



GOVERNMENT OF TAMIL NADU
2009

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Part V—Section 4

Notifications by the Election Commission of India.

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF JUDICATURE AT MADRAS
IN ELECTION PETITION No. 3 OF 2006.

No. SRO G-10/2009.

The following notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 24th March, 2009, [3 Chaitra-1931 (Saka)] is published:—

No.82/TN-LA/(3/2006)/2009.—In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Madras, dated 5th January 2009 in Election Petition No. 3 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Monday, the 5th day of January 2009.

THE HON'BLE MR. JUSTICE C. NAGAPPAN

ELECTION PETITION No. 3 OF 2006

A. Soundararajan—*Petitioner*

Versus

1. R.Chinnaswamy
2. N.Nakkeeran
3. V.Velusamy
4. M.Ponnusamy
5. S.Rajkumar
6. The Returning Officer **
104. Singanallur Assembly
Constituency and Personal Assistant to
the District Collector, Coimbatore.

** R6(Returning Officer)
deleted from the array
of respondents as per the
order of this Hon'ble Court
dt.02-07-2007 made in
OA.No.349/2007—*Respondents*.

Election Petition praying that the Hon'ble Court be pleased to:—

(i) Declare the election of the Returned candidate, namely, the first respondent herein from No.104. Singanallur Assembly Constituency (Tamil Nadu) in the election held on 08-05-2006 (in which results have been declared on 11-05-2006) as void;

(ii) Order re-scrutiny of the voting results recorded in the 315 Electronic Voting Machine used for counting in No.104. Singanallur Assembly Constituency (Tamil Nadu) in the election held on 08.05.2006.

(iii) Order re-polling of 1099 postal ballot by the voters to whom those 1099 postal ballot papers have been issued by the Returning Officer at 104. Singanallur Assembly Constituency (Tamil Nadu) in the election held on 08-05-2006, the address of which voters are with the Returning Officer and consequently order counting of those postal ballot papers after re-polling; and declare the results of the same;

(iv) Declare the petitioner as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 104. Singanallur Assembly Constituency (Tamil Nadu). in the election held on 08-05-2006 (in which results have been declared on 11-05-2006);

(v) Directing the first respondent to pay the costs of this election petition.

The above Election Petition coming on for hearing before this court on various dates and finally on 23-12-2008 and upon hearing the arguments of Mr. T.V. Ramanujam, Senior Counsel for M/s. T.V. Krishnamachari and V.K.Elangho, Counsel for the Election Petitioner and of Mr. K. M. Santhanagopalan for Mr. E. Sampathkumar, Counsel for the 1st respondent and of Mr. S. Shanmugasundaram, counsel for the 5th respondent and the respondents 2 to 4 remained, exparte and Respondent No. 6 (The Returning Officer) struck off from the array of respondents and upon reading the Election Petition filed by the Election Petitioner and counter affidavit of respondents 1 and 5 respectively filed herein and upon perusing the evidence adduced therein and also the exhibits marked thereto and having stood over for consideration till this date and coming on this day before this court for orders in the presence of the said advocates for the parties hereto and this court made the following order:—

The petitioner has filed the election petition under Sections 80 to 84, 100 (1) (d) (iii) and (iv) and 101 of the Representation of the People Act, 1951 and Rules 54 and 54 (A) of the Conduct of Elections Rules, 1961 seeking a declaration that the election of the first respondent herein/returned candidate from No.104. Singanallur Assembly Constituency in the election held on 8-5-2006 is void and to order re-scrutiny of the voting results recorded in 315 Electronic Voting Machines used for counting in the said election in the above Constituency and to order re-polling of 1099 postal ballot papers and declare the result of the same and to declare the petitioner as duly elected as a Member of the Tamil Nadu Legislative Assembly from the above Constituency in the said election.

2. According to the Election Petitioner, he contested as a candidate belonging to the Communist Party of India (Marxist) from 104. Singanallur (Coimbatore) Assembly Constituency in the Election held on 8-5-2006 and the Returned candidate contested as a candidate belonging to the AIADMK Party and the Respondents 2 to 5 also contested the Election as candidates.

3. The averments have been raised from paragraph No.4 onwards in the Election Petition and they are referred to in seriatim. In paragraph No.4, it is stated that the polling was conducted by using 315 electronic voting machines. In paragraph No. 5, it is stated that the Election Petitioner was informed by the Returning Officer that the counting of votes will be done at Government College of Technology, Coimbatore on 11-5-2006 at 8 am and the Election Petitioner appointed his counting agents individually for all the 30 tables. In paragraph No.6, it is stated that the Election Petitioner and his Chief Election Agent were informed

that the votes polled in 315 electronic voting machines will be counted in 28 tables in the aforesaid college premises. In paragraph No.7, it is stated that in the place of counting, the votes pertaining to nine constituencies were counted and there were only 14 counting tables in the counting hall pertaining to 104. Singanallur Constituency and there was confusion and 28 counting agents were asked to occupy in two rows and this created confusion at the beginning itself.

4. In paragraph No.8, it is stated that the postal ballot papers were found scattered in the table of Returning Officer on 10-5-2006 and one Sivaraju, Chief Election Agent of DMK candidate N.Rukmani of 107. Perur Constituency has given representation to the Returning Officer on 11-5-2006 in this regard followed by a reminder dated 6.6.2006 and the Returning Officer has not kept the postal ballot papers (covers) received by him in safe custody and there was non-compliance of Rule 27(3) of the Conduct of Elections Rules. It is further stated in that paragraph that the postal ballot papers polled in favour of the petitioner pertaining to 104. Singanallur Constituency have not been kept separately and no records with break-up details of the postal ballot papers have been maintained by the Returning Officer and on the date of counting on 11-5-2006 at about 7.45 am, a bunch of postal ballot papers, numbering about 30, pertaining to 104. Singanallur Assembly Constituency were found in the table of the Returning Officer pertaining to Perur Assembly Constituency and this was pointed out by the chief election agent of the petitioner to the Returning Officer and he assured to bring those postal ballot papers to the counting table of 104. Singanallur Assembly Constituency for counting and that was not done till the end.

5. In paragraph No. 9, the election petitioner has stated that everything was done in a hurry on 11-5-2006 from 8 am onwards and the election observer was in a hurry to leave Coimbatore by Jet Airways scheduled to depart at 12.55 pm and he wanted everything to be over within a short time and the chief election agent of the petitioner wanted to know as to what happened to the postal ballot papers and there was no answer. In paragraph No. 10, it is stated that without disclosing as to how many postal ballot papers have been received, the counting process was going on in a hurry and there has been non-compliance of Rule 54A (1) to (7) of the Conduct of Elections Rules and this has materially affected the results of the election insofar as the returned candidate is concerned.

6. In paragraph Nos. 11 to 13, the scope of Rules 18, 23, 24, 26 and 27 are stated. In paragraph No. 14, the Election Petitioner has stated that the Returning Officer has not maintained the register or proper records regarding the postal ballot papers (covers) issued and received and there has been non-compliance of Rules 23 to 27 of the Conduct of Elections Rules and that has materially affected the result of the election. It is further stated by the Election Petitioner in that paragraph that large proportion of postal ballot papers have been polled in favour of election petitioner and taking into account the percentage of postal ballot papers in his favour and the narrow margin of 14 votes between him and the first respondent, it is clear that by non-compliance of the Rules, the result of election insofar as the returned candidate has been materially affected.

7. In paragraph No. 15, the election petitioner has stated about the scope of Rules 51, 53 and 54 of the Conduct of Elections Rules and has alleged that there has been non-compliance of the provisions in Rules 23 to 27 and Rule 54-A of the Conduct of Elections Rules and that has materially affected the result of the election. In paragraph No.16, it is stated that the Returning Officer before starting the counting of votes at 8 am, did not inform the election petitioner or his agents as to how many covers containing postal ballot papers have been received in the counting hall and how they are going to be counted and the mandatory procedures laid down in Rule 54A (3) to (7) were not followed. It is further stated in that paragraph that declaration of Form 13A was not scrutinized by the Returning Officer and without verifying the serial number, all covers have been opened and there was non-compliance of sub rules 3 to 7 of Rule 54A of the Conduct of Elections Rules.

8. In paragraph No.17, the election petitioner has stated that the postal ballot papers were not dealt with by the Returning Officer, but dealt with by some of his assistants and there was non-compliance of sub rules 3 to.7 of Rule 54A of the Conduct of Elections Rules and that has materially affected the result of the election. In paragraph No.18, the election petitioner has stated that he was receiving maximum number of votes polled in his favour and if the Returning Officer had complied with Rule 54A properly, he would have been declared as elected.

9. In paragraph No.19, it is stated that everything was done in a hurry at 8 am on 11-5-2006 as far as counting of votes polled in electronic voting machines and the Returning Officer did not allow inspection to the chief election agent of the election petitioner or his counting agents to inspect the paper seal and other vital seals affixed on the unit to satisfy that the seals are intact and the counting supervisor noted down the results displayed in control unit of electronic voting machine in a slip of paper and sent it to the Returning Officer and there is no scope for verification of the results noted down by the Returning Officer and it is not known as to where those slips have gone and on what basis Form No.20 was filled by the Returning Officer. It is further stated by the election petitioner that results were displayed in control panel of the control unit and they have not been recorded in Part II of Form 17C simultaneously or then and there and there was thus non-compliance of Rules 55(C) (2) and 56(C) (2) and that has materially affected the result of the election.

10. In paragraph No.20, the Election petitioner has stated that between 8.45 am and 9 am on 11-5-2006. the counting agents of the election petitioner and all other candidates were asked to go out of the place of counting by the observer and during that period, seals of electronic voting-machines were removed and counting was going on and hence the mandatory provisions in Rules-55(C) (2) and 56(C) (2) of the Conduct of Elections Rules were not complied with. In paragraph No.21, it is stated that Hon'ble Minister S.M.Velusamy entered the counting hall with his volunteers at 11 am on 8-5-2006 and the chief election agent of the Election Petitioner and his counting agents were asked to go out by the observer and the Returning Officer and the Press was not allowed.

11. In paragraph No. 22, it is stated that on the day of counting, the election petitioner and his chief election agent went to the table of Returning Officer of Perur Constituency which was in same compound and asked him as to whether the postal ballot papers pertaining to 104. Singanallur Assembly Constituency found in his table at 7.45 am on 11-5-2006 have been sent to place of counting of 104. Singanallur Assembly Constituency and there was no proper answer and the Returning Officer of Singanallur Constituency was also keeping quiet and two bundles of postal ballot papers numbering about 30 pertaining to 104. Singanallur Assembly Constituency have not been counted and the Returning Officer has not counted all the postal ballot papers and that has materially affected the result. In paragraph No.23, the election petitioner has stated that tender votes, which were kept in separate cover, was taken up for scrutiny inspite of the request of the election petitioner and his chief election agent raised objection and gave representation stating that a bunch of 30 postal ballot papers pertaining to 104. Singanallur Assembly Constituency have not been brought and counted and the Returning Officer passed an order on 11-5-2006 to the effect that the observer has stated that there was no necessity to scrutinise the tender votes and hence the request is rejected and the Returning Officer gave an evasive reply regarding 30 postal ballot papers of Singanallur Assembly constituency, which were found in the table of the Returning Officer of 107. Perur Assembly Constituency and thus there was non-compliance of Rule 23(C) read with Rules 54-A(3) to (7), 55-C(2) and 56-C(2) of Conduct of Elections Rules and that has materially affected the result of the election.

12. In paragraph No.24, the election petitioner has stated that there were 88 service voters in 104. Singanallur Assembly Constituency and the scope of Rules 18, 23 and 27(M) (c) of the Conduct of Elections Rules is also referred to and it is stated that there was non-compliance of Rule 23 and that has materially affected the result of the election. In paragraph No. 25, it is stated that without properly complying with Rules 54-A(3) to (7), 66(A), 55(c) (2) and 56(c) (2) of the Conduct of Elections Rules, the Returning Officer started filling of Form No.20 at 10.30am on 11-5-2006 and at that time, he said that he has counted a total number of 899 postal ballot papers, out of which 798 postal ballot papers were polled in favour of the election petitioner and 75 have been polled in favour of the returned candidate, namely, the first respondent therein. According to the Election petitioner, the valid postal votes received by the Returning Officer were not 899 and it was much more than that and break-up details were also not furnished to him and the Returning Officer was not able to give answers for the query raised by the chief election agent of the election petitioner.

13. In paragraph No.26, it is stated that the Returning Officer has rejected 42 Form No. 12 and no reason is stated as to why 42 Form No.12, requesting for issue of postal ballot papers were rejected and no records have been shown to the petitioner and the Returning Officer did not have any contemporaneous record to show that he has received only 899 postal ballot papers and there are no records maintained by the Returning Officer simultaneously and contemporaneously. It is further stated in that paragraph, if the Returning Officer has counted all the postal ballot papers that were received, the petitioner would

not have lost with narrow margin of 14 votes and non-compliance of Rules referred above, has materially affected the result of the election in so far as the returned candidate is concerned. It is further stated in that paragraph that the Collector of Coimbatore by his proceedings, dated 10-06-2006 addressed to the chief election agent of the petitioner has given the particulars in Form No.12 and the particulars contained therein are not correct.

14. The election petitioner in paragraph No.27 has stated that the election petition is filed under Section 100(1) (d) (iii) and (iv) of the Representation of the People Act, 1951. In paragraph No.28, he has stated that in the interest of justice re-scrutiny of the voting results recorded in 315 Electronic Voting Machines has to be ordered and in addition, repoll of 1099 postal ballot papers and counting of those votes have also to be ordered. In paragraph No.29, the election petitioner has mentioned about the various dates on which cause of action arose for filing the election petition and in paragraph No.30, he has averred that the election petition having been filed within a period of 45 days from the date of declaration of the result is within time.

15. The first respondent in his counter affidavit has stated that the election petitioner has filed documents including one compact disc in support of the election petition and except in the prayer portion and paragraph No.26, the total number of postal votes, numbering 1099, have not been mentioned in other paragraphs of the petition and the election petitioner has not mentioned as to how many postal votes have reached the Returning Officer before the start of counting and there is no mention of any protest being lodged either by the petitioner or his chief election agent or anyone of his counting agents, pointing out that the pell-mell situation is prevailing with respect to postal ballots. Though the counting took place on 11-05-2006, the election petitioner has stated that the postal ballot papers have been found scattered in the table of the Returning Officer on 10-05-2006 and the consideration of postal ballot papers could occur only on the date of counting and not earlier to it.

16. The returned candidate has further stated that the allegations that the covers containing postal ballot papers have not been kept separately and no break-up details were maintained by the Returning Officer have been falsely made for the purpose of election petition, since no whisper was made by the petitioner or by his election agent about this prior to the counting or during the counting and further, there is no record to indicate that 30 postal ballot papers pertaining to 104. Singanallur Assembly Constituency were found on the table of the Returning Officer of 107. Perur Assembly Constituency on 11-05-2006. The letter addressed by the chief election agent of the election petitioner was dated 23-05-2006, namely 14 days after the results were declared and it is not stated in the election petition as to who handed over the letter and who accepted it. The returned candidate has further stated that the letter, dated 11-05-2006 alleged to have been written by one Sivaraj, chief election agent of the D.M.K. Candidate of 107. Perur Assembly Constituency, does not contain any acknowledgment or seal of the Returning Officer or any Officer authorised to conduct election and it is no way connected with the constituency involved in the election petition and it is also

not stated as to who handed over that letter to whom and when it was accepted. It is also further stated by the returned candidate that the letter, dated 6-6-2006 is alleged to be sent 27 days after the counting and it also does not contain any acknowledgment and there is no whisper about any postal ballot papers of 104. Singanallur Assembly Constituency in that letter. It is further stated that in the letter, dated 23-05-2006, the election petitioner's agent has sought for a copy of video cassette with respect to counting of postal ballot papers and the letter does not contain any details as to whom it was given and when it was received and the election petitioner has not elaborated as to whether he received the video cassette and the document Nos.4, 9 to 13 also do not contain the acknowledgment of the addressee with regard to the date and time of its receipt and hence, they have no value and credibility and have to be brushed aside.

17. The returned candidate has further stated that in the election petition, there are allegations made against the election observer Thiru Rajendra Kumar Khataria, but he has not been impleaded as a respondent and the non-joinder is fatal to the maintainability and the continuance of the election petition. The returned candidate has further stated that the procedure for counting of votes received by post is detailed in Rule 54A and the Forms were prescribed and if there was anything wrong with respect to the postal ballot papers, either the election petitioner or the election agent could have very well protested and given a protest letter and that has not been done by the election petitioner. It is further stated that reference to Rules 23 to 26 in the election petition is unnecessary and irrelevant for the purpose of election petition and neither the election petitioner nor his agent did send any letter, alleging unsafe handling or unsafe custody of postal ballot papers and hence, reference to Rule 27 is also unnecessary. The returned candidate has further averred that the election petitioner or his agent did not point out any mistake or non-compliance of Rules with respect to postal ballot papers to the Returning Officer in the counting hall and hence the allegation made in the election petition has no value and credibility.

18. It is further stated that the averment made against the Returning Officer that he did not allow the chief election agent of the petitioner or his counting agents to inspect the paper seal and other vital seals of the Electronic Voting Machines, is most unbelievable and none of the 30 counting agents of the election petitioner protested on the matter at the time of counting and no complaint in writing was lodged and hence only for the purpose of election petition, this false allegation has been made. The returned candidate has further stated that it is not the case of the election petitioner that neither his polling agent nor his counting agent have refused to sign in Form 17C or protested or given any petition in writing and hence the allegation of noncompliance of Form 17C and Form 20 is not true and falsely made for the purpose of the election petition. The returned candidate has further stated that the averment made by the election petitioner that he and his counting agents were asked to go out of the place of counting by the Election Observer and the counting took place behind their back is unbelievable and not supported by any documents and if it is true, the election agent of the election petitioner should have lodged a complaint and refrained from appending his signature and that has not been done and hence this averment is a figment of imagination and incorrect.

19. It is further stated by the returned candidate that the polling trend was well known in Tamil Nadu at 11.00 a.m. on the date of counting and the alliance led by the D.M.K. was emerging to form the Ministry and the allegation that the Minister Thiru S.M. Velusamy influenced the Election is highly unbelievable and such an incident has never occurred and in the absence of impleading him as a party/respondent, the said averment does not command any merit. The returned candidate has further stated that the claim of the election petitioner that his chief election agent went to the table of the Returning Officer of 107. Perur Assembly Constituency and questioned him as to whether the postal ballot papers of 104. Singanallur Assembly Constituency were available with him and no proper answer was given to him by the Returning Officer, cannot be true, since no representation either to the Returning Officer of 107. Perur Assembly Constituency or 104. Singanallur Assembly Constituency was made and in the absence of any protest or information in this context, the version cannot be considered and it is only a figment of imagination of the election petitioner. It is further stated by the returned candidate that if the chief election agent of the election petitioner is certain that the two bundles of postal ballot papers, numbering 30, were found on the table of the Returning Officer of Perur Assembly Constituency, he should have brought it on record before the counting could commence and in the absence of such a vital information, it is incorrect on the part of the election petitioner to make a claim falsely and belatedly.

20. The Returned Candidate has further stated that the averment that the election petitioner gave representation pertaining to tender vote and on the aspect of the postal ballot papers could have been elsewhere, is not true since those letters have not been filed along with the election petition and the Returning Officer in his proceedings, dated 11-05-2006 has referred to the letter submitted by the election petitioner's agent, which was after the declaration of the results and it is clear that those letters were given only after the results were announced and it is not the case of the petitioner that the Returning Officer has not counted the ballot papers, which have reached him before the commencement of the counting and the main case of the election petitioner is that some of the postal ballot papers have not been brought to the counting table and still, no steps were taken by the election petitioner to indicate that he has brought it to the knowledge of the Returning Officer or the Election Observer.

21. It is further stated by the returned candidate that the averment in the election petition that insofar as the Returning Officer started filling of the final result sheet in Form No.20 at 10.30 am on 11-5-2006 is concerned, neither the election petitioner nor his election agent has made any protest in respect of the counting of the postal ballot papers and in the absence of any objection with respect to the procedure of counting of such votes, the averment stated in the election petition is only falsehood. It is further stated by the Returned candidate that the averment in the election petition that no records were kept with respect to the number of postal ballot papers received, is not correct, since the election results are very clear as to how many postal ballot papers were issued and how many were received in time by the Returning Officer and no law can compel a person, who obtained a postal ballot paper, to send it to the Returning Officer and

it is the choice of the voter and hence the averments made by the petitioner are incorrect and liable to be rejected. The returned candidate has further stated that there are no material facts or material particulars available so as to bolster the claim of the election petitioner that he has received at least 25 votes out of 30 ballot papers, which were lying elsewhere and the averment is liable to be rejected.

22. The returned candidate has further stated that the election petitioner has started twisting the issue only after the election results were announced, since in the proceedings of the District Collector, dated 10-06-2006, the alleged letter of the agent of the election petitioner, dated 03-06-2006 addressed to the District Collector, was not referred to and more over, the election petitioner has not filed that letter along with the election petition and hence the averments in this regard are incorrect due to lack of material facts and particulars. It is further stated by the returned candidate that the election petitioner, without disclosing the reasons as to why the voting results recorded in 315 Electronic Voting Machines have to be scrutinised, has sought for such a prayer without furnishing materials facts and material particulars. According to the returned candidate, the present election petition does not contain the adequate statement of material facts on which the election petitioner relies in support of his case and hence the election petition has to be treated as a vexatious one. Moreover, the averments pertaining to allegations of irregularities and illegalities in the counting of votes are invented as an after thought and the averments are vague and general in nature and lacking in material facts.

23. It is further stated by the returned candidate that the narrow margin is not a ground to presume any irregularity or illegality at the time of counting and the petitioner cannot maintain the election petition with vague and indefinite allegations on frivolous and flimsy grounds.

24. The fifth respondent has filed a separate counter statement stating that he contested as an independent candidate from Singanallur Assembly Constituency in the election held on 8-5-2006 and he was allotted 'Bell' symbol. He has further stated that the counting was done on 11-5-2006 at Government College of Technology, Coimbatore and there was confusion at the counting centre before the commencement of counting since counting was arranged for 9 constituencies in the same campus and there were only 14 tables for counting of votes for Singanallur Constituency, but agents were provided for 28 tables and the Returning Officer was not properly handling the situation. He has further stated that the postal ballot covers for Singanallur Assembly Constituency were not kept in order and they were found here and there and some of the postal ballot paper votes belonging to that Constituency were found in the table of the Returning Officer of Perur Assembly Constituency and this was brought to the notice of the Returning Officer of Singanallur Assembly Constituency by the chief election agent of the petitioner, but no efforts were made to bring the papers to the table of the Returning Officer of the Singanallur Assembly Constituency and the Returning Officer did not follow the relevant rules pertaining to postal ballot papers. According to the fifth respondent, in Singanallur constituency, the total Defence service votes are 70 and the votes in Armed Police Force are 18, making a total of 88 service

votes, but none of the service votes was polled in the election due to fault and negligence of the Returning Officer in the despatch of postal ballot papers to them and the Returning Officer has failed to mention the Army numbers on the postal ballot papers sent to Madras Regiment Centre and therefore they were returned and the service voters are deprived of their valuable right to vote and the relevant Rules were not followed in the counting of postal ballots and the same has materially affected the result of the election. The fifth respondent has further stated that the then Minister S.M. Velusamy entered into the counting hall at 11 am and all the candidates and agents were asked to go out of the counting hall and he understands that the postal ballot papers belonging, to Singanallur Constituency have gone to the table of the Returning Officer of Perur constituency and the relief sought for by the election petitioner is justified.

25. Respondents 2 to 4 are called absent and set exparte and Respondent No.6, the Returning Officer, was struck off.

26. The following issues have been framed for trial:—

1. Whether there has been non-compliance of Rules 23 to 27, 54-A, 55(C) (2), 56(C) (2) and 66(A) of the Conduct of Elections Rules, 1961, and that has materially affected the result of the election in so far as the Returned Candidate is concerned.

2. Whether the Election Petitioner is entitled for the declaration that the election of the first respondent/Returned Candidate is void.

3. Whether the Election Petitioner is entitled for the relief of re-scrutiny of voting results recorded in 315 Electronic Voting Machines used for counting in No.104. Singanallur Assembly Constituency in the election held on 8-5-2006.

4. Whether the Election Petitioner is entitled to the relief of re-polling of 1099 postal ballot papers issued to the voters in the election held on 08-5-2006 and to the consequential relief of counting of those votes.

5. Whether the Election Petitioner is entitled for the further declaration as duly elected member of the Tamil Nadu Legislative Assembly, No.104. Singanallur Assembly Constituency in the election held on 8-5-2006.

6. To what other reliefs the Petitioner is entitled to.

Issue Nos. 3 and 4:—

27. Mr.T.V. Ramanujam, the learned Senior Counsel appearing for the election petitioner, at the outset, submitted that though the Election Petitioner has sought for the relief of re-scrutiny of voting results recorded in 315 Electronic Voting Machines and also the relief of re-polling of 1099 postal ballot papers, those reliefs are not provided under Section 98 of the Representation of the People Act, 1951 and no evidence was let in by the Election Petitioner for those reliefs and the Election Petitioner is not pressing issues 3 and 4 which have been framed for the above reliefs. However no endorsement was made nor any memo was filed to the said effect.

28. The third issue framed is as to whether the Election Petitioner is entitled for the relief of re-scrutiny of voting results recorded in 315 Electronic Voting Machines used for counting in Singanallur Assembly Constituency in the election held on 8-5-2006. Mr. K.M. Santhanagopalan, the learned counsel appearing for the first respondent/returned candidate, submits that there was no complaint at all about the recording of votes by 315 Electronic Voting Machines in Singanallur Assembly Constituency in the polling held on 8-5-2006 and the control units have been safely kept and counting was done after careful inspection of the control units by the Election Petitioner, his election agent and his counting agents who were present during the counting and contemporaneous record was made relating to the votes secured by each candidate and no complaint was made with respect to any of the control units and hence the petitioner is not entitled for this relief. The above submission is well-founded.

29. The fourth issue framed is as to whether the Election Petitioner is entitled to the relief of re-polling of 1099 postal ballot papers issued to the voters in the election held on 08-5-2006 and to the consequential relief of counting of those votes. The learned counsel for the first respondent further submitted that 1099 postal ballot papers were sent to the persons on election duty and out of them, 200 persons did not exercise their franchise and only 899 postal ballots were received back and the same is borne out by contemporaneous record maintained and no averment in the election petition has been raised about the non-receipt of 200 postal ballot papers and there can be no compulsion to vote and hence the petitioner is not entitled for this relief.

30. In the absence of material facts covering the issues and in the absence of evidence therefor, the election petitioner is not entitled to the reliefs arising in the issues 3 and 4. Hence issue Nos.3 and 4 are held against the election petitioner.

Issue No. 1:—

31. The election petitioner has challenged the election held on 8-5-2006 to Singanallur Assembly Constituency on the ground that there has been non-compliance of Rules 23 to 27, 54-A, 55C, 56(C) (2) and 66(A) of the Conduct of Elections Rules, 1961, and that has materially affected the result of the election in so far as the Returned Candidate is concerned within the meaning of Section 100 (1) (d) (iii) and (iv) of the Representation of the People Act, 1951 and the burden of proving the same lies with the Election Petitioner.

32. The Election Petitioner has alleged non-compliance of Rules 23 to 27 of the Conduct of Elections Rules. Rule 23(1) stipulates that the postal ballot paper shall be sent by post under certificate of posting to the elector together with Forms 13A to 13D. Rule 23(2) enlists the duties of the Returning Officer before issuing the postal ballot papers to see that there is no complaint of non-observance of this sub-clause. Rules 23 to 26 deal about the procedure to be followed and the duties of the Returning Officer. The Election Petitioner has not pointed out any specific violation or non-compliance of any of the above Rules and there is also no oral evidence adduced regarding the non-observance of the above provisions.

Rule 24 deals with the recording of vote and in the present case, 899 postal ballots were received and all of them have been taken as valid and as such there is no question of non-observance of this Rule. Rule 25 relates to assistance to illiterate and infirm voters and that is not applicable to the facts of the present case. Rule 26 mentions about the re-issue of ballot paper. As per Ex.C29, there is 'nil' return of the postal ballot papers issued numbering 1099. Hence the question of re-issue of ballot paper does not arise in this case.

33. Rule 27 deals with the return of ballot paper and as per clause (3) of it, the Returning Officer shall keep in safe custody all the covers containing postal ballot papers received by him. According to the election petitioner, there was non-compliance of Rule 27(3) by the Returning Officer of Singanallur Assembly Constituency. The election petitioner, in the election petition, has specifically averred that on the day of counting viz., on 11-5-2006, at about 7.45 am, two bundles of postal ballot papers numbering about 30 pertaining to Singanallur Assembly Constituency were found on the Returning Officer's table of Perur Assembly Constituency and it was pointed out at the beginning of counting by the chief election agent of the petitioner to the Returning Officer, who said that they would be brought to the counting table of Singanallur Assembly Constituency for counting and that was not done till the end and that has materially affected the result of the election.

34. Three representations in Ex.C2 (series) were given by the chief election agent of the election petitioner on 11-5-2006 immediately after the counting of votes and announcement of total votes secured by each of the candidates and the said agent Padmanabhan has been examined as P.W.2. In those representations, P.W.2- Padmanabhan has not referred to the fact that two bundles of postal votes numbering 30 pertaining to Singanallur Assembly Constituency were found on the Returning Officer's table of Perur Assembly Constituency and they should also be brought for counting. The tenor of representations in Ex.C2 (series) does not lend any support to the case pleaded by the petitioner.

35. Ex.C6 is the representation dated 22-5-2006 sent by PW.2-Padmanabhan to C.W.I-Returning Officer relating to postal ballot papers and even in that representation, there is no reference that a bunch of postal ballot papers numbering 30 pertaining to Singanallur Assembly Constituency were found on the table of the Returning Officer of Perur Assembly Constituency on the morning on 11-5-2006 and they were not brought for counting to the counting table of Singanallur Assembly Constituency inspite of representation. Ex.C7 is the subsequent representation dated 23-5-2006 sent by P.W.2-Padmanabhan and there is no reference made on this subject in it. In his further representation in Ex.C34 dated 3-6-2006 addressed to C.W.4-District Election Officer also, P.W.2 has made no reference whatsoever regarding the above fact. In short, in the representations made by P.W.2-Padmanabhan on the date of counting and on subsequent dates, there is no reference whatsoever regarding the bunch of postal ballot papers numbering 30 belonging to Singanallur Assembly Constituency found lying on the table of the Returning Officer of Perur Assembly Constituency and not brought for counting to Singanallur Assembly Constituency.

36. P.W.3-Sivaraju is the chief election agent of a candidate contested in Perur Assembly Constituency in the Election held on 8-5-2006 and he has given Ex.C5-representation dated 11-5-2006 to the Election Officer/District Collector, who was examined as C.W.4 and he has not stated in that representation that two bundles of postal ballot papers pertaining to Singanallur Assembly Constituency were found on the table of the Returning Officer of Perur Assembly Constituency and that they were not sent for counting to Singanallur Assembly Constituency and in fact, P.W.3-Sivaraju in Ex.C5-representation, even while referring to his alleged visit to the office of the Returning Officer, Perur Assembly Constituency on 10-5-2006 does not make any reference to the fact that he found any bundles of postal ballot papers belonging to Singanallur Assembly Constituency on the table of Superintendent of that office. In his oral testimony, P.W.3-Sivaraju has admitted that either in his Ex.P10-complaint dated 11-5-2006 or in his subsequent complaint in Ex.P.11 dated 6-6-2006, there is no mention of Singanallur Assembly Constituency and he has not stated that two bundles of postal ballot papers pertaining to Singanallur Assembly Constituency were found on the table of the Returning Officer of Perur Assembly Constituency on the morning of 11-5-2006. The date of counting of votes.

37. Turning to oral evidence in this regard, P.W.2-Padmanabhan has stated that on the date of counting when he entered the counting hall of Singanallur Assembly Constituency in the ground floor, he met P.W.3-Sivaraju and learnt from him that postal ballots belonging to Singanallur Assembly Constituency got mixed with the votes of Perur Assembly Constituency and immediately he went to the counting hall of Perur Assembly Constituency and found on the table of Returning Officer of Perur Assembly Constituency two bundles of postal ballot papers, on which number 30 was written and rounded off on the bundles and on both the bundles, seal of the Returning Officer of Singanallur Assembly Constituency was found affixed and he requested the Returning Officer of Perur Assembly Constituency to send those bundles to the Returning Officer of Singanallur Assembly Constituency and they were not brought till the counting was over and he orally asked the Returning Officer of Singanallur Assembly Constituency as to whether the postal ballots of Singanallur Assembly Constituency have been received from the Returning Officer of Perur Assembly Constituency and he got no reply. P.W.2-Padmanabhan has further stated that again along with the election petitioner, he went to meet the Election Officer of Perur Assembly Constituency, but they were not allowed to meet him and thereafter, they came back and gave a written representation to the Returning Officer of Singanallur Assembly Constituency stating that the postal ballot votes pertaining to Singanallur Assembly Constituency were lying on the table of the Returning Officer of Perur Assembly Constituency and they have to be brought and counted. Ex.C2 (series) representations referred to above do not corroborate the oral testimony of P.W.2-Padmanabhan. In the cross-examination, P.W.2 has admitted that he did not give any representation in writing to the Returning Officer of Singanallur Assembly Constituency or the Election Observer stating that some of the postal ballots were kept on the table of the Returning Officer of Perur Assembly Constituency and they have to be secured and then only counting of votes should commence and he has further admitted that he also did not give anything in writing to the Returning Officer of Perur Assembly Constituency stating that some postal ballot papers of Singanallur Assembly Constituency were found on his table and they have to be transmitted to the Returning Officer of Singanallur Assembly Constituency.

38. The election petitioner in his cross-examination as P.W.1 has stated that neither himself nor his chief election agent viz., P.W.2-Padmanabhan went to the table of the Returning Officer of Perur Assembly Constituency at 7.45 a.m. on the day of counting. This testimony would falsify the testimony of P.W.2-Padmanabhan about his meeting of Returning Officer of Perur Assembly Constituency prior to commencement of counting and his complaining to the Returning Officer of Singanallur Assembly Constituency about the postal ballot papers numbering 30 lying on the table of the Returning Officer of Perur Assembly Constituency even before the commencement of counting. In this context, the order dated 11-5-2006 passed by the Returning Officer of Singanallur Assembly Constituency in Ex.C4 is relevant, in which, it is stated that the counting was recorded in videograph in the presence of candidates, their agents and the Election Observer and the counting was done properly without any complaint whatsoever and the counting was accepted by the candidates and their agents. The election petitioner has not questioned the contents of the above order either in the election petition or in the evidence adduced by him. It is also pertinent to note that in the averments in the election petition, it is not stated that the chief election agent of the petitioner Padmanabhan went to the counting hall of Perur Assembly Constituency before the commencement of counting and found postal ballots in two bundles belonging to his constituency and requested the Returning Officer of Perur Assembly Constituency to send them to the counting table of his constituency and immediately on reaching his counting hall, he also made an oral representation to the Returning Officer of Singanallur Assembly Constituency to send for those bundles of postal ballots. In the absence of relevant pleadings in the form of material facts with regard to the above, the evidence cannot be considered.

39. The Returning Officer of the Perur Assembly Constituency has been examined as C.W.6 and he has denied that on 11-5-2006 at 7.45 a.m. about 30 postal ballots in two bundles pertaining to Singanallur Assembly Constituency were found on his table and he has further denied that P.W.1, the election petitioner and P.W.2-Padmanabhan met him and asked him to transmit them to the Returning Officer of Singanallur Assembly Constituency. According to C.W.6, P.Ws.1 and 2 met him after declaration of results of both Perur Assembly Constituency and Singanallur Assembly Constituency and they asked him as to whether he received any postal ballot papers pertaining to Singanallur Assembly Constituency and he replied in the negative. C.W.6 has also testified that admissions to the counting hall were made strictly in accordance with the Rules and no outsiders were allowed to enter inside the counting hall and P.W.2-Padmanabhan did not at all meet him in his counting hall either prior to the counting or during the process of counting on 11-5-2006 and no complaint was given to him regarding the postal ballot papers of Singanallur Assembly Constituency either by P.W.1 or P.W.2. C.W.1-Returning Officer of Singanallur Assembly Constituency has stated that the counting of postal ballots was taken up first and neither P.W.1-election petitioner nor P.W.2-Padmanabhan made any representation to him to the effect that postal ballots of Singanallur Assembly Constituency were lying on the table of the Returning Officer of Perur Assembly Constituency and they have to be secured and brought for counting and he has further stated that during the counting of votes, nobody complained regarding the

process of counting and only at the time of declaration of results, the objection relating to the question of postal ballots was raised for the first time in Ex.C2 (series) and he rejected those representations.

40. P.W.1-election petitioner and P.W.2-Padmanabhan his chief election agent are experienced persons in election matters and if really on the day of counting 30 postal ballot papers in two bundles belonging to Singanallur Assembly Constituency were found on the table of Returning Officer of Perur Assembly Constituency, they would not have allowed the counting to commence without securing them. As discussed earlier, their testimonies are not credible and cannot be relied on. In short, the election petitioner has not substantiated his plea of non-compliance of Rule 27(3) in this regard.

41. The election petitioner has further alleged in the election petition that there were 88 service voters in Singanallur Assembly Constituency as per the Electoral Roll and out of these, 43 service voters have not received postal ballot papers and there has been non-compliance of Rule 23 of the Conduct of Elections Rules and this has materially affected the result of the election so far as the Returned Candidate is concerned. The election petitioner has further stated in the petition that no reason has been stated as to the rejection of forty two Form 12 Applications requesting for issue of postal ballot papers and if those postal ballot papers have been issued, most of them would have polled in favour of the petitioner, in which event he would have been declared elected. Ex.C34 is the representation dated 3-6-2006 given by P.W.2-Padmanabhan to C.W.5-District Election Officer asking for details of Form 12 Applications received for postal ballot papers and number of postal ballot papers sent with respect to all the fifteen Assembly Constituencies in Coimbatore District. Ex.C35 is the proceedings dated 10-6-2006 of C.W.5-Dr. Neeraj Mittal, District Election Officer providing details of postal ballot papers sought for by P.W.2. It shows that the total number of Applications in Form 12 received for postal votes in Singanallur Assembly Constituency is 1146 and the number of postal ballot papers sent therefor is 1099. Ex.C30, dated 11-5-2006, contains the particulars of postal ballot papers pertaining to Singanallur Assembly Constituency and it shows that the number of Form 12 Applications received is 1146 and the number of Applications rejected is 43 and 4 Applications related to other constituencies and deducting the same, 1099 postal ballot papers were sent to the respective voters to the addresses contained in Form 12 and 899 postal ballot papers were received back and all of them have been taken as valid votes during counting.

42. Postal ballot papers were sent only to persons who were drafted for election duty and none of them has made any complaint that the postal ballot papers were not received by them and they require postal ballot papers to exercise their franchise. Two hundred voters to whom the postal ballot papers were sent, had not exercised their franchise and no submission was made in respect of the above 200 voters.

43. Ex.C10 is the register maintained by C.W.2-Assistant Returning Officer containing the particulars of Form 12 Applications. The learned counsel for the election petitioner contended that the register is not in accordance with the format

prescribed in Ex.C1-Book and there are some corrections and the reason for rejection of Form 12 was not recorded in fourteen entries though C.W.2 in his testimony has explained the reason and there was non-application of mind in scrutinising the applications and there has been non-compliance of Rule while accepting/rejecting Form 12 and sending postal ballot papers. The captions for the columns in which the entries have been made in the register have been marked as Ex.C37 and the entries have been made with regard to the receipt of Form 12 Applications datewise with an abstract of the details of applications received on the said dates and they contain the signature of C.W.2-Assistant Returning Officer and the counter signature of C.W.1-Returning Officer. C.W.2, Assistant Returning Officer has stated that Form 12 Applications have to be duly filled in by the voters who want to exercise their franchise through post and if the application is found incomplete and incorrect, the same would be rejected and no postal ballot paper would be sent to the applicant. He has further stated that no postal voter had ever complained either before or after the election complaining non-receipt of postal ballot papers though they have given duly filled in Form 12 Applications and 43 applications were rejected and the reasons for rejection have been stated in Ex.C10-register and he has signed at the end of the entries, below the abstract and has affixed the seal of his office with date and he denied the suggestion that Ex.C10-register is not in conformity with the format prescribed. According to C.W.2-Assistant Returning Officer, after the rejection of Form 12 Applications, none of the applicants therein applied once again by giving fresh Form 12 Application and none of such applicant met him in person and asked for any clarification and there has been no complaint from any one of the concerned voters, whose applications were rejected. C.W.1-Returning Officer has testified that he made an endorsement as 'seen' with his signature at the end of the entries in Ex.C10-register.

44. P.W.2-Padmanabhan in his chief examination has stated that 1099 postal ballot papers were issued to eligible voters and according to him, that figure is correct. He has further stated that the Returning Officer has stated that they received 899 valid postal votes, which according to him, is not correct and he ought to have received more than 1000 postal ballot papers. P.W.2 in his cross-examination has admitted that 1146 applications were received seeking for postal ballot papers and though they have not sought for any prayer with regard to 43 rejected applications seeking for postal ballot papers, they have mentioned about the same in paragraph No. 26 of the election petition.

45. The learned counsel for the first respondent strenuously contended that in view of the specific admission of P.W.2, as referred to above, it cannot be the case of the petitioner that there has been any irregularity in not issuing postal ballot papers with respect to 43 applications that were rejected. This submission of the learned counsel, cannot be easily brushed aside and the admission made by P.W.2-Padmanabhan is binding on the petitioner. Even in his testimony as P.W.1, the election petitioner has stated that as per Form 20, 899 postal votes were declared to have been received by the Returning Officer but he disputes the same and according to him, 1099 postal ballot papers were issued and the postal ballot papers received were more than 1000. In his cross-examination,

P.W.1-election petitioner has stated that he does not know as to whether the Returning Officer has followed the procedure with regard to the issuance of postal ballot papers and he has not written any letter to the Returning Officer before election seeking information as to how many requisitions for postal ballot papers have been received and how many postal ballot papers have been issued.

46. No specific material facts with respect to 43 rejected Form 12 applications and no material particulars have been mentioned in the election petition and in the absence of the same it cannot be concluded that the rejection of 43 Form 12 applications seeking for postal ballot papers, is improper or incorrect.

47. Section 100(1) (d) (iii) of the Representation of the People Act, 1951 refers only to improper reception, refusal or rejection of any vote and the rejection of Form 12 Applications is not coming within its purview and further no materials have been placed by the election petitioner as to how the rejection of 43 Form 12 Applications are illegal and has materially affected the result of the election in so far as it concerns the first respondent. The petitioner has not substantiated his plea that there has been violation of the Rules in the rejection of 43 Form 12 Applications.

48. It is the admitted case of the petitioner that there are only 88 service voters as per the Electoral Roll in Ex.C33 containing the list of service voters and the petitioner has alleged that out of the above service voters, 43 of them have not received postal ballot papers and that has materially affected the result of the election. In his testimony as P.W.1, the election petitioner has stated that he personally did not enquire 43 service voters who have not received the postal ballot papers and his chief election agent through his members enquired those 43 voters and he has not filed affidavits of those members or 43 service voters in this regard. P.W.2-Padmanabhan in his testimony has stated that there are 88 service voters in the constituency and after declaration of results, he obtained the list of service voters and his members went to the residences of 43 service voters and enquired them and they replied that they have not received postal ballot papers from the Returning Officer. P.W.2 has not given any particulars relating to his members who made the enquires and he has also not given any details of 43 service voters with whom the alleged enquiries were made by his members.

49. C.W.2-Assistant Returning Officer was in-charge of the issuance of postal ballot papers to the eligible voters and he has testified that Ex.C33-list of service voters was prepared by Revenue Divisional Officer and Electoral Registration Officer, Coimbatore on 7-3-2006 and the same was published before the announcement of 2006 election and the list mentions the residential address of service voters and also the official address and none of the service voters had given requisition for issuance of postal ballot papers and on their own, they despatched the postal ballot papers to the service voters mentioned in Ex.C33 list within 48 hours after printing of postal ballot papers as contained in Ex.C9-tapal register and they have been sent to all the 88 service voters under certificate of posting and no postal cover sent to service voters was returned as improper address or deficiency in stamps and no service voter came and made

any complaint to him alleging non-receipt of postal ballot papers and complaints were not received either before election or after election. The Returning Officer viz., C.W.1 has also testified about the despatch of postal ballot papers to all the 88 service voters as per Ex.C33-list through certificate of posting as seen from Ex.C9-tapal register containing the postal stamps and the seal of the Post office. According to C.W.1, Ex.C29 is the record pertaining to postal ballot papers that were returned and it is stated as 'nil' therein.

50. The learned counsel for the election petitioner submitted that the address of the person referred to in Serial No.88 in Ex.C33-list has been wrongly given; the postal ballot paper has been sent without proper address to the person mentioned in Serial No. 51; the correct name of the person is not mentioned in the entry in Serial No. 66 and there is no proof for sending the postal ballot papers either by Air Mail or some other mode to the person referred to in Serial Nos.68 and 69 except the certificate of posting and there has been blatant violation in sending the postal ballot papers to the service voters on account of non- application of mind and Ex.C29 would have been prepared after the election for the purpose of this case.

51. Per contra, the learned counsel for the first respondent, submitted that the evidence on record establish that the postal ballot papers have been despatched through certificate of posting to the addresses as contained in Electoral Roll in Ex.C33-list of service voters in accordance with the provisions contained in the Act and the Rules and no question can be raised by the petitioner as against the correctness of the entries made in the Electoral Roll of the constituency.

52. As already seen, Ex.C33 is the Electoral Roll pertaining to service voters, which contains their addresses and the oral testimonies of C.Ws.1 and 2 coupled with the postal stamps and the seal of the Post office found in Ex.C9-tapal register confirm the despatch of postal ballot papers to all the 88 service voters. The election petitioner has failed to substantiate his plea that 43 service voters had not received the postal ballot papers.

53. Non-compliance of Rule 54A of the Conduct of Elections Rules is also alleged by the election petitioner in the election petition. Rule 54A deals with the counting of votes received by post and its twelve sub-sections mention the process to be adopted in detail. In the election petition, no specific material fact as to how any irregularity was committed with respect to the above Rule is mentioned. In the oral testimony, P.Ws.1 and 2 have stated that counting of postal ballots was not taken up first at the time of counting of votes on 11-5-2006. This allegation has been denied by the election officers who are examined as C.Ws.1 to 3 and R.Ws.1 and 2 also have denied the same.

54. As already seen, Ex.C2 (series) are the representations made by P.W.2-Padmanabhan immediately after the completion of counting on 11-5-2006 and in those representations, there is no reference to this allegation and hence this allegation is not true.

55. The testimonies of C.Ws.1 to 3 coupled with the contemporaneous documents prepared during the process of counting establish that no irregularity was committed with regard to counting of votes received by post and there is no violation of Rule 54A.

56. It is also alleged that there is non-compliance of Rule 55C, which deals about the scrutiny and inspection of voting machines. P.W.2-Padmanabhan admits that his counting agents saw the removal of seals affixed on the Electronic Voting Machines at the time of counting. In other words, the seals were in-tact. From the evidence adduced, it is seen that no complaints were made with respect to the polling held on 8-5-2006 as regards the recording contained in the control units of Electronic Voting Machines. There is no reference to this subject in the representations in Ex.C2 (series). Moreover, issue No.3 framed with respect to the relief of re-scrutiny of voting results recorded in 315 Electronic Voting Machines, was not pressed by the learned Senior Counsel appearing for the petitioner. That apart, no material fact has been alleged in the election petition as to the manner in which the said Rule is not complied with and no evidence has also been let in with reference to the same and hence the allegation of non-compliance of this rule is not substantiated.

57. The election petitioner has alleged that the votes polled by each candidate as displayed on the control unit of Electronic Voting Machines has not been recorded in Part II on Form 17C and there has been non-compliance of Rule 56C(2) and that has materially affected the result of the election in so far as the returned candidate is concerned.

58. Rule 56C deals with counting of votes and 56C (2) relates to the entries to be made in Part II on Form 17C as displayed in the control units of Electronic Voting Machines. Ex.C26 (series) are Form 17C. C.W.1-Returning Officer has stated that Part I of Form 17C in Ex.C26 (series) were filled up by the Presiding Officers of the polling booths at the time of polling and Part II of the said Form were to be filled up only at the time of result of the counting and instead they had separate details of counting and hence Part II of Form 17C in Ex.C26 (series) were not filled up and the details which are required to be filled in Part II of Form 17C in Ex.C26 (series) are available in Form 20 in Ex.C32 (series) with particulars of each round of counting and polling boothwise. According to C.W.1-Returning Officer, the reason for not filling up Part II on Form 17C is that the entries have been made in the result sheet in Form 20 in Ex.C32 (series), which is signed by him and P.W.2.

59. The learned counsel for the election petitioner submitted that the signature of P.W.2 in Form 20 would not stop or exclude the election petitioner from raising the plea of non-recording of the votes polled by each candidate in Part II of Form 17C. In support of his submission, the learned counsel for the petitioner relied on the following decisions of the Supreme Court:—

- (1) J.H. Patel *Versus* Subhan Khan [AIR 1996 Supreme Court 3439]
- (2) Haribhau Madhav Javle *Versus* Ramesh Vithal Choudhari And Others [(2002) 10 Supreme Court Cases 102]
- (3) Harikrishna Lal *Versus* Babu Lal Marandi [(2003) 8 Supreme Court Cases-613]

60. Per contra, the learned counsel appearing for the first respondent contended that Form 20 in Ex.C32 (series) contain the signatures of P.W. 2, the chief election agent of the election petitioner and hence there is no scope left for a grievance and in support of his submission, he relied on a decision of the Apex Court in JANAK SINGH v. RAM DAS RAI AND OTHERS [(2005)2 Supreme Court Cases 1].

61. Rule 56C of the Conduct of Election Rules reads as follows:—

“56C. Counting of votes.—(1) After the returning officer is satisfied that a voting machine has in fact not been tampered with, he shall have the votes recorded therein counted by pressing the appropriate button marked “Result” provided in the control unit whereby the total votes polled and votes polled by each candidate shall be displayed in respect of each such candidate on the display panel provided for the purpose in the unit.

(2) As the votes polled by each candidate are displayed on the control unit, the returning officer shall have,—

(a) the number of such votes recorded separately in respect of each candidate in Part II on Form 17C;

(b) Part II of Form 17C completed in other respects and signed by the counting supervisor and also by the candidates or their election agents or their counting agents present; and

(c) corresponding entries made in a result sheet in Form 20 and the particulars so entered in the result sheet announced.

62. As stipulated in clause 2 of the rule, the Returning Officer shall have to record the number of votes polled by each candidate as displayed on the control unit in Part II on Form 17C and also to make corresponding entries in the result sheets in Form 20. The Returning Officer as C.W.1 has admitted that Part II on Form 17C in Ex.C26 (series) were not filled up and entries were made in the result sheets in Form 20 in Ex.C32 (series).

63. The omission to record the votes polled by each candidate in Part II on Form 17C in Ex.C26 (series) amounts to non-compliance of Rule 56C(2). It has to be seen as to whether the above omission has materially affected the result of the election. From the evidence adduced, it is seen that entries have been made in result sheets in Form 20 then and there at the end of each round of counting and it was signed by the Returning Officer, P.W.2-chief election agent of the petitioner, R.W.2-chief election agent of the respondent No.1 and the election agent of respondent No.4 and the other candidates viz., respondents 2, 3 and 5 acknowledging the correctness of the entries. This would establish that the entries relating to the votes secured by each candidate have been made duly and correctly. Further the entire process, of counting was recorded in the videograph and the video cassette is produced before the Court. No materials have been placed by the election petitioner as to how the result of the election has been materially affected by the omission to fill up Part II on Form 17C. Though there

is non-compliance of Rule 56C(2) in not recording the votes polled by each candidate in Part II on Form 17C, it does not materially affect the result of the election and it is concluded accordingly.

64. Lastly, it has to be seen as to whether there is any violation of Rule 66A, which deals with counting of votes where electronic voting machines have been used. As stated already, there is no complaint about the counting of votes in 315 Electronic Voting Machines and the counting was done after inspection of the control units by the election agents and the counting agents present during the counting. Similarly, there is no complaint about the entries that were made in the result sheets in Form 20 and the relief under Issue No.3 was also not pressed by the election petitioner. Hence there is no violation of Rule 66A.

65. In the light of the discussions as above, Issue No.1 is answered against the election petitioner.

Issue Nos. 2 and 5:—

66. In view of the findings rendered in the earlier issues, the election petitioner is not entitled to the Declaratory reliefs sought for in the election petition.

Issue No. 6:—

67. The election petitioner is not entitled to any relief in the election petition.

68. In the result, the Election Petition, is dismissed with costs of Rs.5,000/- (Rupees five thousand only) to be paid to the first respondent.

WITNESS, THE HON'BLE THIRU SUDHANSU JYOTI MUKHOPADHAYA,
ACTING CHIEF JUSTICE, HIGH COURT AT MADRAS, AFORESAID THIS THE
5TH OF JANUARY 2009.

(Sd.)
(A.S. THIRUMALAI),
Dated 26th February 2009
Assistant Registrar (O.S.II).

(By Order)

TAPAS KUMAR,
Principal Secretary,
Election Commission of India.

Secretariat,
Chennai-600 009,
2nd April 2009.

NARESH GUPTA,
Chief Electoral Officer and
Additional Chief Secretary to Government,
Public (Elections) Department.

HIGH COURT, MADRAS.

ELECTION PETITION No. 3/2006

List of Witnesses

- 1 PW1 A. SOUNDARARAJAN (Election Petitioner)
- 2 PW2 C. PADMANABHAN (Chief Election Agent of the Election Petitioner)
- 3 PW3 R. SIVARAJU (Chief Election Agent of DMK candidate Mrs. N. Rukmani No. 107. Perur Assembly Constituency)
- 4 CW1 M.K. SUBRAMANIAN (Returning Officer, 104. Singanallur Assembly Constituency)
- 5 CW2 V. SUBRAMANIAN (Assistant Returning Officer, 104, Singanallur Assembly Constituency)
- 6 CW3 MRS. BAGYAM
- 7 CW4 S. KOSALARAMAN (District Collector/District Election Officer, Coimbatore.
- 8 CW5 NEERAJ MITTAL (District Collector, Coimbatore, who succeeded CW4 - Mr. S. Kosalaraman)
- 9 CW6 P. ELANGO VAN, (The Returning Officer, 107. Perur Assembly Constituency)
- 10 RW1 R. CHINNASAMY (Returned Candidate)
- 11 RW2 S. NANDAGOPAL (Chief Election Agent of the RW1/Returned Candidate)

HIGH COURT, MADRAS.

ELECTION PETITION No. 3 OF 2006.

List of Exhibits

Documents marked on the side of Election Petitioner:—

- | | | |
|-------|---|-----------|
| Ex.P1 | Form 20, certified by the Returning Officer, Singanallur Assembly Constituency, dated 11-5-2006. | True Copy |
| Ex.P2 | Notice issued by the Returning Officer, Singanallur Assembly Constituency with regard to counting of votes. | Original |
| Ex.P3 | Order dated 11-5-2006 passed by the Returning Officer, Singanallur Assembly Constituency. | Original |

24 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

Ex.P4	Order dated 11-5-2006 passed by the Returning Officer, Singanallur Assembly Constituency rejecting the request of the petitioner for re-counting of votes.	Original
Ex.P5	Representation dated 22-5-2006 sent by Chief Election agent of the petitioner P.W.2-Padmanabhan addressed to Returning Officer, Singanallur Assembly Constituency.	Copy .
Ex.P6	Appointment order issued to P.W.2-Padmanabhan appointing him as election agent of the petitioner.	Original
Ex.P7	Sketch showing the location of counting halls of 104. Singanallur Assembly Constituency and No. 107. Perur Assembly Constituency.	True Copy
EX.P8	Letter dated 1-5-2006 written by the Returning Officer, Singanallur. Assembly Constituency asking the candidates to appoint counting agents.	Original
Ex.P9	Appointment order issued to P.W.3-Sivaraju appointing him as, election agent of Mrs. N. Rukmani, candidate of DMK party in 107. Perur Assembly Constituency.	Original
Ex.P10	Letter, dated 11-5-2006 written by P.W.3-Sivaraju addressed to Election Officer, Coimbatore District.	Copy
Ex.P11	Reminder letter dated 6.6.2006 sent by P.W.3-Sivaraju to the Election Officer, Coimbatore District.	Copy
Ex.P12	Copy of summary of service electors furnished by the Collector of Coimbatore, dated 10-6-2006 to P.W.2 Padmanabhan.	Copy

Documents marked on the side of Respondents:—

Ex.R1	Notice dated 11-4-2007 issued by the counsel for the first respondent for production of documents.	Copy
Ex.R2	Colour photograph of the name board of Office of P.W.3-Sivaraju.	Photo Copy
Ex.R3	Appointment Order dated 22-4-2006 appointing RW2 S. Nandagopal as election agent of R.W.1-first respondent.	Original
Ex.R4	Identity Card issued to R.W.2 S. Nandagopal by the Returning Officer, Singanallur Assembly Constituency as counting agent of the first Respondent.	Original

Documents marked through Court Witness:—

Ex.C1	Hand Book for Returning Officers issued by the Election Commission of India in the year 2006.	Original
Ex.C2 (Series) (3 Nos.)	Representations dated 11-5-2006 sent by PW.2-Padmanabhan, Chief Election agent of election petitioner to the Returning Officer, Singanallur Assembly Constituency.	Original
Ex.C3	Order of Returning Officer, Singanallur Assembly Constituency, dated 11-5-2006 rejecting the request of P.W.2- Padmanabhan.	Copy
Ex.C4	Order dated 11-5-2006 passed by the Returning Officer, Singanallur Assembly Constituency rejecting the request of P.W.2-Padmanabhan for re-counting of votes.	Copy
Ex.C5	Letter of P.W.3-Sivaraju dated 11-5-2006 addressed to Election Officer/District Collector, Coimbatore.	Original
Ex.C6	Representation dated 22-5-2006 given by P.W.2-Padmanabhan, Chief Election agent of Election Petitioner to the Returning Officer, Singanallur Assembly Constituency.	Original
Ex C7	Representation dated. 23-5-2006 given by PW-2-Padmanabhan, Chief Election Agent of Election Petitioner to the Returning Officer, Singanallur Assembly Constituency.	Original
Ex.C8	List of service voters of No. 104, Singanallur Assembly Constituency, containing Page Nos. 2339, 2341, 2343, 2345, 2347, 2349, 2351 and 2353 as on 1-1-2006.	Original.
Ex C9	Tapal Register showing the issuance of postal ballot papers to service voters pertaining to Singanallur Assembly Constituency.	Original
Ex.C10	Register showing the issue of postal ballot papers in respect of No. 104, Singanallur Assembly Constituency.	Original
Ex.C11	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from serial Nos. 1 to 100	Original
Ex.C12	Form 12 pertaining to P. Palanisamy in entry in Serial No. 3 of Ex. C10 Register, found in Ex. C11.	Original

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Ex.C13	Form 12 pertaining to N. Marudhachalam to the entry is Serial No. 4 in Ex. C10 Register.	Original
Ex.C14	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 101 to 200	Original
Ex.C15	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 201 to 300	Original
Ex.C16	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 301 to 400	Original
Ex.C17	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 401 to 500	Original
Ex.C18	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 501 to 600	Original
Ex.C19	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 601 to 700	Original
Ex.C20	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 701 to 800	Original
Ex.C21	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos. 801 to 900	Original
Ex.C22	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos.901 to 1000	Original
Ex.C23	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly constituency from Serial Nos. 1001 to 1100.	Original
Ex.C24	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency from Serial Nos.1101 to 1146	Original
Ex.C25 (Series)	Volume of accepted Form 12 Applications pertaining to Singanallur Assembly Constituency Applications from pages 2749 to 2919	Original

<p>Ex. C-26 Form 17C (Series) Two Volumes</p>	<p>Original</p>
<p>Ex. C-27 Form 20 filled up by Returning Officer, (Series) Singanallur Assembly Constituency in each round of counting.</p>	<p>Original</p>
<p>Ex. C-28 Particulars of postal ballot papers received pertaining to Singanallur Assembly Constituency.</p>	<p>Original</p>
<p>Ex. C-29 Record of postal ballot covers sent to service voters pertaining to Singanallur Assembly Constituency.</p>	<p>Original</p>
<p>Ex. C-30 Particulars of postal ballot papers pertaining to Singanallur Assembly Constituency.</p>	<p>Original</p>
<p>Ex. C-31 Details of valid votes polled by each candidate pertaining to Singanallur Assembly Constituency.</p>	<p>Original</p>
<p>Ex. C-32 Form 20 filled up during each round of (Series) counting and signed by the Returning Officer on 11-5-2006 pertaining to Singanallur Assembly Constituency.</p>	<p>Original</p>
<p>Ex. C-33 List of service voters of No.104, Singanallur Assembly Constituency as on 1-1-2006</p>	<p>Original</p>
<p>Ex. C-34 Letter dated 3-6-2006 from Chief Election Agent of the Election Petitioner addressed to District Election Officer/District Collector.</p>	<p>Original</p>
<p>Ex. C-35 Proceedings dated 10-6-2006 issued by the District Collector, Coimbatore to Chief Election Agent of the Election Petitioner.</p>	<p>Original</p>
<p>Ex. C-36 Details of postal ballot papers with regard to fifteen Assembly Constituencies in Coimbatore District issued by the Collector, Coimbatore on 10-6-2006.</p>	<p>Original</p>

Ex. C-37 Printed captions of the format in Ex.C-10 Register Original

HIGH COURT, MADRAS.

ELECTION PETITION
No. 3 of 2006

THE HON'BLE MR. JUSTICE
C. NAGAPPAN

Order dated : 05-01-2009.

For Approval: 20-01-2009
Approved on: 20-01-2009

Copy to:—

1. The Election Commission of India,
Nirvachan Sadan,
Ashoka Road, New Delhi-110 001.
2. The Chief Electoral Officer and
Secretary to Government,
Public (Elections-IV) Department,
Secretariat, Fort St. George,
Chennai-600 009.