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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	05.10.2021
DELIVERED ON	15.11.2021

CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

C.R.P. (MD) .Nos.1153, 1154 , 1157, 1159, 1184 & 1185 of 2021

and

C.M.P. (MD)Nos. 6729, 6740 & 6865 of 2021

C.R.P. (MD) .Nos.1153, 1154 of 2021

Petchiammal ...Petitioner/Petitioner/Petitioner in
C.R.P. (MD)Nos.1153 & 1154 of 2021

Vs.

1.The Election Commissioner,
The Tamil Nadu State Election Commission,
Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.

2.The District Election Officer-cum-District Collector,
Virudhunagar District,
Virudhunagar.

3.The Returning Officer cum
Block Development Officer,
Sattur Panchyat Union, Sattur,
Virudhunagar District.

4.K.Pandiyammal

5.Chandra

6.Revathi

7.Devi

8.Kiruba

...Respondents/Respondents/Respondents
in C.R.P. (MD)Nos.1153 & 1154 of 2021

COMMON PRAYER in C.R.P. (MD)Nos.1153 & 1154 of 2021: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order passed in I.A.Nos.2 & 3 of 2021 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur, dated 12.07.2021 and allowing the I.A.Nos.2 & 3 of 2021 in E.O.P.Nos.7 of 2020.



C.R.P. (MD).Nos.1157, 1159 of 2021

S.Tamil Selvi

...Petitioner/Petitioner/Petitioner in
C.R.P. (MD)Nos.1157 & 1159 of 2021

Vs.

- 1.The Election Commissioner,
The Tamil Nadu State Election Commission,
Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.
- 2.The District Election Officer-cum-District Collector,
Virudhunagar District, Virudhunagar.
- 3.The Returning Officer cum
Block Development Officer,
Sattur Panchyat Union, Sattur,
Virudhunagar District.
- 4.Senthamarai
- 5.Thirummoorthy

...Respondents/Respondents/Respondents in
C.R.P. (MD)Nos.1157 & 1159 of 2021

COMMON PRAYER in C.R.P. (MD)Nos.1157 & 1159 of 2021: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order passed in I.A.Nos.1 & 2 of 2021 in E.O.P.No.6 of 2020 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur, dated 12.07.2021.

C.R.P. (MD).Nos.1184 & 1185 of 2021

Shanmugavelu

...Petitioner/Petitioner/Petitioner in
C.R.P. (MD)Nos.1184 & 1185 of 2021

Vs.

- 1.The Election Commissioner,
The Tamil Nadu State Election Commission,
Jawaharlal Nehru Road,
Arumbakkam, Chennai - 600 106.
- 2.The District Election Officer-cum-District Collector,
Virudhunagar District, Virudhunagar.
- 3.The Returning Officer cum
Block Development Officer,
Sattur Panchyat Union, Sattur,
Virudhunagar District.
- 4.Muthumariammal

...Respondents/Respondents/Respondents in
C.R.P. (MD)Nos.1184 & 1185 of 2021



COMMON PRAYER in C.R.P.(MD)Nos.1184 & 1185 of 2021: Civil Revision Petitions filed under Article 227 of Constitution of India, to set aside the order passed in I.A.Nos.1 & 2 of 2021 in E.O.P.No.5 of 2020 on the file of the learned Principal District Judge, Virudhunagar District at Srivilliputhur, dated 12.07.2021.

In All CRPs

For Petitioners : Mr.K.K.Kannan
For 3rd Respondent : Mr.A.Baskaran,
Government Advocate
For 4th Respondent : Mr.M.Kannan

COMMON ORDER

C.R.P.(MD)Nos.1153 & 1154 of 2021 have been filed to set aside the order, dated 12.07.2021 in I.A.Nos.2 & 3 of 2021 in E.O.P.No.7 of 2020 passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

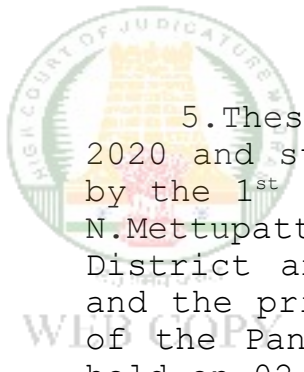
C.R.P.(MD)Nos.1157 & 1159 of 2021 have been filed to set aside the order, dated 12.07.2021 in I.A.Nos.1 & 2 of 2021 in E.O.P.No.6 of 2020 passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

C.R.P.(MD)Nos.1184 & 1185 of 2021 have been filed to set aside the order, dated 12.07.2021 in I.A.Nos.1 & 2 of 2021 in E.O.P.No.5 of 2020 passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur.

2. Heard on either side. Perused the material documents available on record.

3.The issues to be decided in all these revision petitions are same. So, common order is passed in all these revision petitions.

4.These Civil Revision Petitions have been filed on the ground that since the respondents are discharging the public duty and being custodians of the documents and video footage of the election, there is no legal impediment to call for the same from the respondent in their official capacity but the Court below misconceived the legal position and dismissed the I.A. The election petitions have been filed by the petitioners challenging the election under the ground of corruption and mal practice as defined in Section 260 of the Tamil Nadu Panchayats Act, the petitioner has right to question the manner of election conducted but without considering the same the impugned order is passed. The petitioner did not ask any official communications and State secrets within the purview of Section 124 of Indian Evidence Act and therefore, by misconception of the fact and law the impugned order came to be passed.



5. These revision petitioners have filed E.O.P.No.7, 6 & 5 of 2020 and stated that the Panchayat Election notification was issued by the 1st respondent in the year 2019 for electing the President of N.Mettupatti Panchayat, Sattur Panchayat Union, Virudhunagar District and the election was held on 30.12.2019. The petitioners and the private respondents were contesting the election. The post of the Panchayat President allocated for women. The counting was held on 02.01.2020. The original petition has been filed to declare the election of the President of the N.Mettupatti Panchayat and the original petition stands posted for examination of the additional witness of the petitioner. In the original petition, the petitioners have mentioned the bribery of voters and the irregularities at the counting centre on 02.01.2020. At the time of counting, ballot boxes should be opened before the candidate or his representatives. But the candidate or his representative has not been allowed at 08.30 p.m., on the counting center. The entire affairs of the counting center on that day have been recorded on the Video Camera by the 1st to 3rd respondents. Since, video footage which recorded on the counting centre, the documents in respect of counting, the details of contesting candidates and also Form No.22, 23 and 24 are in the custody of respondent Nos.1 to 3 and hence they may be directed to issue certified copies of the same and 1st respondent is directed to appear before the Court and give evidence, Hence, these petitioners are filed to summon the documents mentioned in the petition and mark those documents accordingly.

6. The respondents have filed counter and stated that the 2nd respondent is custodian of the election papers, ballot papers, video footage.

7. The learned counsel appearing for the fourth respondent raised an objection and stated that the petitioners at the time of counting, announcement of result, the petitioners are entitled to certified copy of Form 22, 23 & 24 from the respondent. The petitioners in their evidence stating clearly admitted in their petition that the petitioners obtained the above said documents of Form 22, 23 & 24. It is well settled law that the party cannot have the opposite party as witness. These petitioners cannot compel the respondents to be examined as a witness and adduce evidence particularly the petitioners' evidence is not closed and the respondents is yet to begin. The petitioners are not entitled to any relief of the summons to witness. He further argued that Ex.P.6 reveals stated that fair and reasonably conducted the election counting. No way connected and no intention to involve bribery. The petitioners have given evidence does not state without pleadings of any specific allegation against the fourth respondent. Whereas no way connected in the petitions pleadings and summons to the documents. The above said documents of Form 22, 23, 24 is not in possession of the petitioners and marked on the side of the petitioners.

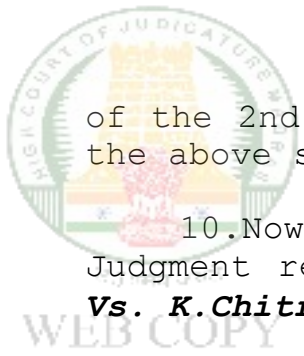


8.The Judgment reported in **AIR 1992 SC 1163, 1192 (1) UJ 773**, wherein, the Hon'ble Supreme Court has held as follows:

"This Court while considering the effect of Rule 93 held in *Hari Singh V. Hira Singh (supra)*, that a perusal of this Rule clearly shows that the Legislature intended to make clear distinction between one set of documents and another. So far as counter-foils and the marked copy of the electoral rolls were concerned, there was a strict prohibition for opening these documents unless the Court was fully satisfied that a cast-iron case was made out for the same; whereas documents mentioned in Clauses (A) and (d) of Sub-rule (2) of Rule 93 could be liberally allowed to be inspected. This was also the view in Ram Sewak Yadav V. Hissain Kamil Kidwal. Thus to maintain the secrecy of ballot papers unless adequate material facts are on record which alone would afford adequate basis of exercise the discretion by the Court; the packets or the used ballot papers with counter-foils attached thereto or the packet of used ballot papers whether valid, rendered or rejected cannot be opened. Equally the packets of declarations by electors and the authorisation of their signatures shall not be opened unless ordered by the Court in that behalf. The Court shall not permit a roving enquiry to enable the defeated candidate election petitioner to have access thereto to fish out the grounds. The High Court, would therefore, be circumspect to Order summoning that records covered under rule 93(1). To effectuate the objects of Section 135A of the Act it may be open to the Rule making authority to have, fresh look into the mandatory language of Rule 93(1), so as to bring it in conformity with Section 135(A) of the Act. "

9.The contention of the petitions is that the petitions have been filed send for documents of (1) all the original ballot papers with ballot machine which was polling in the election of panchayat board president on 30.12.2019, (2) concerned form No.22, 23 & 24 dated 02.01.2020 with regard to election of panchayat board president and (3) entire affairs of the video footage which was recorded by the election commission at the time of counting at counting centre on 02.01.2020, after the election of panchayat board president in these applications, the 4th respondent declared as a elected candidate. The above said Election O.P was challenged by the 4th respondent and supported 1 to 3 respondents pleadings and material documents supported prove of the election O.Ps 02.01.2020 dated the counting of election of proceedings recorded by the and

<https://hcservices.mcaonline.net/> The above said documents 1 to 3 is in possession



of the 2nd and 3rd respondent. The 2nd respondent is custodian of the above said election papers, ballot papers, video footage.

10. Now the Court cannot pass an order for recounting as per Judgment reported in **2009(3) MLJ P 345** in the case of **M. Kalavathy Vs. K. Chitra and Others**, wherein this Court held as follows:

"No recount of votes could be ordered in the absence of specific pleadings in the election petition."

11. Various allegations were raised regarding counting of votes. But, except no other contested candidates raised the objections and complaints against the election officials. The allegations are vague and general and not supported by any materials.

12. The judgment reported in **2006(2) LW 490**, in the case of **P.V. Thambidurai Vs. K. Paramasivan and another One**, wherein this Court held as follows:

....
"Held : An order of inspection may not be granted as a matter of course until adequate statement of material facts, on which the election petitioner relies in support of his case. Mere vague pleas made in the election petition not supported by material facts or to fish out evidence to support such pleas in respect of ballot papers cannot be granted. The election petition is quasi criminal nature, hence, the allegations must be pleaded clearly and with full particulars. If the allegations made against the elected candidate is clear and specific and supported by adequate statement of material facts, the Court must prima facie satisfy on the materials produced before it regarding the truth of allegations made for recount. The court must come to the conclusion that in order to grant the relief of inspection it is necessary and imperative to do full justice between the parties. The discretion conferred on the Court should not be exercised in such a way to enable the election petitioner to indulge in a roving inquiry with a view to fish materials for declaring the election to be void. The Court is also given power to deal with documents when produced in such a manner as shall appear just. Therefore, the power to order production of document is coupled with discretion to examine the expediency, justness and the relevancy of the documents to the matter in



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question. In any case secrecy of the ballot boxes cannot be tinkered unless an iron-cast case is made out in the election petition.

The allegations are vague and general and not supported by any material facts. This Court does not find any concise statement of material facts demanding the grant of inspection of the records. If the material facts are not stated, it cannot be permitted to make out a case for fishing out evidence from an inspection of election materials. The said factors are relevant for consideration for summoning documents, which were not considered by the trial court before passing the impugned order. Until an iron-cast case is made out, the secrecy of ballot box cannot be tinkered. "

13.Already these petitioners have received Form 22, 23 & 24 . So, without specific allegations the petitioners cannot call for ballot boxes with entire votes.

14. Since the petitions filed for send for documents are not allowed, they cannot call the respondents to adduce evidence regarding the documents.

15.The ingredients of **Section 124 of the Indian Evidence Act** is extracted hereunder:

"124. Official Communications : No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interests would suffer by the disclosure."

16.As per contention of the Mr.A.Baskaran, learned Government Advocate appearing for 3rd respondent, votes were counted from 07.00 a.m. The petitioners have entered only at 08.30 a.m. So, the opening of ballot box before the petitioners cannot hold good. As stated above, no other candidate objected the proceedings.

17.Therefore, the learned Principal District Judge, Virudhunagar District at Srivilliputhur, has rightly dismissed the petitions. This Court has no valid reason to interfere with the findings.

18.Finally, these Civil Revision Petitions are dismissed by confirming the order, dated 12.07.2021 in I.A.Nos.2 & 3 of 2021 in E.O.P.No.7 of 2020 and in I.A.Nos.1 & 2 of 2021 in E.O.P.No.6 of



2020 and in I.A.Nos.1 & 2 of 2021 in E.O.P.No.5 of 2020 passed by the learned Principal District Judge, Virudhunagar District at Srivilliputhur. No Costs. Consequently, connected miscellaneous petitions are closed.

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Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Principal District Judge,
Virudhunagar District at Srivilliputhur.

+1 CC to M/s.SPL GP (SR-34573[F] dated 16/11/2021)

+1 CC to M/s.M. KANNAN, Advocate (SR-34795[F] dated 17/11/2021)

+6 CC to M/s.K.K. KANNAN, Advocate (SR-34782 to 34787[F]
dated 17/11/2021)

**Common Order made in
C.R.P. (MD) .Nos. 1153 & 1154,
1157, 1159, 1184 & 1185 of 2021
15.11.2021**

SJ(CO)

GC(09.12.2021) 8P 10C