

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

THURSDAY, THE 16TH DAY OF MARCH 2017

THE HON'BLE MR. JUSTICE M.VENUGOPAL

O.A. No. 244 of 2017

IN

Election Petition No. 1 of 2011

ELP No. 1 of 2011

AND

O.A.NO.244 OF 2017

Saidai Sa.Duraisamy,
S/o.Samiappan,
No.28/62, 1st Main Road,
C.I.T.Nagar,
Chennai - 35.

... Petitioner/Applicant

-VS-

1. Stalin M.K.
S/o. M.Karunanidhi,
15, 4th Street,
Gopalapuram,
Chennai - 86.
2. Armstrong K.
S/o.M.Krishnan,
41, Venugopal Swamy Koil Street,
Perambur, Chennai - 11.
3. Ashok Kumar S.
S/o. M.Sankaralingam,
238, G-Block,
Gowthama Puram,
Perambur,
Chennai - 11.
4. Atick Yezdon. A.S.
S/o.A.S.Sahabeer,
14A, Dimmasamy Durga Street,
Agaram,
Chennai - 82.
5. Sivakumar.M.
S/o. M.Muthu,
6-113/NA, Thingal Sandhai Minnampalli,
Vazhapadi,
Salem - 636 106.

6. Azhagesan.S.
S/o.K.S.Mani,
52/37, Venkataraman Street,
Kondithope,
Chennai - 79.
7. Ramesh.D.
S/o.R.S.Dakshinamoorthy,
37/15, First North Street,
Kennedy Square,
Thiru Vi.Ka.Nagar,
Chennai - 11.
8. Ravi Kumar.T.
S/o.Thirumaal,
181, Kannadasan Street,
Senthamizh Nagar,
Pattabiram,
Chennai - 72.
9. Ganesan.P,
S/o. M.Pazhinimuthu,
1st Ward, East Street,
Veeraganoor (P.O.),
Gangavalli Taluk,
Salem District.
10. Kandasamy.S,
S/o. R.Subramani,
18/12, Gnanamabal Garden,
2nd Street,
Ayanavaram,
Chennai - 23.
11. Kalai Arasan.M.
S/o.Masa Naicker,
7C4/52, Sivan Koil Street,
Kodambakkam,
Chennai - 24.
12. Gopi.K.S.,
S/o. Kannan,
15-17, Gandhi Street,
West Saidapet,
Chennai - 15.
13. Shankar.K.P.M.,
S/o. K.P.Marimuthu,
2/19, Bajanaik Koil Street,
Choolaimedu,
Chennai - 94.

14. Charavanan.M.P.,
S/o. M.Paramanandham,
159/6, Golden Jubilee Flats,
Padikuppam Road,
Anna Nagar (West),
Chennai - 40.
15. Saravanan.S.P.,
S/o. S.Periasamy,
17, Gokul First Street,
Rajaji Nagar,
Villivakkam,
Chennai - 49.
16. Sivasubramani.S,
S/o, M.Sethu,
205, Anna Street,
Devar Nagar,
Padi,
Chennai - 50.
17. Suresh.D,
S/o.K.Devarajan,
131, Choolai High Road,
Chennai - 112.
18. Suriya Narayanan.D,
S/o.G.Durairaj,
5/4, Eswaran Nagar 3rd Street,
Ramapuram,
Chennai - 89.
19. Narayanarao.V.S.,
S/o.V.Selapathi Rao,
38/24, Gandhipuram First Street,
Kannapet,
T.Nagar,
Chennai-17.
20. Padmarajan.K,
S/o.K.Kunjambu Nair,
3/3-23A, Padma Nivas,
Rama Nagar Post,
Mettur Dam-3,
Mettur Taluk,
Salem District.
21. Murali Vinodh.M.
S/o.K.Masilamani,
3/266, C-Type Sidco Nagar,
Villivakkam,
Chennai.

22. Raghu.V.M.,
S/o. M.Vadivelu,
11/5, Thiru.Vi.Ka.Nagar,
8th Street,
Puliyanthope,
Chennai - 12.
23. Venkataramani.K.,
S/o.C.R.Krishnan,
6/27-B2, Annamalai Flats,
First Main Road,
Vengeeswarar nagar,
Vadapalani,
Chennai - 26.
24. Venugopal.M,
S/o. M.K.Munusamy,
4-9/28, South Dandapani Street,
T.Nagar,
Chennai - 17.
25. Jayaseelan.A,
S/o.A.Aandi Gounder,
17, 3rd Street,
Sundaram Colony,
West Tambaram,
Chennai - 45.
26. Jayaramaraj.T,
S/o.K.Thiruvambalam Nadar,
41/25, Madhavaperumal Koil Street,
Mylapore,
Chennai - 4.
27. The Returning Officer,
No.13, Kolathur Assembly
Constituency, (and)
Zonal Officer, Zone-IV,
Corporation of Chennai,
Chennai - 600 023. ...Respondents/Respondents

R27 has been struck off from the array of Respondents as per order of this court dated 12/12/2012 in OA.No.1038 of 2012 in ELP.No.1 of 2011

O.A.NO.244 OF 2017

This Original Application praying that this Hon'ble Court be pleased to issue subpoena to Mr.Thirunavukarasu, Divisional Engineer, (South), Electrical Department,

Corporation of Chennai to come and give evidence regarding Exhibit C-8 to C-15 and give necessary certificate under section 65-B of Indian Evidence Act regarding Exhibits C-8 to C-15.

The Original Application having been heard on 13.03.2017 in the presence of Mr.T.V.Ramanujam, Senior Counsel for M/s.S.Thiruvenkatasamy, K.Soundararajan, advocates for the applicant/Election Petitioner and Mr.R.Shunmugasundaram, Senior Counsel for M/s.C.Seethapathy, Pushpa Menon, advocates for the 1st respondent/1st respondent and upon reading the Judges Summon and affidavit of Saidai Sa.Duraisamy and this court having stood over for consideration till this date and coming on this day before this court for orders in the presence of the above said advocates,

This Court made the following order:

Preface: The Applicant/Election Petitioner has preferred the instant Original Application praying for passing of an order by this Court to issue subpoena to Mr.Thirunavukarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai to come and tender evidence as regards Exs.C.8 to C.15 and to give necessary certificate under Section 65-B of the Indian Evidence Act, 1872.

Submissions of Applicant/Petitioner:

2.According to the Applicant/Election Petitioner, through C.W.2 and C.W.3 Exs.C.8 to C.15 [CDs] were produced

and marked before this Court in main E.L.P.No.1 of 2011. It is the stand of the Applicant/ Petitioner that pursuant to the orders passed by this Court in O.A.No.1147 of 2016 dated 02.01.2017, the present Chief Electoral Officer was examined as C.W.5 and through him Exs.C.18 to C.22 were marked and further that, he had deposed that the records pertaining to the Election in question are with the District Electoral Officer.

3.The Learned Senior Counsel for the Applicant/Petitioner submits that witnesses C.W.2 and C.W.3 had spoken about Exs.C.8 to C.15, but they were not able to furnish certificate under Section 65-B of the Indian Evidence Act, 1872 because of the reason that they had not stored the video footages to the Computer and in turn copied the same into Compact Discs.

4.The Learned Senior Counsel for the Applicant/Petitioner brings it to the notice of this Court that the Election Petitioner filed O.A.No.695 of 2015 in E.L.P.No.1 of 2011 praying for passing of an order by this Court to issue subpoena to then Returning Officer, Kolathur Assembly Constituency (Zonal Officer-VI, Corporation of Chennai, No.5, Anderson Road, Ayyanavaram, Chennai - 23) to come and produce the Serial Nos.1 to 8 Compact Discs viz., the electronic records along with the necessary certificates [authenticating the copies under Section 65-B of the Indian Evidence Act. 1872 and to tender evidence and the same was

allowed by this Court on 05.08.2015.

5.Added further, it is the plea of the Applicant/Petitioner that he took summons to the then Returning Officer (Mr.Rajarathinam), who had not received the summons in question.

6.At this juncture, the Learned Senior Counsel for the Applicant/ Petitioner contends that Ex.C.20 - (Instructions on Pre Elections of Expenditure Monitoring in Elections) makes it clear that the Election Commission appoints persons to record videos during the Election and the said video footages were to be viewed by the Officials of the Election Commission.

7.Advancing his arguments, the Learned Senior Counsel for the Applicant/Petitioner proceeds to submit that Exs.C.8 to C.15 [CDs] are official in character and they are public documents maintained as per the direction of the Election Commission.

8.In this connection, it is represented on behalf of the Applicant/ Petitioner that Exs.C.8 to C.15 were produced from lawful custody and in fact, C.W.2 had clearly deposed that these documents are maintained in their office.

9.The Learned Senior Counsel for the Applicant/Petitioner contends that earlier the Returning Officer viz., Rajarathinam had viewed the CDs [Exs.C.8 to C.15] and maintained them in safe custody and in fact, the said CDs were recorded as per Ex.C.20 (Instructions on Pre Elections of Expenditure Monitoring in Elections).

10.The Learned Senior Counsel for the Applicant/Petitioner refers to the decision in Anvar P.V. v. P.K.Basheer and others, (2014) 10 Supreme Court Cases 473 at special page 486, wherein at paragraph 24, it is observed as under:

".... It is clarified that notwithstanding what we have stated herein in the preceding paragraphs on the secondary evidence of electronic record with reference to Sections 59, 65-A and 65-B of the Evidence Act, if an electronic record as such is used as primary evidence under Section 62 of the Evidence Act, the same is admissible in evidence, without compliance with the conditions in Section 65-B of the Evidence Act."

11.The Learned Senior Counsel for the Applicant/Petitioner contends that when witnesses C.W.2 and C.W.3 had not assisted the Court by furnishing necessary certificates as per Law, then, the Applicant/Election Petitioner has rightly taken out the present O.A.No.244 of 2017 in E.L.P.No.1 of 2011 praying for issuance of subpoena to Mr.Thirunavukarasu, Divisional Engineer, (South),

Electrical Department, Corporation of Chennai, was the person who arranged for the transfer of video footages from camera to Computer and in turn copied the same to the Compact Discs and therefore, his evidence and furnishing of certificates by him relating to Exs.C.8 to C.15 [CDs] as per requirement of the Section 65-B of the Indian Evidence Act is very much essential. Since he is very much competent to issue the certificate in question, the present O.A.No.244 of 2017 [filed by the Applicant/Petitioner] is to be allowed by this Court, to advance the cause of substantial Justice.

First Respondent's Contentions:

12.Conversely, it is the submission of the Learned Senior Counsel for the 1st Respondent that there is no basis for issuing a subpoena either to C.W.2 or to Mr.Thirunavukarasu based on the deposition of C.W.2 and C.W.3 before this Court in the main E.L.P. No.1 of 2011 and in short, the relief sought for in O.A.No.244 of 2017 in E.L.P.No.1 of 2011 is a clear abuse of process of Law and waste of precious time of this Court.

13.The Learned Senior Counsel for the 1st Respondent contends that the Applicant/Petitioner in O.A.No.244 of 2017 nowhere had stated that as to how he came to know about Thirunavukarasu and how he knows the said Thirunavukarasu was working with the Returning Officer of the Kolathur Constituency during 2011 General Elections to the Tamil Nadu

Legislative Assembly etc.

14.The Learned Senior Counsel for the 1st Respondent submits that nearly after five years, the Applicant/Election Petitioner has found Thirunavukarasu who is introduced for the first time before this Court through O.A.No.244 of 2017. Also that, it is the stand of the 1st Respondent that the Applicant/Election Petitioner had not pleaded these material facts in his Election Petition before this Court on 27.06.2011 nor he spoke anything relevant about his aspect at the time of his chief examination on various dates.

15.The Learned Senior Counsel for the 1st Respondent refers to Section 81 of the Representation of People Act, 1951 which runs as under:

"Presentation of Petitions.- (1) An election petition calling in question any election may be presented on one or more of the grounds specified in [sub-section (1)] of Section 100 and Section 101 to the (Substituted by Act 47 of 1966, S.39, for "Election Commission" (w.e.f.14-12-1966) [High Court] by any candidate at such election or any elector (Substituted by Act 27 of 1956, S.44, for certain words.) [within forty-five days from, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.]."

16.The Learned Senior Counsel for the 1st Respondent,

by referring to Section 81 of the Representation of People Act, 1951, contends that the Applicant/Election Petitioner had introduced new material facts in O.A.No.244 of 2017 which constitute an amendment to the Original Pleadings to the main Election Petition and therefore, the same must be barred for being made beyond the limitation period of 45 days.

17.The Learned Senior Counsel for the 1st Respondent submits that the video camera is not produced before this Court and as per decision of the Hon'ble Supreme Court in **Anvar P.V. v. P.K.Basheer, reported in (2014) 10 Supreme Court Cases 473, at special page 486**, wherein at paragraph 24, it is observed as follows:

"24.The situation would have been different had the appellant adduced primary evidence, by making available in evidence, the CDs used for announcement and songs. Had those CDs used for objectionable songs or announcements been duly got seized through the police or Election Commission and had the same been used as primary evidence, the High Court could have played the same in court to see whether the allegations were true. That is not the situation in this case. The speeches, songs and announcements were recorded using other instruments and by feeding them into a computer, CDs were made therefrom which were produced in court, without due certification. Those CDs cannot be admitted in evidence since the mandatory requirements of Section 65B of the Evidence Act are not satisfied. ..."

18. On behalf of the 1st Respondent, it is represented before this Court that there is no record to show that Mr. Thirunavukarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai was on deputation to the concerned Department/Section and in the instant case, no one had stated that Thirunavukarasu was arranging the transfer of Data. Therefore, it is projected on the side of the 1st Respondent that Thirunavukarasu is a 'new find' and at this belated stage, he cannot be permitted to let in evidence in regard to the Exs.C.8 to C.15 [CDs] (especially when arguments are advanced on the side of the 1st Respondent in the main case).

19. Continuing further, the Learned Senior Counsel for the 1st Respondent submits that under P.W.1 (Election Petitioner), the said Thirunavukarasu was working for five years and even if he is to be examined before this Court, he will not be a truthful witness.

20. The Learned Senior Counsel for the 1st Respondent proceeds to state that O.A.No.244 of 2017 [filed by the Applicant/Election Petitioner] is a calculated and deliberate endeavour by him to fill up the lacunae in his evidence at the fag end of the trial. Further, the new set of facts, which were not mentioned earlier in the Election Petitioner's pleadings or in his oral evidence before this Court, ought not to be permitted.

21.The Learned Senior Counsel for the 1st Respondent submits that the Applicant/Petitioner is not vigilant and law cannot assist a person who sleep over his rights and in fact, 'Delay Defeats Equity'.

22.The Learned Senior Counsel for the 1st Respondent relies on the decision of the Hon'ble Supreme Court in *Mulayam Singh Yadav V. Dharam Pal Yadav and others, reported in (2001) 7 Supreme Court Cases 98 at page 99*, wherein it is held that *'Since the original video cassette had not been filed along with the copies thereof, the petition was incomplete and in non-compliance with Sections 81 and 83 of the Representation of People Act and hence, the petition is liable to be dismissed under Section 86 of the Act'*.

23.He also cites the decision of the Hon'ble Supreme Court in *Ramakant Mayekar reported in (1996) 1 Supreme Court Cases 399 at special page 410 & 411*, wherein at paragraph 21, it is observed as under:

"21.If the mere mention of photographs without indicating its contents in the election petition is to be construed as incorporation of its contents by reference in the election petition, then non-supply of the copy of the photographs with the copy of the election petition would result in non-compliance of Section 81(3). However, since the photographs were not annexed to the election petition, it is a case

not of non-compliance of Section 81(3) but a case of total absence of any pleading in the election petition of the corrupt practice on the basis of wall paintings. Therefore, the pleading being wholly deficient in material facts necessary to constitute the cause of action, it was insufficient to raise a triable issue on that basis. In fact, this part of the pleading was liable to be struck out since it was irrelevant at the trial for the reason stated. It is clear that any evidence adduced later, in the absence of the requisite pleading of this corrupt practice was irrelevant and inadmissible and should not have been recorded and having been recorded must be excluded from consideration. The finding of the High Court of any corrupt practice being proved on this basis is contrary to law, and has to be set aside for this reason alone."

Reply of the Applicant's side:

24.By means of a Reply, the Learned Senior Counsel for the Applicant/Petitioner submits that Mr.Thirunavukarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai mentioned in O.A.No.244 of 2017 is a responsible person and that Order XVI of the Madras High Court Original Side Rules, 1956 speaks of 'Summoning and Attendance of Witnesses' and that the election expenses were video graphed in the present case. Furthermore, the Rule 3 of Rules of the Madras High Court Election Petitions, 1967 deals with 'Every application in respect of an Election Petition shall be by Judge's summons' and moreover, the application under Order XIV Rule 8 of the Original Side

Rules of this Court read with Rule 3 and 12 of the Rules of the Madras High Court Election Petitions, 1967 is perfectly in order.

Discussions:

25.It is to be borne in mind that 'Information Technology' is ever developing in a modern era and each new development plays a vital role in one's life. Admittedly, the evidence from 'Electronic device' is a part of new/investigative activity in public as well as in private domain.

26.No wonder, a computer based electronic evidence, information and data are of immense investigative significance i.e. stored or transmitted by a computer. The said evidence is akin to 'Finger Prints or DNA (DEOXY RIBO NUCLEIC ACID) Evidence'.

27.It cannot be forgotten that a special care is to be taken to document, collect, preserve and examine the electronic evidence. Further, Section 62 of the Indian Evidence Act, 1872 speaks of 'Primary Evidence'. As per Section 63 of the Evidence Act, an immovable electronic evidence can be produced as 'Secondary Evidence' by making copies of the original. Section 65 of the Act enables secondary evidence of the contents of a document to be adduced if the original is not essentially movable (i) thereby printouts are taken from the computer servers by a

mechanical process, provided it is certified by the Certifying Officer prescribed in the Section.

28.It is to be pointed out that the name of every witness need not be stated in the particulars except where his name becomes essential item of particulars in an Election Petition. Indeed, neither Section 87 nor Section 83 of the Representation of People Act, 1951 or even Rule 94-A and Form 25 of the Conduct of Elections Rules, 1961 speaks of such a way of thinking, as opined by this Court. Further, notwithstanding the fact that the Rules of Madras High Court Election Petitions, 1967, it is to be stated that every witness may not be mentioned as a source and every source person may not be examined by a party.

29.There is a difference among the grounds in Section 81(1); the_'Material Facts' in Section 83(1)(a) and full particulars in Section 83 (1) (b) of the Representation of the People Act, 1951. As a matter of fact, Section 83(1)(a) and (b) are like Order VI Rule 1 and 2 and Order VII Rule (1) e of the Civil Procedure Code.

30.It is to be pointed out that Order XVI Rule 14 C.P.C. enjoins a duty on a Court of Law to consider whether it is essential, in the interest of Justice, to examine any person or any other person who has not been examined.

31.It is mentioned that whether in an Election Petition, a particular fact is Material Fact or not and as

such, required to be ordered is a pure question which depends upon the nature of charges levelled, the ground relied upon and in the background of special circumstances of the case. Suffice it for this Court to point out that all primary facts which ought to be established by a party to prove the existence of a cause of action or his defence are 'Material Facts'.

32.A simple generic and theoretical doubt cannot be raised on evidence. The burden is on a challenger to prove an inaccuracy of a computer evidence on the ground of misuse of system or operating failure etc. In case of dispute relating to an authenticity of electronic evidence, a Court of Law can call for a foundation for the evidence deduced.

33.In the decision **(1946) K.B. at page 407, Lord Goddard** observed that ***'It seems to me clear from Lord Blackburn's speech that to be a public document, it must be one made for the purpose of the public making use of it. Its object must be that all persons concerned in it may have access to it'.***

34.In reality, a 'Public Document' is prepared by a public servant in the discharge of his official duties. In fact, all the public documents are kept under some special custody, to be proved by means of a copy without production of original. In fact, a private document to be a public

document, it ought to be a record of the act of a public officer or of a Court, that a part of the document viz., the original part would be a private document forming the record of the act of a private parties, and what is later added to the document by the Court would be a public document, as per decision ***State of Gujarat V. Ambalal Maganlal Shah reported in 1966 Cr.L.J. 967 (1).***

35. There is no two opinion of a vital fact that if the documents are of official records of undoubted authenticity and would assist the Court in deciding the controversies between the parties, then, it can be admitted by the Court as per Law.

36. At this stage, this Court worth recalls and recollects the decision of the Hon'ble Supreme Court in ***Central Bureau of Investigation, New Delhi V. Abhishek Verma, (2009) 6 Supreme Court Cases 300***, wherein it is observed that 'evidence present in CD, DVD, MO drive, USB, Floppy or any other storage device be accepted provided the conditions specified in Section 65 of the Indian Evidence Act, 1872 are complied with'.

37. It is to be noted that a true copy of account of Election expenses lodged with the District Electoral Officer under the Representation of the People Act, 1951 and Rules thereunder is a public record of a private document, as per

decision *Kandru Majhi V. Budnesher Majhi* reported in *ILR (1972) 2 Cal. 618*.

38. In the decision of the Hon'ble Supreme Court in *R.M. Seshadri V. G. Vasantha Pai*, [Civil Appeal No. 1519/1968 decided on 28.11.1968], it was held that '*the Court has the power to summon a Court witness if it thinks that the ends of Justice require or that the case before it needs that kind of evidence*'.

39. Indeed, Section 65(e) of the Indian Evidence Act permits secondary evidence, such as certified copy to be given when the original is a public document within the meaning of Section 74. If a person is bound to record a fact, the proper evidence thereof is, it has been considered a copy of the record, duly authenticated.

40. It is to be relevantly pointed out that 'a primary evidence Par Excellence of the contents of a document is the original'. In England wherever an original document is of public nature and would of itself be evidence if produced from proper custody, certain kinds of copies to documents are admissible in evidence at Common Law also.

41. It is just and necessary to access original data held on a computer or on a storage media. The person

accessing the data must be competent to do show and is obliged to tender evidence explaining relevance and implications of his actions.

42.It is well accepted principle in Law that a Court of Law cannot compel a party to summon a witness or cannot penalise him for refusal to summon.

43.In so far as the Election Petition is concerned, the charge of 'corrupt practice' is akin to that of a criminal case and the evidence let in, in the case ought to be such so as to enable the Court to hold that the charge must be a true one. In fact, between 'May be true' and 'Must be true', there is a yearning gap and the said gap is to be traversed upon with necessary evidence of an 'unimpeachable character'.

44.It is to be remembered that ordinarily, a Court of Law will not lend assistance or help a litigant to remedy/rectify his omission, either intentional or through neglect to examine a witness, as per decision ***K.S.Agha Mir Ahmed Shah V. Mir Mudassir Shah, AIR 1944 PC 100.***

45.In regard to the plea of the 1st Respondent that if the present O.A.No.244 of 2017 is allowed, it will introduce new material facts by means of amendment to the main Election Petition and as such, the same is beyond the period

of 45 days limitation, it is to be pointed out that to bring the true facts before this Court and to prevent an aberration of Justice, a Court of Law is empowered under Order XVI and Rule 14 C.P.C. to examine any person, who would assist the Court in resolving the controversies between the parties. Therefore, the contra plea taken in this regard is not acceded to by this Court.

46.Earlier, the Applicant/Election Petitioner took out O.A.No.962 of 2015 in E.L.P.No.1 of 2011 praying for passing of an order by this Court to issue subpoena to then Returning Officer viz., M.Rajaratnam at the address stated therein, to come and give evidence and produce necessary certificate under Section 65-B of the Indian Evidence Act, 1872 authenticating Exs.C.8 to C.15 (marked through C.W.2) on 28.02.2015 and the same got returned with an endorsement 'Witness not residing in the address' and therefore, it was returned as 'Unserved'.

47.Later, on 09.02.2016 before this Court in main E.L.P.No.1 of 2011, a Memo was filed [on behalf of the Election Petitioner] specifying the address of the then Returning Officer Mr.M.Rajaratnam of Kolathur Constituency and a subpoena for this address also got returned stating that 'M.Rajaratnam was not present in the address'.

48.It comes to be known that earlier the 1st Respondent, during the midst of arguments of the Petitioner's side in the main Election Petition, projected O.A.No.1146/2016 and O.A.No.1147/2016 and on 02.01.2017,

O.A.No.1146/2016 was withdrawn and dismissed as not pressed. However, O.A.No.1147/2016 was allowed on 02.01.2017 and C.W.5 was examined and Exs.C.18 to C.22 were marked.

49.Now, the Applicant/Election Petitioner, during the midst of arguments of the 1st Respondent's side, had filed the present O.A.No.244 of 2017 [to issue subpoena to one Thirunavakarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai].

50.For the foregoing detailed qualitative and quantitative discussions and considering the fact that Exs.C8 to C.15 [CDs] were already marked through C.W.2 and also this Court by keeping in mind the plea of the Applicant/Petitioner that one Thirunavukarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai was the person who arranged for transfer of video footages from camera to Computer and in turn copied the same to the Compact Discs and therefore, he is quite competent to furnish certificate under Section 65-B of the Indian Evidence Act relating to Exs.C.8 to C.15, this Court, by applying its Judicial sound discretion (of course, based on the facts and circumstances of the present case which float on the surface), with a view to provide an opportunity to prove the claim of the Applicant/Petitioner in the main Election case in E.L.P.No.1 of 2011, permits him to take out subpoena to Mr.Thirunavukarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai to come before this Court and tender evidence in regard to the

Exs.C.8 to C.15 and give necessary certificate, in furtherance of substantial cause of Justice.

51.In fine, the Original Application No.244 of 2017 is allowed. No costs. The Registry is directed to issue subpoena to Mr.Thirunavukarasu, Divisional Engineer, (South), Electrical Department, Corporation of Chennai to appear before this Court on 22.03.2017 at 2.15 p.m. in E.L.P.No.1 of 2011 and to tender evidence in regard to Exs.C.8 to C.15 and to give necessary certificate thereto under Section 65-B of the Indian Evidence Act. Liberty is granted to the 1st Respondent to adduce rebuttal evidence, if any and if need be, [in so far as the witness mentioned in this Application]. The Applicant/ Election Petitioner is directed to pay emergent batta in this regard. Private Notice is also permitted.

WITNESS, THE HON'BLE THIRU HULUVADI GANGADHARAPPA RAMESH, ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE 16TH DAY OF MARCH 2017.

sd/-
ASSISTANT REGISTRAR
Original Side - II

//CERTIFIED TO BE TRUE COPY//

DATED THIS THE DAY OF 2017

COURT OFFICER (O.S.)

From 25th Day of September 2008 the Registry is issuing certified copies of the Orders/Judgments/Decrees in this format.

cns - 17.03.2017

OA.NO.244 OF 2017

in

ELP.NO.1 OF 2011

ORDER

DATED:16/03/2017

THE HON'BLE MR. JUSTICE

M.VENUGOPAL

FOR APPROVAL: 17/03/2017

APPROVED ON : 17/03/2017