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C.R.P.(NPD) No.270 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.03.2023

CORAM

THE HONOURABLE **MRS.JUSTICE T.V.THAMILSELVI**

C.R.P.(NPD) No.270 of 2023

Janarthanan

... Petitioner

Vs.

1.R.G.Jaganathan

2.The Tamilnadu State Election Commission,
rep. by its Secretary,
No.208/2, Jawaharlal Road,
Arumbakkam, Chennai – 600 106.

3.The District Collector/
Tiruppur District Election Officer,
Collector Office, Palladam Road,
Tiruppur – 641 604.

4.The Returning Officer/Project Officer,
Women Welfare, Collectorate,
Tiruppur, Tiruppur District.

5.The Assistant Election Officer/
Assistant Director (Hort)
Panchayat Ward No.17,
Udumalpet, Collectorate,
Tiruppur, Tiruppur District.

... Respondents



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Civil Revision Petition filed under Article 227 of Constitution of India to call for the records in EL.O.P.No.21 of 2020 on the file of the Principal District Judge, Tiruppur and set aside the order dated 21.12.2022 directing recounting of votes.

For Petitioner : Mr.R.Asokan
For R1 : Mr.C.Jagadish
For R2 : Mr.S.Sivashanmugam
For R3 to R5 : Mr.B.Tamil Nidhi
Government Advocate

ORDER

Heard both sides.

2. Challenging the impugned order of the Principal District Judge, Tiruppur dated 21.12.2022 in EL.O.P.No.21 of 2020, the petitioner/fifth respondent has filed the present Civil Revision Petition.

3. The learned counsel for the petitioner submits that the Trial Judge, without any sufficient material on the side of the first respondent/election petitioner, erroneously ordered for re-counting the



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votes by appointing an Advocate Commissioner and it is liable to be set

aside on the following grounds:-

- i. The Trial Judge has failed to notice that the first respondent/election petitioner and his agents were present in the venue of counting all along during the counting of the ballot papers and did not raise any objection during the counting or thereafter till the result of the election was declared even though they had ample opportunity to raise objection.
- ii. The Trial Judge has failed to note that the first respondent/election petitioner has not followed Rule 66 of the Tamil Nadu Panchayat Election Rules for seeking re-counting of the votes.
- iii. For re-counting of votes, a contesting candidate or in his absence, his agent should apply in writing for re-counting the votes before the Returning Officer, after the completion of the counting and announcement of votes polled for each candidate and before the declaration of result of the Election. In this case, neither the first respondent/election petitioner nor his agent applied for re-counting after the counting was over and before the declaration of the result.



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iv. The only Letter dated 02.01.2020 said to have been given by the first respondent/petitioner to the Returning Officer which was marked as Ex.P5. In the said Ex.P5 Letter, the first respondent/election petitioner wanted the Returning Officer to re-count the votes on the ground that the margin of votes between the candidates was meager and the number of invalid votes is more. However, in the said Ex.P5 Letter, there is no reference with regard to the irregularity in the counting as alleged by the first respondent/election petitioner in the Election Petition.

4. In support of his contention, the learned counsel for the petitioner/fifth respondent relies on the decision of the Hon'ble Supreme Court in **Vadivelu Vs. Sundaram and others**, (2000) 8 SCC 355, wherein, the Court held as follows:-

16. The result of the analysis of the above cases would show that this Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was



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improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties.

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18. From the above pleadings, it is evident that the appellant has not set forth material facts or particulars required for re-count of votes. To justify his contention that there was irregularity or illegality in the counting, except making some general and bald allegations, no other details are given. Though an allegation is made that the electoral roll contained the names of dead persons, that the 1st respondent took advantage of the same, and that some persons had impersonated and cast votes in his favour, no details are given as to who committed such irregularity. The appellant has also not mentioned as to how many such votes had been cast in favour of the 1st respondent. So also, the appellant has not alleged the nature of the illegality or irregularity said to have been committed by the Counting Officers. How and in what manner there was improper acceptance of invalid votes and improper rejection of valid votes also is not explained by the appellant. In short, the election petition is bereft of all details and the appellant, while examined as PW 1, could not supplement anything by way of evidence.



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5. Relying on the above decision, the learned counsel for the petitioner/fifth respondent submits that the first respondent/election petitioner who sought for re-counting the votes should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes and therefore, the Court cannot order for re-count of votes.

6. The learned counsel for the petitioner further relies on the another decision of the Hon'ble Supreme Court in **Kattinokkula Murali Krishna Vs. Veeramalla Koteswara Rao and others**, (2010) 1 SCC 466. Relying the above decision, the learned counsel for the petitioner submits that the doctrine of prejudice is an irrelevant factor for ordering re-count and that narrow margin of votes between the returned candidate and the election petitioner does not *per se* give rise to a presumption that there had been an irregularity or illegality in the counting of votes. But Trial Judge failed to consider that there is no material evidence on the side of the first respondent/election petitioner and therefore the order of re-count is liable to be set aside.



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7. The learned counsel for the petitioner further submits that if the first respondent/election petitioner really wants to re-count the votes, he ought to have raised the objection prior to the declaration of results. But, the first respondent/election petitioner has not raised such objection before the Election Officer by relying Section 66 of the Tamil Nadu Panchayats (Elections) Rules, 1995 which reads as under:-

66. Re-count of votes.-(1) After the completion of the counting and recording in Form 22 the total number of votes polled by each Candidate under sub-rule (2) of Rule 64, the Returning Officer shall announce the same. After such announcement and before the declaration of the result of the election, a contesting Candidate or in his absence his election Agent, may apply in writing to the Returning Officer for a re-count of all or any of the votes already counted stating the grounds on which he demands such re-count.

(2) On such application being made, the Returning Officer shall decide the matter and may allow the application in whole or in part, or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning Officer under sub-rule (2) shall be in writing and contain the reasons therefor.

(4) If the Returning Officer decides under sub-rule (2) to allow an application either in whole or in



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part, he shall-

(a) count the votes again in accordance with his decision;

(b) amend the result sheet in Form 22 to the extent necessary after such re-count; and

(c) announce the amendments so made by him.

(5) After the total number of votes polled by each Candidate has been announced under sub-rule (1) or under sub-rule (4) of this Rule, the Returning Officer shall complete and sign the result sheet in Form 22 and no application for a re-count shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the Candidates or the election Agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

8. By way of reply, the learned counsel for the first respondent/election petitioner submits that counter affidavit filed by the third respondent is sufficient to prove that Rules ought to be followed at the time of counting the votes. Further, he relies on Sections 61(1)(b), 61(7), 62 and 63 of the Tamil Nadu Panchayats (Elections) Rules, 1995. Sections 61, 62 and 63 of the Tamil Nadu Panchayats (Elections) Rules,



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1995 read as under:-

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61. Counting of postal ballot papers and scrutiny and opening of ballot boxes.- (1) The Returning Officer shall first deal with the postal ballot papers forwarded to him under Rule 52 as specified below:-

(a) No cover referred to in Rule 52 received by the Returning Officer, after the expiry of the time fixed in that behalf, shall be opened and no vote contained in any such cover shall be counted.

(b) The outer covers shall be opened one after another and the election duty certificates and declaration under Rule 52 contained therein shall be collected together, counted and sealed in a separate packet.

(c) The inner covers containing the marked ballot papers shall, then, be opened one after another and the voters counted. If the declaration is not found or has not been duly signed or is otherwise substantially defective, that inner cover shall not be opened and after making an appropriate endorsement thereon, the Returning Officer shall reject the ballot paper contained therein.

(2) The ballot boxes relating to each of the polling stations shall, then, be taken up for counting. The Returning Officer may in his discretion have the ballot boxes used at more than one polling station opened and their contents counted simultaneously.

(3) Before any ballot box is opened at a



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counting table, the counting Agents present at the table shall be allowed to inspect the paper seal and other seals on the ballot box and satisfy themselves that they are intact.

(4) The Returning Officer shall satisfy himself that none of the ballot boxes has, in fact, been tampered with.

(5) In the Returning Officer is satisfied that any ballot box has, in fact, been tampered with, shall not count the ballot papers contained in that box and shall follow the procedure laid down in Rule 57 in respect of that polling station.

(6) (a) If a fresh poll is held under Rule 57, the Returning Office shall, after completion of that poll recommence the counting of votes on the date, at the time and place which have been fixed by the District Election Officer in that behalf and of which notice has been previously given to the contesting Candidates and their election Agents.

(b) The provision of this part shall apply, so far as may be, to such further counting.

(7) The Returning Officer shall allow the Candidates and their Agents reasonable opportunities to inspect, without handling, all ballot papers which in his opinion are liable to be rejected under Rule 63. He shall endorse on every ballot paper which he rejects, the letter 'R' and the ground of rejection in abbreviated form either in his own handwriting or by means of a rubber stamp and shall initial such endorsement.

(8) he shall verify the ballot paper account submitted by the Presiding Officer under sub-rule (4)



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(a) of Rule

62. Destruction or loss of ballot papers at the time of counting.- (1) If at any time before the counting of votes is completed, ballot papers used at a polling station are unlawfully taken out to the custody of the Returning Officer or accidentally or intentionally destroyed or lost or damaged or tampered with to such an extent that the result of the poll of that polling station cannot be ascertained, the Returning Officer shall forthwith report the matter to the District Election Officer, State Election Officer and the State Election Commission.

(2) Thereupon, the District Election Officer shall after taking all material circumstances into account either,-

(a) direct that the counting of votes shall be stopped, declare the poll at that polling station to be void, appoint the date and fix the hour for taking the fresh poll at that polling station and notify the date so appointed and hour so fixed in such a manner as he may deem fit; or.

(b) if satisfied that the outcome of a poll at that polling station will not in any way affect the result of the election, the District Election Officer shall issue such direction to the Returning Officer as he may deem proper for resumption and completion of the counting and for the further conduct and completion of the election to which the votes have been counted.

(3) Provision of these Rules shall apply to



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every such fresh poll as they apply to the original poll.

63. Rejection of ballot papers.- (1) A ballot paper shall be rejected-

(a) if it bears any mark or writing by which the elector can be identified, or

(b) if no vote is recorded thereon, or

(c) if votes are given on it in favour of more Candidates than the number of Candidates to be elected, or

(d) if the mark indicating the votes thereon is placed in such manner as to make it doubtful to which Candidate the vote has been given, or

(e) if it is a spurious ballot paper, or

(f) if it is so damaged or mutilated that its identity as a genuine ballot paper cannot be established, or

(g) if it bears a serial number, or is of a design, different from the serial numbers or design as the case may be, of the ballot papers authorized for use at the particular polling station, or

(h) if it does not bear both the distinguishing mark and / or the signature of the Presiding Officer which it should have borne under the provision of sub-rule (1) of Rule 51 or the words E.D.C. under the sub-rule (1) of Rule 52, or



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(i) if it is not the relevant ballot paper:

Provided that where the Returning Officer is satisfied that any such defect as is mentioned in clause (g) or clause (h) has been caused by any mistake or failure on the part of a Presiding Officer, the ballot paper shall not be rejected merely on the ground of such defect:

Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is not distinct or made more than once, if the intention that the vote shall be for a particular Candidate clearly appears from the way the paper is marked.

(2) All ballot papers rejected under this Rule shall be made into a separate bundle.

(3) The decision of the Returning Officer under this Rule shall be final, subject only to the decision of the competent court on an election petition.

9. Relying the above provisions, the learned counsel for the first respondent/election petitioner submits that the election officials have not complied with the all rules before rejecting 3484 votes and no opportunity was given to the candidates to verify the rejection votes.

10. The acts of the election officials are clearly in violation of the



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Rules. The counter objection filed by the fourth respondent/third respondent relied is in support of the first respondent's/election petitioner's contention . In paragraphs 9 and 10 of the counter objection filed by the fourth respondent/third respondent before the Trial Court clearly reveals that 3484 votes were rejected and Form-23 was filled up after completion of entire votes. It further reveals that mistake had happened due to the inexperience of counting personnel and total number of votes 43661 was corrected as 43447 by election officials after revised counting.

11. By relying all these incidents, the learned counsel for the first respondent/election petitioner submits that there is lot of irregularities committed the election officials while counting the votes. The records reveal that the first respondent/election petitioner has approached the Court by filing the election petition under Section 258 and 259 of the Tamil Nadu Panchayat Act, 1994 praying to declare the election of returned candidate i.e. the petitioner/fifth respondent to be void and to pass an order for recounting the total votes polled in concerned Ward.

12. The learned counsel for the first respondent/election petitioner



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relied Section 259(1)(d)(iii) of the Tamil Nadu Panchayat Act, 1994 in

respect of filing of the election petition. Section 259 of the Tamil Nadu

Panchayat Act, 1994 reads as under:-

259. (1) Subject to the provisions of sub-section (2), if the District Judge is of opinion-

- (a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or.
- (b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or
- (c) that any nomination paper has been improperly rejected, or
- (d) that the result of the election in so far as it concerns a returned candidate has been materially affected**
 - (i) by the improper acceptance of any nomination, or
 - (ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or
 - (iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or**
 - (iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the court shall declare the election of the returned candidate to be void.



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13. The submission of the learned counsel for the first respondent/election petitioner is that if there is any improper acceptance or refusal of any vote or reception of any votes which is valid and there is non-compliance of provisions of the Act, he is entitled to claim for re-counting the votes. As narrated above, at time of counting the votes, there was rejection of 3484 votes and no opportunity was given to the candidates to verify the same.

14. As discussed above, the margin of votes between the petitioner/fifth respondent and the first respondent/election petitioner is only 66 and 277 excess votes were counted and subsequent the same was revised. The counter objection filed by the fourth respondent/third respondent clearly reveals that some procedure was not followed. It has been rightly considered by the Trial Court. The order passed by the Trial Court is no interference. The decisions cited by the learned counsel for the petitioner/fifth respondent in supporting of his contention is not valuable.



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15. Accordingly, this Civil Revision Petition is dismissed. No cost.

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Internet : Yes/No

Index: Yes/ No

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To

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- 2.The Secretary,
The Tamilnadu State Election Commission,
No.208/2, Jawaharlal Road,
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- 3.The District Collector/
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T.V.THAMILSELVI, J.



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