



IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

WEDNESDAY, THE 28TH DAY OCTOBER 2015

THE HON'BLE MR. JUSTICE K. RAVICHANDRABAABU

Election Petition No.11 of 2011

ELP No.11 of 2011

R.S.Raja Kannappan,
S/o.Samia Pillai
No.46/1, Senthamil Nagar
Pudur Main Road
Sivagangai District.
185, Tiruppathur Assembly Constituency
(Party .. A.I.A.D.M.K
Symbol .. TWO LEAVES)

... Petitioner

-VS-

1.K.R.Periakaruppan,
S/o.A.N.Karuthan
Aralikottai
Thiruppathur Taluk,
Sivaganga District.
PARTY :: D.M.K.
SYMBOL :: RISING SUN

2.M.Sathaiya,
S/o.Muthukoori
No.8,Bharathiyar 1st Cross Street
Paduvancheri
Agaram Then, Chennai-600 073
PARTY :: BHAGUJAN SAMAJ PARTY,
SYMBOL :: ELEPHANT

3.M.Sheik Dawood,
S/o.Muthalif
No.1/1-188, Maruthipatti,
Muraiyur Post, Tiruppathur Taluk.
PARTY :: BHARATHIYA JANATHA PARTY
SYMBOL :: LOTUS



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4.M.Singaravelu,
S/o.Manickam
No.9, 6th Cross Street
Vijayaraghavapuram,
Chennai-600 093
PARTY :: IJK
SYMBOL :: RING

5.P.Gunasekaran,
S/o.S.Pappu
No.183, Muruveeran Street
Singampunari
PARTY :: INDEPENDANT
SYMBOL :: GAS STOVE

6.A.Sakthivel,
S/o.Aathinamilagi
No.88, Therku Theru
Bhatharakudi Post
Karaikudi Taluk
PARTY :: INDEPENDENT
SYMBOL :: TELEVISION BOX

7.S.Santhanakrishnan,
S/o.S.M.Sundaram
No.No.2/187-A, Rakkayee Illam
Padamathur Post, Sivagangai Taluk
PARTY :: INDEPENDENT
SYMBOL :: CEILING FAN

8.R.Sathappan,
S/o.S.Raman
Sunnampiruppu
Kottai Irruppu Post
Thiruppathur Taluk.
PARTY :: INDEPENDENT
SYMBOL :: TABLE LAMP

9.A.Thiyagarajan,
S/o.Akasamoorthy
No.136, Mercku Theru
Kothamangalam Post,
Karaikudi Taluk
PARTY :: INDEPENDENT
SYMBOL :: ROAD ROLLER



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10.M.Periyyaya,
S/o.Maruthappan Achari
Karuppannan Ambalam Street
Velankudi Pudur,
Kottaiyur Post,
Karaikudi Taluk
PARTY :: INDEPENDANT
SYMBOL :: TORCH LIGHT

11.M.Manickavalli,
W/o.Muralidharan
No.191-B, Kallipattu
Sembanur Post
Kallal Via
Thiruppathur Taluk
PARTY :: INDEPENDENT
SYMBOL :: ELECTRIC POST

12.The Returning Officer
185, Tiruppathur Assembly Constituency
Tiruppathur

...Respondents

This Election Petition praying that this Hon'ble Court
be pleased to pass an order to

(i)declare the election of the Returned Candidate, namely
Thiru K.R.Periyakaruppan, the 1st Respondent herein from
No.185, Tiruppathur Assembly Constituency, Tamil Nadu, in
election held on 13.04.2011 (in which results were declared
on 13.05.2011) as VOID.

(ii)Order Re-poll for the whole of No.185, Tiruppathur
Assembly Constituency or inter alia order re-poll in

- (1) Polling Station No. 9-Varapur
- (2) Polling Station No. 188-Devarampuri
- (3) Polling Station No. 191-Piramanapatti
- (4) Polling Station No. 196-Thanipatti



- (5) Polling Station No. 215-Kallipattu
- (6) Polling Station No. 11-Karisalpatti
- (7) Polling Station No. 31-Kattukudipatti
- (8) Polling Station No. 102-Poolankurichi
- (9) Polling Station No. 104-Thirukolakudi
- (10) Polling Station No. 115-Keelaseevalpatti
- (11) Polling Station No. 148-Pillaiyarpatti
- (12) Polling Station No. 181-Manakadu
- (13) Polling Station No. 52-Vettiyampatti
- (14) Polling Station No. 56-Singampunari
- (15) Polling Station No. 57-Singampunari
- (16) Polling Station No. 59-Singampunari
- (17) Polling Station No. 63-Singampunari
- (18) Polling Station No. 67-Kannamangalapatti
- (19) Polling Station No. 72-A.Kalapur
- (20) Polling Station No. 73-A.Kalapur
- (21) Polling Station No. 74-A.Kalapur
- (22) Polling Station No. 77-S.V.Mangalam
- (23) Polling Station No. 87-S.S.Kottai
- (24) Polling Station No. 122-Thuvar
- (25) Polling Station No. 126-Periamaruthipatti
- (26) Polling Station No. 138-Kandavaryapatti
- (27) Polling Station No. 171-Tiruppathur
- (28) Polling Station No. 97-E.Valayapatti
- (29) Polling Station No. 6-Kulathupatti
- (30) Polling Station No. 135-Thirukalapatti
- (31) Polling Station No. 252-kanadukathan



- (32) Polling Station No. 259-Pallathur
(33) Polling Station No. 266-V.Soorakudi
(34) Polling Station No. 273-Kottaiyur
(35) Polling Station No. 275-Kottaiyur
(36) Polling Station No. 232-Patharakudi
(37) Polling Station No. 39-Oduvanpatti
(38) Polling Station No. 144-Ammapatti
(39) Polling Station No. 236-Palaiyur

(iii) Declare the Petitioner as duly elected from No.185 Tiruppathur Assembly Constituency in the election held on 13.04.2011 (in which results were declared on 13.05.2011

(iv) Direct the 1st Respondent to pay the costs.

The above Election Petition having been heard on 11.09.2015 in the presence of Mr.T.V. Ramanujam, learned senior counsel for Mr. G.Saravana Kumar, advocate for the Election Petitioner and of Mr. T.R. Rajagopalan, Senior Counsel for Mr. K.Muthuramalingam, advocate for the 1st respondent herein and upon reading the Election petition and affidavit of the R.S.Rajakannappan and counter affidavit of the K.R.Periakaruppan filed herein and upon perusing the evidence adduced herein and the exhibits marked thereon and this Court having stood over for consideration till this day and coming on this day before this Court for orders in the presence of the above said advocates, **The Court made the following order:-**



election of the Returned Candidate, the first respondent herein from No.185, Tiruppathur Assembly Constituency, Tamil Nadu, in election held on 13.04.2011 (in which results were declared on 13.05.2011) as void; to order Re-poll for the whole of No.185, Tiruppathur Assembly Constituency or to inter alia order re-poll in the above stated 39 Polling Stations and to pay the costs.

2.The case of the election petitioner is as follows:

i) The Election Commission of India decided to hold General Elections to the Tamil Nadu Assembly and issued the necessary notifications and Election Schedule. The filing of Nomination commenced on 16.03.2011; last date for filing nomination was 26.03.2011; scrutiny of notimations was on 29.03.2011; date of election was fixed to 13.04.2011. Election to No.185, Thiruppathur Assembly Constituency in Tamil Nadu State, which is the subject matter of this election petition was scheduled to be held within the time table aforesaid. After scrutiny and withdrawals, the nomination papers of the petitioner and the respondents were accepted by the Returning Officer, Tmt.V.Alagumeenal. The petitioner contested as the Official Candidate of the All India Anna Dravida Munnetra Kazhagam (A.I.A.D.M.K.) in "Two Leaves" symbol and the first respondent, whose election is under challenge in this petition, contested as the Official Candidate of the Dravida Munnetra Kazhagam (D.M.K.) in "Rising Sun". The first respondent was the



party men led by one Karuppiah caught a person with an E.V.M. in his possession entering the E.V.Ms. room. When the Returning Officer was informed the above fact, she came and managed to protect the intruder by giving lame excuses and escorted him in her car without handing him over to the police. Both of them gave conflicting versions regarding the entry with a E.V.M.

iv) On 13.05.2011, counting of votes began around 8.00 a.m. in the ground floor hall containing 14 tables. Despite the use of mobile phones by candidates and their agents in the counting hall was completely prohibited, an intruder was found using his mobile. He was planted inside the counting area by the first respondent with the connivance of the District Election Officer and the Returning Officer to monitor and manipulate the counting in favour of the first respondent. The first respondent came to rescue the intruder. Later, the intruder was removed from the area by the police and no F.I.R. for trespass was lodged. Thus, the above two incidents are clearly in violation of Rule 53 of the Conduct of Election Rules.

v) In the 10th round in Table No.9, since the petitioner's counting Agent found discrepancy in the number of the Control Unit and the number found on it, the counting of E.V.M. pertaining to No.135, Thirukalapatti was kept pending.



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vi) In the 18th round in Table No.14, the petitioner's agent protested that the paper seal number differed and hence, the E.V.M pertaining to Polling Station No.252, Kanadukathan was kept pending. The petitioner was leading at the end of the 18th round by securing 74,432 votes as against the first respondent who had secured 74,386 votes.

vii) In the 19th round in Table No.7, since the petitioner's counting agent raised an objection stating that there was no signature of any of the polling Agents in the tag appended to the Control Unit, the E.V.M. pertaining to Polling Station No.259 was also kept pending. In the 19th round in Table No.14, since the Form No.17-C Part I did not contain the Serial Number of the paper seal used on the E.V.M., on objection, the E.V.M. pertaining to Polling Station No.266, V.Soorakudi was also kept pending.

viii) In the 20th round, in Table No.7, the objections of the petitioner's counting agent that the signatures of the Polling Agents found in Part I Form 17-C differ from the E.V.M was not considered.

ix) In the 20th round, when the EVM pertaining to Polling Station No.275, Kottaiyur was brought to Table No.9 and in the 17th round, when the E.V.M. pertaining to Polling Station No.232, Padharakudi was brought to Table



No.8, the objection raised by the petitioner's agent with regard to the difference in the number of the Control Unit of the E.V.M. given as 1 in Part I of Form 17-C and the actual number on the E.V.M was not considered by the District Election Officer and the Returning Officer. The petitioner gave totally three objections during the counting to the Returning Officer warranting re-poll.

x) The counting process commenced around 8 a.m. and by 2.00 p.m., it was over in all the constituencies except in Tiruppathur and Kolathur. The counting in Tiruppathur was stopped at 9.20 p.m as the petitioner and his agents were demanding re-poll due to large discrepancies in the E.V.Ms. The District Election Officer and the Returning Officer said that they have sent a report to the Election Commission of India and awaited orders. The first respondent and his agents started creating ruckus in the counting hall and indulged in capturing the counting process. Suddenly, around 10.45 p.m., the Returning Officer gave a notice Doc.No.7 that the counting of the votes would commence. Then, the counting process was completed hurriedly and the first respondent was declared as elected in the election.

xi) The petitioner made an application dated 17.05.2011 to the Returning Officer for copies of Form No.17-C and Compact Discs. Pursuant to the fee remitted by



the petitioner through Challan dated 20.05.2011, the Returning Officer furnished 279 copies of Form 17-Cs in part without any authentication on 21.05.2011 and again, on protest, the same was supplied fresh after duly authenticated by her on 30.05.2011. It was surprised to note by the petitioner that there has been a wholesale manipulation of records in this case even amongst the two sets supplied by the Returning Officer.

xii) Further, the petitioner found the following various discrepancies from the records supplied by the Returning Officer.

In respect of Polling Station Nos.9, Varapur, 188, Devarampur, 191, Brahamanapati, 196, Thanipatti and 215, Kallipattu, the authenticated copy of the Part I of Form 17-C does not contain the number of the Balloting Unit and Control Unit whereas its unauthenticated copy contains the number of the Balloting Unit and Control Unit. Hence, it is clear that both the documents have been subsequently created and the controlling unit has been tampered with.

xiii) In respect of Polling Station Nos.11, Karisalpatti, 31, Kattukudipatti, 104, Tirukolakudi, 115, Keelaseevalpatti, 148, Pillaiyarpatti, the unauthenticated copy of the Part I of Form 17-C contains the signatures of the Polling agents whereas its authenticated copy does not contain their signatures and in Polling Station Nos.102,



Poolankurichi and 181, Manakudi, both the authenticated and unauthenticated copy of Part I of Form 17C does not contain the signatures of the Polling Agents.

xiv) The Presiding Officer of the Polling Station should sign Part I of Form 17-C and the Zonal Officer is not contemplated in the Act or in the Rules. It is contended that in respect of Polling Station Nos.52, Vettaiyampatti, 56, 57, 59, 63, Singampunari, 72, 73, 74, A.Kalapur and 77, S.V.Mangalam, the authenticated copy of Part I of Form 17-C bears the signature of the Presiding Officer whereas the unauthenticated copy of it contains the signature of the Zonal Officer and does not contain the signature of the Polling Agents. Thus, the Returning Officer was not maintaining a true account of Form 17-Cs in order to pave the way for manipulation of the E.V.Ms. in the polling stations.

xv) In respect of Polling Station Nos.87, S.S.Kottai, 122, Thuvar, 126, Pariyamaruthipatti, Part I of Form 17C given to the Polling Agent and its authenticated copy bears the identical signature of the Presiding Officer whereas its unauthenticated copy contains different signature.

In respect of Polling Station Nos.138, Kandavaryanpatti, 97, E.Vallayapatti, 6, Kulathupatti, Part I of Form 17C issued to the Polling Agent and its authenticated copy contains the details of the paper seal



used in Column No.9 whereas its unauthenticated copy contains no details. In respect of Polling Station Nos. 39, Oduvanpatti, 144, Ammapatti, 236, Palaiyur, there are no details of paper seal in column No.9 of Part I Form 17C, authenticated copy and unauthenticated copy. In respect of Polling Station Nos.135, Thirukkalapatti, 275, Kottaiyur, 232, Patharakudi Part I Form 17C and its authenticated copy does not contain the number of Control unit and Ballot unit whereas its unauthenticated copy contains. In respect of Polling Station No.171, Tiruppathur, Part I Form 17-C and its authenticated copy bears the signatures of the polling agents whereas its unauthenticated does not contain. In respect of Polling Station No.252, Kannadukathan, description of paper seal in Part I Form 17C and its authenticated copy and unauthenticated copy are similar whereas it is different on the EVM. In respect of Polling Station No.259, Pallathur, there was signature of the polling agent in Part I Form 17-C whereas the Tag appended to the Control unit does not contain the same. In respect of Polling Station No. 266, V.Soorakudi, Part I Form 17C, authenticated copy and unauthenticated copy does not contain the serial number of the paper seal used on the E.V.M. In respect of Polling Station No.273, Kottaiyur, the signature of the Polling Agents in Part I Form 17C differs from the signatures found on the E.V.M.



required to affix the paper seal containing the serial number and that the details of the paper seal should be noted in Column 9 of Part I of Form 17-C. Since there is violation of these procedures facilitating tampering of the E.V.Ms. concerning the Polling Stations, the election of the first respondent deserves to be declared void under section 100(1)(d)(iii) of the Representation of People Act 1951. The petitioner found grave discrepancies in Form-17Cs pertaining to certain polling stations and that the election of the first respondent deserves to be declared void under section 100(1)(d)(iii) and (iv) of the Representation of People Act 1951. Since the first respondent adopted corrupt practice on the officials and persuaded them to proceed with the counting, his election should be declared void for non compliance of the provisions of the Representation of People Act and Conduct of Election Rules 1961 under section 100(1)(d)(iv) of the Act read with Rule 66-A, 55-C and Section 58 of the Representation of People Act.

3.The first respondent filed counter affidavit denying all the allegations made in the election petition, wherein it is stated as follows:

i) The allegations that he managed to secure the victory by corrupt practices, manipulating EVM and by undue influence on the District Election Officer and Returning Officer are denied. The election petitioner had failed to



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aver any of the material facts regarding manipulation of EVM. It is true that all the EVMs were brought to Alagappa College of Engineering in Karaikudi and they were kept with the three tier security provided by the Election Commission to guard the same. Hence, the election petitioner is barred from pleading about the safety of the EVM. The allegation with regard to an entry of intruder into the EVM room is denied. The election petitioner had not pleaded at what time the alleged incident took place, the name of the intruder and the conversation between Karuppiah, the petitioner party men and the intruder. The voice recorded with CD is also not clear. The allegation that the Returning Officer and the first respondent gave conflicting version is vague. The allegation that an intruder was planted in the counting area by him with the connivance of the District Election Officer and the Returning Officer to monitor and manipulate the counting in favour of the first respondent is denied, which is bereft of any material facts. Since this Court has rightly struck off the pleading that the two intruders had manipulated the EVMs, the rest of the allegations do not have any legs to stand and hence, the entire election petition is liable to be dismissed. The election petitioner did not aver as to who were his counting agents, the complaints levelled by them and about the discrepancies found in polling station No.135.



there is a change in EVM No. alone and not stated that Form 17C did not contain serial No. of the paper seal used on the EVM. Regarding the difference in signature of polling agents on the EVM and Part No.1 of Form 17C, the election petitioner himself on his own hand had withdrawn his objections pertaining station No.279. It is false to state that the No. of control unit of the EVM given in Form 17C was differed from the actual No. on the EVM, since the petitioner had stated that the Ballot Unit No. is changed in his representation.

iii) It is true that the counting commenced on 13.05.2011 at all counting centres around 8 a.m. and it was over by 2 p.m. except in Tiruppur and Kolathur. The counting was stopped due to disturbances caused by the election petitioner and his agents. When the election was stopped, only 6 EVMs were kept pending for counting. The allegation that there are some discrepancies in the documents, the same will not vitiate the election process as the election petitioner only was leading in all the polling stations. Moreover, there is no discrepancies in number of votes in both the authenticated and unauthenticated copies. Hence, all the allegations made by the election petitioner is vague and the contention of the election petitioner that the election of the first respondent ought to be declared as void under section 100

(1)(d)(iii) & (iv) of Representation of the People Act, does not hold good. Hence, the election petition is liable



to be dismissed with exemplary costs.

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4. Based on the pleadings of the respective parties, this court framed the following issues:

1. Whether the first respondent/Returned candidate indulged in corrupt practices as set out in Section 123 of the Representation of People Act ?

2. Whether the first respondent/Returned candidate had brought any undue influence on the District Officer of the Returning Officer in the capacity of State Cabinet Minister ?

3. Whether the EVMs stored in the Alagappa Chettiar College of Engineering at Karaikudi at the first floor were without any security and whether the first respondent/Returned candidate has tampered with the EVMs with the connivance of the Election officials thereby violating Rule 53 of the Conduct of Election Rules ?

4. Whether there were discrepancies in the number of the Control Unit as given in Part I of Form 17-Cs and the number found on the Control Units ?

5. Whether there are discrepancies between the unauthenticated and authenticated



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copies of Form 17-Cs supplied to the petitioner by the Returning Officer ?

6. Whether Form 17C was supplied to the petitioner by the Returning Officer after the declaration of result and if so, whether the same can be relied on ?

7. Whether there are discrepancies between Form 17-Cs given to Polling agents and the authenticated copies of Form 17-Cs supplied by the Returning Officer ?

8. Whether any Report was sent on 13.5.2011 by the Returning Officer and District Election Officer to the Election Commission of India and if so whether any instructions were received from the Election Commission of India to the District Election Officer and the Returning Officer to resume counting ?

9. Whether there is violation of Rule 49E(3)(4) & (5) , 49S, 49-V(2), 55-C, 66-A, 53 and Section 58 of the Representation of People Act ?

10. Whether the security deposit was not made along with the Election Petition and if so whether such non-deposit, would make the Election Petition liable for dismissal ?

11. Whether verification of the pleadings



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was not made properly and in accordance with Representation of People Act and the Rules framed thereunder ?

12. Is there a non-compliance of the mandatory provisions in Form 25 under Rule 94-A of Conduct of Election Rules and if so, whether the Election Petition is liable to be rejected as not maintainable on that ground ?

13. Whether the Election Petition has not pleaded or disclosed material facts and material particulars ?

14. Whether striking of the part of pleadings in Paragraph 12 of the Election Petition by this Court would render the Election Petition as not maintainable?

15. Whether the Election Petition is barred by limitation ?

16. Whether the election of the first respondent/ Returned Candidate can be declared void ?

17. Whether the Election Petitioner can be declared as duly elected candidate from No. 185, Tiruppathur Assembly Constituency, (Tamilnadu, India) in the election held on 13.4.2011 ?

<https://hcservices.ecourts.gov.in/hcservices/> 18. To what other relief the Election Petitioner is entitled to ?



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5.The election petitioner examined himself as P.W.1. One L.Devadoss, worked as Additional Agent (Accounts of the election petitioner) was examined as P.W.2. One P.Karuppiyah was examined as P.W.3. On the side of the petitioner, Exs.P1 to P115 were marked. The Returning Officer for Tiruppattur Assembly Constituency was examined as C.W.1 and Ex.C1, the original summon received from this court was marked. The first respondent examined himself as R.W.1. One K.S.Manimuthu, the Chief Agent of the first respondent was examined as R.W.2. No documents were marked on the side of the first respondent.

6.P.W.1 deposed that he has secured 81,901 votes and the first respondent secured total votes 83,485; the votes difference between him and the first respondent is 1,584; there were totally 279 polling stations in Tiruppathur Assembly Constituency and Form-17C is the most important document in the election proceedings. He further deposed that the Presiding Officer should note down the number of paper seal in column IX in Form 17C to ensure that the particular electronic voting machine (EVM) was used in the particular polling station; the EVMs were kept in the first floor of an Engineering College, Karaikudi in unsafe manner; the room in which EVMs were kept was locked by putting a cross bar and also a seal over the crossbar; the cross bar can easily be removed without breaking the seal.



He further deposed that the Returning Officer colluding with the first respondent ensured the success of the first respondent by committing mal practices; a day before counting i.e., on 12.05.2011, a person brought an EVM in a vehicle where EVMs were kept; when the aforesaid person tried to enter the room where the EVMs were kept, his agent Mr.Karuppiah stopped him and asked why he brought EVM in his hand, when the counting is about to start tomorrow; the information was given to the Returning Officer; the Returning Officer came immediately and she without answering properly took the intruder with the EVM in her car; Ex.P2 is a CD which contains videograph recorded in a mobile by Mr.Karuppiah which shows catching of a person with EVM in his possession. He further deposed that when the counting started an unauthorized person who was speaking over cell phone entered into the counting room and the intruder was giving instructions and monitoring the counting process; as his agent stopped the same, there was a problem. He further stated that the said intruder has come to the counting place at the instance of the first respondent; as the police officer were present there, the said intruder was handed over to the police; Ex.C3 is the CD issued by the Election Commission, which contains the videograph of the above said incident; though the intruder was handed over to the police, neither the police nor the election officer identified the intruder and the police also did not file any F.I.R. He further deposed that those



two incidents formed a base for the first respondent in indulging in corrupt practices in connivance with the election officials; the votes polled to him was rejected improperly and some votes were transferred to the first respondent illegally due to which the result of the election was materially affected. He further deposed that in 39 EVMs, the numbers given in Form 17C and the numbers in the EVMs do not tally; since the first respondent has been declared as successful candidate illegally by the election officials in connivance with the first respondent, he gave a request to the District Collector asking him to furnish the copies of Form 17C. The next day after paying fee for the copies of Form 17C, the Returning Officer furnished 279 numbers of photocopies of Form 17C but they were all unauthenticated. Ex.P114 Series (20 numbers) are round wise tabulation sheets given by the Returning Officer for the polling stations in the Assembly Constituency of Tirupattur. As per Ex.P114, he was leading upto the 18th round. Though he gave objections for 39 boxes, only four boxes were kept pending without being counted. Despite his objections, four EVMs which were kept pending were also counted at the instance of the first respondent.

7.P.W.1 further deposed in his cross-examination that he has not stated in his election petition about his raising oral objections to the election officer regarding keeping of EVM in a class room in an unsafe manner; he has orally



objected to the officials but has not made any written objections. He further stated that since few EVMs are not in accordance with the election norms as a few EVMs did not contain paper seal number, control unit number and ballot unit number, they would have been manipulated in the time gap of one month between the polling and counting. He stated that 39 boxes which were not in accordance with the election norms were manipulated to transfer votes poled to one candidate to another by improper receipts and rejection of votes. He further stated that unauthenticated copies of Form 17C are not fabricated and the same were issued by the election officer.

8.P.W.2 has deposed that he was working as Additional Agent at the election petitioner and his job was to participate in the meetings conducted with regard to the election and helping the candidate in appointing polling agent, submission of accounts and all other helps required by the election candidate during the election. He further stated that a day before counting, the election petitioner received a phone call informing that EVMs were brought in a Government jeep to strong room and when the agents questioned as to why those EVMs were brought, the officers who came in the Government jeep informed them that they were brought for demonstration; though the agents present at the counting station objected to the same, the government jeep was driven inside the campus and thus from



the 39 booths in which discrepancies are found, the election petitioner secured more votes than the first respondent, he answered that he did not remember.

10.P.W.3 has deposed that on 12.05.2011, the Returning Officer and the Tahsildars came to the counting station in the jeeps of Tamilnadu Government and on their arrival, 15 to 20 steel boxes were taken to the strong room. He further deposed that when he questioned about the same, the Returning Officer replied that those boxes are empty boxes. He further deposed that he asked the Returning Officer to open the boxes and show them to him and however, the persons were taking the steel boxes to the strong room. He further deposed that since the last box was lifted by two persons, it was apprehended which contained some objects and the same was opened and it contained control unit machine and polling unit machine. He further deposed that when those machines were switched on, it displayed about 1000 votes and when he asked the Returning Officer as to why the machine displays about 1000 votes, she told that those are waste machines and he need not create problem.

11.In the cross-examination, P.W.3 has deposed that he was appointed as agent to Mr.Santhanakrishnan and he was given a pass by Santhanakrishnan. He further deposed that he went inside the counting hall for the candidate Singaravel.



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12. The Returning Officer who was examined as C.W.1 deposed that EVMs were kept in the safe custody in Treasury and that she had no occasion to go through the averments made by the election petitioner in this election petition. She further deposed that EVM brought on 12.05.2011 was for the purpose of demonstration to the counting officials and that only one EVM was brought for demonstration on 12.05.2011 and the said EVM was brought from the office of the Tahsildar, Tiruppattur. She further deposed that on 13.05.2011, the agents of the election petitioner gave her oral objection stating that a stranger was present inside the counting hall with mobile phone and the stranger was caught and handed over to the police and she did not know as to how the unknown person entered the counting hall with mobile phone. She further deposed that when the aforesaid incident took place, the observer was also present and the intruder was taken out in the presence of the observer. She further deposed that she chose to stop counting of four EVMs because objections were raised with regard to those four EVMs and she overruled other objections as instructed by the observer and based on the fax received from the Election Commission of India, they restarted the counting of those four EVMs. She denied the suggestion that a day before counting, an unauthorised person had brought many EVMs to strong room only with her knowledge and that she did not prevent him entering with EVMs to the strong room.



She further denied the suggestion that two persons entered inside the counting hall and tampered with the EVMs only with their blessings and further denied the suggestion that since the first respondent was a Minister, they acted in favour of the first respondent. She further denied the suggestion that by her acts, she caused improper reception of votes to the first respondent and improper rejection of votes to the petitioner. She further deposed in her cross-examination that the alleged unauthenticated copies of Form 17Cs filed by the election petitioner were not given by her and that there was no chance for issuance of copies of Form 17C without her signature.

13. The first respondent who was examined as R.W.1 has deposed that the Returning Officer was working under the Revenue Department and he was the Minister of H.R & C.E. Department during the year 2006 and therefore, there was no chance to the Returning Officer to work under him. He further deposed that Form 17C Part I would be given by the Presiding Officer of the Polling Station and Form 17C Part II would be given by the counting station. He further deposed that the Rules of the Election Commission of India were followed perfectly particularly, as far as Tiruppattur Assembly Constituency is concerned and there was no complaint lodged on the date of polling by both sides. He further deposed that only the Officer who conducts polling station issued Form 17C and all the EVMs were properly



collected and stored at the first floor of Karaikudi Azhagappa Engineering College with the police protection. He further deposed that before placing EVMs in the strong room, the strong room was opened and shown to the agents of the candidates and the strong room was sealed and all the incidents were videographed. He further deposed that three tier security was provided for the said strong room; when the strong room was sealed after placing EVM inside in it, there were no objections or complaint given either by the election petitioner or on his behalf; the election petitioner did not raise any objection or complaint either at the time of placing EVMs inside the strong room or at the time the strong room was opened for counting the EVMs.

14. He further deposed that authenticated copy of Form 17C shall be given by the authorised officer concerned and unauthenticated copy do not form any basis. He further deposed that there is a practice that before polling and before counting, a proper training to the concerned officer would be given and that the videograph in CD marked as Ex.P2 shows that authorised officer has brought an EVM and that the authorised officer was wearing I.D. card which would go to show that he is an authorised officer; the agents of the election petitioner has raised several questions on doubt for which proper explanation was given by the Returning Officer. He further deposed that in the counting hall, the Returning Officer, the District Election



Officer and the Observer were present and the counting was started in their presence. He further deposed that when the counting was going in proper manner, the election petitioner asked the election officials to stop counting of votes at about 9 p.m. at the stage only six EVM boxes were due for counting. He further deposed that the agents of the election petitioner inside the counting hall created law and order situation and base on the fax order received from the Election Commission of India, the remaining six EVM boxes were also counted and he was declared elected with votes difference of 1584. He further deposed that there were no irregularities in 39 booths and the election petition was filed based on improper evidence and facts.

15. He further deposed that the contention of the election petitioner that he misused his power is not correct. In the cross-examination, the R.W.1 has deposed that he did not know personally about the demonstration that was carried out before starting of the polling and that he did not know personally whether the details in Part I of Form 17C has been filled up by the officials who conducted the election. He further deposed that he was not present personally when the Presiding Officer of the polling station sealed the EVMs. He also deposed that he has no personal knowledge as to whether his polling agents had verified the distinct numbers of each of the EVMS. He further deposed that he did not know about the objections



raised by the election petitioner regarding non tallying of signatures of the polling agents in Part I of Form 17C given to the polling agents with the copies kept at the counting station. He further deposed that he came to know that the intruder was removed from the counting hall and he did not know whether he was handed over to the police or not. He denied the suggestion that only with his connivance, the District Election Officer and the Returning Officer allowed an intruder to bring an EVM for the purpose of tampering as stated in paragraph No.15 of the election petition. He also denied the allegation that he involved in corrupt practices in connivance with the District Election Officer and the Returning Officer in furtherance to prospect of his election, which materially affected the result of the election.

16.The additional counting agent of the first respondent was examined as R.W.2. He has deposed that the EVMs were kept in the room in the upstairs of the college and the area of about 100 metres around the said room was barricaded as pedestrian restricted zone. He further deposed that on 12.05.2011, himself and the chief agent viz.,Thirunavukkarasu were present in the college where the training for counting was held and the Returning Officer informed him that the Deputy Tahsildar brought an EVM for the purpose of demo and since there was a dispute about the same, he was taking back the same. He further deposed that till 16-17th round of counting, the election petitioner was



released.

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17.Mr.T.V.Ramanujam, learned Senior counsel appeared and argued for the election petitioner. Mr.T.R.Rajagopalan, learned Senior Counsel appeared and argued for the first respondent.

18.The sum and substance of the arguments advanced on behalf of the election petitioner are as follows:

(i) The election petition is questioning the election for Legislative Assembly from No.185 Tirupatthur Constituency in Tamil Nadu. The petitioner was the candidate of AIADMK political party with two leaves symbol. The first respondent was the candidate of DMK political party with rising sun symbol. There were 279 polling booths for this Assembly Constituency. The polling took place on 13.04.2011 and polling was closed on 13.04.2011. The date of counting was fixed as 13.05.2011. The first respondent has secured 83,485 votes and the election petitioner has secured 81,901 votes. The margin of difference is 1584 votes.

(ii) According to the petitioner, the returned candidate viz., the first respondent secured victory by corrupt practices and by bringing undue influence on District Election Officer and Returning Officer using his position as State Cabinet Minister. The District Election



Officer and Returning Officer made ready a well-designed plan for securing the victory of the first respondent by manipulating the Electronic Voting Machines (EVMs). The relevant provision with regard to corrupt practice in this case is Section 123(7) of the Representation of People Act, 1951.

(iii) The allegation of corrupt practice under section 123(7) can be proved only by circumstantial evidence and probabilities and not by direct evidence. Perusal of the evidence of the Returning Officer, CW1 clearly shows that she is withholding material information from the Court. It also shows that there was an intruder into the counting hall on 13.05.2011 (Ex.P3). Ex.P2 shows that a person was being handed over to the police. If there was adequate security and the rules had been strictly followed and complied with, an intruder could not have entered the counting area. Regarding the intruder, there are various versions. Thus, it is clear that a stranger has been allowed to enter the counting hall which shows that there has been a scheme or plan to manipulate the EVMs and the stranger could not have entered but for the connivance of the Returning Officer. The intruder has not been taken into custody, which shows that the Returning Officer, being a Gazetted Officer has connived with the first respondent and obliged him by allowing



manipulation of the EVMs.

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iv) Though the incidents that took place on 12.05.2011 and 13.05.2011 are admitted, different versions are given. The evidence of CW1 regarding Ex.P2 and P3 shows that the incident covered by those C.Ds. have been proved to have happened but there are different versions. The fact remains that an EVM has been brought to the place of counting on 12.05.2011, one day before the counting, which was fixed on 13.05.2011. There are various versions regarding that EVM. C.W.1 says that she has not verified as to whether there was only one EVM or some more EVMs in the jeep and the same is not known. It is the duty of the Returning Officer, CW1 to explain the distinct number of that EVM and how it came to the place of counting. She has simply stated that it came from the office of the Tahsildar, Tiruppathur. She says that only one EVM was brought from the office of Tahsildar, Thirupattur.

v) The evidence of CW1 is not at all helpful. It is very clear that there was a deliberate dereliction of duty to support the first respondent, who was the then Minister. The evidence of CW1 is highly unreliable and she had taken everything lightly and not discharged her duty as mandated under the Representation of People Act, 1951 and the Conduct of Election Rules, 1961. There is no material evidence produced before this court to show what EVMs were brought for counting.



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vi) R.W.1 pleads ignorance stating that he was not personally present on 12.05.2011. It is the duty of the Returning Officer to place records before the Court. The election petitioner has discharged the initial burden and the burden has shifted to the returned candidate and the Returning Officer.

vii) RW2 in his evidence says that EVM was brought on 12.05.2011 for demonstration and that at about 7 p.m. to 8.30 p.m. on the day of counting, a person alleged to be a reporter came and he was taken to the Returning Officer as there was trouble and on enquiry, he said that he was a reporter of Jaya TV and people shouted at him and the same was also reported to the Returning Officer and thereafter, he was sent out. This was not the version of RW1, Returned Candidate and there is no such pleading in the counter statement. The Returning Officer has not passed any written orders or proceedings. She has also not not filed any FIR against the intruder and she is not able to produce any records as to how an EVM was brought for the so called demonstration purposes. This clearly shows that the Returning Officer has failed in her statutory duty and there is deliberate non compliance with the provisions of the Representation of People Act, 1951. Thus, the incidents on 12.05.2011 and 13.05.2011, the intruder in counting hall roaming around with mobile phone and being handed over to the police without any FIR clearly shows



that the EVMs have been tampered with.

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viii) Part I of Form 17 C does not contain the Control Unit and Balloting Unit number but at the same time those EVMS have been opened and taken up for counting without any written proceedings. If Part I of Form 17 C does not contain the Control Unit and Balloting Unit number, then it cannot be identified as an EVM pertaining to a particular polling station and thus, it cannot be taken up for counting. If the Returning Officer had followed the rules, then she should have verified from her records maintained at the time of sending the EVM with distinct numbers to the respective 279 polling stations. The following are the EVMS in which Part I of Form 17 C does not contain the Control Unit and Balloting Unit number, Polling Booth Nos.9, 188, 191, 196, 215, 73, 126, 135, 252, 275 and 232, which is sufficient to show that there has been noncompliance with the provisions of the Conduct of Election Rules, 1961. When Part I of Form 17C in the above Exhibits does not contain control unit and balloting unit number, those EVMS should not have been taken up for counting.

ix) The entries in Ex.P114 have not been proved. As seen from Ex.P114, it is not known as to why the decision in 4 polling stations was kept pending. In Polling Station No.259, no authenticated copy of Form 17C has been marked.

In Polling Booth No.266, authenticated copy of Form 17C has



been marked as Ex.P96.

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x) The Conduct of Election Rules, 1961 pertaining to counting do not give any power to Returning Officer to keep the decision pending pertaining to an EVM. The documents viz., Exs.P2, P3, P114, P89, P92 and P96 would clearly show that the Returning Officer has not followed the mandatory provisions of the Representation of People Act, 1951. Ex.P2 coupled with oral evidence clearly shows that an EVM has been brought to the place of counting. No record has been produced except simply stating that the Tahsildar (ARO) brought it. Ex.P3 is CD covering the incident that took place on 13.05.2011 in which an intruder has been inside the counting area with a mobile phone. No FIR has been filed against him.

xi) The Returning Officer is guilty of dereliction of duty and she has given opportunity to tamper with the EVMs just to oblige the returned candidate in order to enable him to secure success. Thus, there is deliberate non compliance with the mandatory provisions of the Representation of People Act, 1951 and the Conduct of Election Rules, 1961.

19. The sum and substance of the arguments advanced on behalf of the first respondent/Returned candidate are as follows:



i) The election petition is bereft of any material facts and particulars. The petitioner had averred that the intruders had done some manipulation to the EVMs however, he did not say what was the nature of the manipulation so as to enable the first respondent to answer the allegations. Mere word of manipulation is not sufficient whereas the petitioner has to specifically plead the nature of manipulation or allegation. From the documents filed by the election petitioner himself, the person who was holding the EVM, was wearing the tag with an I.D. card however the petitioner failed to say about the identity of such person and the same is fatal to the election petition.

ii) The election petitioner did not file any document to establish that the unauthenticated copies were supplied by the election commission and thereafter, he had written to the election commission seeking for authenticated copies. The alleged discrepancies found in the unauthenticated copies and authenticated copies would not render the election as void since those documents were obtained post election.

iii) The election petitioner had not filed the verification affidavit as mandated under Rule 94A of Conduct of Election Rules. The Form 25 appended to the said Rules mandates that the election petitioner has to specifically mention what are all the corrupt practice and



the particulars of the said corrupt practices. Failure on the part of the election petitioner to mention those details with specification would render the affidavit invalid and consequently, the election petition has to be rejected on this sole ground.

iv) There are marked discrepancies between the verification paragraphs in the election petition and Form

25. The petitioner who filed an affidavit in terms of Order VI Rule 15(4) CPC did not cure the defects found in the verification in the election petition as well as Form 25, even after providing an opportunity. Thus, the election petition has become defective and liable to be dismissed.

v) In so far as the issue with regard to the alleged security breach and tampering of the EVMs is concerned, the election petitioner has accepted that there was three tier para military security provided for the place in which the EVMs were kept. P.Ws.2 and 3 did not speak anything about the alleged lapse of security arrangement. There was no cross-examination of CW1 with respect to security arrangement.

vi) On the other hand, R.W.1 in his chief-examination had categorically deposed that 279 EVMs were kept inside the strong room which were sealed and all the incidents



were videographed and there was three tier security provided for the said strong room. R.W.1 was not cross-examined on anything with respect to the protection given to the EVMs. Likewise, R.W.2 also has spoken in his chief examination about the security arrangement. No cross-examination of RW2 was made anything on the issue of security lapse.

vii) Document Nos.1 , 2 and 3 are the CD copies filed by the election petitioner. They were marked subject to objections. Those documents were inadmissible in evidence as they are secondary evidence and the same was not filed in compliance with Section 65B of Indian Evidence Act. Ex.P2 would establish that the above documents are not clear and the same were created for the purpose of election petition. There has been clear editing/morphing of the videograph. In this aspect, reliance is placed on the decision of the Hon'ble Supreme Court reported in 2014(10) SCC 473.

viii) As per the above decision, the election petitioner has to furnish certificate in terms of Section 65B of the Indian Evidence Act in respect of Exs.P1 to P3. Admittedly, no such certificates were produced by the election petitioner.

ix) The election petition proceeds on the footing that



the election is bad for the reason that the entry of two intruders on 12.05.2011 and 13.05.2011 had created apprehension in the mind of the election petitioner that those persons had manipulated the EVMs so that there was improper reception of votes in favour of the first respondent and rejection against the election petitioner. The election petitioner apart from saying so, did not plead and prove what are all the manipulation done by those intruders. In any event, the election petition is liable to be rejected on the sole reason that this court has already struck off paragraph No.12 of the election petition and the deleted portion is as follows:

"These two unauthorized intruders have manipulated the machines in such a way as to materially affect the election of the petitioner by improper acceptance of votes in favour of first respondent and rejection of votes against the petitioner."

x) As the above portion at paragraph 12 is deleted by this court, the election petition does not have any legs to stand as the pleadings with respect to manipulation and improper rejection and acceptance of votes cannot stand.

xi) Thus the only remaining allegation is that the discrepancies found in authenticated and unauthenticated

Form 17C. Admittedly, both authenticated and unauthenticated copies of Form 17C were supplied after the



election. It is not the case of the election petitioner that there is discrepancies with respect of recording or polling of votes. Therefore, the alleged discrepancies in Form 17C does not have any legs to stand.

xii) The non payment of security deposit is fatal to the election petition in view of the mandatory provision contained under Clause (1) of Section 117 of Representation of People's Act. The subsequent payment of the deposit will not cure the said defect. In this case, admittedly the election petitioner, at the time of presentation of the election petition, had not deposited the sum of Rs.2,000/-.

xiii) With regard to issue Nos.1,2 and 13, the election petitioner had not supplied the essential and material particulars towards the allegations that the first respondent had indulged in corrupt practice as provided under Section 123 of Representation of People's Act and that the first respondent exercised undue influence of the Election Officer and Returning Officer. The election petitioner had not pleaded and proved as to what is the alleged manipulations and in what way the District Election Officer and the Returning Officer colluded with the first respondent for their acts. The election petitioner through his evidence had never elucidated as to what are all the malpractices/manipulations committed by the aid of the District Election Officer or the Returning Officer.



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xiv) It is not pleaded by the election petitioner that the presence of the intruders on both days was in connivance with the District Election Officer and the Returning Officer. He has also not pleaded as to how the presence of intruders have affected the election process. When there is no allegation that the intruders had committed any misdeed in furtherance of the first respondent's election in connivance with the District Election Officer and the Returning Officer, the presence of the intruders besides being not attributable to the first respondent, liable to be eschewed in view of the absence of any pleading to such effect. Therefore, Section 123 of the Representation of People's Act cannot be pressed into service. In this aspect, the following decisions of the Hon'ble Supreme Court are relied on:

a) 1986 (Suppl) SCC 315, *Azhar Hussain vs Rajiv Gandhi*;

b) 1975(4) SCC 769, *Ch.Razik Ram vs Ch.Jaswant Singh Chouhan and*

c) 2011(2) SCC 532, *Kalyan Kumar Gogoi vs Ashutosh Agnihotri*.

xv) Even assuming there are certain violations of any rules, still if the election petitioner's evidence is not satisfactory, then the election petition deserves to be dismissed as held by the Hon'ble Supreme Court in 1993(3)



SCC 357. 2009 (1) SCC 633, is relied on to contend that the candidate who loses the election within narrow margin will make all sorts of unwarranted allegations.

xvi) With regard to issue Nos.4 to 9, it is to be noted that the petitioner has not marked his application dated 17.05.2011 made to the Returning Officer for supply of copies of Form 17 C. He has also not marked the covering letter of the Returning Officer while furnishing authenticated copies and the alleged unauthenticated copies. Thus, the failure on the part of the election petitioner to mark the above documents would only drive to irrefutable conclusion that the alleged unauthenticated copies of Form 17C were never issued by the Returning Officer at any point of time and the same had been created / manipulated by the election petitioner for the purpose of the election petition. Even assuming without admitting that the alleged unauthenticated copies of Form 17C were issued by the Returning Officer, the same cannot be used as secondary evidence to prove the contents of the original Form 17C in view of clear bar under section 65 of the Indian Evidence Act.

xvii) The election petitioner had filed an application in O.A.No.950 of 2014 seeking sub-peona of documents.

Though this court has allowed the application and pursuant to the same, CW1 was summoned and the case was posted for



inspection of documents, the election petitioner who inspected the original records of the election commission chose not to mark any of the documents furnished by CW1. Failure on the part of the election petitioner to mark the documents summoned by him would enable this court to draw adverse inference against the election petitioner. Thus, he did not discharge the burden which rest on him heavily. Moreover, all the unauthenticated copies of Form 17 C are all xerox copies and the same cannot be relied upon. In this aspect, the decision of the Hon'ble Supreme Court reported in 2015(1) CTC 187.

xviii) Even otherwise, in view of the decision made by this court in respect of an election petition under identical circumstances reported in CDJ 2014 MHC 4029, the allegation made herein of the discrepancies found in Form 17C had to be rejected.

xix) On behalf of the election petitioner, though an argument was advanced as if four booths were not at all counted as could be found in Ex.P114, that is a false statement liable to be rejected, as the election petitioner himself in his election petition at para 49 had categorically pleaded that those booths were counted. The election petitioner has purposefully burked the last page of Ex.P114 as he has admitted that totally there were 21 rounds.



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20. Heard both sides. I have given careful consideration to the pleadings and evidence of respective parties as well as the case laws cited by them.

21. This election petition was filed to declare the election of the returned candidate viz., the first respondent herein from No.185, Tiruppathur Assembly Constituency, Tamilnadu in the election held on 13.04.2011 as void and for ordering re-poll for the whole of No.185, Tiruppathur Assembly Constituency or to order re-poll in 39 named polling stations; to declare the petitioner as duly elected from Tiruppathur Assembly Constituency.

22. The first respondent herein filed an original application in O.A.No.215 of 2012 to strike off the pleadings in paragraphs 5,9 to 12 and 22 to 47 of the election petition as vague, vexatious without material facts and material particulars and consequently, to reject the election petition as being bereft of necessary cause of action for trial.

23. After hearing both sides, this court passed an elaborate order on 21.01.2013 in the said original application wherein the operative paragraph No.59 reads as



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referred to above, the following conclusions are arrived at by me:-

(i) The election petition does not require rejection under Order VII Rule 11 C.P.C. for the reason stated in paragraphs 14 to 17 above.

(ii) The averments made in the election petition have to be taken as a whole, which has disclosed a cause of action or a triable issue, as such, this court cannot dissect the pleadings into several parts and consider whether each of them discloses cause of action. Under Order VII Rule 11 C.P.C., there cannot be a partial rejection of the plaint or an election petition.

(iii) The last sentence of paragraph 12 of the election petition viz., "These two unauthorised intruders have manipulated the machines in such a way as to materially affect the election of the petitioner by improper acceptance of votes in favour of the first respondent and rejection of votes against the petitioner" is liable to be struck off and accordingly, struck off. But, however, the rest of the averments made in paragraph 12 are not struck off for the reasons stated in paragraph 28 above.

(iv) Paragraphs 22 and 46 of the election petition are liable to be struck off and accordingly, struck off for the reasons stated in paragraphs 29 and 43 to 45.

(v) Material facts with particulars as required under Section 83(1)(a) and (b) of the Act were set out by the election petitioner in paragraphs 5, 9 to 11, part of paragraphs 12 and 23 to 45 of the election petition and hence, the same does not require to be struck off in the election petition. The veracity of the averments



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thereunder has to be tested during trial. The reasonings are stated in paragraphs 23, 25, 26, 27 and 30 to 42 above.

(vi) Paragraphs 8, 13, 17 and 21 need not be struck off. The reason being that in the prayer to strike out pleadings, the returned candidate did not refer about the said paragraphs. This reasonings set out in paragraph 47.

(vii) The non filing of the affidavit under order VI Rule 15(4) C.P.C. as mandated under section 83(1)(c) of the Act is curable and the same has been cured by the election petitioner by filing an affidavit as required. Discussions made in paragraphs 50 to 54."

24. Not being satisfied with the above order passed in O.A.No.215 of 2012 dated 21.01.2013, the first respondent herein challenged the same before the Apex Court in Special Leave Petition No.107 of 2013. It is also to be noted at this juncture that the election petitioner has not chosen to challenge the said order and on the other hand, he allowed the said order to stand. However, on 22.03.2013, the Apex Court, while issuing notice to the respondents therein in the Special Leave Petition, ordered that the proceedings in this Election Petition shall continue but final order shall not be passed. Thus, the trial of the election petition was taken up and after completion of the trial and hearing the arguments on both sides, the matter was adjourned to await the final order to be passed in the S.L.P. On 04.09.2015, the learned senior counsel for the



petitioner before the Apex Court (the first respondent in the present election petition) sought permission to withdraw the S.L.P. and accordingly, such permission was granted by the Apex Court and consequently, the S.L.P. was dismissed as withdrawn. The Apex Court also observed that the interim order passed on 22.03.2013 stood vacated. Consequent upon the said order, this court on 11.09.2015 reserved the matter for orders.

Issue Nos.1,2, 3, 12, 13 and 14:

25. In so far as the above issues are concerned, it is the contention of the election petitioner that the first respondent/returned candidate indulged in corrupt practice as set out in Section 123 of Representation of People Act, as he had brought undue influence on the Returning Officer in the capacity of the State Cabinet Minister. It is his further contention that the EVMs were stored in the Alagappa Chettiar Engineering College at Karaikudi without any security and the first respondent/Returned candidate has tampered with the EVMs with the connivance of the election officials thereby violating Rule 53 of the conduct of the Election Rules.

26. Per contra, the first respondent/returned candidate apart from stoutly denying those allegations, further contended that the striking off the pleadings in paragraph 12 of the election petition by this court would itself



render the election petition as not maintainable.

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27. Before answering the above issues, let me consider the relevant provisions of law under the Representation of the People Act, 1951. Section 83 of the said Act deals with contents of an election petition, which reads as follows:

"83. Contents of petition:- (1) An election petition-

(a) shall contain a concise statement of the material facts on which the petitioner relies;

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

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

(Provided that where the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.)

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition."

28. Perusal of the above provision would make it clear



that the election petition should contain concise statement of material facts and full particulars of any corrupt practice that the election petitioner alleges including a full 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. Therefore, it is evident that mere reproducing the term 'corrupt practice' in the pleading is not sufficient but on the other hand, full material facts with particulars with specifications should be stated by the election petitioner.

29. Section 123 of the said Act refers as to what are deemed to be corrupt practices for the purposes of the said Act. In so far as the present case is concerned, as claimed by the election petitioner, the sub clause (7) of section 123 is relevant, which reads as follows:

"123. Corrupt Practices:- The following shall be deemed to be corrupt practices for the purposes of this Act:-

.. (7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent, or by any other person (with the consent of a candidate or his election agent), any assistance (other than the giving of vote) for the furtherance of the prospects of that candidate's election, (from any person whether or not in the service of the Government) and belonging to any of the following classes, namely:-

(a) Gazetted Officers;

(b) stipendiary judges and magistrates;



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(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and)

(g) such other class of persons in the service of the Government as may be prescribed;

(h) class of persons in the service of a local authority, university, government company or institution or concern or undertaking appointed or deputed by the Election Commission in connection with the conduct of elections:)

(Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangement, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election)."

30. Perusal of the above said provision would show that

<https://hcservices.ecourts.gov.in/Hcservices> any assistance obtained or procured or abetting or attempting to obtain or procure by a candidate or his agent



or by any other person from any person whether or not in the service of the Government and belonging to the classes referred to therein for the furtherance of the prospects of the candidate of the election, is deemed to be a corrupt practice. Needless to say that when such serious allegation of corrupt practice is made in an election petition, it is the bounden duty of the election petitioner to prove such allegation beyond any reasonable doubt, as it involves the reputation of not only the contesting candidate against whom such allegation is made but also that of the responsible officials of the Government. Thus, the election petitioner, apart from giving full particulars of such corrupt practice, has to prove the same by adducing material evidence.

31. First of all, there must be specific averment in the election petition that the returned candidate obtained or procured or abetted or attempted to obtain or procure an assistance from such an Officer. If such assistance not obtained by the candidate himself and on the other hand, the same was alleged to have been obtained or procured by his agent or by any other person, then it is for the election petitioner to specifically allege and prove that such assistance was obtained by such agent or any other person with the consent of the candidate or his election agent. In both cases, it is also necessary for the election petitioner to plead and prove that such assistance



was obtained or procured for the furtherance of the prospects of the said candidate's election. Only when these mandatory requirements are satisfied, not only by making the specific pleadings with material details and particulars but also by letting in evidence supporting such pleading, it can be said that the election petitioner has made out the case within the scope and ambit of Section 123 (7) of the said Act. Mere vague or bald allegations that too with presumptions and assumptions cannot pass the test under section 123(7) of the said Act.

32. Further, Rule 94(A) of the Conduct of Election Rules, 1961 deals with the form of affidavit to be filed with the election petition. It reads as follows:

"94-A. Form of affidavit to be filed with election petition:- The affidavit referred to in the proviso to sub-section(1) of Section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."

33. As per the above Rule, the affidavit to be filed with the election petition shall be in Form-25 which reads as follows:

[FORM 25

(See rule 94-A)

AFFIDAVIT

<https://hcservices.ecourts.gov.in/hcservices/>

I,, the petitioner in the accompanying election petition calling in



question the election of
Shri/Shrimati.....(respondent
No..... in the said petition) make solemn
affirmation/oath and say_

(a) that the statements made in
paragraphs.....of the accompanying election
petition about the commission of the corrupt practice
of*.....and the particulars of such corrupt
practice mentioned in
paragraphs.....of the same petition
and in paragraphs.....of the Schedule annexed
thereto are true to my knowledge;

(b) that the statements made in
paragraphs.....of the said petition about the
commission of the corrupt practice of*.....and
the particulars of such corrupt practice given in
paragraphs.....of the said petition and in
paragraphsof the Schedule annexed
thereto are true to my information;

(c)

(d)

etc.

Signature of deponent

Solemnly affirmed/sworn by
Shri/Shrimati.....at.....this.....day of
20.....

*Before me, Magistrate of the first class/
Notary/Commissioner of Oaths.*

**Here specify the name of the corrupt practice.]*

34. Perusal of the above mandatory form of the
affidavit to be filed along with the election petition
would show that the election petitioner has to specify the
name of the corrupt practice and the particulars of such



corrupt practice.

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35. Keeping these statutory principles in mind in respect of the allegation of corrupt practice, let me consider the present case to find out as to whether the election petitioner has satisfied the mandatory requirement not only by making the required pleadings and also by letting in evidence in support of such pleadings.

36. Paragraph 12 of the election petition as stood at the time of filing reads as follows:

"12. Thus, it is clear that the 1st respondent, in connivance with the District Election Officer and the Returning Officer, has manipulated the E.V.Ms. as evidenced from the two incidents namely, the entry of an unauthorized person with an E.V.M. on the 12th and the entry of an intruder into the counting area at the time of counting which is clearly in violation of Rule 53 of the Conduct of Election Rules. These two unauthorized intruders have manipulated the machines in such a way as to materially affect the election of the petitioner by improper acceptance of votes in favour of the 1st respondent and rejection of votes against the petitioner."



37. However, on the application made by the first respondent for striking out the pleading, this court struck off the last sentence of the paragraph 12. Thus, after deletion, paragraph 12 reads as follows:

"12. Thus, it is clear that the 1st respondent, in connivance with the District Election Officer and the Returning Officer, has manipulated the E.V.Ms. as evidenced from the two incidents namely, the entry of an unauthorized person with an E.V.M. on the 12th and the entry of an intruder into the counting area at the time of counting which is clearly in violation of Rule 53 of the Conduct of Election Rules. "

38. At paragraph No.10, the election petitioner has alleged that his party men caught a person with an E.V.M. in his possession entering the room on 12.05.2011 and that he was unable to give any satisfactory explanation. He further stated that the Returning Officer managed to protect the intruder by giving some lame excuses and escorted him in her vehicle without handing him over to the police.

39. At paragraph No.11, the election petitioner has alleged that on 13.05.2011, at the counting place, an intruder was noticed by the counting agent of the petitioner and his conduct aroused suspicion and that the



petitioner's agent lodged a protest and he was apprehended.

It is further contended by the election petitioner that the agents of the first respondent came to the rescue of the intruder and that the said intruder was planted inside the counting area by the first respondent with the connivance of the District Election Officer and the Returning Officer to monitor and manipulate the counting in favour of the first respondent.

40. With these allegations, the election petitioner contends that the first respondent manipulated the E.V.Ms. with the connivance of the District Election Officer and the Returning Officer.

41. I have carefully gone through the pleadings and evidence. I am unable to accept the above contention of the election petitioner for the following reasons:

42. First of all, the election petitioner, except saying manipulation of the E.V.Ms., has not stated as to what sort of manipulation was made by the first respondent with the connivance of the election officials and how such manipulation resulted in furtherance of the prospects of the first respondent's election. Except saying baldly at paragraph No.11 that the intruder was planted inside the counting area on 13.05.2011 by the first respondent with the connivance of the District Election Officer and the Returning Officer, no material evidence is placed before



this court to substantiate such contention. The intruder was not examined to prove such contention. If an intruder is found inside the counting room, it cannot be concluded automatically that such person was allowed inside at the behest of the winning candidate that too with the connivance of the election officials. Every link has to be specifically pleaded and proved. It has not been done so in this case.

43. Admittedly, no police complaint was made by any party in respect of such incident. Therefore, this court is not in a position to accept the contention of the election petitioner that the said intruder was planted inside the counting area on 13.05.2011 by the first respondent. There is no evidence to the effect that the said intruder came inside the counting area as a person sent by the first respondent and there is no evidence to the effect that, even assuming that the first respondent has sent such person, the said act was done with the connivance of the District Election Officer and the Returning Officer. Therefore, these allegations, in respect of the intruder inside the counting room on 13.05.2011, are not well founded and proved and consequently, this case cannot be brought in within the scope of Section 123(7) of the said Act.

44. Likewise, even in respect of the allegation that an



unauthorised intruder was found entering the store room with an E.V.M. on 12.05.2011 is concerned, it is not stated in the election petition anywhere that the said intruder was sent by the first respondent and that the first respondent by way of such action, that too in connivance with the election officials, has indulged in corrupt practice as contemplated under section 123(7) of the said Act. Therefore, it is not the case of the election petitioner that the said unauthorised intruder was sent by the election petitioner and therefore it cannot be stated that the first respondent has obtained any assistance from the election officials for the furtherance of the prospects of his candidature in the election. In the absence of any such pleading, mandatorily required under section 123(7) read with Section 83, Rule 94(A) and Form 25, any amount of evidence developing the story in respect of such incident cannot be looked into or relied upon. Needless to say that evidence is to be let in only to support the pleadings and any amount of evidence without proper pleading is of no use.

45. At any event, as it is the categorical case of the election petitioner that those two unauthorised intruders have manipulated the machines in such a way as to materially affect the election of the petitioner by improper acceptance of the votes in favour of the first respondent and rejection of votes against the petitioner



and when such specific pleading of the election petitioner was struck off by this court in O.A.No.215 of 2012 dated 21.01.2013 and when the said order was accepted by the election petitioner and not challenged any further, as rightly contended by the first respondent, the election petition as such cannot have any legs to stand based on the remaining pleadings alone in so far as the allegation of corrupt practice is concerned.

46.The election petitioner has strongly relied on Exs.P1 to P3 in support of his contention regarding the allegation of manipulation of E.V.Ms. Exs.P1 to P3 are CD copies marked subject to objections raised by the first respondent. These documents are undoubtedly secondary evidence and thus, as rightly contended by the learned senior counsel appearing for the first respondent, they are inadmissible in evidence as they failed to comply with the mandatory provision of Section 65B of the Indian Evidence Act, which reads as follows:

"65B. Admissibility of electronic records:

(1)Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the



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original or of any fact stated therein of which direct evidence would be admissible.

(2) The conditions referred to in sub-section (1) in respect of a computer output shall be the following, namely: -

(a) the computer output containing the information was produced by the computer during the period over which the computer was used regularly to store or process information for the purposes of any activities regularly carried on over that period by the person having lawful control over the use of the computer;

(b) during the said period, information of the kind contained in the electronic record or of the kind from which the information so contained is derived was regularly fed into the computer in the ordinary course of the said activities;

(c) throughout the material part of the said period, the computer was operating properly or, if not, then in respect of any period in which it was not operating properly or was out of operation during that part of the period, was not such as to affect the electronic record or the accuracy of its contents; and

(d) the information contained in the electronic record reproduces or is derived from such information fed into the computer in the ordinary course of the said activities.

(3) Where over any period, the function of storing or processing information for the purposes of any activities regularly carried on over that period as mentioned in clause (a) of sub-section (2) was regularly performed by computers, whether -

(a) by a combination of computers operating over that period; or

(b) by different computers operating in succession over that period; or

(c) by different combinations of computers operating in succession over that period; or

(d) in any other manner involving the successive operation over that period, in whatever order, of one or more computers and one or more combinations of computers, all the computers used for that purpose during that period shall be treated for the purposes of this



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section as constituting a single computer; and references in this section to a computer shall be construed accordingly.

(4) In any proceedings where it is desired to give a statement in evidence by virtue of this section, a certificate doing any of the following things, that is to say, -

(a) identifying the electronic record containing the statement and describing the manner in which it was produced;

(b) giving such particulars of any device involved in the production of that electronic record as may be appropriate for the purpose of showing that the electronic record was produced by a computer;

(c) dealing with any of the matters to which the conditions mentioned in sub-section (2) relate, and purporting to be signed by a person occupying a responsible official position in relation to the operation of the relevant device or the management of the relevant activities (whichever is appropriate) shall be evidence of any matter stated in the certificate; and for the purposes of this sub-section it shall be sufficient for a matter to be stated to the best of the knowledge and belief of the person stating it.

(5) For the purposes of this section, -

(a) information shall be taken to be supplied to a computer if it is supplied thereto in any appropriate form and whether it is so supplied directly or (with or without human intervention) by means of any appropriate equipment;

(b) whether in the course of activities carried on by any official, information is supplied with a view to its being stored or processed for the purposes of those activities by a computer operated otherwise than in the course of those activities, that information, if duly supplied to that computer, shall be taken to be supplied to it in the course of those activities;

(c) a computer output shall be taken to have been produced by a computer whether it was produced by it directly or (with or without human intervention) by means of any appropriate equipment.

Explanation: For the purposes of this section any



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reference to information being derived from other information shall be a reference to its being derived therefrom by calculation, comparison or any other process.]

47. While considering the electronic records as evidence and the scope of section 65B of the Indian Evidence Act, the Hon'ble Supreme Court in its decision reported in **2014(10) SCC 473, Anvar P.V. vs P.K. Basheer**, has observed at paragraphs 15 to 17 and 22 as follows:

"15. Under Section 65-B(4) of the Evidence Act, if it is desired to give a statement in any proceedings pertaining to an electronic record, it is permissible provided the following conditions are satisfied:

(a) There must be a certificate which identifies the electronic record containing the statement;

(b) The certificate must describe the manner in which the electronic record was produced;

(c) The certificate must furnish the particulars of the device involved in the production of that record;

(d) The certificate must deal with the applicable conditions mentioned under section 65B (2) of the Evidence Act; and

(e) The certificate must be signed by a person occupying a responsible official position in relation to the operation of the relevant device.

16. It is further clarified that the person need only to state in the certificate that the same is to the best of his knowledge and belief. Most importantly, such a certificate must



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accompany the electronic record like computer printout, compact disc (CD), video compact disc (VCD), pen drive, etc., pertaining to which a statement is sought to be given in evidence, when the same is produced in evidence. All these safeguards are taken to ensure the source and authenticity, which are the two hallmarks pertaining to electronic record sought to be used as evidence. Electronic records being more susceptible to tampering, alteration, transposition, excision, etc., without such safeguards, the whole trial based on proof of electronic records can lead to travesty of justice.

17. Only if the electronic record is duly produced in terms of Section 65-B of the Evidence Act, would the question arise as to the genuineness thereof and in that situation, resort can be made to Section 45-A-opinion of Examiner of Electronic Evidence.

..22. The evidence relating to electronic record, as noted hereinbefore, being a special provision, the general law on secondary evidence under section 63 read with Section 65 of the Evidence Act shall yield to the same. Generalia specialibus non derogant, special law will always prevail over the general law. It appears, the court omitted to take note of Sections 59 and 65-A dealing with the admissibility of electronic record. Sections 63 and 65 have no application in the case of secondary evidence by way of electronic record; the same is wholly governed by sections 65-A and 65-B. To that extent, the statement of law on admissibility of secondary evidence pertaining to electronic record, as



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stated by this court in Navjot Sandhu case [State (NCT of Delhi) v. Navjot Sandhu, (2005) 11 SCC 600: 2005 SCC (Cri) 1715], does not lay down the correct legal position. It requires to be overruled and we do so. An electronic record by way of secondary evidence shall not be admitted in evidence unless the requirements under section 65-B are satisfied. Thus, in the case of CD, VCD, chip, etc., the same shall be accompanied by the certificate in terms of Section 65-B obtained at the time of taking the document, without which, the secondary evidence pertaining to that electronic record, is inadmissible."

48. No such certificate, as contemplated under section 65B of the Indian Evidence Act, was marked before this court and consequently, this court holds that Exs.P1 to P3 are inadmissible in evidence.

49.As against the allegation of corrupt practice, the following decisions relied on by the learned Senior counsel appearing for the first respondent are relevant to be quoted:

i) In **1986 (Suppl) SCC 315, Azhar Hussain vs Rajiv Gandhi**, the Apex Court has observed at paragraph No.18 as follows:

"18.....The most important test which remained unsatisfied is as regards the omission to satisfy in what manner the assistance was obtained and procured by the election candidate



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for promoting the prospects of his election. All that has been stated is:

"His services were procured and obtained by the respondent, his agents and other persons with the consent of the respondent with a view to assist the furtherance of the prospects of the respondent's election...."

It is not mentioned as to who procured or obtained the services of Shri Beg, in what manner he obtained the services and what were the facts which went to show that it was with the consent of the respondent. Unless these "essential facts" which would clothe the petition with a cause of action and which will call for an answer from the returned candidate are pleaded as per the law laid down in *Manubhai Nandlal Amorsey v. Popatlal Manilal Joshi*, it cannot be said that the petition discloses a cause of action in regard to this charge."

ii) Likewise in **1972 (1) SCC 214, Hardwari Lal vs Kanwal Singh**, the Apex Court has held at paragraph Nos.18 and 22 as follows:

"18. Therefore material facts are to be alleged as to whether the candidate obtained or procured or abetted or attempted to obtain or procure any assistance other than the giving of vote.

...Thus, it had to be alleged as the material facts as to what assistance the appellant obtained or procured or abetted or attempted to obtain or procure from which person and how the assistance furthered the prospects of



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the appellant's election. If all the four variants and ingredients were to be charged against the appellant these had to be set out as statements of material facts in relation to each person.

..22.The allegations in paragraph 16 of the election petition do not amount to any statement of material fact of corrupt practice. It is not stated as to what kind or form of assistance was obtained or procured or attempted to obtain or procure. It is not stated from whom the particular type of assistance was obtained or procured or attempted to obtain or procure. It is not stated in what manner the assistance was for the furtherance of the prospects of the election. The gravamen of the charge of corrupt practice within the meaning of Section 123(7) of the Act is obtaining or procuring or abetting or attempting to obtain or procure any assistance other than the giving of vote. In the absence of any suggestion as to what that assistance was the election petition is lacking in the most vital and essential material fact to furnish a cause of action."

iii) In **1975 (4) SCC 769, Ch. Razik Ram vs Ch. Jaswant Singh Chouhan**, the Apex Court has observed at paragraph No.15 as follows:

"15. Before considering as to whether the charges of corrupt practice were established, it is important to remember the standard of proof required in such cases. It is well settled that a charge of corrupt practice is substantially akin



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to a criminal charge. The commission of a corrupt practice entails serious penal consequences. It not only vitiates the election of the candidate concerned but also disqualifies him from taking part in elections for a considerably long time. Thus, the trial of an election petition being in the nature of an accusation, bearing the indelible stamp of quasi-criminal action, the standard of proof is the same as in a criminal trial. Just as in a criminal case, so in an election petition, the respondent against whom the charge of corrupt practice is levelled, is presumed to be innocent unless proved guilty. A grave and heavy onus therefore, rests on the accuser to establish each and every ingredient of the charge by clear, unequivocal and unimpeachable evidence beyond reasonable doubt."

50. **2011(2) SCC 532, Kalyan Kumar Gogoi vs Ashutosh Agnihotri**, is cited by the learned Senior counsel for the first respondent wherein the Apex Court has observed at paragraph No.24 as follows:

"24.It is well to remember that this court has laid down in several reported decisions that the election of a returned candidate should not normally be set aside unless there are cogent and convincing reasons. The success of a winning candidate at an election cannot be lightly interfered with. This is all the more so when the election of a successful candidate is sought to be set aside for no fault of his but of



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adopted, while judging the question whether the result of the election insofar as it concerns a returned candidate is materially affected, would be proof beyond reasonable doubt or beyond the pale of doubt and not the test of proof as suggested by the learned counsel for the appellant."

51. During the course of argument, it was submitted on behalf of the election petitioner that four E.V.Ms. which were kept pending earlier, were not counted as it is evident from Ex.P114. Therefore, it was contended that the declaration of the result declaring the first respondent as elected is vitiated. I am not able to appreciate the above said contention as I found that the said submission was made without reference to the pleading of the election petitioner as well as his evidence as P.W.1. First of all perusal of the election petition would show that no such averment was made specifically. Further, the election petitioner who was examined as P.W.1 in his chief examination has specifically admitted that despite his objections, the four EVMs which were kept pending were also subsequently counted under the influence of the first respondent. Likewise, the evidence of C.W.1 also shows that all the EVMs were counted and thereafter, the election was declared. Therefore, it is seen that such argument based on Ex.P114 appears to have been made without any basis. As rightly contended by the learned Senior Counsel appearing for the first respondent, the election petitioner



has not placed Ex.P114 in full and on the other hand, it appears that the last sheet disclosing the counting of those four EVMs is not placed before this Court by the election petitioner.

52. In so far as the allegation that the EVMs were manipulated is concerned, the election petitioner only presumed that the first respondent would have manipulated the same in the time gap of 9one month between polling and counting. This is evident from his statement as P.W.1 during the cross-examination by the first respondent. Therefore, it is evident that the election petitioner has filed this election petition based on mere presumption and assumption that too without making any specific averments with details and particulars as to how the EVMs were manipulated.

53. No doubt for making such allegation, the election petitioner has relied on certain discrepancies in the unauthenticated and authenticated Form-17Cs. Admittedly, both were not issued on the same day by the same authority but said to have been issued on different dates by different officials. Such unauthenticated Form-17Cs cannot be relied on even for comparison, as they are inadmissible in evidence, especially, when the other side opposes and objects marking of such documents. Even otherwise such discrepancies while making entries, at the best may be construed as clerical mistake and would not amount to tampering of EVMs, as admittedly, it is not the case that



the seal affixed therein is broken.

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54. It is further seen that with regard to the allegations of bringing EVMs from outside to the counting premises on 12.05.2011, the version of P.W.1, P.W.2 and P.W.3 differs with each other. When P.W.1 says that one EVM was brought in, P.W.2 says in plural. On the other hand, P.W.3 says 15 to 20 EVMs were brought in. Therefore, it shows that the election petitioner has not come out with actual facts and for the purpose of filing this election petition, he has made out some bald allegation. On the other hand, from the evidence of C.W.1, it is crystal clear that such EVM was brought in by a person having an identity tag on his neck only for the purpose of demonstration. Therefore, such contention of the election petitioner in respect of the said EVM cannot be accepted as proved.

55. In so far as the security arrangement made in the counting place is concerned, even according to the evidence let in by the election petitioner, there is no material either in the form of pleading or by evidence to suspect that the EVMs were stored without any security. On the other hand, admittedly, three tier security was provided and it is also admitted case that apart from this constituency, there were other three constituencies within the same District whose EVMs were also stored in the same campus. It is also an admitted fact that no complaint whatsoever was filed by the agent or election petitioner



at any point of time either before sealing the premises or opening the same for counting. Under such circumstances, this court holds that the E.V.Ms were stored with full security and that the election petitioner has not pleaded with any material particulars as to in what manner the EVMs were either tampered with or manipulated by the first respondent and proved the same with any convincing evidence. In fact, the election petitioner at one place in the election petition alleged that the long gap of one month between the polling and counting was used by the first respondent to manipulate the EVMs. However, he has not stated in what manner and how such manipulation took place and on what date and time. On the other hand, he also alleges that the two incidents took place on 12.05.2011 and 13.05.2011 are the factors to show there was manipulation. Thus, it is clear that there is no specific and concrete allegation of manipulation except on presumption. Thus, this court holds that the allegation of tampering with the E.V.Ms. by the first respondent with the connivance of the election officials are baseless and not proved by the election petitioner.

56. Insofar as the issue No.14 is concerned, in view of my above stated discussion of facts and circumstances, I hold that striking off the pleadings in paragraph No.12 of the election petition would render the election petition as



not maintainable.

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57. Considering the above stated facts and circumstances, the issue Nos. 1, 2, 3, 12, 13 and 14 are decided against the election petitioner by holding that he has not pleaded the corrupt practice as required in Section 123(7) read with Section 83 of the Representation of the People Act as well as in Rule 94-A read with Form 25 of the said Rules and proved the same against the first respondent. Likewise, the election petitioner has not proved that the first respondent has brought any undue influence on the election official in the capacity of the State Cabinet Minister.

Issue Nos. 4, 5, 6, 7, 9:

58. All these issues relate to the alleged discrepancies between the unauthenticated and authenticated copies of Form 17C supplied to the petitioner. First of all, this court is not in a position to appreciate the claim of the election petitioner for comparing the discrepancies between authenticated and unauthenticated copies of Form 17C. A comparison by the court of law can be made only between two legally admissible documents or forms. When admittedly one of such document or form is not an authenticated one and it is claimed to be an unauthenticated one, a comparison cannot be made between those two as it would amount to treating an inadmissible



document at par with an admissible document. No doubt, the election petitioner marked several Exhibits to show that there are discrepancies between the unauthenticated and authenticated copies of Form 17C. If a document is issued by the competent authority with affixture of seal and signature at the appropriate time, such document becomes an authenticated one and comparison of the same can be made only with the copy of the said document available with the Officer who issued such document. On the other hand, a comparison cannot be called upon to be made between an authenticated document and unauthenticated copy of the same document, especially when both are available in the hands of the election petitioner and produced by himself. Therefore, I find no force in the pleadings made by the election petitioner in respect of Form-17C and the alleged discrepancy made thereunder and consequently, rejected those contentions as not maintainable. When the pleadings itself cannot be sustained any amount of evidence let in, in support of such unsustainable pleading, will not help the election petitioner in any manner in so far as the Form-17C issue is concerned.

59. It is also to be seen that it is the case of the election petitioner that he obtained authenticated copies of Form 17C from the Returning Officer on making an application while he got with unauthenticated copies of Form 17C earlier. First of all, the election petitioner has



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of materially affecting the result of the election petitioner.

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62. Further in this case, the election petitioner filed O.A.No.950 of 2014 calling for documents from the possession of the election commission. This court allowed the application. Consequently, C.W.1 was summoned and examined. The election petitioner though, was permitted to inspect the original records of the Election Commission, has however not chosen to mark any documents. Therefore, it would only show that there are no documents in support of the election petitioner available in the custody of the election commission.

63. Insofar as the alleged discrepancies found in Form 17C is concerned, a learned Single Judge of this court in similar circumstances dismissed the election petition. The said decision was reported in **CDJ 2014 MHC 4029, S.Ramachandran vs E.V.Velu**. In the said decision, the learned Judge has observed at paragraph Nos.24 and 25 as follows:

"24. It is to be noted that as per Section 65B of the Indian Evidence Act, 1872 Electronic Records such as, Computer Print Out, C.Ds. Pen Drives, Micro-Chips, V.C.Ds. etc. are considered as secondary evidence. As per amended Evidence Act, the person in-charge of duplication of Data



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is to give the Court a certificate that the Data or authentication is to the best of his knowledge. Without a certificate the secondary evidence in this regard is not to be permitted by a Court of Law.

25....Insofar as the third category of four instances wherein the respective Form 17Cs were filled up incorrectly due to clerical error on the Polling day, it is to be pointed out that the said four instances (as stated earlier) were all only clerical errors/minor errors and could not be construed as any manipulation of E.V.Ms. or the records. Furthermore, 10 out of 25 instances complained of by the petitioner, the petitioner himself had secured more votes than the returned candidate/first respondent."

In this case also, admittedly the election petitioner had secured more votes in respect of many of the disputed EVMs than the returned candidate/first respondent. Therefore, it cannot be said that such mistakes or discrepancies found in Form 17C are in any way affect the result of the election or the same have facilitated the furtherance of the prospects of the first respondent's election. Accordingly, Issue Nos.4,5,6,7 and 9 are answered against the election petitioner.

Issue No.8:

64.In so far as this issue is concerned, C.W.1 has categorically stated that she received the instruction from the election commission of India to resume counting. This



court does not find any reason to disbelieve her version in the absence of any contra material evidence placed before this Court. Therefore, issue No.8 is answered accordingly.

Issue No.10:

65.Non payment of security deposit along with the election petition itself would not make the election petition liable for dismissal since such defect is a curable one. In any event, in this case, such deposit was made on the same day of filing of the election petition. Therefore, I find this issue in favour of the election petitioner.

Issue No.11:

66.No doubt, defect in the verification of the pleadings is again a curable defect and therefore, on that ground, the election petition cannot be rejected. At this juncture, it is useful to refer to the decision of the Apex Court reported in **2013 (5) SCC 673, Neena Vikram Verma vs Balmukund Singh Gautam** wherein at paragraph No.32, it has been observed that a defect in the verification in the matter of election petition can be removed in accordance with the principles of CPC and that it is not fatal to the election petition. Therefore, when such defect being a curable defect, the same cannot be stated as a reason for



when such defect continues throughout the proceedings and an issue is raised to that effect and when the defect in the verification of the pleadings has not been cured by the election petitioner in accordance with the procedure contemplated under CPC, the question that would arise is as to whether the election petition still be sustained inspite of such defects, especially, when the election petitioner has not chosen to cure the same. In my considered view, the answer to the above said question would go against the election petitioner by holding that the election petition cannot be sustained as the defect in Form-25 as well as the verification of the election petition have not been cured till the final disposal of the election petition. I have already pointed out that the requirement under Form 25 is that the election petitioner has to specifically state as to what are the corrupt practice. Such statement is totally absent in the Form-25 affidavit filed by the election petitioner in this case. Likewise, the verification of the pleadings in the election petition was not made in accordance with the above said Act and the rules framed thereunder. Hence a curable defect, if not cured, undoubtedly becomes fatal to the election petition if such defect pertains to the mandatory requirement of law. Consequently, the issue No.11 is answered against the election petitioner by holding that the election petition cannot be sustained with improper verification of the pleadings as well as for non-disclosure with specification



of the corrupt practice in Form-25.

Issue No.15:

67. Though such an issue was raised at the instance of the first respondent, no argument was advanced seriously on that issue. No materials are placed before this court to hold otherwise. Accordingly, I find the election petition is not barred by limitation.

68. **AIR 1954 Supreme Court 520, Durga Shankar Mehta vs Raghuraj Singh**, is relied on by the learned senior counsel appearing for the election petitioner to contend that non compliance with the provisions of the Constitution referred to in Section 100(2)(c) is sufficient to cover the cases where the question is not one of improper acceptance or rejection of the nomination by the Returning Officer but there is a fundamental disability in the candidate to stand for election at all. Going by facts and circumstances of the present case, I do not think that the above decision is relevant for consideration.

69. **1978 (1) Supreme Court Cases 405, Mohinder Singh Gill vs The Chief Election Commissioner, New Delhi**, is relied on to contend that the expression "non compliance" includes every excess, transgression, breach or omission. In paragraphs 20 and 125, the Apex Court has observed as



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imaginative application of principles and liberal interpretation of the Constitution and the Act will avoid anomalies and assure justice. If we may anticipate our view which will presently be explained, Section 100(1)(d)(iv) of the Act will take care of the situation present here, being broad enough, as a residual provision, to accommodate, in the expression 'non compliance', every excess, transgression, breach or omission. And the span of the ban under Article 329(b) is measured by the sweep of Section 100 of the Act.

..125...We have already held that the order is within the scope and ambit of Article 324 of the Constitution. It, therefore, necessarily follows that if there is any illegality in the exercise of the power under Article 324 or under any provision of the Act, there is no reason why Section 100(1)(d)(iv) should not be attracted to it. If exercise of a power is competent either under the provisions of the Constitution or under any other provision of law, any infirmity in the exercise of that power is, in truth and substance, on account of non-compliance with the provisions of law. Since law demands of exercise of power by its repository, as in a faithful trust, in a proper, regular, fair and reasonable manner."

70. There is no quarrel about the said proposition of law. However, facts of the present case must be of such nature to come to to a conclusion that there is an excess, transgression, breach or omission by the election officials. I have already pointed out that from the



pleadings as well as the evidence let in by the parties, I do not find any such lapses on the part of the Authorities. Therefore, application of the above said decision is also not warranted to the facts and circumstances of the present case.

71.1980 Suppl.SCC 53, S.Raghubir Singh Gill vs S.Gurucharan Singh Dohra, is further relied on by the election petitioner. It is seen from the above decision that the Apex Court has observed that if once tampering is proved and not controverted, the action of the Returning Officer in counting those four votes as first preference votes in favour of the appellant therein would imply improper reception of the first preference votes in favour of the appellant therein. First of all, the facts and circumstances of the above case are totally different and distinguishable and consequently, the said decision cannot be applied to the present case. Secondly, the election petitioner has not proved that there was tampering of the EVMs, even though he made vague averments to that effect. Therefore, I find no relevance of the above said decision in favour of the election petitioner.

72.2010 SCC Online Del 1155, Bheeshma Sharma vs Sahab Singh Chauhan, is further relied on by the learned senior counsel appearing for the election petitioner. Perusal of the decision would show that total of votes polled as



election petitioner is that the first respondent obtained assistance from the election officials by manipulating or tampering the EVMs. These allegations are undoubtedly to be stated with material facts without any vagueness. Therefore, these facts would come within the purview of 'facta probanda'. If those material facts are absent and consequently, there is no facta probanda, then proving those facts by evidence viz., facta probantia does not arise. In other words, what is not pleaded cannot be claimed to have been proved by adducing any amount of evidence. Therefore, I find the above decision is also not helping the election petitioner in any manner.

Issue Nos.16, 17 and 18:

74. In view of the above stated facts and circumstances and the findings rendered in support of the other issues, I hold the election of the first respondent/returned candidate cannot be declared as invalid and the election petitioner is not entitled for any other relief.



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75. In the result, the Election Petition is dismissed.
No costs.

WITNESS THE HON'BLE THIRU SANJAY KISHAN KAUL, THE
CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE
28TH DAY OF OCTOBER 2015.

Sd/-
ASSISTANT REGISTRAR
Original Side - II

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2015

COURT OFFICER(OS)

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ELP.NO.11 OF 2011

ORDER DATED: 28.10.2015

THE HON'BLE MR. JUSTICE
K.RAVICHANDRABAABU

FOR APPROVAL: 03/11/2015

APPROVED ON : 03/11/2015

Copy to
Mr.M.R.Raghavan
Standing Counsel for
Election Cases