition under the said Act. An election petition is a matter of statutory right. In the petition, the key issue was whether the appellant held an office of profit on the date of scrutiny. For that purpose, the appellant ought to have stated that on 13.3.2002 he had requested for waiver of the notice period; that the appointing authority had received the notice on the specified date and that his request for waiver stood granted on the date of scrutiny and he ceased to be a government servant. These were the material facts which the appellant should have pleaded so that the returned candidates would not be taken by surprise. They are material facts within his knowledge and ought to have been pleaded in the election petition. Lastly, even the letter of the appellant seeking the waiver of the notice period did not form part of the election petition. Hence, the High Court was right in dismissing the election petition for want of material facts.

4. (1993) 3 SCC 151 S.A. Khan v. CH. Bhajan Lal and Anr.

"Para 21. The bone of contention of Mr. Parasaran is that the statement of fact contained in a newspaper report is merely hearsay and therefore inadmissible in evidence in the absence of any proof by evidence aliunde. According to him, in the present case there is no proof that the alleged contemptuous statement was in fact made by the Chief Minister as it appears in the Press note. According to him, it is only for the applicant to satisfy the Court by adducing acceptable evidence that the statement of fact contained in the report is true and that it calls for issue of suo motu notice. According to him, the decision in In Re: P.C. Sen, cannot be availed of by the applicant because in that case, the evidence was led before the Court to prove that the offending speech was in fact broadcast by the Chief Minister on the All India Radio, Calcutta Station. In support of his submission that the news item cannot be the basis for initiating contempt proceeding against the alleged maker of the statement, he relied upon a decision of this Court in Samant N. Balkrishna and Another Vs. V. George Fernandez and Others, wherein it has been held that news items when published are garbled versions and cannot be regarded as proof of what actually happened or was said without other acceptable evidence through proper witnesses. He also drew our attention to the dictum laid down by this Court in Laxmi Raj Shetty and Another Vs. State of Tamil Nadu, with regard to the admissibility of the news item appearing in a Press report. The dictum reads thus: SCC p.346, 25 and 26)

"We cannot take judicial notice of the facts stated in a news item being in the nature of hearsay secondary evidence, unless proved by evidence aliunde. A report in a newspaper is only hearsay evidence. A newspaper is not one of the documents referred to in Section 78(2) of the Evidence Act, 1872 by which an allegation of fact can be proved. The presumption of genuineness attached u/s

81 of the Evidence Act to a newspaper report cannot be treated as proved of the facts reported therein.

It is now well settled that a statement of fact contained in a newspaper is merely hearsay and, therefore, inadmissible in evidence in the absence of the maker of the statement appearing in court and deposing to have perceived the fact reported."

5. Santosh Yadav Vs. Narender Singh,

"Para 16. The law as regards the results of election having been materially affected in case of improper acceptance of nomination may be summed up as under:-

(1) A case of result of the election, in so far as it concerns the returned candidate, having been materially affected by the improper acceptance of any nomination, within the meaning of S. 100(1)(d)(i) of the Representation of the People Act, 1951 has to be made out by raising specific pleadings setting out all material facts and adducing cogent evidence so as to enable a clear finding being arrived at on the distribution of wasted votes, that is, the manner in which the votes would have been distributed if the candidate, whose nomination paper was improperly accepted, was not in the fray.

(4) The burden of proof placed on the election petitioner is very strict and so difficult to discharge as nearing almost an impossibility. There is no room for any guess-work, speculation, surmises or conjectures i.e. acting on a mere possibility. It will not suffice merely to say that all or majority of wasted votes might have gone to the next highest candidate. The law requires proof.

6. Shri Udhav Singh Vs. Madhav Rao Scindia,

"Para 37. Like the Code of Civil Procedure, this section also envisages a distinction between "material facts" and "material particulars" CI. (a) of sub-section (1) corresponds to Order 6, Rule 2, while Clause (b) is analogous to Order 6, Rules 4 and 6 of the Code. The distinction between "material facts" and "material particulars" is important because different consequences may flow from a deficiency of such facts or particulars in the pleading. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6, Rule 16, Code of Civil Procedure. If the petition is based solely on those allegations which suffer from lack of material facts, the petition is liable to be summarily rejected for want of a cause of action. In the case of a petition suffering from a deficiency of material particulars, the court has a discretion to allow the petitioner to supply the required particulars even after the expiry of limitation.

Para 38. All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defence, are "material facts". In the context of a charge of corrupt practice, "material facts" would mean all the basic facts constituting the ingredients of the particular corrupt practice alleged,

which the petitioner is bound to substantiate before he can succeed on that charge. Whether in an election-petition, a particular fact is material or not, and as such required to be pleaded is a question which depends on the nature of the charge levelled, the ground relied upon and the special circumstances of the case. In short, all those facts which are essential to clothe the petitioner with a complete cause of action, are "material facts" which must be pleaded, and failure to plead even a single material fact amounts to disobedience of the mandate of Sec. 83(1)(a).

Para 39. "Particulars", on the other hand, are "the details of the case set up by the party". "Material particulars" within the contemplation of Clause (b) of Section 83(1) would therefore mean all the details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of Clause (a). "Particulars" serve the purpose of finishing touches to the basic contours of a picture already drawn to make it full, more detailed and more informative."

7. D. Ramachandran v. R.V. Janakiraman and others MR 1999 S.C. 1128.

"Para 8. For the purpose of considering a preliminary objection, the averments in the petition should be assumed to be true and the Court has to find out whether those averments disclose a cause of action or triable issue as such. The Court cannot probe into the facts on the basis of the controversy raised in the counter.

Para 9. Under Order VI, Rule 16, the Court is enabled to strike out a pleading (a) which may be unnecessary, scandalous, frivolous or vexatious or (b) which may tend to prejudice, embarrass or delay the fair trial of the suit; or (c) which is otherwise an abuse of the process of the Court. We have already pointed out that it is not the case of the first respondent that the pleading in the election petition is vitiated by all or any one of the aforesaid defects mentioned in the rule. Hence striking out parts of the pleading in this case was not at all justified."

8. Regu Mahesh @ Regu Maheswar Rao Vs. Rajendra Pratap Bhanj Dev and Another,

"Para 8. What is "corrupt practice" is set out in Section 123. In terms of Section 83(1)(b), wherever corrupt practice is alleged, full particulars of such practice alleged including as full a statement as possible of the names of the parties alleged to have committed corrupt practice and the date and place of commission of such practice has to be indicated. Though allegations of fraud etc. in obtaining a false caste certificate have serious implications, under the Act and particularly as the language of Section 123(3) specifies and enumerates, they do not per se constitute corrupt practice. The fact that a candidate obtains a certificate that he belonged to and is a member of the Scheduled Caste/Tribe to contest as one belonging to such caste/tribe, essential and necessary for contesting as a candidate in a reserved constituency, at any rate, cannot amount to an appeal to vote or refrain from voting on the ground of his caste/tribe for the reason that

what was obligated by the statute upon anyone to be entitled to contest in such a reserved constituency cannot become condemnable as "corrupt practice". To attract the vice of the said provisions as amounting to "corrupt practice", independent appeal or canvassing for votes by the candidate or his agent or by another person with the consent of the candidate or the election agent for the furtherance of the prospects of the election of that candidate or for prejudicially affecting the election of any candidate is an essential ingredient."

9. Mahadeorao Sukaji Shivankar Vs. Ramaratan Bapu and Others,

"Para 6. Now, it is no doubt true that all material facts have to be set out in an election petition. If material facts are not stated in a plaint or a petition, the same is liable to be dismissed on that ground alone as the case would be covered by clause (a) of Rule 11 of Order 7 of the Code. The question, however, is as to whether the petitioner had set out material facts in the election petition. The expression "material facts" has neither been defined in the Act nor in the Code. It may be stated that the material facts are those facts upon which a party relies for his claim or defence. In other words, material facts are facts upon which the plaintiffs cause of action or the defendant's defence depends. What particulars could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down. It is, however, absolutely essential that all basic and primary facts which must be proved at the trial by the party to establish existence of cause of action or defence are material facts and must be stated in the pleading of the party.

Para 7. But, it is equally, well settled that there is distinction between "material facts" and "particulars". Material facts are primary or basic facts which must be pleaded by the petitioner in support of the case set up by him either to prove his cause of action or defence. Particulars, on the other hand, are details in support of material facts pleaded by the party. They amplify, refine and embellish material facts by giving finishing touch to the basic contours of a picture already drawn so as to make it full, more clear and more informative. Particulars ensure conduct of fair trial and would not take the opposite party by surprise."

19. Keeping in view the above decisions and the relevant provisions of law, the relief of striking out the offending paragraphs and the rejection of election petition sought for in the application has to be considered by examining the relevant paragraphs in the election petition.

20. In the averments in paragraphs 8(b) to (d) of the election petition, it is averred that if the applicant/returned candidate, has joined Indian National Congress; this fact should have been informed to the thirteenth respondent, viz., Election Commission of India, and if it is so, the thirteenth respondent could have informed the same to the election petitioner's agent on his request and since the thirteenth respondent has not replied, it is presumed that there is no change as on 20.4.2004 in the particulars furnished by Congress Jananayaga Peravai at the time of its registration. Document No. 1 filed alongwith the Election Petition, is

the Xerox copy of the Tamil Nadu Government Gazette Amendment Notification dated" 29.3.2004 to Election Symbols (Reservation & Allotment) Order, 1968 issued by the Election Commission of India. Document No. 2 is a Fax transmission report dated 21.4.2004. Document No. 3 is the Xerox copy of the letter dated 21.4.2004 sent by one Haja Najmuddin claiming to be the chief election agent of the election petitioner, addressed to the 13th respondent seeking information about the returned candidate's official status in Congress Jananayaga Peravai as on 20.4.2004.

21. The contention of the applicant/returned candidate is that there is no obligation on the part of a citizen to inform the 13th respondent viz., the Election Commission, as to when he joined a political party and there is no obligation that 13th respondent should convey the information to the election petitioner's agent and there is no presumption that since the election petitioner did not receive the reply, there was no change as on 20.4.2004 in the particulars given by Congress Jananayaga Peravai and any enquiry into these aspects would be irrelevant and immaterial to the issues raised in the election petition and such an enquiry would be vexatious and hence the averments are liable to be struck out.

22. It is true that the election petitioner has not disclosed the provision of law under which the parties/citizens are required to inform the Election Commission furnishing the information about admission, resignation/removal of their membership in the registered political party and the Election Commission is required to maintain information about the members of political parties and the obligation on their part to furnish such membership information on request. In the absence of disclosure of relevant provision of law constituting the material facts from which the presumption can flow, those averments are liable to be struck out as sought for.

23. In paragraph No. 11 of the election petition, the election petitioner has reproduced in verbatim the objections made by him to the 12th respondent, viz., the Returning Officer and although those objections were rejected by the Returning Officer, they have been reproduced in the election petition and according to the applicant/returned candidate many of those averments are liable to be struck out on the ground that they are unnecessary, irrelevant and immaterial to the issues raised in the election petition and the applicant has sought for striking out the bullets bearing Nos. 5, 8 to 10 and 13.

24. In the 5th bullet, the election petitioner has stated that the returned candidate has filed Forms A and B, as if he is the candidate set up by the Indian National Congress and the reserved symbol is the recognition accorded by the Election Commission identifying the particular political party and it is neither a chattel owned by the said political party which could be bartered or sold or mortgaged or gifted nor it is available to the candidate not set up by the political party and it is not the property to be gifted to anybody or to be abused.

25. The learned Senior Counsel for the applicant/returned candidate submitted

that the election petitioner has not stated clearly as to whether the Indian National Congress violated any law by setting up the applicant as their candidate and whether the applicant has violated any law by filing the nomination as the candidate of Indian National Congress and the averment regarding reserved symbol being bartered, mortgaged, gifted or sold is vague and does not specify the provision of law under which the said assumption is made and how and under what provision of law this averment shall render the acceptance of the nomination of the applicant improper and constitute a ground to challenge the election and hence the averments in the said sub-paragraph are unnecessary, frivolous, vexatious, scandalous and have to be struck off. It is true that the said sub-paragraph raised no disputed question of fact or issue of law and it reflects only the opinion of the election petitioner and no issue of fact or law can be framed and the subparagraph is liable to be struck out as prayed for.

26. In the 8th bullet, the election petitioner has stated that it is an admitted fact that the returned candidate is neither a member of the Indian National Congress nor can he claim so and hence the question of membership of the said political party whose symbol he wants to utilize for the purpose of election cannot be allotted to him and only a person who is a member or card-holder of the particular political party can be given the reserved symbol of that political party and the same cannot be allotted to other persons by the Returning Officer.

27. The learned Senior Counsel for the applicant/returned candidate contended that the averment that it is an admitted fact that the returned candidate is not a member of Indian National Congress is a mere imaginary assertion and it is not supported by any material fact on the basis of which it can be said to be an admission and it is not stated as to who, where and when admitted as said above and the election petitioner has neither furnished documentary evidence nor pleaded the material facts, particulars regarding the said assertion of alleged admission and the election petitioner has also not disclosed the source of information and hence the said averment is liable to be struck out. He further contended that the averment stating that the returned candidate cannot claim that he is a member of that party is also an empty assumption and imagination of election petitioner and liable to be struck off for want of material facts and particulars. According to him, the averment to the effect that the symbol of the political party which the applicant wants to utilize cannot be allotted to him, is also not supported by any material fact and no material fact is pleaded to show and prove as to how the acceptance of the nomination and allotment of the symbol reserved for Indian National Congress to the applicant has materially affected the result of the election and the averment that the Returning Officer cannot allot the symbol to the applicant is also not supported by any material fact as to why it should not be allotted and the specific provision of law which prevent or render the allotment of symbol as improper has also not been stated and the sub-paragraph is liable to be struck off.

28. The learned counsel for the election petitioner contended that the allegations

contained in paragraph 11 of the election petition can be substantiated only at the time of trial by letting in evidence and it cannot be decided at this stage.

29. The above sub-paragraph only reflects the opinion of the election petitioner and no issue of fact or law can be framed and any enquiry into the said averments would only be irrelevant and immaterial and the averment has to be struck out as prayed for.

30. In the 9th bullet, the election petitioner has averred that the election symbol is not a movable property that could be bartered away and the Tenth Schedule of the Constitution of India deals about the membership of a particular person tracing him to the said political party and by mere allotment of symbol, a person will not be deemed to be a member of that political party and the membership is the basic fabric for any person to be the candidate in an election to whom the reserved symbol of the particular political party can be allotted and at the will and pleasure of the political party, a third party unconnected with the political party, cannot be allotted with the symbol as a matter of grace or as a matter of will.

31. The learned Senior Counsel for the applicant/returned candidate contended that these averments do not specifically state as to how the Tenth Schedule of the Constitution of India shall apply to the election petition and Tenth Schedule relates to the certain conduct of the elected candidate and has no relevance to a stage prior to the declaration of the election and further the election petitioner has failed to state the material facts as to why the symbol of Indian National Congress should not have been allotted to the applicant and which provision of the Representation of People Act or Election Symbols (Reservation & Allotment) Order has been violated while allotting the symbol and the averments contained no material facts and liable to be struck off as irrelevant.

32. Nothing in reply is found in the counter of the election petitioner to this averment of the applicant.

33. The Tenth Schedule of the Constitution of India contains the provisions as to disqualification on ground of defection and it will come into play only after declaration of election and it has no application to an election petition. The averments in this sub-paragraph contain no material fact as rightly contended by the applicant and it has to be struck out as prayed for.

34. In the 10th bullet, the election petitioner has stated that the applicant is no longer a candidate set up by the Indian National Congress and in such a situation, he loses the character of the candidate set up by a political party which has got the benefit under the Election Symbols (Reservation & Allotment) Order and if that be so, he is deemed to be only an independent candidate and as such he should have been proposed atleast by ten voters which is not the case with respect to the nomination filed by him before the Returning Officer and the mandatory requirements prescribed for nomination of the independent candidate have not been followed by the applicant.

35. The learned Senior Counsel appearing for the applicant/returned candidate contended that the election petitioner has failed to state the material facts as to why the applicant is not a candidate set up by the said political party viz., Indian National Congress, even though Forms A and B have been duly presented to the Returning Officer and this allegation is made on information, but the source and details relating thereto have been withheld and it is also not stated with material facts as to how the result of the election was materially affected by the allegation. It is his further contention that the averment regarding deeming the applicant as an independent candidate is imaginary hypothetical assumption and is not founded on any law or facts and the election petitioner has failed to state the provisions as per which the applicant is deemed to have been an independent candidate and the election petitioner cannot plead/raise a hypothecated situation and answer the same against the applicant.

36. It is true that the election petitioner in the above sub-paragraph has chosen to state that the applicant is no longer a candidate set up by the Indian National Congress though Forms A and B have been duly presented to the Returning Officer, without stating the material facts based on which the assumption is made and no issue of fact or law can be framed on the basis of such averments and any enquiry into the same would be wholly irrelevant and immaterial and this sub-paragraph deserves to be struck out as sought for.

37. In the 13th bullet, the election petitioner has averred that neither the Tenth Schedule of the Constitution of India nor the Election Symbols (Reservation and Allotment) Order could be taken for a ride by any political party as if the authorised signatory can name anybody in Forms A and B to allot the reserved symbol of the political party and if it is not so, wayfarers in the political scenario could be benefited by such allotment of symbols, which is not the intention of the very recognition of the political party or reserved symbol and in order to preserve the democratic system, a deep analysis of these aspects is necessary to avoid political persons to over-ride the mandatory provisions in respect of acquiring symbols for contesting elections.

38. The learned Senior Counsel for the applicant/returned candidate contended that the averments regarding the intention and interpretation of the Tenth Schedule of the Constitution of India and the Election Symbols (Reservation and Allotment) Order is a product of the election petitioner's vagaries of mind based on presumptions and assumptions of facts and law that ought to be and hence not relevant to the election petition and the said averments do not fall within the four corners of election law and liable to be struck off. The averments in this subparagraph are only the arguments of the election petitioner and not relevant to the election petition and they have to be struck out as sought for.

39. The election petitioner in Paragraph 12 (d) of the election petition has stated that it is not known as to when the applicant has resigned from the primary membership of Congress Jananayaga Peravai and re-joined and enrolled himself as member of the Indian National Congress and though the election petitioner

has wanted those details, the same have not been furnished either by the applicant or by the Returning Officer and in sub-para (e) of Paragraph 12, the election petitioner has stated that the 13th respondent viz.. Election Commission of India, would have the records to show the applicant's position and status in the Congress Jananayaga Peravai and if there had been any change, it could have been duly intimated to the agent of the election petitioner and in sub-para (g) of Paragraph 12, it is averred that the applicant and the Indian National Congress have treated the reserved symbol like that of a chattel and it has been assigned to the applicant being fully aware that he is a founder member of Congress Jananayaga Peravai.

In sub-para (i) of Paragraph 12 of election petition, it is stated that the agent of the election petitioner filed his objections with the Returning Officer and sought for information pertaining to the membership of the applicant with the Indian National Congress and the Returning Officer did not give any satisfactory reply to the objections raised and this only leads to adverse inference as to his membership.

In sub-para (j) of Paragraph 12 of election petition, it is stated that the 13th respondent has failed in its duty to provide the requested information about the applicant when contacted by the agent of the election petitioner and it has not complied with the provisions of law which provide for the right of the electorate to get information about the contesting candidates.

It is averred in sub-para (k) of Paragraph 12 of election petition that the 13th respondent has acted in a manner prejudicial to the interest of the election petitioner and not responded to the request of the agent of the election petitioner and has accepted the nomination of the applicant by his proceedings dated 24.4.2004.

In sub-para (1) of paragraph 12, it is stated that the 13th respondent has not acted in a transparent and accountable manner for the purpose of which it has been made as an autonomous body with vast powers for the effective functioning of democracy.

40. The learned Senior Counsel for the applicant/returned candidate contended that the averments regarding the 13th respondent not furnishing of details are alien factors to the present election petition and the same cannot form a ground to challenge the election of the applicant and the inaction on the part of the 13th respondent even if it is true, cannot form the basis or ground to challenge the election of the applicant under the provisions of the Representation of People Act and hence the averments have to be struck off. The learned Senior Counsel further contended that the election petitioner neither stated the material facts and particulars to prove that the applicant was a member of Congress Jananayaga Peravai on the date of filing of his nomination nor has he stated the material facts which would show that the applicant was not a member of Indian National Congress on the date of filing of his nomination and no material facts

have been pleaded to show conclusively that the applicant was not a member of Indian National Congress and the averments having been made on information, the source and details of information have not been pleaded by way of material facts and the averments are only vague allegations and not supported by material facts and they are liable to be struck off.

41. The learned counsel for the election petitioner contended that whether the applicant re-joined the Indian National Congress as alleged by him and whether he had furnished any information about this to the 13th respondent as required by law and whether he continued to be a founder leader/president of the Congress Jananayaga Peravai are all matters to be considered only at the time of trial and not at the interlocutory stage.

42. As rightly contended by the learned Senior Counsel for the applicant, the alleged inaction on the part of the 13th respondent cannot form the basis or ground to challenge the election of the applicant/returned candidate under the provisions of the Representation of People Act and no material facts have been pleaded to show that the applicant was not a member of Indian National Congress on the date of filing of nomination and these averments are only vague allegations, not supported by material facts and have to be struck off as sought for in the application.

43. The election petitioner in paragraph 12(h) of the election petition has averred that the applicant has played a fraud on the Constitution of India and has failed to maintain the high traditions of democracy and purity of elections and he has resorted to fraudulent means by misrepresenting that he is a member of Indian National Congress and that he no longer continues to be a member of Congress Jananayaga Peravai. In sub-para (m), it is averred that the improper acceptance of the applicant's nomination has materially affected the election result and the polling trend and the applicant misrepresented that he is a member of the Indian National Congress and played a fraud on the large number of illiterate mass who exercised their franchise by identifying the candidate only with the help of his political symbol and hence they have been duped into believing that he is a congressman and the result of the election insofar as it concerns the returned candidate has been materially affected by improper acceptance of the nomination by the 12th respondent.

44. The learned Senior Counsel for the applicant/returned candidate vehemently contended that the election petitioner has made an irresponsible allegation of fraud without giving particulars and the allegation is based on presumption and not on the basis of any facts and the source of information and the details of document or persons from whom these information are gathered have not been disclosed by way of material facts and particulars and these averments are per se scandalous and defamatory and ought to be struck out.

45. The learned counsel for the election petitioner contended that the details as to how the election process is vitiated on account of irregularities and illegalities

are mentioned in the election petition and they have to be substantiated only at the time of trial and not at the interlocutory stage.

46. It is true that the allegation of fraud has been made without giving any particulars. It is settled law that when a party pleads fraud, he shall state the particulars of it in the pleadings. The election petitioner has made the allegation of fraud not on the basis of any fact and there can be no enquiry into the averments contained in the sub-paragraphs and they are liable to be struck out as prayed for.

47. In paragraph 12(n) of election petition, it is averred that the applicant continues to be a member of Congress Jananayaga Peravai is very clear and evident from the various Press releases and advertisements given out by the Congress Jananayaga Peravai congratulating its party leader upon his victory in the election.

48. It has been contended on behalf of the applicant/returned candidate that the above averments are made on the basis of Press reports and the same are not authentic facts which could be independently relied upon without other pleading of material facts or documentary evidence in support of the election petitioner's claim to establish the cause of action for the Election Petition and the material facts relating to the press reports such as the reason for non-filing of the original manuscript, the name, address, identity of the person who reported the news, the source of his information, the name of the editor and publisher of the newspaper, the region of the edition have not been pleaded and disclosed and no other material facts and particulars to corroborate the newspaper report have been pleaded and no connection has been alleged or established between the applicant and the said Press releases and advertisements and no enquiry can be made into the same and the averments ought to be struck off.

49. It is well settled that the newspaper reports are only hearsay secondary evidence, unless proved by evidence aliunde. Documents 8 to 15 are copies of the various newspaper reports. As rightly contended by the learned Senior Counsel for the applicant, no material facts to corroborate the newspaper reports have been pleaded and in the absence of the same, the averments have to be struck out as prayed for.

50. In Paragraph 12 (o), the election petitioner has stated that even prior to the polling date, when the profile and other details of the various candidates were printed and circulated in the Press, the applicant was only portrayed as a member of the Congress Jananayaga Peravai and they were having an alliance with Dravida Munnetra Kazhagam and Indian National Congress and hence the applicant was not entitled to contest under the political symbol reserved for Indian National Congress.

51. It is urged on behalf of the applicant/returned candidate that the above averment is not based on any facts or documents and do not raise any issue of fact or law and hence ought to be struck off.

52. As already seen, Forms A and B have been duly presented to the Returning Officer by the Indian National Congress setting up the applicant as their candidate and the same has been accepted by the Returning Officer and the election petitioner has not pleaded any material fact as to how the applicant was not entitled to contest under the political symbol reserved for the Indian National Congress. This averment is also liable to be struck out as sought for.

53. The election petitioner in paragraph 14 of the election petition has averred that the applicant by making a false representation in his nomination, has indulged in corrupt practice, which though not per se come under the purview of Section 123 of the Representation of People Act, by confusing the mind of electorate as being a Congressman.

54. The learned Senior Counsel for the applicant/returned candidate strenuously contended that this averment is contrary to the election law, as there is a deeming provision as to what could be deemed to be a corrupt practice u/s 123 of the Representation of People Act and the election petitioner is not entitled to infuse any other criteria into the deeming clause for treating it to be a corrupt practice. It is further contended by the learned Senior Counsel for the applicant that the election petitioner himself has candidly admitted that the applicant is not guilty of corrupt practice as prescribed u/s 123 of the Representation of People Act and hence no cause of action for the election petition is made out and the averment has to be struck off.

55. Section 2(1)(c) of the Representation of People Act states that "corrupt practice" means any of the practices specified in Section 123 of the Act and the corrupt practices are exhaustively stated in Section 123 of the Act and other than that, there cannot be any other corrupt practice. Hence, there can be no enquiry into this bare allegation and the paragraph is liable to be struck out as sought for.

56. As discussed above, the applicant is entitled for the relief of striking out of the offending paragraphs as sought for in the application. The averments contained in the remaining paragraphs have to be analysed.

57. Paragraphs 1 and 2 of the election petition deal with the description of parties. The averments in paragraphs 3 and 4 are not germane to the issue.

58. In paragraph 5, it is averred that the returned candidate was a member of Indian National Congress and in the year 1996 he was expelled from that party as he joined a new political out-fit, namely, Tamil Maanila Congress (Moopanar) which was a recognized State political party and as its candidate contested in the Sivaganga Parliamentary Constituency thrice, in the years 1996, 1998 and 1999 and in the year 2001 he was expelled from that party and he founded Congress Jananayaga Peravai and registered the same as a political party with the Election Commission of India. There are no material facts pleaded and the averments are irrelevant.

59. In para 6, the election petitioner has averred that the returned candidate

filed his nomination on 19.4.2004 declaring himself as a candidate of Indian National Congress and as he was a member of Congress Jananayaga Peravai on that date, his declaration is false and the Agent of the election petitioner contacted the 13th respondent namely, the Election Commission of India, over phone on 20.4.2004 to ascertain the official position of the returned candidate in Congress Jananayaga Peravai and as instructed he also sent a written representation on 21.4.2004 to the 13th respondent requesting it to furnish the details regarding the official position of the returned candidate in Congress Jananayaga Peravai as on 20.4.2004 and there was no response. As already seen, the election petitioner has not stated the material facts to prove that the returned candidate was a member of Congress Jananayaga Peravai on the date of filing of his nomination and no material facts have been pleaded to show that the applicant was not a member of Indian National Congress as on that date, and the averments having been made on information, the source and details of information have not been pleaded by way of material facts and the averments are only vague allegations not supported by material facts. The learned Senior Counsel for the returned candidate contended that the election petitioner has not stated material facts to prove the appointment of the election petitioner's Agent, the name and address of the election Agent who was said to have given written representation and also not pleaded "material facts" and "material particulars" to show sending of written representation such as mode of dispatch, delivery, acknowledgement from the Office of the Election Commission to prove the claim of sending written representation and the averments are frivolous and vexatious. As already seen, the averments regarding the 13th respondent not furnishing details to the election petitioner are alien factors to the election petition and the same cannot form a ground to challenge the election.

60. In para 7, the election petitioner has averred that as per law a person could not be a member of more than one political party at a given point of time and while registering a political party, particulars regarding the names of its President, Secretary, Treasurer and other Office Bearers should be furnished under an affidavit duly signed by the President/General Secretary of the party sworn in before a First Class Magistrate/Oath Commissioner/Notary Public to the effect that no member of the Organisation is a member of any other political party registered with the Commission and similar individual affidavits from at least 100 members of the party should also be furnished and after registration as a political party as per sub-Section of Sec. 29(A) of the Representation of the People Act, 1951, any change in its name, head office, office bearers, address shall be communicated to the Election Commission without delay. The learned Senior Counsel for the returned candidate contended that though the election petitioner has stated on advice that as per law a person cannot be a member of more than one political party, he has not pleaded the material facts as to the name, identity and address of the person who gave the advice and he has not set out the provision of law which prohibits a person from being a member of more than one political party at a given point of time and which constitutes a

ground for declaring the election invalid. It is true that no material facts have been pleaded stating the relevant provision of law and the violation, if any, and the averments are irrelevant, frivolous and vexatious.

61. In para 9, it is averred that during the scrutiny of nominations on 24.4.2004, the agent and proposers of the election petitioner raised serious objections before the Returning Officer, namely, the 12th respondent, seeking to reject the nomination of the returned candidate by filing the written objection and the same came to be rejected by Order of the 12th respondent dated 24.4.2004 and the Agent of the election petitioner sent a petition dated 25.4.2004 to the 13th respondent requesting it not to publish the final list and stop the election. Document No. 4 is the written objection dated 24.4.2004 given by one Haja Najmuddin, claiming himself to be the Chief Election Agent of the election petitioner, to the Returning Officer; Document No. 5 is the Proceedings of the Returning Officer, dated 24.4.2004 rejecting the objections; Document No. 6 is the petition dated 25.4.2004 sent by Haja Najmuddin addressed to the 13th respondent; and Document No. 7 is a Fax Transmission Report dated 26.4.2004. The learned Senior Counsel appearing for the returned candidate contended that the election petitioner has failed to furnish the material facts and material particulars about the name, identity and address of his alleged Agent and his authority of appointment pleaded and document produced, and the name, identity and address of his proposers also have not been pleaded with material facts, who are said to have raised the objection, and the election petitioner has failed to state under what provision of law the election petitioner is entitled to request and the 13th respondent is empowered to stop the election and not to publish the final list of candidates and hence, the averments are irrelevant, frivolous and vexatious. This contention raised on behalf of the returned candidate cannot be brushed aside. No material facts and provisions of law have been pleaded in these averments.

62. In para 10, it is averred that the 12th respondent, namely, the Returning Officer, in his Proceedings has rejected the objections without going into the root of the question and improperly accepted the nomination of the first respondent as a valid one and it is wrong, improper, illegal and against the spirit of the Constitution, the Representation of the People Act, and the Election Symbols (Reservation & Allotment) Order, 1968, the conduct of Election Rules, 1961 together with the periodical instructions issued by the 13th respondent. The learned Senior Counsel for the returned candidate contended that no material facts have been pleaded to show as to how and why the acceptance of nomination of the returned candidate was improper and the relevant provision of law required to be satisfied for acceptance of nomination, and which has not been satisfied. He further contended that the election petitioner has not mentioned the provision of the Constitution, Section of the Representation of the People Act, and the Rule made under it and the particular Order made under that Act sought to be relied upon to prove the allegation in the election petition and there are no averments much less material facts to the effect that the allegation

has materially affected the result of the election of the returned candidate. The fact remains that the election petitioner has not chosen to mention the specific provision of law and the material facts regarding its violation. The averments are vague and vexatious.

63. In para 13, it is averred that the averments in the election petition would manifestly prove and establish that by the improper acceptance of the nomination of the returned candidate by the 12th respondent, the result of the election in so far as it concerns the returned candidate had been materially affected and there had been flagrant violations of the provisions of the Constitution, the Representation of the People Act and the rules framed thereunder, the Election Symbols (Reservation & Allotment) Order and the Conduct of the Election Rules and in view of the above illegalities, the election has to be declared as "void". As already seen, the election petitioner has failed to plead material facts and furnish material particulars to establish that the election in so far as it concerns the returned candidate was materially affected on account of the alleged improper acceptance of his nomination and further the election petitioner has not pleaded material facts as to how he could have obtained a majority of valid votes to support his claim to declare himself as elected. The averments in this paragraph also are vague and frivolous besides bereft of material facts.

64. The election petitioner has mentioned various dates on which the cause of action arose in para 15, and para 16 states the payment of costs and court fee and para 17 is the prayer portion.

65. To sum up, the election petitioner has not pleaded either material facts or violation of any specific provision of law to make out a cause of action and a triable issue for the ground of improper acceptance of the nomination of the returned candidate and further, no material facts to prove violation of any specific provision of the Constitution of India or the Representation of People Act or Rules or Orders made under it have been pleaded in support of the election petition and moreover, no material fact is pleaded in the election petition to make out a cause of action and triable issue that the result of the election in so far as it concerns the returned candidate was materially affected.

66. The election petitioner has not pleaded material facts or any specific provision of law in the election petition to show that the returned candidate was a member of Congress Jananayaga Peravai and was not a member of Indian National Congress on the date of filing of his nomination and no allegation of corrupt practice as set out in Section 123 of the Representation of People Act has been pleaded. The election petition, read as a whole, does not disclose any cause of action or triable issue and the same has to be rejected as sought for in the application. In the result, the Original Application No. 105 of 2005 is allowed as prayed for. Consequently, the Election Petition No. 3 of 2004 is dismissed. The parties have to bear the respective costs in the Original Application as well as in the Election Petition.