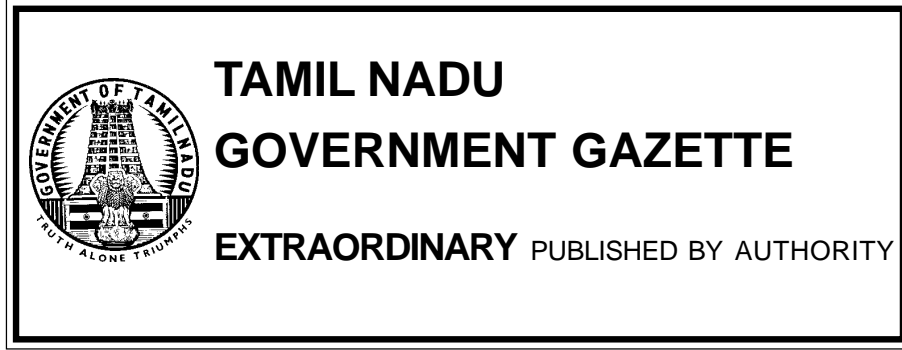


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GOVERNMENT OF TAMIL NADU
2015

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[Price : Rs. 29.60 Paise.



No. 79] CHENNAI, WEDNESDAY, APRIL 1, 2015
Panguni 18, Jaya, Thiruvalluvar Aandu-2046

Part V—Section 4

Notifications by the Election Commission of India

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF MADRAS
ELECTION PETITION No. 2 OF 2011.

No. SRO G-9/2015.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 23rd March, 2015, 2 Chaitra 1937 (Saka) is published.

No. 82/TN-LA/2/2011:—In pursuance of section 106 (b) of the Representation of the people Act, 1951 (43 of 1951), the Election Commission hereby publishes the Order of the High Court of Madras, dated: 25-9-2014 in Election Petition No. 2 of 2011.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL, CIVIL JURISDICTION)

Thursday, the 25th Day of September 2014

THE HON'BLE MR. JUSTICE M. VENUGOPAL

Election Petition No. 2 of 2011

ELP No. 2 of 2011

S. Ramachandran
S/o Saminathan
Alamara Street, Thesoorpalayam Village,
Keezhvanakkampadi Post,
Thandrapattu Taluk,
Tiruvannamalai.

—Petitioner.

-Versus-

1. E.V. Velu,
S/o Ethirajulu,
Ch. Kudaloor Village,
Serppapattu Post,
Thandrapattu Taluk,
Tiruvannamalai.
2. A. Arjunan,
S/o. Arunachalam,
No. 187, Mettuthuru,
Vengikal Village and Post,
Tiruvannamalai.
3. S. Raji,
S/o. Shanmugam,
51E/36-A, Kanchi Road,
Aadaiyar Village and Post,
Tiruvannamalai Taluk.
4. K.E. Deiveegan,
S/o. Erusappan,
No. 86, Pallikooda Street,
Isukkazhi Katteri Village,
Tiruvannamalai Taluk.
5. S. Yesudurai,
S/o. Shanmugam,
186-A, Maniyam Street,
Chinnaiyanpettai Village,
Thandarampattu Taluk.

6. A. Ganesh,
S/o. Elumalai,
No. 90, Vettavalam Road,
Tiruvannamalai Nagaram.
7. B. Kothandapani,
S/o. Balaraman,
No.333, Ambedkar Nagar,
Sunikkavadi Village and Post,
Polur Taluk.
8. S. Sadasivaraja,
S/o. Subbaraja,
No.2B/41, Avarankattu Street,
Tiruvannamalai Nagaram and Taluk.
9. K. Suresh,
S/o. Krishnan,
304, Durgai Nambivandhal Village,
Vengikal Post, Tiruvannamalai Taluk.
10. J. Senthil
S/o. Jeyakumar,
45/4-1, Kadambarayan Street,
Tiruvannamalai Nagaram and Taluk.
11. G. Selvam,
S/o Govindasamy,
200/B1, G, Peekopura Street,
No.1, Tiruvannamalai Nagaram and Taluk.
12. A. Narayanan,
S/o. Annamalai,
94B/13B, Kalnagar,
Tiruvannamalai Nagaram and Post.
13. K. Palanivel,
S/o. Kannan
Meelagaram Village, Radhapuram Post,
Thandampattu Taluk.
14. A. Velu,
S/o. Arjunan,
No.102, Sellaneri Theru,
Tiruvannamalai Nagaram and Taluk.
15. M. Velu *alias* Shanmugavelu,
S/o. Munusamy,
No. B57, Vanavil Nagar 2nd Street
Vengikal Post,
Tiruvannamalai Taluk.

16. Returning Officer,
63, Tiruvannamalai Assembly Constituencies
Revenue Divisional Officer,
Tiruvannamalai.

This petition praying that this Hon'ble Court be pleased to (a) declare the election of the Returned candidate, namely Thiru E.V. Velu, the 1st Respondent herein from No. 63, Tiruvannamalai Assembly Constituency, Tamil Nadu in election held on 13-4-2011 (in which results were declared on 13-5-2011) as VIOD (b) order re-poll for the whole of No. 63, Thiruvannamalai Assembly Constituency or inter alia order re-poll in.

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|-----------------------------|--|
| (1) Polling Station No. 17 | Childfood Centre, Iyappan Nagar, Vengikal. |
| (2) Polling Station No. 20 | Panchayat Union, Elementary School, East Building, Durgai Nammianthal, Vengikkal Post. |
| (3) Polling Station No. 39 | Gangambal Matriculation School, East Room Easaniya Street. |
| (4) Polling Station No. 41 | Thyagi N. Annamalai, Govt. Higher Secondary School, No. 70, Vanniyakula Street. |
| (5) Polling Station No. 57 | Danish Mission Higher Secondary School, Sowndarajan, Memorial North Building, West Side Kattabomman Street. |
| (6) Polling Station No. 61 | Divisional Excise Office Revenue Divisional Office Compound Anna Salai. |
| (7) Polling Station No. 62 | Municipal Primary School Main Building East Part, Anna Salai. |
| (8) Polling Station No. 69 | Municipal Girls Higher Secondary School, Arignar Anna Platinum Jubilee Building Campus, Central Hall Room No. 43, Radio, Ground. |
| (9) Polling Station No. 75 | Kannika Parameswari Aided Primary School, Room No. 4, North Main Building, Rajarajan Street. |
| (10) Polling Station No. 88 | Saraswathi Vikas, Matriculation School, Mere Travellers, Bungalow, Vettavalam Road, Ramajayam Nagar. |
| (11) Polling Station No. 93 | Municipality Elementary School, North Part, Room No. 1, Thandrapet Road, Samuthiram Colony. |

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|--------------------------------|--|
| (12) Polling Station No.98 | Municipal Muslim Girls Elementary School, Backside Building North Facing Bootharaja Koil Street. |
| (13) Polling Station No.99 | Municipal Muslim Girls Elementary School, North Building, North Facing, Karikalan Street. |
| (14) Polling Station No. 104 | Shanmuga Industrial Govt. Higher Secondary School, Peraingnar Anna Platinum Jubilee Year Memorial Hall, 3rd Room, SSA Building, (Eastern Wing) North Facing, Chengam Road. |
| (15) Polling Station No. 112 | Natasa Pillai Aided Primary School, Southern Side Building, East Facing Korimettu Street. |
| (16) Polling Station No.135 | AL.C Good Shepherd Matriculation School, North Facing Room, No. 1, Vettavalem Road. |
| (17) Polling Station No.159 | Panchayat Union School, North Facing Building, Melkatchipattu, Meiyur. |
| (18) Polling Station No. 166-A | Panchayat Union Elementary School, North Facing Building, Kallarpalayam, HO, Viswanthangai. |
| (19) Polling Station No. 182 | Panchayat Union Elementary School, Su. Andapattu and Post. |
| (20) Polling Station No.187 | Panchayat Union Primary School, East Facing Building North Wing Kattampoondi Village and Post. |
| (21) Polling Station No.191 | Panchayat Union Primary School, South Facing, Se. Guddalore Village, Sirappapattu Post. |
| (22) Polling Station No.204 | Panchayat Union Primary School, North Facing Building, Perunduraipattu and Post. |
| (23) Polling Station No.209 | Panchayat Union Elementary School, Facing North East Part, Pazhaiyanoor. |
| (24) Polling Station No. 215 | Panchayat Union Middle School, East Facing Buildings, Velliampakkam Village and Post. |
| (25) Polling Station No. 222 | Panchayat Union Middle School, South Facing Building, Periyampattu and Post. |
| (26) Polling Station No. 224 | Panchayat Union Middle School, South Facing Building, Su. Pappambadi and Post. |

(c) Declare the petitioner as duly elected from No. 63, Thiruvannamalai Assembly Constituency in the Election held on 13-04-2011 (in which results were declared on 13-05-2011)

(d) direct the 1st respondent to pay the costs.

The above said Election petition having been heard on 5-9-2014 in the presence of Mr. S. Rajendrakumar for Mr. G. Saravanakumar, Advocate for the petitioner herein and Mr. P.R. Raman, Advocate for the 1st respondent herein and Mr. M.R. Raghavan, standing Counsel for election cases, appearing for the 16th Respondent herein and upon reading the petition of S. Ramachandran and the counter affidavit of E.V. Velu and reply statement of S. Ramachandran filed herein and upon perusing the evidence adduced herein and the exhibits marked thereon and having stood over for consideration till this day and coming on this day before this court for orders in the presence of above said advocates and the respondents, 2 to 15 not appearing in person or by advocates and this court observed, that the 1st respondent brought about undue influence on the District Election Officer (C.W.2) or the Returning Officer (C.W.1) in his capacity as State Cabinet Minister and although the Form 17C3 Supplied by the Returning Officer contained discrepancies as set out in para 15 of the Election petition (filed by the petitioner), these discrepancies, in the considered opinion of this Court, had not materially affected the result of the Election in favour of this 1st respondent and furthermore, the petitioner has failed to establish that the 1st respondent indulged in corrupt practices and also not substantiated by necessary material facts and material evidence brought on record before this Court and further, he failed to prove that the 1st respondent had tampered with the E.V. Ms with the connivance of the Election Officials and that apart, C.W.1, in his evidence, had clearly stated that neither any candidate nor political party can interfere with the randomization process and further he had stated that he went on to add that after the polling was over, all the control units were brought to the counting centre and stored in a strong room and police protection was arranged for 24 hours and that the candidates and agents were keep watch on the strong room and that no complaint was received from the petitioner for the deficiency in the protection provided for safeguarding for E.V. Ms. and the petitioner is not entitled to any of the reliefs sought for by him in his Election Petition.

It is Ordered as follows:-

1. That the Election Petition No. 2 of 2011 be and is hereby dismissed.
2. That the Petitioner and the 1st Respondent herein shall bear their own costs.

WITNESS THE HON'BLE THIRU SANJAY KISHAN KAUL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 25TH DAY OF SEPTEMBER 2014.

Sd-/

ASSISTANT REGISTRAR
Original Side-II

// Certified to be True Copy //

DATED THIS THE 12TH DAY OF NOVEMBER 2014.

COURT OFFICER (OS)

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

MK-27/10/2014

ELP.No. 2 OF 2011

Decree

Dated 25-9-2014

THE HON'BLE MR. JUSTICE

M. VENUGOPAL.

FOR APPROVAL: 31-10-2014

APPROVED ON: 31-10-2014.

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

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(ORDINARY ORIGINAL CIVIL JURISDICTION)

Thursday, the 25th Day of September 2014

THE HON'BLE MR. JUSTICE M. VENUGOPAL

Election Petition No. 2 of 2011

ELP No. 2 of 2011

S. Ramachandran
S/o Saminathan
Alamara Street, Thesoorpalayam Village,
Keezhvanakkampadi Post,
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Tiruvannamalai.

—Petitioner.

Verses

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Tiruvannamalai.
2. A. Arjunan,
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10. J. Senthil,
S/o. Jeyakumar,
45/4-1, Kadambarayan Street,
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11. G. Selvam,
S/o Govindasamy,
200/81C, Peekopura Street,
No.1, Tiruvannamalai Nagaram and Taluk.
12. A. Narayanan ,
S/o. Annamalai,
94B/13B, Kalnagar,
Tiruvannamalai Nagaram and Post.
13. K. Palanivel,
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16. Returning Officer,
63, Tiruvannamalai Assembly Constituencies,
Revenue Divisional Officer,
Tiruvannamalai.

This petition praying that this Hon'ble Court be pleased to (â) declare the election of the Returned candidate, namely Thiru E.V. Velu, the 1st Respondent herein from No.63, Tiruvannamalai Assembly Constituency, Tamil Nadu in election held on 13-4-2011 (in which results were declared on 13-5-2011) as VOID (b) order re-poll for the whole of No. 63. Tiruvannamalai Assembly Constituency or inter alia order re-poll in

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| (5) Polling Station No. 57 | Danish Mission Higher Secondary School,
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| (6) Polling Station No. 61 | Divisional Excise Office, Revenue Divisional
Office, Compound Anna Salai |
| (7) Polling Station No. 62 | Municipal Primary School, Main Building East
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Campus, Central Hall Room No. 43, Radio
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Room No. 1, Thandrapet Road, Samuthiram
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- (25) Polling Station No. 222 Panchayat Union Middle School, South Facing Bldg., Periyampattu and Post.
- (26) Polling Station No. 224 Panchayat Union Middle School, South Facing Bldg., Su. Pappambadi and Post.

(c) Declare the Petitioner as duly elected from No. 63, Tiruvannamalai Assembly Constituency in the election held on 13-04-2011 (in which results were declared on 13-05-2011)

(d) direct the 1st respondent to pay the costs.

The above said Election petition having been heard on 05-09-2014 in the presence of Mr. S. Rajendrakumar for Mr.G. Saravanakumar, advocate for the petitioner herein and Mr. P.R. Raman, advocate for the 1st respondent herein and Mr. M.R. Raghavan, standing counsel for election cases, appearing for the 16th Respondent herein and upon reading the petition of S. Ramachandran and the counter affidavit of E.V. Velu and reply statement of S. Ramachandran filed herein and upon perusing the evidence adduced herein and the exhibits marked thereon and having stood over for consideration till this day and coming on this day before this court for orders in the presence of the above said advocates, and the respondents 2 to 15 not appearing in person or by advocates, **The Court made the following order:-**

The Petitioner has preferred the present Election Petition before this Court seeking for a declaration that the election of the Returned Candidate, Viz., E.V. Velu, the 1st Respondent herein from No. 63, Tiruvannamalai Assembly constituency, Tamil Nadu, in the Election held on 13-4-2011 (in which results were declared on 13-05-2011) as void. Also, he has sought for the relief for passing of an order by this Court in ordering re-poll for the whole of No. 63, Tiruvannamalai Assembly Constituency or inter alia order re-poll in polling station Nos.17, 20, 39, 41, 57, 61, 62, 69, 75, 88, 93, 98, 99, 104, 112, 135, 159, 166-A, 182, 187, 191, 204, 209, 215, 222 and 224. Moreover, he has also prayed for the relief of declaration to the effect that he was duly elected from No. 63, Tiruvannamalai Assembly Constituency in the Election held on 13-4-2011 (in which results were declared on 13-05-2011) and to direct the 1st Respondent to pay costs.

2. The Long and Germane Facts of the Election Petition:

2.1. According to the Petitioner, the Election Commission of India decided to hold General Election to the Tamil Nadu Assembly 2011 and issued the necessary notifications and Election Schedule. Further, the filing of Nomination commenced on 16-03-2011. The Last date for nomination was 25-03-2011. The date of Election was Fixed to 13-04-2011. As a matter of fact, Election to No. 63, Tiruvannamalai Assembly Constituency in Tamil Nadu State, which is the subject matter of the present Election Petition was scheduled to be held within the time table mentioned aforesaid. After scrutiny and with drawals, the nomination papers of the Petitioner and the Respondents were accepted by the Returning Officers, V. Boopathy, who was presently the Revenue Divisional Officer, Tiruvannamalai. During the Election, M. Rajendran, I.A.S., was the District Collector, Tiruvannamalai and the District Election Officer, under whom the Returning Officer worked. The Petitioner contested as the Official Candidate of the All India Anna Dravida Munnetra Kazhagam (A.I.A.D.M.K.) in 'Two Leaves' Symbol and the 1st Respondent, whose election was under challenge in the present petition, contested as the Official Candidate of the Dravida Munnetra Kazhagam (D.M.K.) in 'Rising Sun' Symbol. The Petitioner

appointed K.R. Balasubramanian, as his Chief Counting Agent, who was issued the Identification Card.

2.2. The 1st respondent was the sitting Member of the Assembly from Thandrapattu Constituency and he was the Minister for Food in the previous D.M.K. Government at the time of the election. The returning Officer declared that the 1st Respondent secured 84,802 votes as against 79,676 votes said to have been secured by the Petitioner and resultantly, declared the 1st Respondent having been duly elected by a margin of 5126 votes. The 1st Respondent managed to secure this victory by corrupt practices and by bringing upon undue influence on the District Election Officer and the Returning Officer in his capacity as the State Cabinet Minister. The District Election Officer and the Returning Officer made ready a well designed ground for ensuring the victory of the First Respondent by manipulating the Electronic Voting Machines (EVMs).

2.3. It is the case of the Petitioner that there were totally 236 polling stations in No. 63, Tiruvannamalai Assembly Constituency. Each Polling Station was headed by an officer called the Presiding Officer under whom there were other staff to assist him. Each contesting candidate was permitted to have one Agent in each Station called "Polling Agent". After mock poll and before commencement of the actual poll, the Presiding Officer should affix the paper seal on the Control Unit of the Electronic Voting Machine to ensure that the Control Unit was not tampered with, as that would contain the votes obtained by each candidate. At the close of poll, the Presiding Officer should fill the total votes polled in the Polling Station in Form 17 - C Part I and also note the identification number of the Balloting Unit and Control Unit in Form 17 - C Part I. A true copy of Part I of Form 17 - C should be furnished to the polling Agent of each candidate. This was to ensure that the candidates were made aware of the number on the Balloting Unit and Control Unit on the E.V.M.

2.4. it is the duty of the Returning Officer to keep the Electronic Voting machine in safe custody under proper security. No outsider can be allowed to enter the Room where E.V.Ms. were kept. In this connection, Strangely, there was a long gap of one month from the date of Poll to the date of counting, which was used by the 1st Respondent in connivance with the District Election Officer and the Returning Officer to manipulate the E.V.Ms. That apart, all the E.V.Ms. were brought to the Government Shanmugha Industries Higher Secondary School where they were kept in classroom in the First Floor without any security. A mere padlock and the crossbar which can be easily unscrewed and re-fixed were fixed on the door. This was done deliberately to facilitate free ingress into the room for the purpose of tampering the machines.

2.5. On 13-5-2011, counting of votes began in the Ground Floor Hall around 8.00 a.m. There were 14 tables. A mesh screen separated the Counting officials from the Counting Agents. In other words, the Counting Officials were assigned an exclusive area, entry to which was restricted. As the counting progressed in various tables, the Counting Agents of the Petitioner were heard frequently complaining to the Counting Supervisors about the discrepancies in the identification of the E.V.Ms. which were all brushed aside. In the 10th round of Table No. 9 when the E.V.M. pertaining to polling station 135, A.L.C. Good Shepherd Matriculation School, North

Facing Room No.1, Vettavalam Salai, Tiruvannamalai, came for counting, the Petitioner's Counting Agent found a discrepancy in the number of the Control Unit (E.V.M.) No. L 17922 and the Number is found as K. 18214 in Part I of Form 17-C. Hence, Counting of the E.V.M. Pertaining to Polling Station No.135 was kept pending. The Petitioner submitted written objection during the counting to the Returning Officer, highlighting the various irregularities and illegalities, warranting a re-poll.

2.6. Added further, on 13-05-2011 counting process commenced at all the counting centers through out Tamil Nadu around 8.00 a.m. and by 2.00 p.m. counting was over in almost in all the Constituencies except in Tiruppathur and Tiruvannamalai, where were neck to neck contest. The counting in Tiruvannamalai got delayed because from the beginning the Petitioner's agents, were observing wholesale manipulations in the E.V.Ms. and were protesting to the District Election Officer and the Returning Officer but it was of no avail. Ultimately, the counting was topped at 11.30 a.m. since the Petitioner and his Agents were demanding re-poll due to large scale discrepancies in the E.V.Ms. The District Election Officer and the Returning Officer informed that they had sent a report to the Election Commission of India and were awaiting orders. It was not known as to what sort of report they had sent. Nevertheless they were not sent a proper report based on the valid objections raised by the Petitioner in the three representations referred to supra. The 1st Respondent and his agents started creating ruckus in the counting hall and indulged in capturing the counting process. Around 7.00 p.m. the Returning officer suddenly issued a notice that the counting of the votes commenced. The Petitioner knew that the 1st Respondent's influence and corrupt practice had prevailed over the wisdom of the district Election Officer and the Returning officer and so he refused to take further part in the counting process. The District Election Officer and the Returning Officer hurriedly completed the counting process and illegally declared the 1st Respondent as having won in the election.

2.7. The Petitioner made an application dated 24-6-2011 to the Returning Officer for copies of Form No. 17-C and Compct Discs. containing the Videograph of the counting by the Election Commission. The returning Officer supplied Certified copy of "Form 17 – C" duly authenticated by him. The Petitioner is surprised to note that the marked discrepancies even amongst the two sets supplied by the returning officer, which only goes to show that there were a wholesale manipulation of records in the present case.

2.8. Apart from the above, Petitioner had catalogued the various discrepancies from the records supplied by the Returning Officer which would go to show that in the present Election Petition, there were improper reception and rejection of votes and violation of the Act, Rules and orders made under the Act, so as to materially affect the result of the election. They are as under:

(a) In respect of Polling Station No. 20, Panchayat Union Elementary School, East Building, Durgai Nammianthal, Vengikkal Post, the Ballot Control Unit Number was given as K.16841 whereas during the actual counting, E.V.M. bearing No. K. 19323 was counted as evidenced from the Roundwise Tabulation sheet-Document No. 3, issued by the Election Commission of India.

(b) In respect of Polling station No.39, Ganagambal Matriculation Higher Secondary School, Main Building, North Facing Room No.7 and South side Building, Easanya Street, Tiruvannamalai, the ballot Control Unit Number was given as J 24916 whereas during the actual counting, E.V.M. bearing No.H 19113 was counted as evidenced from the Roundwise Tabulation Sheet-Documents No.4, issued by the Election Commission. Form No. 17-C Given to the Polling Agent Doc. 5.

(c) In respect of polling Station No.57 Danish Mission Higher Secondary School, Soundarajan Memorial Building west Side, Kattabomman Street, Tiruvannamalai, the Ballot Control Unit Number was given as K 23817 whereas during the actual counting, E.V.M. bearing No.H 09104 was counted as evidenced from the Roundwise Tabulation Sheet-Documents No.5, Issued by the Election Commission. Form No.17-C given to the polling Agent Doc.7.

(d) respect of Polling Station No.61, Divisional Excise Office, R.D.O. Compound, Anna Salai, Tiruvannamalai, The Ballot Control Unit Number was given as K 18934 whereas during the actual counting, E.V.M. bearing No. H 22134 was counted as evidenced from the Roundwise Tabulation Sheet-Documents No.8 issued by the Election Commission. Form No.17-C given to the Polling Agent Doc. 9.

(e) In respect of Polling Station No. 69, Municipal Girls Higher Secondary School, Arignar Anna Platinum Jubilee Building Campus, General All Room No. 43, Radio Ground, Tiruvannamalai, the Ballot Control Unit Number was given as L. 17925 whereas during the actual counting, E.V.M. bearing No. H 05932 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 10, issued by the Election Commission. Form No.17 - C given to the Polling Agent Doc.11.

(f) In respect of polling Station No.75, Kannikaparameswari Aided Primary school, Room No. 4, North New Building, Rajarajan Street, Tiruvannamalai, the Ballot Control Unit Number was given as L 17929 whereas during the actual counting, E.V.M. bearing No. L 20920 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.12, issued by the Election Commission Form No.17 - C given to the Polling Agent Doc. 13.

(g) In respect of Polling Station No.93, Municipal Elementary School, North Part Room No.1, Thandrapattu Road, Samuthiram Colony, Tiruvannamalai, the Ballot Control Unit Number was given as K 24230, whereas during the actual counting, E.V.M. bearing No. H 03644 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 14, issued by the Election Commission. Form No.17 - C given to the Polling Agent Doc. 15.

(h) In respect of polling Station No. 159, Panchayat Primary School, North Facing Building, Mel Kachirapattu, Meyyur Post, the Ballot Control Unit Number was given as L 27304 whereas during the actual counting, E.V.M. bearing No. L 17764, was counted as evidenced from the Roundwise Tabulation Sheet - Document No.16, issued by the Election Commission.

(i) In respect of Polling station No.182, Panchayat Union Elementary School, North Side Building, Su.Andapattu Post, the Ballot Control Unit Number was given as J 23641 whereas during the actual counting, E.V.M. bearing No. K 18473 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 17, issued by the Election Commission.

(J) In respect of polling station No. 191, Panchayat Union Primary School, South Facing, Se. Guddalore Village, Serppapattu Post, the Ballot Control Unit Number was given as K 13775, whereas during the actual counting, E.V.M. Bearing No. K 13773 was counted as evidenced from the Roundwise Tabulation Sheet-Documnent No. 18, issued by the Election Commission. Form No. 17-C given to the Polling Agent Doc. 19.

(k) In respect of Polling Station No.209, Panchayat Union Elementary School, North Facing East Part, Pazhaiyanoor, the Ballot Control Unit Number was given as K 21635, whereas during the actual counting, E.V.M. Bearing No. L. 19626 was counted as evidenced from the Roundwise Tabulation Sheet-Documnent No.20, issued by the Election Commission. Form No.17-C given to the Polling Agent Doc. 21.

(l) In respect of Polling Station No.222, Panchayat Union Middle School, South Facing Building, Paraiyampattu Post, the Ballot Control Unit Number was given as K 16818, whereas during the actual counting, E.V.M. bearing No. K 15670 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 22, issued by the Election Commission. Form No.17-C given to the Polling Agent Doc. 23.

(m) In respect of Polling Station No.17, Childhood Centre Iyyappan Nagar, Vengikkal, the Control Unit Number was Blank. Whereas during the actual counting, the E.V.M. bearing No. K 23884 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 24, issued by the Election Commission of India.

(n) In respect of Polling Station No.41, Thyagi N. Annamalai Pillai Government Higher Secondary School, Tiruvannamalai, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. L 17669 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.25, issued by the Election Commission of India.

(o) In respect of Polling Station No.62, Municipal Primary School, Main Building East, Anna Salai, Tiruvannamalai, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. H 84751 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.26, issued by the Election Commission of India.

(p) In respect of Polling Station No.88, Saraswathi Vikas Matriculation School, near Travellers Bungalow Veettavalam Road, Ramajayam Nagar, Tiruvannamalai, the control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. H 09026 was counted as evidenced from the

Roundwise Tabulation Sheet - Document No.27, issued by the Election Commission of India.

(q) In respect of Polling Station No.98, Municipal Muslim Girls Elementary School, Backside Building, North Facing, Bootharaja Koil Street, Tiruvannamalai, the control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. K 23617 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 28, issued by the Election Commission of India.

(r) In respect of Polling Station No.99, Municipal Girls Elementary School, North Building, North Facing, Karikalan Street, Tiruvannamalai, the control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. H 89654 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.29, issued by the Election Commission of India.

(s) In respect of polling Station No. 104, Shanmuga Industrial Government Higher Secondary School, Peraignar Anna Platinum Jubilee Memorial Hall, Room No. 3, SSA Building (Eastern Wing), North Facing, Chengam Road, Tiruvannamalai, the Control Unit No. was given as 1. whereas during the actual counting, the E.V.M. bearing No. K 20018 was counted as evidenced from the Roundwise Tabulation Sheet - Document No. 30, Issued by the Election Commission of India.

(t) In respect of Polling Station No.112, Natasapillai Aided Elementary School, Southern Side Building East Facing Building, Korimettu Street, Tiruvannamalai, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. K 22628 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.31, issued by the Election Commission of India.

(u) In respect of Polling Station No.166A, Panchayat Union Elementary School, North Facing Building Room No.1, Kallarpalayam, HO Viswanthangal, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. H 10585 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.32, issued by the Election Commission of India.

(v) In respect of Polling Station No.187, Panchayat Union Primary School, East Facing Building North Wing, Kattampoondi Village and Post, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. H 88451 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.33, issued by the Election Commission of India.

(w) In respect of Polling Station No.204, Panchayat Union Primary School, North Facing Building, Perunduraipattu and Post, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. K 16368 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.34, issued by the Election Commission of India.

(x) In respect of Polling Station No.215, Panchayat Union Middle School, East Facing Building, Velliampakkam Village and Post the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. K 16782 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.35, issued by the Election Commission of India.

(y) In respect of Polling Station No. 224, Panchayat Union Elementary School, South Facing Building Su. Pappambadi and Post, the Control Unit No. was given as 1. Whereas during the actual counting, the E.V.M. bearing No. H 72433 was counted as evidenced from the Roundwise Tabulation Sheet - Document No.36, issued by the Election Commission of India.

2.9. The plea of the Petitioner is that he had filed the available Part 1 of Form 17 - C issued to the Polling Agents. In cases where the same was not filed, it was because he was unable to obtain the same from the concerned Polling Agent. The aforesaid instances shown that the Returning Officer was not maintaining a true account of Form 17 - Cs. in order to pave the way for manipulation of the Electronic Voting Machines concerning the Polling Stations. Rule 49-5 of the conduct of Election Rules 1961 mandates that the Presiding Officer should have to prepare Form 17 - C containing the details about the number of the balloting unit, control unit, the paper seal used, the total votes polled together with the signatures of the Polling Agents. Thereafter, the Presiding Officer was required to furnish a true copy of the same to the Polling Agents. Thus, Form 17 C assumes great significance as it ensures that there was no tampering of E.V.Ms. after the poll and before counting. In the present case, the Petitioner had cited specific instances where the discrepancies found in Form - 17 Cs relating to certain specific Polling Stations are so grave, it was evident that the 1st Respondent, in connivance with the District Election Officer and Returning Officer has caused tampering of the E.V. Ms. thereby the result of the election in so far as it pertains to the 1st Respondent was materially affected by the improper reception of vote by him and thereby the election of the 1st Respondent deserves to be declared void under Section 100 (1) (d) (iii) and (iv) of the Representation of People Act, 1951.

2.10. The Petitioner had stated that according to the Returning Officer, there is no doubt in one E.V.M. which resulted in the counting being stopped around as stated supra. This was evident from the Roundwise Tabulation Sheet - Document No.37 issued by the Returning Officer. On the undue influence brought about by the 1st Respondent, the Returning Officer, instead of ordering re-poll proceeded with the counting unilaterally and declared the results in favour of the 1st Respondent. In such cases, re-poll should have been ordered which was not done since the 1st Respondent adopted corrupt practice on the Officials and persuaded them to proceed with the counting and hence, his election should be declared void for non-compliance of the provisions of the Representation of People Act and Conduct of Election Rules, 1961 under Section 100(1) (d) (iv) of the Act r/w rule 66-A, 55 - C and Section 58 of the Representation of the People Act. The 1st Respondent had with the assistance of the District Election Officer committed corrupt practice as set

out earlier by tampering with the E.V.Ms. and thereby attracting the provisions of Section 100 (1) (b) r/w 123 (7) of the Representation of the People Act, 1951. As a Cabinet Minister, the 1st Respondent brought undue influence on the District Election Officer and the Returning Officer, who are Government servants and with their help, the aforesaid records were created.

3. Resume of the 1st Respondent's Counter:

3.1. The sole grievance of the Petitioner in the Petition was that there was discrepancy in the number of Control Unit/Electronic Voting Machines (E.V.Ms.) which according to him resulted in ensuring the victory of the 1st Respondent at the instances of District Election Officer and Returning Officer. The Petitioner had not disclosed any materials as to how the 1st Respondent influenced the District Election Officer and the Returning Officer by allegedly manipulating E.V.Ms. or how the alleged discrepancy occurred. He had also not disclosed any material evidence as to how the E.V.Ms. could be manipulated. In the absence of these material evidences, the present Election Petition is not maintainable and deserves to be dismissed in limini.

3.2. It is a matter of common knowledge and also the Courts has taken judicial notice of the fact that the E.V.Ms. could not be manipulated. The 1st Respondent denied the allegation that the he had managed to secure victory by corrupt practices and by bringing undue influence upon the District Election Officer and the Returning Officer in his capacity as the State Cabinet Minister. Also, the allegation that the District Election Officer and the Returning Officer made ready a well designed ground for ensuring the victory of the 1st Respondent by manipulating E.V.Ms. as set out therein or otherwise or at all was denied. In fact, no material particulars were disclosed by the Petitioner to substantiate allegations of corrupt practice in general and in particular, as to how the said Officers could be or were in fact influenced by the Respondent in his capacity as Cabinet Minister. Further, the Petitioner had not disclosed the details of the so called "well designed ground" for ensuring the victory of the 1st Respondent or the nature of manipulation of the E.V.Ms. and the E.V.Ms. were designed in such a way that they cannot be manipulated as contended by the Petitioner. Moreover, all the requirements prescribed by the conduct of a smooth election were complied with by the officers concerned.

3.3. There was nothing strange about the gap of one month from the date of Poll to the date of counting. The dates of counting were fixed for the purpose of synchronizing the counting dates in other States all over the Country. It was denied by the 1st Respondent that the gap of one month aforesaid, was brought into force in order to manipulate the E.V.Ms. in connivance with the District Election Officer. The allegation that all the E.V.Ms. were kept in classrooms in the First Floor without any security was denied by the 1st Respondent. Also, it was denied by the 1st Respondent in regard to the allegation that a mere padlock and a crossbar, that could be easily unscrewed and re-fixed, were fixed on the door. Also, it was denied that this was done deliberately to facilitate free ingress into the room for the purpose of tampering. the machines. There were any allegations about any actual tempering of the machines and no details were provided to show that

actually tampering had taken place at all. The allegations were mere surmises and conjectures and they were denied.

3.4. The allegation that as the counting progressed on various tables the Counting Agents of the Petitioner “were heard” frequently complaining to the Counting Supervisors about the discrepancies in the identification of the EVMs which complaints were all brushed aside by the said officers was denied. Indeed, no materials evidence was produced by the Petitioner in support of the same in order to any particulars were provided regarding the same. The Petitioner had. not producer a single document evidencing the alleged (‘frequent complaints’ allegedly lodged with the said officers. It was true that the Control Unit (E.V.M.) No. L 17922,. was kept in abeyance, but it was denied that: there was any malpractice in connection with the above. The votes in the said machine were not taken into account to arrive at the total counting of votes and therefore, the votes of the said machine being kept in abeyance would not accrue in favour of the Petitioner. The very fact that the officers concerned kept the votes of the said machine in abeyance goes to show that the Returning Officer was diligent in his work and when he noticed the discrepancy, the votes pertaining to the same was kept in abeyance. That apart, no written abjection was given during the counting to the Returning Officer and in this regard, the Petitioner is put to strict proof thereof.

3.5. The allegation that by 2.00 p.m. counting was over in almost all the constituencies except at Tiruppathur and Tiruvannamalai constituencies where there was neck to neck contest. Also, it was denied that the counting in Tiruvannamalai got delayed because there was wholesale manipulations in the E.V.Ms. or that the Petitioner and his Agents were protesting to the District Election officer and the Returning officer of that the said officer had not taken any action and in this regard, the petitioner is put to strict proof thereof. But there was not a single letter placed on record by the Petitioner to prove the said allegations, in fact, they were concocted allegations forming part: of the petition.

3.6. The allegation that there was any manipulation or discrepancies in E. V.Ms. was denied. On the one hand, the Petitioner had taken a plea that the said officers had not sent a proper report to the Election Commission of India while on the other hand admitted that the Petitioner was not aware as to what sort of report they had sent. If the Election Petitioner was not aware of the nature of the report sent by the said Officers, he could not contend that the report was not proper. Also, it was denied that the 1st Respondent and his Agents started creating ruckus in the counting hall and indulged in capturing the counting process. On the contrary, it was the Petitioner’s supporters who created the ruckus when they came to know that the Petitioner was going to .Lose the election.

3.7. It is pertinent to note that E.V.Ms. were pre-set prior to the election and it was not possible for any person to manipulate the E.V.Ms. Besides this, the process was done . in the presence of all officials and representatives of the candidates and also in the presence of neutral persons, therefore, it was not possible for any person to capture the counting process. It was denied by the 1st Respondent that his alleged influence and corrupt practice had prevailed over the

wisdom of the District Officer or the Returning Officer or that the said Officers hurriedly completed the counting process and declared the 1st Respondent as having won in the Election. Per contra, it was the Petitioner's agents who had created the ruckus and delayed the counting process as they were aware that the 1st Respondent was securing the maximum number of votes and was likely to be elected.

3.8. Furthermore, it was denied that there were marked discrepancies even amongst the two sets supplied the Returning Officer and that the Petitioner is put to strict proof of the allegations contained therein. It was denied that the Petitioner purported to have catalogued the alleged discrepancies from the records allegedly received from the Returning Officer and when this record is put to strict proof. Also, it was denied that there was any improper reception or rejection of votes or Violation of the Act, Rules or Orders as set out therein or otherwise or at all. Therefore, the question of any alleged violation materially affecting the result of the election, in any manner, does not and could not arise.

3.9. The procedure for polling and counting of votes in the Election, which would be relevant to establish that there was no malpractice or corrupt practices in the conduct of Election, which is the subject matter of present election petition, as set out as under:

(a) Ten days before the polling date of concerned District Constituency, the Election Commission of India deputed B or such other number of election Observers as deemed fit from other States to the concerned District Constituency and through these Observers the E.V.M. Machines are listed by randomization and allotted to the District Constituency. This is called first level randomization.

(b) One, week before the date of polling, a similar procedure as, aforesaid was carried out for the second level randomization for the purpose of effecting polling station wise randomization/allotment of control units with reserve control units numbering to 15 of the total allotted units to the respective polling stations. This procedure was also carried out in the manner as aforesaid through computers as was done for the first level randomization. After the second level of randomization, the results of this second level randomization are displayed in the Internet were displayed in the Internet. In addition, the Returning Officer's of the concerned constituency prepare the list of the control units and reserve units at each polling station.

(c) In the polling booth, there was one Ballot Unit and one Control Unit. The ballot unit which resemble a keyboard contained the symbols of various candidates so as to enable them to identify the candidates and used for casting votes by the voters. The function of the ballot unit ended as and when voters press the key relating to the symbol of the preferred candidate and thus cast their votes. The ballot unit could not store any information regarding the number of votes registered. For every ballot unit there was a corresponding control unit. The Control Unit which was also called the Electronic Machine (E.V.M.) registers the number of votes cast by the voters. The control unit is under the control of one of the Officers of the polling stations.

(d) On the day of polling, prior to start of the polling, Form 17-C was filled up by the returning officer by hand and the said form was signed by the political Agents of the candidates. On the day of polling, the voting machines allotted to each booth are examined and a trial was conducted by affixing a trial vote in the presence of all the polling agents and representatives of the candidates and after checking the working condition of the said Voting Machine, it was placed for polling. If any of the control unit was not functional or if any defect was found out at the time of trial, the said machines were replaced immediately by the reserve units. As aforesaid, 15 of the total allotted control units were reserve units.

(e) At the end of the day of poll, the respective control units/E.V.Ms. were sealed along with the corresponding Form 17C which carries the signatures of all the representatives and agents at the polling station. Later, the said sealed E.V.Ms. were transported to the concerned storage area guarded by Central Reserve Police as well as the State Police personnel. After storing the sealed E.V.Ms. in the Strong Room, the door of the storage room was locked with a padlock which was covered with a piece of cloth and a seal was affixed on it by the returning officer in the presence of all the representative of the candidates who are present, media personnel, video coverage unit and polling agents and a 3-tier security team with the fire arms was provided for the said strong Room in order to secure the sealed machines.

(f) On the day of the counting, all the representatives of the candidates, media persons, videographers and election agents, as the case may be approached the sealed premises of Strong Room and after confirming the existence of the seal affixed on the padlock, the said strong room was opened in the presence of the aforesaid persons for the purpose of commencing of counting of votes. On the commencement of the counting of votes in the Control Unit/E.V.Ms., 14 table are provided and on each table an E.V.M. is placed. Central Government staff was deputed as a Micro Observers to supervise that first round of counting. After completion of the first round of all the tables, the number of votes counted were verified by the Micro Observer and was certified by him. This certified information was forwarded to the Returning Officer. The Returning Officer, after confirmation and approval of the same, send the said results to the Data Entry Operators for displaying the same in the Internet. It is pertinent to note that at the close of counting, after the votes were entered in the reverse side of Form 17C, the signatures of all counting agents are taken on Form 17C.

(g) The significance of Form 17C was only to validate the genuineness of the corresponding E.V.M. In other words, for every E.V.M. a form 17C was signed by the Returning Officer and all the polling agents and after voting was concluded, the Form 17C containing the signatures of the aforesaid persons would be sealed along with the corresponding E.V.M. in the presence of all the above parties. When the seal was broken at the time of counting, again in the presence of the aforesaid parties, who choose to remain present at the time of breaking of the seal by the Officer concerned, what is required to be verified was whether in the Form 17C containing the signatures of the aforesaid parties is sealed along with the particular E.V.M. which affirms the genuineness and purity of the election

counting process. Further, this was confirmed by taking the signatures of the polling agents at the close of the counting for the respective booth on the respective Form 17C.

(h) In the instant case, the agents of the petitioner and other candidates who signed Form 17C were present at the time of sealing Form 17C with the corresponding EVM as also at the time of opening the seal and extracting the E.V.M. for the purpose of counting. It was not the Petitioner's case that his agent had not signed the Form 17C which was sealed along with the corresponding E.V.M. or that the seal was tampered with or that when seal was broken the form 17C which his agent signed was not found in the corresponding E.V.M. Neither the petitioner nor his polling agent raised any objections pertaining to any of the above aspects at the time of sealing the E. V.Ms., opening of the seal of the E. V.M. or while affixing their signature in Form 17C at the close of the counting process which leads to the irrevocable conclusion that the process of election was properly conducted and the allegations contained in the present Petitions were nothing but afterthought.

(i) The 'allegations of the Petitioner to the effect that correctness of the entries regarding the E.V.M. number in Form 17C was determinative of the genuineness of poll or that absence of the details thereof in Form 17C vitiates the poll was entirely misconceived. These discrepancies could not constitute malpractices or corrupt practices on the part of the 1st Respondent, Returning Officer or the Election Commissioner or any other: Officer involved in the conduct of the poll.

(j) There was no complaint, of whatsoever nature, from the Petitioner or his agent or Observers or any other person about the procedure of the poll including the sealing of the control unit, their signatures, safe keeping of the same with padlock covered with cloth and sealed in the strong room with 3-tier security system. The Petitioner had not written a single letter to any authority about manipulation of E.V.Ms or alleging that the sanctity of the security of the E.V.Ms. was compromised.

(k) At no stage or the conduct or the polls nor during the counting of votes did the Petitioner lodge any complaint about any malpractice, corrupt practice or allege that the Officers concerned had not followed the proper procedure. After the results were declared and after the 1st Respondent was declared elected in the Election from No.63, Tiruvannamalai Constituency, the Petitioner has, for the first time, in the present Election Petition. that there were corrupt practices and malpractices on the solitary ground that there were some discrepancies in the Control, Unit/E.V.M. number vis-a-vis that recorded in Form 17C.

(l) The Round wise Tabulation Sheet was a tabulation form containing all the information of the 2nd. randomization sheet after effecting necessary changes to the information contained therein such as change in E.V.M. numbers alongwith the information regarding votes secured by the different candidates in the poll from the respective polling booths and constituencies. The data entry operator, after receiving the details of the number of votes Secured by the various candidates from each polling booth from the Officer in-charge of counting, was expected to post the same in the Round wise Tabulation Sheet. It appears that the data entry

operators have “cut and pasted” the randomization list, added a column for counted votes and posted the same in the net without verifying whether the original allotted E.V.Ms. were replaced by reserve E.V.Ms. in some polling booths. The so called discrepancies pointed out by the petitioner had occurred solely due to the above, but such discrepancies do not in any manner amount to any corrupt practice nor would such discrepancies constitute an illegality in the poll process that can affect the result of the election.

(m) The data entry operators, while publishing the results, instead of typing out all the information afresh, copied the randomization sheet and added a column to it showing the number of the votes won by the candidate and put the same on the internet. In view of this “cut and past” publication, the randomization sheet which contained the earlier allotted control unit/E.V.M. Number continued to show the same without displaying the number of the reserve Control Units/E.V.M. which replaced the originally allotted units due to their malfunction, most of which was reflected in Form 17C. This inadvertent error could in no way effect the result of the election and in fact, the petitioner had every opportunity to verify the Form 17C that was signed by the his polling agent if he had any doubt regarding the identity of the E.V.M. This was at all time, including day of the counting, non-issue as far as the Petitioner was concerned since the identity of the EVM used were never in question. The same Form 17C which was signed and sealed along with the EVM was found while opening the sealed container on the date of counting.

3.10. There was no objection from the petitioner or any of the other candidates about the genuineness of the votes polled except to state that the control unit number was not entered properly in the Form 17C. The fact that the Form 17C was signed by the Returning Officer and all the agents of the candidates, that the Form 17C was sealed along with the corresponding E.V.M. and that the seal was opened in their presence was not disputed by the Petitioner. As such, the mere fact that the Control Unit Number was not filled or filled mistakenly in Form 17C could not amount to malpractice or corrupt practice and this could not result in setting aside of the Election of the Respondent. It was denied on the part of the 1st Respondent that the Returning Officer had not maintained a true account of Form 17Cs in order to pave way for manipulation of the E.V.Ms. in the polling stations and that he was unable to obtain the said Form from the concerned polling agent was denied.

3.11. Also that, the allegation that the Petitioner had cited specific instances about the discrepancies found in Form 17C's and the allegation that the 1st Respondent in connivance with the District Election Officer and the Returning Officer had caused tampering of the E.V.Ms. was vehemently denied and in this regard, the Petitioner was put to strict proof thereof. Furthermore, it was denied that the Returning Officer stopped counting in one E.V.M. as there was doubt regarding the same of that undue influence was brought about by the 1st Respondent, the Returning Officer, instead of ordering re-poll, proceeded with the counting unilaterally and declared the results in favour of the 1st Respondent. In fact, the only E.V.M. where the Returning Officer had doubt was the one mentioned in paragraph 13 of the Counter and the same was therefore kept pending.

3.12. It was denied on the side of the 1st Respondent that re-poll should have been ordered or that he had adopted corrupt practice on the officials or that there was a violation of the provisions of the Representation of the People Act, 1951 and Conduct of Election Rules, 1961. In fact, the counting was done properly in accordance with the Rules. It was denied that the 1st Respondent with the assistance of the District Election Officer committed corrupt practices as set out in the petition by tampering with the E.V.Ms. or for any other reasons set out therein or otherwise or at all. Also, it was denied that as Cabinet Minister, the 1st Respondent brought undue influence on the District Election Officer and the Returning Officer and with their help the aforesaid records were created. Indeed, neither material particulars are furnished nor any evidence in support of the same was produced by the Petitioner.

3.13. It was denied that the Returning Officer did not provide for security for safety of the E.V.Ms. or that Form 17C and E.V.Ms. were tampered with. Also, it was denied that there was wholesale irregularities in Form 17C and paper seals which were brought to the notice of the District Election Officer and the Returning Officer, who ignored them and went ahead with the counting. It was also denied that counting was stopped in respect of one polling station where there were clear discrepancies in E.V.Ms. and discrepancies were noticed with the Roundwise Tabulation Sheet and the Petitioner was put to strict proof of the allegations. Also that non of the above mentioned cases, there was any written complaints or F.I.Rs. lodged with the competent authorities pertaining to the said allegations and the same were mere afterthought of the Petitioner.

3.14. The Petitioner has not made out a case and in fact, no case exists for grant or any of the reliefs sought for by him in the Election Petition. Also, he has not made out a case for seeking the relief of declaration of the election of the 1st Respondent as void or to order for repoll for No.53, Tiruvannamalai Assembly Constituency, likewise, no case is made out on his side in seeking the relief of declaration that he was duly elected from No. 53, Tiruvannamalai Assembly Constituency in the election held on 13.04.2011 as void (in which results were declared on 13.05.2011).

4. The Contents of Petitioner's Reply Statement:

4.1. In terms of Section 83(1) of the Representation of the People Act, 1951, the Petition should contain only a statement in a concise form of the material facts but not on evidence. The Petitioner had complied with the second limb of Section 83(1) (b) of the Representation of People Act.

4.2. In regard to the pleading in the main Election Petition and the Counter stand taken on behalf of the 1st Respondent is not correct. In fact, the 1st Respondent is making an endeavour to show as though everything was properly done but it is not the case. The 1st Respondent is pleading for the officers, who had helped him to secure the votes which in fact the should not have secured.

4.3. A Complete reading of the main petition would show that a wealth of material particulars were supplied therein quite inconformity with the requirements to show how the election insofar as the returned candidate was materially affected as required under relevant Sections and Rules. The Petitioner was to let in

evidence in support of the averments made by him in the main petition and also he was to prove his case.

5. on the basis of above pleadings, the following issues were framed by this Court on 07.08.2012:

"1. Whether the 1st Respondent/Returned Candidate indulged in corrupt practices as set out in Sec. 123 of the Representation of People Act?

2. Whether the election petitioner has proved that the corrupt practices alleged in the election petition are substantiated by material facts and material evidence?

3. Whether the EVMs were stored in the 1st floor of Government Shanmuga Industries Higher Secondary School without any security?

4. Whether the 1st Respondent/Returned Candidate had tampered with the EVMs with the connivance of the Election Officials?

5. Whether the election petitioner proved that the 1st respondent brought about undue influence on the District Election Officer or the Returning Officer in his capacity as State Cabinet Minister?

6. Whether Form 17-C supplied by the Returning Officer contained discrepancies as set out in Para 15 of the Election Petition?

7. Whether the Election Petitioner be declared as duly elected candidate from No.63, Tiruvannamalai Constituency for the election held on 13.04.2011?

8. Whether the election of the 1st Respondent/Returned Candidate be declared void?

9. Whether the petitioner established that re-poll should be ordered for the whole of No.63, Tiruvannamalai Constituency or in some polling stations alone?

10. Whether the election petition is maintainable in law and on facts?

11. Whether the election petition is barred by limitation?

12. To what relief the election petitioner is entitled to?"

6. During the trial of main Election Petition, on behalf of the petitioner, witnesses P.W.1 and P.W.2 were examined and Exs.P.1 to P.38 were marked. On the side of Respondents, the contesting 1st Respondent was examined as R.W.1. Also, C.W.1 and C.W.2 were examined and Exs. C.1 to C.11 were marked.

7. The Petitioner's Contentions:

7.1. According to the Learned Counsel for the Petitioner, the Petitioner contested as Official Candidate of the All India Anna Dravida Munnetra Kazhagam (A.I.A.D.M.K.) in "Two Leaves" Symbol and the 1st Respondents Election, whose election is under Challenge in the present Election Petition, contested as the Official Candidate of the Dravida Munnetra Kazhagam (D.M.K.) in "Rising Sun" Symbol.

7.2. The Learned Counsel for the Petitioner submits that the petitioner appointed K.R. Balasubramanian (P.W.Z.) as his Chief Counting Agent and that Identification Card was issued to him.

7.3. The Learned Counsel for the Petitioner brings it to the notice of this Court that the 1st Respondent at the time of Election was the sitting Member of the Assembly from Thandrapattu Constituency and he was the Minister for food in the erstwhile DMK Government

7.4. Further, the Learned Counsel for the Petitioner proceeds to add that the Returning Officer (C.W.1) declared that the 1st Respondent secured 84802 votes as against 79,676 votes purported to have been secured by the Petitioner and resultantly, declared the 1st Respondent as having been duly elected by a margin of 5126.

7.5. The Learned Counsel for the Petitioner contends that it is the duty of the Returning Officer to keep the Electronic Voting Machine in safe custody under proper security and no outsider can be allowed to enter the room where the E.V.Ms. were kept. Added further, the Learned Counsel for the Petitioner submits that there was a long gap of one month from the date of poll to the date of counting, which was used by the 1st Respondent in connivance with the District Election Officer and the Returning Officer to manipulate the E.V.Ms.

7.6. Advancing his arguments, the Learned Counsel for the Petitioner contends that all the E.V.Ms. were brought to Government Shanmugha Industries High Secondary School where they were kept in class rooms in the first floor without any security and only a padlock and a cross bar which could be easily unscrewed and re-fixed were fixed on the door and this according to the Petitioner, was done deliberately to facilitate free ingress into the room for the purpose of tampering the machines.

7.7. The Learned Counsel for the Petitioner submits that on 13-05-2011 the counting of votes started in the ground floor hall around 8.00 a.m. and there were 14 tables and a mesh screen separated the Counting Officials from the Counting Agents and the Counting Officials were assigned an exclusive area, entry to which was restricted. Furthermore, the Learned Counsel for the Petitioner draws the attention of this Court to the averments in para 11 of the Election Petition made by the Election Petitioner to the effect that as the counting progressed in various tables, the Counting Agents of the Petitioner were heard frequently complaining to the Counting Supervisors about the discrepancies in the identification of the E.V.Ms.

which were all brushed aside and in the 10th round of Table No. 9, when the E.V.M. relating to polling Station 135, AL.C. Good Shepherd Matriculation School, North Facing Room No. 1, Vettavalam Salai, Tiruvannamalai, came for counting the Petitioner's counting Agent found a discrepancy in the number of the control unit (E.V.M.) No. L 17922 and the Number is found as K. 18214 in part I of Form 17-C and as such, Counting of the E.V.M. Pertaining to Polling Station No. 135 was kept pending.

7.8. The Learned Counsel for the Petitioner refers to Ex.C.2 - Authenticated copy of the Form 17C given to the polling Agent. Under 49-5 and 56C(2) of the Conduct of Election Rules, 1961, which speaks of 'Accounts of Votes REcorded' and 'Counting of Votes' in respect of polling Station No. 135, AL.C. Good Shepherd Matriculation School.

7.9 The Learned Counsel for the petitioner contends that in the Election Petition, the Pettitioner had averred in para 12 to the effect that the Petitioner gave written objection during the counting to the Returning Officer highlighting the various irregularities and illegalities warranting the re-poll. Also, the Learned Counsel for the Petitioner submits that on 13.05.2011 the counting process commenced at all the counting centres throughout the Tamil Nadu around 8.00 a.m. and by 2.00 p.m. counting was over in almost all the Constituencies except in Thiruppathur and Tiruvannamalai where there were neck to neck contest and that the counting in Tiruvannamalai got delayed because from the beginning the Petitioner's Agents, were observing wholesale manipulations in the E.V.Ms. and were produced to the District Election Officer and the Returning Officer but they were of no avail. Finally, the counting was stopped at 11.30 a.m. as the Petitioner and his Agents were demanding re-poll due to large scale discrepancies in the E.V.Ms.

7.10. The learned Counsel for the Petitioner proceeds to state that the District Election Officer and the Returning Officer informed that they had sent to the Election Commission of India and were awaiting orders. It was not known as to that sort of report they had sent. But in fact, they had not sent a proper report based on the valid objections raised by the Petitioner in the three representations. That apart, it is represented on behalf of the 1st Respondent and his Agents stated creating ruckus in the counting hall and indulged in capturing the counting process and suddenly around 7.00 p.m. the Returning Officer gave notice that the counting or votes would be commenced. Furthermore, the Petitioner knew that the 1st Respondent's influence and corrupt practice had prevailed over the wisdom of the District Election Officer and the Returning Officer and so he refused to take further part in the counting process. Also, the District Election Officer and the Returning Officer hurriedly completed the counting process and illegally declared the 1st Respondent as having won in the election.

7.11. The Learned Counsel for the Petitioner submits that the Petitioner made an application dated 24.06.2011 to the Returning Officer for copies of Form No.17C and Compact Discs containing the Videograph of the counting by the

Election Commission and that the Returning Officer supplied Certified copy of "Form 17 – C" duly authenticated by him and that the Petitioner was surprised to note that the marked discrepancies even amongst the two sets supplied by the Returning Officer, which only goes to show that there were a wholesale manipulation of the records in the case.

7.12. The Learned Counsel for the Petitioner refers to the evidence of C.W.1 wherein he had stated that he sent two reports dated 10-04-2011 and 05-04-2011 to C.W.2 (District Collector) regarding the E.V.M. replacements on the poll day and that he had not given any written intimations either to the Polling Agents or to the Candidates about the change in E.V.Ms. Also that, it is represented on behalf of the Petitioner that when the Polling Agents met him on 17-4-2011, he had not recorded/minuted the meeting. Nor had he provided intimation to them about the change in the E.V.Ms.

7.13. Continuing further, the Learned Counsel for the Petitioner proceeds to take a plea that C.W. 1 did not have any idea as to whether the second level of randomization was available in the Internet or not and it was the Returning Officer, who had conducted the second level randomization process, in fact, C.W.1 (Returning Officer) further asserted that the second level of randomization was given to each candidate and the Returning Officer had consistently stated that at the time of counting the Petitioner and his Agents raised objections only in respect of Polling Station No. 135, and not in respect of other Polling stations which was utterly unbelievable. Moreover, the Returning Officer (C.W.1), in his evidence had stated that the counting was stopped for two hours and it should be taken that the entire counting was stopped for two hours and not in respect of Polling Station No. 135 alone and if one was to take that the counting was stopped in respect of Polling Station No. 135 alone, it would lead an anomalous situation.

7.14. The Learned Counsel for the Petitioner refers to the evidence of C.W.2 (District Election Officer) that he had spoken about the first level randomization process, second level randomization process and other connected procedures and he was extensively cross examined with the help of 'Handbook for Candidates' issued by the Election Commission of India and that he had agreed with the procedure laid down therein.

7.15. At this stage, the Learned Counsel for the Petitioner contends that from the evidence of C.W.2, the following aspects emerge:

- (i) All the candidates or their agents should be given notice in writing as to the place and time of preparation of EVMs.
- (ii) The 1st level and 2nd level randomization should be done in the presence of contesting candidates.
- (iii) For which notices should have been given to them.
- (iv) If none of the candidates present, public announcement should be made.

(v) During the preparation of EVM, a pro forma of label would be stuck on the EVM itself which would contain the name of the state, name of the election, District name, C.U.No., District running serial no current id, first level check, randomization 2, deployment status, polling station no, Returning Officer/ Assistant Returning Officer.

(vi) All the above stages should be video graphed.

(vii) Returning Officer should give in writing to the candidates regarding machine numbers of control units replaced.

(viii) Returning Officer should paste EVM deployment account in the counter hall itself.

(ix) The Returning Officer of Kilpennathur promptly sent reports to the Collector ie. CW2 whereas CW1 has not done so and failed to emulate such quality.

7.16. Therefore, it is the plea of the Petitioner that the above aspects were not complied with at all either by the Returning Officer (C.W.1) or supervised by District Election Officer (C.W. 2). In short, it is the stand of the Petitioner that there were inconsistencies with respect to the time of stopping of counting process among C.W.1, C.W. 2, and R.W.1.

7.17. The Learned Counsel for the Petitioner refers to the deposition of R.W. 1 and submits that R.W.1 had stated that on receipt of information in regard to stopping of counting process he rushed to the counting hall and he was informed by the C.W.1 (Returning Officer) that everything was happening smoothly and he had admitted that Form 17 C is common to all the candidates and that his agents did not object as to the Discrepancies in the Form 17 Cs, and further that his agent did not have the list (Ex.C2) at the time of counting and that his agent downloaded it only after the filing of Election Petition and that he had no occasion to know about the change of E.V.Ms. reported by Returning Officer.

7.18. The Learned Counsel for the Petitioner submits that there was no averment in the pleading of the 1st Respondent not in his evidence that he had participated in the 1st and 2nd level randomization. Also that, equally there were no averments that he had received notice from the office of the Returning Officer calling upon him to participate in the randomization.

7.19. The Learned Counsel for the Petitioner contends that the plea taken on behalf of the 1st Respondent that the remissness on the part of the election officials cannot be used to dislodge the elected candidate cannot hold good because of the reason that Rule 49 E of the Conduct of Election rules, 1961 speaks about the preparation of voting machine for poll and 49 S talks about accounts of vote recorded and Rule 66 A talks about counting of votes where electronic machines were used. Moreover, it is represented on behalf of the Petitioner that rule 55(c)(3) of the Conduct of Election Rules, 1961 states that the Returning Officer should be satisfied that the E.V.Ms. should not be tampered with

and there was nothing on record to show that the Returning Officer was satisfied about the many discrepancies were brought to his knowledge.

7.20. The Learned Counsel for the Petitioner contends that in an Election Case, the Petitioner is expected to prove the charges beyond doubt like a criminal or quasi criminal charge. But it differs in regard to the manner of establishment of guilt in criminal prosecution.

7.21. The Learned Counsel for the Petitioner, to lend support to the contention that the charge must be proved beyond doubt like a criminal or quasi criminal but not exactly in the manner of establishment of the guilt in a criminal prosecution where the accused has liberty to keep silent and further, charge has to be proved on an appraisal of the evidence adduced by both sides, especially by the Election Petitioner, relies on the decision of the Hon'ble Supreme Court in *Harish Kumar, V. Bhagwan Sahai Rawat, 2003 (7) Supreme Court Cases 709*.

7.22. Also, the Learned Counsel for the Petitioner cites the decision of the Hon'ble Supreme Court in *S. Harcharan Singh V, Sajjan Singh and others, AIR 1985 Supreme Court 236 at page 237*, wherein it is held as follows:

"While insisting on standard of strict proof, the court should not extend or stretch this doctrine to such an extreme extent as to make it well-nigh impossible to prove an allegation of corrupt practice. Such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process."

7.23. The Learned Counsel for the Petitioner, by referring to the aforesaid decision, contends that it can only be concluded that the Election Tribunals are directed not to stretch the standard of strict proof beyond certain limit and further, the elected candidate is not altogether absolved of his responsibilities to assist the Court and added further, he is expected to produce best evidence that are within the ambit of his knowledge.

7.24. The Learned Counsel for the Petitioner invites the attention of this Court to the decision in *Nani Gopal Swami V. Abdul Hamid Choudhury and another, Air 1959 Assam 200 at page 203 & 204*, wherein in paragraph 4, it is, inter alia, held as follows:

"Section 123(1) has to be read along with section 100 of the Act, which Specifies the grounds on which any election should be declared to be void. Section 100 provides that where a corrupt practice has been resorted to by a returned candidate or his election agent or by any other person with the consent of the returned candidate or his election agent, the Tribunal shall declare the election of the returned candidate to be void. As Abdul Bari in this case is not alleged to be an election agent, but merely an agent of the respondent, it is argued that the Court will have to see whether the act complained of against Abdul Bari, if it is found to be true, was a corrupt act done

with the consent or at the instance of the respondent Abdul Hamid Choudhury. Reliance has been placed on the language of section 100, Sub-section (1), Clause (b) of the Act. Direct evidence of consent of the candidate to a corrupt act done by his agent in most cases may not be available; and for obvious reasons, it would be unwise to insist upon the production of direct evidence in every case. Here again, the consent of the candidate to the act complained of or to his acceptance thereof has to be inferred from the facts and circumstances proved in the case. In my opinion, where the corrupt practice is attributed to an "agent" and not to 'any other person' as provided in Sub-section (1), Clause (b) of section 100, the case strictly falls under Sub-section (2) of the section. It is common knowledge that in elections many strangers start taking interest, who have directly no concern with the candidates or their election agents and have never been asked to do anything on their behalf in furtherance of their election. Such persons are in the position of mere intermeddlers or sympathisers and the candidate or his election agent will have no responsibility for anything done by them, even if the act is done with a view to advance the prospect of the candidate's election or results in some advantage to him, unless it is shown that the candidate or his election agent had given his express or implied consent to the act in question or had knowingly taken the benefit of his conduct at the time. The case, however, of an "agent", who has been proved to be regularly working for the candidate during the election, stands on a somewhat different footing. In his case, approval or consent to any act done by him to promote the candidate's election is implied. Where, therefore, corrupt practice in the course of the election proceedings is attributed to an "agent", it raises a strong presumption that it was done at the instance or with the express or implied consent of the candidate himself. The candidate is himself vicariously responsible for the act and conduct of his "agent" during the election. The language of Sub-section (2) of Section 100 strengthens the above inference. This sub-section assumes that the returned candidate himself is guilty of the corrupt practice done by an "agent" unless he satisfied the Tribunal about the conditions mentioned in any of the clauses of that sub-section, in order to escape the guilt; in which case the Tribunal may decide that the election was not void. One of the conditions in Sub-section (2) is that the candidate is to satisfy the Tribunal that the questionable practice of his agent was contrary to his orders and without his consent or that of his election agent."

7.25. Apart from the above, the Learned Counsel for the Petitioner cites the decision *U.S. Sasidharan V. K. Karunakaran and another*, Air 1990 Supreme Court 924, wherein in paragraph 20, it is observed as follows:

"20. The speeches of the two government servants relating to "Malayude Purogathi" that is, the progress of Mala, simpliciter will not constitute a corrupt practice within the meaning of Section 123(7). In order to be a corrupt practice

within the meaning of Section 123(7), the speeches of the said government servants as recorded in the video cassette and alleged to have been used in the constituency at the instigation of the first respondent, must be with a view to obtaining or procuring or abetting or attempting to obtain or procure the assistance for the furtherance of the prospects of the first respondent's election."

7.26. The Learned Counsel for the Petitioner submits that the results of randomization is a open document and anybody can download from the Internet and Ex.P.4 was the final result Roundwise-Tablewise showing the number of votes polled and that C.W.2 (District Election Officer/then District Collector of Tiruvannamalai District), in his evidence, had answered in the affirmative that in Chapter 10-2.2 of Manual under the caption First Level Checking it was mentioned that 'the DEO shall nominate a nodal officer at his level and intimate the name of such officer to the CEO' and further, he went on to depose that is was correct to state that in Chapter 10-2.13 under the caption –Numbering of the EVMs, it was stated that "since the first level check is over, the sticker will be pasted on the side of the CU and the checking-engineer will put his signature indicating the date in the relevant slot provided in the sticker. This would mean that the CU is in order in every respect'.

7.27. The Learned Counsel for the Petitioner submits that if the sticker was there in the EVMs (had it been stuck on EVMs), then, the present case would not have come up before this Court. Also, the Learned Counsel for the Petitioner refers to the evidence of C.W. 2 wherein he has stated that he was not sure but though that the Election Tahsildar was his representative.

7.28. The Learned Counsel for the Petitioner contends that C.W.2, in his evidence, had stated that the Election Commission itself fixed the date for randomization process and further, he has deposed that they might have sent notice to any candidate or the Petitioner in particular about the schedule of first level of randomization and further that he had not brought proof in regard to the notice being sent to the candidate or any acknowledgment to show that they had received and according to him, they might be available in the District Collectorate, Tiruvannamalai. That apart, the Learned Counsel for the Petitioner refers to the evidence of C.W.2 wherein he had deposed that it was correct to state that 2.2 of Chapter 10 in page 79 of the Election Commission's Manual gave a preforma of the label stuck on EVMS and further, it was correct to state that a mere cursory look of the proforma would reveal that the name of the State, name of the election, District Name, Control Unit Number, District, running serial number, Current ID first level check Randomization-2, deployment status, polling station Number, R.O./A.R.O.

7.29. At this Stage, the learned Counsel for the Petitioner contends that the petitioner had pointed out the acts/omissions of officials in the Election Petition. The learned Counsel for the Petitioner refers to the evidence of C.W.2 (District Election Officer) and submits that as per Chapter 10-3.2 of the Handbook for the Candidates, it was correct to state that if none of the candidates or agents were present, announcement to be made from a public address system fitted in the building before starting the preparation.

7.30 Also, the Learned Counsel for the petitioner refers to the evidence of C.W.2, who had stated that he had full knowledge about the discrepancies and after receipt of Exs.C.2 and C.3 and the directions circulated to all the District Election Officers from Ramesh and the Went through their contents. Further, the Learned Counsel for the Petitioner refers to the evidence of C.W.2 Wherein he had stated that in Chapter 10-2.5 of the Manual alone, it was mentioned that randomization in the presence of candidates or his representative was compulsory and in 2.7, it was stated that it was optional and in 2.8, it was stated that it should be done in the presence of the candidate, his agent or authorised representative and in the presence of an Election observer. Moreover, he had stated that in page 23 of Ex.C.5 (Entire Fiel - Directions communicated to all DEO by the Chief Electoral Officers), it was stated that all the contesting candidates of 8 constituencies were informed about the randomization of EVMs.

7.31. The Learned Counsel for the Petitioner refers to the evidence of C.W.2 and contends that C.W.2. had deposed his evidence that it was correct to state that as per Chapter 10 - 2.14, all the stages relating to second level of randomization shall invariably. fully covered with videography and records kept properly. Also, the Learned Counsel for the Petitioner brings it to the notice of this Court that C.W.2 in his evidence had stated that in Chapter 10 - 2.13, it was mentioned that after the second level of randomization, the candidate would also be given the consolidated list of polling station wise list of Control units used during the polls and further, he had stated that it was correct to state that in Chapter 10 - 2.13 of the handbook for the candidates, it was mentioned that along with additional information given by the Returning Officer in writing to the candidates regarding the machine numbers of control units used as replacement and the control units used during re-poll would give of complete picture of all the EVMS used at polling stations. Further C.W.2 had proceeded to state in his evidence that it was correct to state that it was further expected of the Returning Officer to paste the EVM deployment account indicating the control unit numbers of used polling station wise in the relevant counting hall itself for everyone to see and that he visited all the eight counting stations on the day of counting. Moreover, to a query put to C.W.2 (on behalf of the Petitioner), Whether he had seen the posting of the EVM deployment account indicating the control unit number of the EVM used polling station wise stuck on the counting hall ?, he had stated that he does not remember because of the lapses of time.

7.32. The Learned counsel for the petitioner refers to the evidence of C.W.1 (then Returning Officer wherein he had stated that he does not have any idea whether the second level of randomization was available in the Internet or not but deposed that Ex.C.1 was the list of EVMs in the second level of randomization published. Moreover, C.W.1, in his evidence, has also proceeded to state that he had not informed any of the candidates that eight EVMS were faulty and he replaced them with reserved units, but stated that sent a report to the Collector in this regard Further, C.W.1, had also deposed that it was correct to state that since the candidates were allowed to witness the checking of the EVMS, they would be fully aware of the EVMS that were faulty and replaced. Added Further, C.W.1, in

his evidence, had stated that it was correct state that there was no control units number as o, Nil Blank or I as found in form 17Cs Viz., Exs.P.26 to 38 and it was correct to state that it was the mistake of the person in not verifying the number and noting it down in the Form 17Cs and he had also proceeded to add that it was the mistake of the Presiding Officer of the Polling Station in not having the mention of the control unit in Form 17Cs.

7.33. The Learned Counsel for the Petitioner refers to the evidence of C.W.2 (District Election Officers) who had deposed the second randomization was the job of the Returning Officer and Assistant Returning Officer and that he had no role in it. Further, he had stated that Ex.C.8 series was the photocopy of the notice sent to all the candidates regarding first level of randomization and the Photocopy of the acknowledgement of the candidates and that Ex.C.9 was the Photocopy of the list of the candidates / their agents who attended the first level of randomization on 07-04-2011 with their signatures (marked without objection) and EX.C 10 was by the photocopy of the letter dated 10-04-2011 sent by the Returning Officer to him regarding the malfunctioning of seven ballot units and seven control units along with replacements (marked without objection) and that since the originals of the aforesaid documents were required for officers use/ purpose, the Photocopies were marked.

8. The Submissions of the 1st Respondent:

8.1 Per contra, the Learned Counsel for the 1st Respondent adverts to the averments in paragraph 5 of the Election Petition Filled by the Petitioner, relating to the alleged corrupt practice of influencing the District Election Officer and Returning Officer in the 1st Respondent's capacity as State Cabinet Minister and the another allegation relates to manipulation of EVMS and also in paragraph 8 of the petition, it was averred by the Petitioner that there was a long gap of one month from the date of poll to the date of counting alleging that this gap was used by the returned candidate in connivance with the election officials to manipulate the EVMS and that apart, in para 9 the Petitioner had averred that there was no security for the EVMS after the date of poll and that access to the room where the EVMS were kept was made easy in order to facilitate tampering of the EVMS and and submits that the petitioner would necessarily have to plead with cleaity the manner in which the returned candidate carried out such manipulations to tampering of the EVMS, when such tampering took place and how exactiy it proves the connivance or active participation of the election officials in tampering of the EVMS and further, how by such Manipulation or tampering, the result of the election was materially affected, Further, it is for the petitioner to place cogent evidence and prove that in fact what was alleged was committed by the returned candidate in connivance or with the active participation of the election Officials.

8.2 Expatiating his submission, the Learned Counsel for 1st Respondent contends that a heavy duty is cast upon the Petitioner to specifically allege and prove the mode, manner, time place and method of commission of any such corrupt practices by leading cogent evidence. According to the 1st Respondent,

The Petitioner, in the instant case, had miserably failed to prove the same and instead had chosen to cross examine and bring on record the evidence from the election officials viz., C.W.1, and C.W.2 as though they had not followed certain guidelines issued by the Election Commission of India which are not statutory in character.

8.3. The Learned Counsel for the 1st Respondent urges before this Court that there was no single averment in the Election Petition that the election guidelines given in the form of hand book to the official were not followed and also that there was not a single averment in the election petition that the non-observance of any particular guideline facilitated the alleged corrupt practice of manipulation of tampering of E.V.Ms.

8.4. The Learned Counsel for the 1st Respondent contends that in paragraph 11 of the Petition, the Election Petitioner had averred about the discrepancy in the number of Control Units of EVMS pertaining to Polling Station No. 135 noticed by him on the date of counting i.e. 13-05-2011 and that it is admitted case of the returned Candidate/ 1st Respondent and the election officials that counting in relation to the polling Station No. 135 was stopped and that this Polling Station had only 705 registered voters. Further more, It is represented on behalf of the 1st Respondent that the margin of victory of the returned candidate was admittedly 5126 votes and the non-declaration of results of polling station No. 135 would not in any event materially alter the result of the election and as such, the issue pertaining to P.S.No. 135 could be ignored.

8.5. The Learned Counsel for the 1st Respondent refers to Ex.P.2 Communication dated 13-05-2011 from the Returning Officer (C.W.1) to the candidates informed them that due to the discrepancies in the Control Units numbers, the candidates had raised objections and therefore the counting was stopped in respect of polling station No. 135.

8.6. The Learned Counsel for the 1st Respondent with regard to the averments of alleged corrupt practice in para 13 of the Election Petition wherein the Petitioner had alleged that the 1st Respondent and his agents stated creating a ruckus in the counting hall and indulged in capturing of the counting process contends that virtually no details were furnished in the Election Petition as to how such an event had occurred and in fact, the capturing of the counting process by the 1st Respondent was not even admitted or proved in evidence in the instant case on hand.

8.7 That apart the Learned Counsel for the 1st Respondent submits that the serious Charge of corrupt practice leveled by the petitioner in paragraph 13 of the Election Petition would Certainly require some further facts and particulars to constitute a pleading which could give rise to cause of action at the first instance. Moreover, it does not qualify as a material fact that would be proved by leading evidence since this was not a cause of action based upon which the Petition was filed and in fact, these allegations are to be rejected as false one and that too made in any casual and desultory manner.

8.8. The Learned Counsel for the 1st Respondent contents that the Petitioner in para 14 of the Election Petition has inter alia stated that he was surprised to note the marked discrepancies between the two sets of form 17C supplied by the Returning Officer which point out that there was a wholesale manipulation of records in the present case and in this regard, the plea taken on behalf of the 1st Respondent is that the allegation up to this point in the petition through bereft of details and vague, were only that the E.V.Ms. were manipulated or tampered with by the returned Candidate/1st Respondent connivance with the Returning Officer (C.W.1) and District Election Officer (C.W.2). In this connection, the Learned counsel for the 1st Respondent projects an argument that in para 14 of the Election Petition of the Petitioner, a new plea was introduced that there was whole sale manipulation of records.

8.9. According to the Learned Counsel for the 1st Respondent, the word 'manipulate' is defined according to Webster's Dictionary as 'to control or take advantage of by artful unfair or insidious means.'

8.10. Proceeding further it is the submission of the Learned Counsel for the 1st Respondent that the Petitioner apart from mentioning in para 15 of the petition that there were variations in the control unit numbers in the records Viz., from 17C and the Roundwise Tabulation list of results, there was not a single averments (i) as to which Particular record was manipulated, (ii) as to who actually indulged in such manipulation of records (iii) how it was manipulated, (iv) what was the effect of such manipulation of record and (v) how the election result was materially affected by such manipulation. In this regard the stand of the 1st Respondent is that there were no pleadings in the Election Petition relating to such aforesaid material facts and furthermore, no material particulars such manipulation were furnished and in the absence of the same the allegation that records were manipulated is to be rejected in toto.

8.11. The learned Counsel for the 1st Respondent invites the attention of this Court to Section 83(1) of the Representation of People Act and contends that in the Election Petition, the Petitioner should state the material facts from which he had gathered the commission of the corrupt practices and further the petition should contain fullest possible particulars of the corrupt practices that the petitioner alleged. Further it is the submission of the learned counsel for the 1st Respondent that a mere averment in the election petition made by the petitioner to the effect that there was wholesale manipulation of records would not in any manner satisfy the requirement of the Representation of the people Act, 1951 and as such the plea of the petitioner in this regard is to be rejected by this court.

8.12. The learned counsel for the 1st Respondent contends that in paragraph 17 of the election petition the petitioner had alleged that the Returning officer (C.W.1) had not maintained a true account of the form 17Cs in order to pave the way for manipulation of EVMs. Also that, the petitioner in para 18 of Election petition has averred that there were various discrepancies in form 17Cs which show the connivance of the District Election Officer (C.W.2) and the Returning Officer (C.W.1) with 1st Respondent to tamper the E.V.Ms and materially affect the result of the election. In this connection the Learned counsel for the 1st Respondent

submits that a new allegation introduced in paragraph 17 and 18 of the Election Petition that discrepancies in Form 17Cs paved the way for manipulation of the E.V.Ms.

8.13. The Plea of the 1st Respondent is that the Petitioner had not cited any specific details in regard to the so-called manipulation of E.V.Ms., how the E.V.Ms. May in fact be manipulated as claimed and the date of occurrence, persons involved and the manner of commission of such manipulation of E.V.Ms.

8.14. At this stage, the Learned Counsel for the 1st Respondent forcefully submits that in the affidavit filed under the proviso to Section 83 (1) of the Representation of people Act, 1951 read with Rule 94 (a) of Conduct of Election Rules, 1961 filed along with the petition there is no specific averment relating to paragraph 17 and 18 of the petition and indeed, this affidavit should furnish the particulars in support of the allegation of corrupt practice as per the Representation of people Act, 1951 and as per conduct of election rules, Form 25 (C) Rule 94 (A) shows that the petitioner ought to clearly acknowledge which of the statements made in the petition were based upon his knowledge and which are based upon information received by him. Also that, the petitioner's affidavit referred to supra does not disclose any information at all in regard to the averments made by him in para 19 of the Election Petition.

8.15. The Learned Counsel for the 1st Respondent refers to the averments in para 19 of the Election of the Petition of the Petitioner and contends that it is the case of the Petitioner that the 1st Respondent brought undue influence upon the Returning Officer (C.W.1) and prevented a re-poll and that re-poll was warranted in as much as the counting was stopped in one Polling Station No. 135 was stopped. Therefore, this Court, by taking note of the aforesaid circumstances, has to be completely eschewed the averments of the Petitioner made in paragraph 17 to 19 of the Election Petition.

8.16. Coming to the averment of the Petitioner made in Paragraph 20 of the Election Petition, it is the contention of the Learned Counsel for the 1st Respondent that the Petitioner in fact has alleged that as a Cabinet Minister, the 1st Respondent / Returned Candidate brought undue influence upon the District Election Officer (C.W.2) and Returning Officer (C.W.1) and created the aforesaid records and here also, no details were provided as to how the 1st Respondent brought undue influence upon the Government officials, which "records" were created by the exercise of undue influence who created them, how and what point of time they were created etc. In fact, according to the Learned Counsel for the 1st Respondent, no material particulars were provided on behalf of the Petitioner to support this allegation and also no evidence was let in on his behalf.

8.17. Besides the above, the Learned Counsel for the 1st Respondent brings it to the notice of this Court that the only allegation of irregularity set out by the Petitioner was in respect of the averment seen in paragraph 15 of the Election Petition relating to the variation of control Unit Numbers of E.V. Ms. on a comparison of the Form 17Cs and Ex.P.4-Roundwise Tabulation Sheet.

8.18. The Learned Counsel for the 1st Respondent proceeds to state that prior to poll date the Election Commission of India allots E.V.Ms. to a particular constituencies and within the constituencies, allotment takes place for particular polling stations and these processes take place in the presence of candidates or their agents and in fact, all major political parties and their candidates are well aware of this procedure.

8.19. Furthermore, it is represented on behalf of the 1st Respondent that the 2nd round of randomization on whereby a particular Polling Station is allotted E.V.M.s within the constituency takes place a few days before the poll date. The allotment takes place by means of a computer software program without human intervention insofar as an Assembly constituency is concerned, a certain number of E.V.Ms. are allotted over and above the number of Polling Stations to provide for the possibility of some of the E.V.Ms. Developing technical problems. In fact, around 15th extra E.V.Ms. are usually allotted to a particular constituency. Also, while preparing the list of E.V.Ms. allotted to a Particular polling station, these extra units are shown as "Reserve" units in the list and this list of Control Units and Ballot Units (CUs and Bus) are allotted to a particular polling station is a document prepared by the Returning Office (C.W.1) in the presence of all the candidates. This is the second level randomization list of CUs and BUs (Ex.C.1-attested copy as per R.D.O.'s office record available) that would contain the Control Unit Number of Particular E.V.Ms. allotted to the polling station and also the "Reserve" unit number allotted to the constituency and although the significance of Ex.C.1-Attested Copy was not lost on the Petitioner, the original of this document was not produced and instead it was suppressed.

8.20. The Learned Counsel for the 1st Respondent contends that Form 17C is prepared by the Presiding Officer of the Polling Station and in reality, in terms of Rule 49 (S) of the Conduct of Election Rules, 1961, Form 17C would be prepared on the date of polling containing the name and number of the polling Station Number of Control Units, Ballot Units, total number of registered voters for that polling station and the total number of votes registered on polling day among other details.

8.21. It is the stand of the 1st Respondent that Form 17C is filled up in the presence of the candidate's agents and the copy is handed over to the agents after obtaining their signature in the Polling Station and further, on the day of counting, on the reverse side of Form 17C the number of votes gathered by each candidate would be mentioned and once again the signature of the counting agents of the candidates would be obtained and a copy would be issued. In the present case, the Petitioner had produced some of the copies of Form 17C given to his agents on polling day as also a certified copy issued by the Returning Officer in respect of all the 25 Polling Stations in which discrepancies were alleged.

8.22. The Learned Counsel for the 1st Respondent submits that Exs.P.3,5,6,8,10,12,14,16,18,20,22,24,26 to P.38 were the certified copies of Form 17C issued to the Petitioner and Exs.P.7,9,11,13,15,17,21,23,25 were the certified copies issued to the Petitioner's agent on polling day and the Roundwise Tabulation Sheet depicting the results of the counting (Polling Station Wise) was marked as Ex. P.4.

8.23. In regard to the purported anomalies/discrepancies set out by the Petitioner in his Election Petition in paragraph 15(a) to (z), the Learned Counsel for the 1st Respondent submits that the discrepancies can be categorised in three categories such as:

- (i) polling Station wherein E.V.Ms. were replaced with reserve units.
- (ii) The discrepancies found in 13 instances wherein Form 17Cs were filled up improperly by the Presiding Officer [by either leaving the column No.4 dealing with control unit number as blank or entering numeral "1"].
- (iii) In four instances wherein the respective Form 17Cs were filled incorrect [due to clerical error on polling day].

8.24. According to the 1st Respondent, in the first category (wherein E.V.Ms. were replaced with reserve units), there were 8 Polling Stations and in these Polling Stations, the control unit number of the E.V.Ms. that was replaced was wrongly entered in Ex.P.4-Roundwise Tabulation Sheet instead of the "Reserve" Unit number. Further, it is represented on behalf of the 1st Respondent that in other words, the Officer in-charge of the Polling Station of the Polling Station had checked the control unit number of E.V.Ms. in which votes were registered and entered the correct number in the Form 17C. Also that, at the end of the counting of votes, the election official in charge of preparing the Roundwise Tabulation Sheet had not noticed that E.V.Ms. originally sent to the particular Polling Station as per Ex.C.1 was replaced and the control unit in which the votes were registered and brought to the counting table was the "Reserve" unit.

8.25. The Learned Counsel for the 1st Respondent contends that while entering data at times, the Computer Operator derives the previously entering data and pastes the same in the fresh document and this appears to have taken place/ happened and this explanation is supported by Ex. C.3 (Report on Poll day E.V. Ms. Replacements in Tiruvannamalai District relating to No.63, Tiruvannamalai Assembly Constituency), in Ex.C.5 series [entire file wherein the Election Commission's direction were communicated to all District Election Officers, all Returning Officers of Assembly constituencies] which is an official communication issued by the Returning Officer (C.W.1) that 8 E.V.Ms. were not working and replaced with 8 Reserve Units and the details of the said 8 instances are as follows:

<i>Sl. No.</i>	<i>Polling Station</i>	<i>Form 17-C and Exhibit No.</i>	<i>CU No. Allotted as per Ex.C1</i>	<i>Reserve Unit used as per Ex.C3 of C5</i>	<i>CU as per roundwise tabulation sheet Ex.P4</i>
01	20	K 16841 (P-05)	K 19323	K 16841	K 19323
02	39	J 24916 (P-06)	H 19113	J 24916	H 19113
03	57	K 23817 (P-08)	H 09104	K 23817	H 09104

<i>Sl. No.</i>	<i>Polling Station</i>	<i>Form 17-C and Exhibit No.</i>	<i>CU No. Allotted as per Ex.C1</i>	<i>Reserve Unit used as per Ex.C3 of C5</i>	<i>CU as per roundwise tabulation sheet Ex.P4</i>
04	61	K 18934 (P-10)	H 22134	K 18934	H 22134
05	69	L 17925 (P-12)	H 05932	L 17925	H 05932
06	75	L 17729 (P-14)	L 20920	L 17729	L 20920
07	93	K 24230 (P-16)	H 03644	K 24230	H 03644
08	182	J 23641 (P-19)	K 18473	J 23641	K 18473

8.26. The Learned Counsel for the 1st Respondent contends that in the above 8 Polling Stations, there was malpractice or tampering of E.V.Ms. as alleged by the Petitioner and as a matter of fact, a mistake was committed by the Officials in-charge of preparing the Roundwise Tabulation Sheet Ex.P.4 on the day of counting. That apart, this sort of discrepancy, according to the Learned Counsel for the 1st Respondent, had not caused any material change to the results of the election since the machines in which votes were registered where in fact the machines which came to the counting table.

8.27. The Learned Counsel for the 1st Respondent (in regard to the 2nd category of anomalies found in 13 instances) submits that in all these instances the control unit number of the E.V.Ms. was originally allotted as per Ex.C.1 matches control unit number found in Ex.P.4 (Roundwise Tabulation Sheet) in the respective polling station and there cannot be even an iota of evidence in doubt in these 13 instances there had not been any manipulation since the E.V.Ms. that was allotted was in fact used for registration of votes and later sent to the Counting Table. In this connection, the Learned Counsel for the 1st Respondent submits that the mistake was on the part of the presiding Officer of the Polling Station who had either left out the control unit number in the Form 17C or filled up the said column with numerical "1". For a ready reference, the details of 13 instances are furnished hereunder:

<i>Sl. No.</i>	<i>Booth No.</i>	<i>Ex.No.</i>	<i>As per II Level Randomization List Ex. C1</i>	<i>Entry in Form 17-C on poll date</i>	<i>As per Ex.P4 at the time of Counting</i>
1	17	P-26	K 23884	Blank	K 23884
2	41	P-27	L 17669	1	L 17669
3	62	P-28	H 84751	1	H 84751
4	88	P-29	H 09026	1	H 09026
5	98	P-30	K 23617	1	K 23617

<i>Sl. No.</i>	<i>Booth No.</i>	<i>Ex.No.</i>	<i>As per II Level Randomization List Ex. C1</i>	<i>Entry in Form 17-C on poll date</i>	<i>As per Ex.P4 at the time of Counting</i>
6	99	P-31	H 89654	Blank	H 89654
7	104	P-32	K 20018	1	K 20018
8	112	P-33	K 22628	1	K 22628
9	166 A	P-34	H 10585	1	H 10585
10	187	P-35	H 88451	1	H 88451
11	204	P-36	K 16368	1	K 16368
12	215	P-37	K 16782	1	K 16782
13	224	P-38	H 72433	1	H 72433

8.28. The Learned Counsel for the 1st Respondent, by adverting to the 3rd category of anomaly which comprises of four instances [wherein the respective Form 17Cs were filled incorrectly due to clerical error on polling day] and submits that (a) in regard to the Polling Station No. 159 (Ex.P.18) in the Form 17C Control Unit No. L 27304 was entered. Also that as per Ex.C.1 (list of E.V.Ms. in second level randomization) as well as Ex.P.4 (Roundwise Tabulation Sheet) L 27304 was actually the ballot unit number and not the control unit number. In fact, the control unit No. L 17764 got correlated both in Ex.C.1 and Ex. P.4 and in reality, instead of the control unit number, the Presiding Officer of the Polling Station had entered the Ballot Unit number and in any event, this could be termed only as a clerical error.

(b) in respect of P.S.No.191 (Se. Kudalur) (Ex.P.20), the Control Unit number was entered as K 13773 and this was the correct number as per Ex.C.1 and Ex.P.4. However, in Ex.P.20 was the certified copy issued to the Petitioner and Ex. P.21 was the purported copy issued tot the Petitioner's polling agent in which the last digit of the control unit number appeared to be '5' instead of '3' According to the Learned Counsel for the 1st Respondent, in reality, both the numbers K 13775 and K 13773 are found in Ex.P.20 and as such, it was nothing but a clerical mistake. (c) in regard to Polling Station No. 209, the Form 17C (Ex.P.22) shows that the control unit number K 21635 whereas in Ex. C.1 and C.4 reflects the correct number as L 19626 and as such, it is contended on behalf of the 1st Respondent that it was a mistake of individual in preparing Form 17C and it is only a mere clerical error. That apart, it is the stand of the 1st Respondent that number of votes assigned to this polling station is 570 whereas the margin of victory of the 1st Respondent was 5126 votes. (d) in regard to the fourth instance viz., relating to Polling Station No. 222, Form 17C Ex. 24), it is to be pointed out that the said document indicates the control unit number as K 16818. However, in Ex.C.1 and Ex.P.4 the number was mentioned as K 15670. Here again, it is the plea of the

1st Respondent that the Petitioner had secured 175 votes more than the returned candidate in this polling station even though the number of votes of 619 out of a total assigned number of votes 694 and error was only a clerical error and could not be attributed by any manipulation of the E.V.Ms. or the records in as much the petitioner had secured more votes than the 1st Respondent.

8.29. The Learned Counsel for the 1st Respondent strenuously contends that out of 25 instances mentioned by the petitioner in the Election Petition, in 10 instances he had secured more votes than that of the 1st Respondent (the respective polling station Nos. 17,20,75, 88, 99, 104,182, 166A, 222 and 224). At this stage, the Learned Counsel for the 1st Respondent strenuously takes a stand that in all the 25 instances Form 17C prepared by the Presiding Officer of the Polling Station was signed by the Agents of the Petitioner as well as the 1st Respondent and it was inconceivable that the Petitioner would not have noticed these discrepancies much before the date of counting considering the fact that he had a one month's time to ponder on the contents of the Form 17Cs Collected by his polling agents.

8.30. Also, the Learned Counsel for the 1st Respondent proceeds to state that when the 1st Respondent was able to easily obtain Ex.C.1 (list of E.V.Ms. in second level of randomization published) from the website of Election Commission of India, the Petitioner chose to totally ignore the existence of such document and had clearly foisted a completely false charge of corrupt electoral practice against the returned candidate.

8.31. The Learned Counsel for the 1st Respondent refers to the evidence of P.W.1 (Petitioner) (in chief examination) that he had obtained the certified copies of Form 17C and filled the same and likewise, he also obtained Compact Discs and filed them before this Court. However, in the Election Petition, at paragraph 14, the Petitioner had stated that he made an application dated 24-06-2011 to the Returning Officer asking for copies of Form 17C and Compact Discs containing video of the counting. But the Petitioner had not mentioned that the Compact Discs were given to him but only stated that the Returning Officer supplied certified copies of Form 17C. Added further, the application dated 24-06-2011 was not produced along with the petition or at later point of time not had be filed any compact Discs before this Court.

8.32. The Learned Counsel for the 1st Respondent refers to the evidence of P.W.1 (in cross examination) and submits that P.W.1. had stated the he does not posses the application dated 24-06-2011 but admits that he received both Form 17C as well as the Compact Discs. Also, P.W.1, in his evidence, had went on to add that a query as to why he had not file the C.Ds. into Court, it was not necessary for him to file the Same.

8.33. The Learned Counsel for the 1st Respondent proceeds to submit that in fact a suggestion was put to C.W.2 on behalf of the Petitioner, that no videography of counting was done at all, for which, the witness had denied the suggestion. That apart, the Learned Counsel for the 1st Respondent submits that P.W.1 firstly stated (in chief examination) that he had applied for the Compact Discs and then stated in chief examination that he had filed it in court and finally stated that it was not

necessary for him to file them. Also, it is contended on behalf of the 1st Respondent that the best proof to substantiate any of the serious allegations i.e. Capturing of the counting process by the agents of the 1st Respondent would be official video issued to the petitioner by the Returning Officer and in the absence of not producing the same, an adverse inference could be inferred against the Petitioner. Moreover, according to the 1st Respondent that the Petitioner is to explain that as to why there were no complaints made during the counting except for the Polling Station No.135 and in fact, election officials had treated all the candidates equally without showing any fear of favour and that all steps were taken in compliance with the Acts and Rules, Regulations as well as Guidelines applicable to the C.W.1 and C.W.2 and other officers working under them.

8.34. The Learned Counsel for the 1st Respondent vehemently contends that the Petitioner made no complaint before any official in regard to the conduct of the election at any time prior to the filling of the Election Petition. In paragraph 12 of the Petition, there was a reference to a written objection given in writing to the Returning Officer highlighting various irregularities and illegalities warranting re-poll and according to the 1st Respondent, this averment was not substantiated by the Petitioner before this Court by means of any record.

8.35. The Learned Counsel for the 1st Respondent refers to the para 13 of the Election Petition (filed by the Petitioner) to the effect that District Election Officer and Returning Officer told him that they had sent the report to the Election Commission of India, nevertheless they had not sent a proper report based on the valid objections raised by him in the three representations referred.

8.36. In this connection, it is represented on behalf of the 1st Respondent that indeed, no explanation was forthcoming from P.W.1, P.W.2 or even during the course of the Petitioner's arguments as to his three representation, referred to in the Petition. In this connection, the Learned Counsel for the 1st Respondent refers to the evidence of P.W.2 (in his cross examination) wherein he had stated that he had never sent any representation in writing and as such, three representations were sent was a blatant falsehood.

8.37. The Learned Counsel for the 1st Respondent refers to the deposition of P.W.1 (In cross examination) to the effect that he had never seen Ex. C.1 which was put to him but submits that he denied the same although it was a public document. Furthermore, P.W.1 had stated that he had no knowledge of when and who prepared Ex. C. 1 (list of E.V.Ms. in second level of randomization published) and that he did not remember whether even before polling day during the second level randomization notice would be given and he did not know whether his agents were present when Ex. C.1 was prepared, However, it is the stand of the 1st Respondent that P.W.2 admitted in his cross examination that it was correct to state that political parties would watch which E.V.Ms. were allotted to which polling station and that before the date of polling the Returning officer would furnish the list of E.V.Ms. for each station and that the aforesaid list would be available at the Election Commission website and therefore, it is quite evident that the Petitioner had full knowledge of Ex.C.1 but refused to even admit the public document and instead falsely claimed that he did not know anything about it. At this stage, the Learned Counsel for the 1st Respondent submits that P.W.2 had admitted the

publication of the document and further the political parties would be present when it was prepared and it was available in the official website of the Election Commission of India. Also that, when a specific question Ex.C1 was put to P.W.1 (in cross examination) he had stated that he came to know that none of his agents were present during the second level of randomization which was a false one.

8.38. The Learned Counsel for the 1st Respondent contends that the onus of proof in an Election Petition is heavily on the Petitioner to establish the corrupt practices and in fact, the alleged corrupt practice ought to be proved to the hilt.

8.39. Furthermore, the Learned Counsel for the 1st Respondent relies on the decision of the Hon'ble Supreme Court in *Baldev Singh Mann V. Surjit Singh Dhiman*, (2009) 1 Supreme Court Cases 633 at special page 640, 641 & 642, wherein in paragraph 19 & 21 it is observed and held as follows:

"19. In the Impugned Judgment the High Court came to the conclusion under sub-section (7) of 123 of the said Act, it is obtaining or procuring of assistance for the furtherance of the prospects of the candidate which constitutes main ingredients of corrupt practice. The assistance has to be procured from a person who is in the government service and who additionally is a gazetted officer. In the impugned Judgment the High Court had also discussed the legal position in detail. The law is now well-settled that charge of a corrupt practice in an election petition should be proved almost like the criminal charge. The standard of proof is high and the burden of proof is on the election petitioner. Mere preponderance of probabilities are not enough, as may be the case in a civil dispute. Allegations of corrupt practices should be clear and precise and the charge should be proved to the hilt as in a criminal trial by clear, cogent and credible evidence.

21. The Court in a number of cases held that charge of corrupt practice is a quasi-criminal in character and it has to be proved as a criminal charge and proved in the court.

In Jeet Mohinder Singh's case (supra), the court observed as under:-

"Charge or corrupt practice is quasi-criminal in character. If substantiated it leads not only to the setting aside of the election of the successful candidate, but also of his being disqualified to contest an election for a certain period. It may entail extinction of a person's public life and political career. A trial of an election petition though within the realm of civil law is akin to trial on a criminal charge. Two consequences follow. Firstly, the allegations relating to commission of a corrupt practice should be sufficiently clear and stated precisely so as to afford the person charged a full opportunity of meeting the same. Secondly, the charges when put to issue should be proved by clear, cogent and credible evidence. To prove charge of corrupt practice a mere preponderance of probabilities would not be enough. There would be a presumption of innocence available to the person

charged. The charge shall have to be proved to the hilt, the standard of proof being the same as in a criminal trial."

8.40. The learned Counsel for the 1st Respondent cites the decision of the Hon'ble Supreme Court in *Gajanan Krishnaji Bapat and another V. Dattaji Raghobaji Meghe and others*, (1995) 5 Supreme Court Cases 347 at special page 359 to 361, wherein in paragraph 13 & 14, it is observed and laid down as follows:

"13. *Though the election of a successful candidate is not to be interfered with lightly and the verdict of the electorate upset, this Court has emphasised in more than one case that one of the essentials of the election law is to safeguard the purity of the election process and to see that people do not get elected by flagrant breaches of the law or by committing corrupt practices. It must be remembered that an election petition is not a matter in which the only persons interested are the candidates who fought the election against each other. The public is also substantially interested in it and it is so because election is an essential part of a democratic process. It is equally well settled by this Court and necessary to bear in mind that a charge of corrupt practice is in the nature of a quasi criminal charge, as its consequence is not only to render the election of the returned candidate void but in some cases even to impose upon him a disqualification for contesting even the next election. The evidence led in support of the corrupt practice must therefore, not only be cogent and definite but if the election petitioner has to succeed, he must establish definitely and to the satisfaction of the court the charge of corrupt practice which he levels against the returned candidate. The onus lies heavily on the election petitioner to establish the charge of corrupt practice and in case of doubt the benefit goes to the returned candidate. In the case of an election petition, based on allegations of commission of corrupt practice, the standard of proof is generally speaking that of criminal trials, which requires strict proof of the charge beyond a reasonable doubt and the burden of proof is on the petitioner and that burden does not shift. (See with advantage: Nihal Singh Vs. Rao Birendra Singh Anr (1970 (3) SCC, 239); Om Prabha Jain Vs. Charan Das & Anr. (1975 (Supp) SCR, 107) ; Daulat Ram Chauhan Vs. Anand Sharma (1984 (2) SCR, 419) and Quamarul Islam Vs. S.K. Kanta And Others (1994 Supp (3) SCC, 5).*

14. *By this proposition, however, we should not be understood to mean or imply that the returned candidate is absolved from his liability to bring forth evidence on the record to rebut the case of the petitioner and to particularly prove such facts which are within his special knowledge (Section 106 Evidence Act). Though, the nature of allegations in cases alleging corrupt practices are quasi-criminal and the burden is heavy on him who assails an election but unlike in a criminal trial, where an accused has the liberty to keep silent, during the trial of an election petition the returned candidate has to place before the Court his version and to satisfy the Court that he had not*

*committed the corrupt practice as alleged in the petition and wherever necessary by adducing evidence besides giving his sworn testimony denying the allegations. However, this stage reaches if and when the election petitioner leads cogent and reliable evidence to prove the charges levelled against the returned candidate as, only then, can it be said that the former has discharged his burden. That necessarily means, that if the election petitioner fails to adduce such evidence which may persuade the Court to draw a presumption in his favour the returned candidate will not be required to discharge his burden by adducing evidence in rebuttal. While on this point it will be also pertinent to mention that the election petitioner has to establish the charge by proof beyond reasonable doubt and not merely by preponderance of probabilities as in civil action. In *Surendra Singh Vs. Hardayal Singh* [AIR 1985 SC 89], this Court held it as "very well settled and uniformly accepted that charges of corrupt practices are to be equated with criminal charges and proof thereof would be not preponderance of probabilities, as in civil action, but proof beyond reasonable doubt and if after balancing the evidence adduced there still remains little doubt in proving the charge its benefit must go to the returned candidate." Various tests have been laid down by the High Courts and by this Court to determine the extent of proof required to establish a corrupt practice. The most well accepted test however is that the charge must be established fully to the satisfaction of the Court. While insisting upon the standard of strict proof beyond a reasonable doubt, the courts are not required to extend or stretch the doctrine to such an extreme extent as to make it well nigh impossible to prove any allegation of corrupt practice and as was said in *Harcharan Singh Vs. Sajjan Singh* [AIR 1985 SC 236] "such an approach would defeat and frustrate the very laudable and sacrosanct object of the Act in maintaining purity of the electoral process."*

8.41. The Learned counsel for the 1st Respondent cites the decision of the Hon'ble Supreme Court in *Arikala Narasa Reddy V. Venkata Ram Reddy Reddygari* and another, (2014) 5 Supreme Court Cases 312, at special page 318, whereby and whereunder in paragraph 13 and 15, it is observed and held as follows:

"13. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the

Returning Officer leads to formation of a government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if recounting of votes is made easy. The court has to be more careful when the margin between the contesting candidates is very narrow. "Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results." However, a genuine apprehension of mis-count or illegality and other compulsions of justice may require the recourse to a drastic step.

15. *This Court has consistently held that the court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been "materially affected". There can be no dispute to the settled legal proposition that "as a rule relief not founded on the pleadings should not be granted". Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for dealing the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts. (Vide: Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors., AIR 1964 SC 1249; Bhabhi v. Sheo Govind & Ors., AIR 1975 SC 2117; and M. Chinnasamy v. K.C. Palanisamy & Ors., (2004) 6 SCC 341).*

Narration of Evidence of Witnesses:

9. For fuller and better appreciation of the merits of the controversies involved between the parties in the present Election Petition, this Court, in the interest of Justice, this makes a useful reference to the evidence of P.W.1, P.W.2. and R.W.1.

9.1. P.W.1 (Petitioner), in his evidence, had deposed that he belong to All India Anna Dravida Munnetra Kazhagam (A.I.A.D.M.K.) and contested the Election to No. 63, Tiruvannamalai Assembly Constituency in 2011 as an Official Candidate of A.I.A.D.M.K. Party and that the Election held on 13.04.2011.

9.2. Further, it is his evidence that his Principal Opponent was the 1st Respondent who contested as a candidate of Dravida Munnetra Kazhagam (D.M.K.) on the "Raising Sun" symbol and further that, the 1st Respondent was declared elected in the Election.

9.3. According to P.W.1, he secured 79,676 votes and the 1st Respondent polled 84,802 votes and the difference of votes was 5,126 and that his Counting Agent was K.R. Balasubramanian and Ex.P.1 was the original identity card issued to the counting agent and that at the time of election, the 1st Respondent was the Minister for Food, Government of Tamil Nadu and he won the Election by adopting the corrupt practice and in respect of 26 polling booths, where the polling took place, the EVM numbers mentioned in Form 17C at the time of polling differed from the EVM numbers mentioned at the time of counting.

9.4. P.W.1 in his evidence, had deposed that the E.V.Ms. pertaining to Tiruvannamalai Assembly Constituency was sent to Shanmuga Industrial Government Higher Secondary School, Tiruvannamalai and that his major complaint was that the number of the control units at the polling stations were different from those of control units at the counting station in all the 26 polling stations and that since the control unit numbers were different, they had raised objection and on their objection, the Election Commission had stopped the counting of votes for several hours and that the document shown to him was the certificate given by the RDO (Election Officer) accepting the discrepancy in the number for the Polling Station No. 135, Good Shepherd Matriculation School, Vettavalam Road, Tiruvannamalai which was marked as Ex.P.2.

9.5. Added further, it is his evidence that he obtained the certified copies of Form 17C from the Election Commission and also obtained the Compact Discs and filed the same before this Court. He had further stated that Ex.P.3 was the certified copy of Form 17C relating to Polling Station No. 135 and Ex.P.4 was the Roundwise Tabulation Sheet for the 17th round of counting at Tiruvannamalai and that he filed Ex.P.4 to show that the control unit numbers in Ex.P.4. were different to that of the control unit numbers found in Form 17Cs. Moreover, he had stated in his evidence that the control unit numbers of EVMs in Ex.P.4. differs from that of control units numbers found in Ex.P.5. to P. 38 – certified copy of Form 17Cs and therefore, these would show that there were some irregularities between the time the votes were casted and counted and since the 1st Respondent/returned candidate was the D.M.K. Minister at the time of election and therefore, some manipulation had taken place with the connivance of the officials. Furthermore, he had mentioned that the difference in numbers in Form 17C in Exs.P.5 to P.38 compared to Ex.P.4 in Election Petition and that the Returning Officer and other Election Officials who worked under him were responsible for the discrepancies found in Exs.P.5. to P. 38 compared to Ex.P.4.

9.6. That apart, it is the evidence of P.W.1. (in his cross examination) that the Form 17Cs filed before this Court were obtained from the Election Officials and his agents and that before the counting process started, they had made a complaint stating that the place where the EVMs were kept was opened by the District Election Officer and District Collector Stating that they had to protect them from the rain and further, they made a complaint at the time of counting that the numbers

of the EVMs had not corresponded to their control unit numbers and at the time of counting, they had made a complaint that since the EVMs were manipulated, the control unit numbers did not correspond with the EVMs and he had filed the letter and the complaint regarding the same before this Court.

9.7. Continuing further, it is his evidence that they made an oral complaint to the district Election Officer stating that before the counting process started the counting centre was opened to protect the EVMs from rain and they objected to the opening of the counting centre but they were stopped by the police and the Election Officials came out of the counting centre only after about an hour. Further, he had stated that immediately after the counting process started, they found the discrepancies between the numbers in the Form 17Cs and the EVMs and that the Election Officer accepted that there were discrepancies between the numbers found in Form 17Cs and the EVMs and gave a letter.

9.8. Apart from the above, it is the evidence of P.W.1 that before the date of polling, they were not furnished the ballot numbers and the control unit numbers and he had not obtained copy of the Internet publication of the ballot unit numbers and control unit numbers allotted for each polling station published by the Election Commission before election and on election day after polling, his agents would sign the Form 17Cs which contain the ballot unit numbers and control unit numbers.

9.9. P.W.1 (in his cross examination) had deposed that he had asked his polling agents to sign after reading the Form 17Cs and he does not know whether they signed after reading or not and further that his polling agent signed the Form 17Cs and received the same, Furthermore, he had stated that he received the Form 17Cs from his agents the next day after the day of polling and after receiving form 17Cs, they would verify and analyse the ballot unit numbers and control unit numbers of each polling stations and that he had not enquired about the discrepancy regarding the control unit number and ballot unit number being 1 for polling station No. 41.

9.10. It is the evidence of P.W.1 that in Ex P. 3, the From 17C relating to Polling Station No. 135, his polling agent C. Subramani had signed and his counting agent S. Elanchezian had not signed in Part II page 3 of Ex.P.3 and that according to him, the numeral "1" shown against the ballot unit number and control unit number in Form 17Cs for Polling Station No. 135 denotes that the number of EVMs allotted is "1" and in Ex. P.28, the From 17C relating to Polling Station No. 62, his polling agent S. Srinivasan and counting agent S. Naresh had signed and that the ballot unit number and control unit number was shown as "1" and he had not enquired from his polling agent as to how he had signed the Form 17C which showed the ballot unit and control unit numbers as "1".

9.11. Moreover, it is the evidence of P.W.1 that it is his case that out of 26 irregularities, in 13 instances the numbers given in the Form 17Cs were blank or simply marked "1" and as regards the balance, one EVM was left without being counted and for 12 EVMs corresponding 17C Forms in Part I did not match the control unit and ballot unit numbers given at the time of counting in the Tabulation Sheet.

9.12. Continuing further, it is the evidence of P.W.1 that he had raised objection stating that the machine in the polling booths should have had a number and the same should have been shown in Form 17 but a different number was given for the same polling station at the counting centre and so they raised objections stating that the election officials had not done their job properly and the returning candidate had used it to his advantage.

9.13. P.W.1 in his evidence, went on to add that he verified that when the EVMs were brought and kept inside the rooms after polling and it was correct to state that when the EVMs were being taken from the ground floor to the first floor, the security personnel were present and after the polling day, he had not gone in person to verify whether the EVMs were safeguarded properly and that on the polling day, when the EVMs were brought and kept in the first floor, he went in person and verified and that he does not remember whether his agents were present when the rooms were locked and sealed and a form in which all the candidates or their agents signed was stuck. Also, he had stated that in between the polling and counting days, the Collector and RDO went inside the rooms where the EVMs were kept and stayed there for about one hour stating that they had to protect the EVMs from the rain and we could only raise an objection at that point of time. That apart, he had also stated that he had not given any complaint in writing about this incident.

9.14. Furthermore, it is the evidence of P.W.1 that he had given written objections to the Election Officials but he had not filed the copies of the same, since he does not have the copies and further that the written objections were given to RDO and he does not remember as to who signed the written objections. Besides this, it is the evidence of P.W.1 that the counting was stopped at 11.30 a.m. (but mistakenly mentioned as 11.30 p.m.) and the counting got resumed at 7.00 p.m. through a notice given by the Returning Officer that the counting of votes would commence and he also denied the suggestion that the non Counting of votes in Polling Station No.135 had not affected the election results as the margin of difference was 5, 126.

9.15. Moreover, it is the evidence of P.W.2 that at the counting centre, 14 tables were arranged and 17 rounds of counting took place and initially the postal ballots were counted and they objected at the time of counting the postal ballots itself because the seal of the box wherein the postal ballots were protected was broken. But the Returning Officer failed to accept the same and none of their objections were accepted by the Returning Officer as his only aim was to ensure the success of the 1st Respondent and that at each round of counting, on finding that there were discrepancies in the control unit numbers, he as Chief Counting Agent along with other counting agents of his party, objected to the counting of votes and that the discrepancies continued in every round and in the tenth round when they found there were several discrepancies in the control unit numbers they raised objections to the Returning Officer and his agents quarreled with him and there arose a situation where there was a clash between their agents and the agents of the 1st Respondent and that the counting process was stopped at 11.30 a.m. and that the quarrel still continued when their party candidate came to the counting centre and objected to the discrepancies in the control unit numbers and requested that the counting process be stopped and also asked for re-poll.

9.16. It is the further evidence of P.W.2 that after 7 hours of quarreling, the Returning Officer asked them to give a written complaint and they made a written complaint over phone to the Chief Election Officer and that the Returning Officer informed that he would stop the counting process as far as booth No.135 was concerned and further, the Returning Officer informed them that he would contact the Election Commission in this regard and after receiving the directions from the Election Commission, he would resume counting for booth No. 135 etc.

9.17. P.W.2, in his evidence, has also deposed that after the polling, the EVMs were kept at Shanmuga Industries Higher Secondary School and the police force were present for protecting the EVMs and that no party men were allowed and one day he does not remember the exact date, the Returning Officer and the District Election Officer opened the room wherein the EVMs were kept and that there were no notice or prior information were given to them regarding the opening of the room and that one Police Constable known to them informed him (unofficially) that the room where the EVMs were kept was opened. But he does not know the name of the Police Constable and when they asked the Returning Officer about this, they were informed that he had opened the room to check whether the EVMs were safe and not affected by the rain.

9.18. Also, it is the evidence of P.W.2 that on 13-05-2011, the counting process started and he believed that the Returning Officer and the District Election Officer on the pressure given by the 1st Respondent (returned candidate) had planned and executed several malpractices to ensure the success of the 1st Respondent. He had also deposed that (in his cross examination) that he had not seen in person the Returning Officer and the District Election Officer opening the room where the EVMs were kept and that they were informed by phone by one policeman stationed there and he does not know the aforesaid policeman and the policeman called over the cellphone and he had not given the cellphone number to the said policeman and that he had not given written complaint immediately after receiving information about the opening of the room where the EVMs were kept but he made a complaint to the Election Officials over the phone.

9.19. It is the evidence of R.W.1 (returned candidate) that he contested for the fifth time in the Assembly Elections of the year 2011 and that he filed his nomination on 21-03-2011 and that the EVMs were allotted by a lot by the Computer and this list was published on the Internet and that it was correct to state that Ex.C.1 was the list of the CUs and Bus allotted to AC after second level of randomization of Assembly Constituency and that he was informed by counting agent that in one polling agent counting was stopped.

9.20. It is the further evidence of R.W.1 that he was informed by one of his agents that there was a problem in the counting station and went there and enquired about the same from the Election Officials and that he was informed by Election Officials that everything was happening smoothly and that there was a problem with respect to EVM pertaining to booth No. 135 in which they had difficulty in opening and so they were unable to initiate the counting process with respect to this booth and when he enquired about the Election Officials and he informed that since both the parties had agreed to count this particular EVM towards the end, they decided to continue with the counting. Also that, after getting the phone call, he went from his party office to the counting station in 15 minutes and that his party agent made

the phone call to him informing that the counting was stopped. But he does not remember his name and he was informed by the Returning Officer that counting pertaining to Booth No.135 was stopped and counting for other booths were progressing and further, he denied the suggestion put to him on the side of the Petitioner that EVMs were kept in the first floor of the Government Shanmugha Industries Higher Secondary School without any security. In fact, R.W.1 specifically, in his evidence, has denied the suggestion that since he was a Minister prior to the elections and the Election Officials worked under him, he exerted influence on them and won the elections.

The Discussions and Findings on Issues No. 1 to 6:

10. At the outset, since the issues No. 1, 2, 4 & 5 are inextricably interwoven and interconnected, this Court deals with them in common and answers the same. Also, this Court answers the issues No. 3 & 5 separately.

Issue No. 3:

11. Dealing with the plea of the Petitioner that in para 9 of the Election Petition that E.V.Ms were brought to Government Shanmugha Industries Higher Secondary School where they were kept in classrooms in the First Floor without any security and that a mere padlock and a crossbar which could be easily unscrewed and re-fixed were fixed on the door and that this was done deliberately to facilitate free ingress into the room for the purpose of tampering the machines, it is to be pointed out that P.W.1, in his evidence (in Chief examination), had not stated anything about the lack of security in the School. However, in his cross examination, he had deposed that security were present when the E.V.Ms were taken from the ground floor to the first floor and after the polling day, he had not turned up in person to verify whether the E.V.Ms. were safeguarded properly. Significantly, in the affidavit filed as per Form 25 of the conduct of Election Rules, 1961, the Petitioner had stated that averment in para 9 of the Petition was as per his knowledge and further deposed that he was aware that the School, in which E.V.Ms were kept, was safeguarded by the C.R.P.F.

12. P.W.2 in his evidence, had deposed (in chief examination) that C.W.1 and C.W.2 opened the room wherein the E.V.Ms. were kept on a particular day though he does not know the exact date which was informed to him by a police Constable unofficially and however, he does not know the name of the Policeman. Further, P.W.2, in cross examination, had admitted that he does not know the identity of the Policeman though his call was received by him over the cellphone. In this connection, this Court pertinently points out that when the Petitioner had made an allegation in his Election Petition that the rooms where E.V.Ms. were kept did not have security which allegedly allowed C.W.1 and C.W.2 to manipulate the E.V.Ms to secure victory in favour of the 1st Respondent, it is for him to prove that allegation to the subjective satisfaction of this Court.

13. However, in this regard, this Court is or the considered view that the Petitioner has failed to establish that the E.V.Ms. were showed in the first floor of the Shanmuga Industries Higher Secondary School without any security, for the simple reason that C.W.1 (Returning Officer), in his evidence, had categorically deposed that after the polling was over all the Control Units were brought to the

counting centre and stored in a strong room and that the police protection was arranged for 24 hours and further added that candidates and their agents were also allowed to keep watch on the strong room and that no complaint was received from the Petitioner stating that there was deficiency in the protection provided for safeguarding the E.V.Ms.

14. Added further, P.W.1 himself had admitted in his cross examination that the E.V.Ms kept was safeguarded by C.R.P.F. but in his chief examination, he had not whispered anything about the lack of security in the School. As such, the evidence of P.W.1 to the effect that the School, in which where E.V.Ms were kept, was safeguarded by C.R.P.F. goes against his pleading in para 9 of the Election Petition that all the E.V.Ms were brought to Government Shanmugha Industries Higher Secondary School where they were kept in classrooms in the first Floor without any security.

15. In the instant case, it is to be pointed out that although P.W.1 in his evidence, had stated before this Court that in between the polling and counting days, the District Election Officer (C.W.2) and the Returning Officer (C.W.1) went inside the rooms where the E.V.Ms. were kept and they stayed about there for one hour stating that they had to protect the E.V.Ms. on rain, in regard to these aspects, the Election Petition is conspicuously silent. As a matter of fact, for the first time only P.W.1 had stated about the C.W.2 (District Collector) and C.W.1 (R.D.O.) went inside the room where the E.V.Ms were kept etc.,

16. That apart, although P.W.2, in his chief examination, had referred to the fact that over a cellphone, a Police Constable informed him unofficially that C.W.1 and C.W.2 opened the room where the E.V.Ms. were kept on a particular day though he does not remember the exact date which was informed to him by the said Constable and the very fact that in his cross examination he had deposed that he had not known the identity of the Policeman though his call was received by him over cellphone, on all these aspects, the evidence of P.W.2 does not inspire any confidence in the mind of this Court and as such, this Court rejects his evidence as unworthy of acceptance, Likewise, the evidence of P.W.1, in this regard, is not a credible, reliable and trustworthy one, in the considered opinion of this Court.

17. However, P.W.2 (Counting Agent of P.W.1), in his evidence, had stated that he had not seen in person the Returning Officer (C.W.1) and the District Election Officer (C.W.2) opening the room where the E.V.Ms were kept and further stated they were informed by one policeman stationed there and he does not know the identity of the aforesaid policeman and the policeman called over the cellphone and he had not given his cellphone number to the said policeman and added further, he had not given written complaint immediately after receiving information about the opening of the room where the E.V.Ms were kept but he made a complaint to the Election Officials over the phone. At this stage, this Court significantly points out that P.W.2 although, in his evidence had stated that the policeman called him over the cellphone and based on the information that the room where the E.V.Ms were kept was opened by the Returning Officer and District Election Officer, yet, notwithstanding the fact that he had stated that he does not know the identity of the said policeman atleast by the cellphone call received from the said

policeman, the policeman could have been identified by him and to substantiate his allegation aforesaid he could have been examined by taking out the necessary summons. Unfortunately, such a procedure was not resorted to, on the side of the Petitioner and certainly this is not a circumstance in favour of the Petitioner, in the considered opinion of this Court.

18. Furthermore, this Court, on going through the entire evidence of C.W.1 (Returning Officer), is of the considered view that C.W.1 had stated that after the polling was over all the control units were brought to the counting centre and stored in strong room and the police protection was arranged for 24 hours and that the candidates and agents were allowed to keep watch on the strong room and that no complaint was received from the Petitioner that there was deficiency in the protection for safeguarding the E.V.Ms. Also that, no specific question was put to him, on the side of the Petitioner, that he went inside the room along with C.W.2 (D.E.O.) where the E.V.Ms. were kept in the School in question. In the absence of the same, the allegation made on behalf of the Petitioner that C.W.1 went inside the room along with C.W.2 where E.V.Ms. were kept remained unproved to the subjective satisfaction of this Court. Likewise, no categorical question was put to C.W.2 (District Election Officer) that he went along with C.W.1 (Returning Officer) inside the room where the E.V.Ms were kept in the School and as such, the contra allegation levelled against C.W.2 also not established on the side of the Petitioner.

19. That apart, P.W.1, in the present case, had not filed the C.Ds. as regards the video of the counting before this Court and also not filed a copy of the application dated 24-06-2011 purported to have been submitted to the Returning Officer (C.W.1) asking for copies of Form 17Cs.

20. In short, the Petitioner had not established his case that the E.V.Ms. were stored in the first floor of the Government Shanmuga Industries Higher Secondary School without any security to the subjective satisfaction of this Court and the Issue is answered accordingly.

Issue No. 5 :

21. Dealing with the plea of the Petitioner that the 1st Respondent brought about undue influence on the District Election Officer or the Returning Officer in his capacity as State Cabinet Minister (as he then was), it is to be pointed out that securing/procuring official assistance or bringing undue influence on the officials concerned in this regard, there must be convincing evidence beyond reasonable doubt that the candidate or his agent or any other person with the consent of the candidate or his agent, had procured or attempted to obtain the assistance from the said persons mentioned in section 123(7) of the Representation of the People Act and the said assistance should have the direct nexus to further the prospects of election. As far as the present case is concerned, although the Petitioner has filed the present Election Petition under Section 80, 81, 82, 83, 84, 100(1) (b) (d) (ii) (iii) (d) (iv) r/w Section 58, 58-A, 64-A of the Representation of the People Act, 1950, Rule 66-A, r/w Rule 55-C(2), (3) (4) of conduct of Election Rules, 1961, Rule 53 of the Conduct of Election Rules, 1961, Rule 49-T(2), 49-V(2) of the Conduct of Election Rules, 1961 Rule 49-5(2) of the conduct of Election Rules, 1961 etc., he had not proved the necessary material facts on the basis of necessary evidence

‘ To constitute-corrupt practice’ in terms of Section 123 (7) of the Representation of the People Act. In fact, the pleading averments of the petitioner, in the Election Petition in para 20, inter alia, to the effect that ‘The 1st Respondent had with the assistance of the District Election Officer committed corrupt practice as set out earlier by tampering with the E.V.Ms. And thereby attracting the provisions of section 100 (1) (b) r/w 123 (7) of the Representation of the People Act, 1951. As a Cabinet Minister, the 1st Respondent brought undue influence on the District Election Officer and the Returning Officer, who are Government servants and with their help the aforesaid records were created’ were only as vague as vagueness could be and the mesearements / allegations to that effect could not form the cementing platform for this Court to hold that the 1st Respondent had committed an act of corrupt practice under section 123(7) of the Representation of the People Act.

22. In short, there is paucity of an adequate/enough material facts and evidence in regard to the allegations of corrupt practice as stated in para 20 of the Election Petition by the Petitioner and added further, at this stage, very pertinently points out that a Court of Law is not to proceed on probabilities, it cannot even make a while guess or indulge in speculation or forecast. Also that, the allegation of corrupt practice cannot be established by a mere balance or probabilities. In fact, it is for the petitioner to make out a clear cut case in regard to the allegation or corrupt practice purported to have been indulged by the Returned Candidate/1st Respondent and in the instant case, this Court comes to a resultant conclusion that the petitioner had failed to establish his plea that the 1st Respondent brought about undue influence on the District Election Officer (C.W.2) or the Returning Officer (C.W.1) in his capacity as State Cabinet Minister and accordingly, the Issue is so answered.

Issues No. 1, 2, 4 & 6:

23. It is to be pointed out pertinently that all primary facts which must be established during trial by a person to establish the existence of Cause of Action or his defence are ‘ Material Facts’, in the considered opinion of this Court. It is the primordial duty of the petitioner to furnish particulars of corrupt practice, Material Facts’ would mean all the basic facts which constitute the ingredients of corrupt practice alleged.

24. It is to be noted that as per section 65B of the Indian Evidence Act, 1872 Electronic Records such as, Computer Print Out C.Ds Pen Drives, Micro-Chips, V.V.Ds. etc. are considered as secondary evidence. As per amended Evidence Act, the person in-charge of duplication of Data is to give the Court of certificate that the Data or authentication is to the best of his knowledge. without a certificate the secondary evidence in this regard is not to be permitted by a Court of Law.

25. Be that as it may, this Court very relevantly points out that on a cursory perusal of the contents of the present Election Petition filed by the Petitioner, it is quite clear that the petitioner had referred to 25 instances of discrepancies and in fact, the discrepancies relating to the E.V.Ms. which were replaced with reserve units in eight Polling Stations, it is to be pointed out that only because of eight E.V.Ms. which were not working, they were replaced with eight reserve units as per

explanation supported by Ex.C.3 in Ex. C.5 series and in any event, these discrepancies, in the considered opinion of this Court, had not caused any material change to the results of the Election, because of the simple fact that these machines in which votes were registered were in fact the machines in which had reached the counting table. In regard to the second category of discrepancies seen in 13 instances (pertaining to Form 17Cs which were filled improperly by the Presiding Officer either leaving the column No. 4 dealing with control unit number as blank or entering numeral "1"), it is to be pointed out that in all these matters, the control unit number of the E.V.Ms. Initially allotted the control unit number of the E.V.Ms. Initially allotted as per ExC.1 tallied with the control unit number seen in Ex. P.4 in the concerned Polling Stations and inasmuch as the E.V.M that was allotted was in reality used for registration of votes and later sent to the counting table, it could not be said that there was manipulation and at best, the mistake was on the part of the presiding deity of the Polling Station, who had either left out the control unit number in the Form 17 C or filled up the said column with numerical "1". Insofar as the third category of four instances wherein the respective Form 17Cs were filled up incorrectly due to clerical error on the polling day, it is to be pointed out that the said four instances (as stated earlier) were all only clerical errors/minor errors and could not be construed as any manipulation of E.V.Ms. or the records. Furthermore, 10 out of 25 instances complained or by the Petitioner, the Petitioner himself had secured more votes than the returned candidate/ 1st Respondent.

26. Before answering the Issues in question, this Court, to prevent and aberration of Justice and to promote substantial cause of Justice, cites the following decisions, touching upon the aspect of 'Corrupt Practice'

(a) In the decision of the Hon'ble Supreme Court in Joseph M. Puthussery V. T.S. John & others, AIR 2011 Supreme Court 906 wherein it is held as follows:

"It would be unsafe to accept the oral evidence on its face value without seeking for assurance from other circumstances or unimpeachable document. It is very difficult to Prove a charge of corrupt practice merely on the basis of oral evidence because in election cases, it is very easy to the help of interested witnesses. Oral evidence has to be analyzed by applying common sense test. In assessing the evidence, which is blissfully vague in regard to the particulars I support of averments of undue influence, cannot be acted upon because the Court is dealing with a quasi criminal charge with serious consequences and, therefore, reliable, cogent and trustworthy evidence has to be led with particulars. If this is absent and the entire case is resting on shaky ipse dixits, the version tendered by witnesses examined by election petitioner cannot be accepted."

(b) In the decision Babu Rao V. Basavaraj, AIR 2011 Karnataka 165, at Special Page 173, in Paragraph 18, it is observed as follows:

"18. Then coming to the allegation of undue influence by the petitioner and his son Rajashekar Patil, they are at paragraphs 5(a),

7 & 6 of the Election petition. According to the petitioner being a District In-charge Minister, the 1st respondent exercised undue influence on the Government Officials and with their help included members of the Taluk/Zilla/Town Gram Panchayath and Town Municipal Council to vote in his favour by threatening the voters with size consequences. Apparently, there is no affidavit filed in form No. 25 as required under the Act in support of the allegations of corrupt practises as contemplated under proviso to Section 83(1). As a matter of fact, apart from the evidence of P.W.I., he has examined P.W.5 one Mr. Maruti who has stated that polling agents of the petitioner were not allowed to enter the booth till 9.00 a.m. Though the petitioner has made lengthy allegations of undue influence, names of the voters who were threatened with such threats by the respondent are not mentioned. Apart from mentioning the names of those voters, date and place where such threats were made also have to be mentioned as material particulars. Except making an omnibus Statement that Government Officials extended help to the 1st respondent in bringing such pressure on the voters, no names of such Government officials are also forthcoming."

(c) In the decision Ayanur Manjunath V. S. Bangarappa and others, AIR 2003 NOC 161 (Karnataka), It is observed as follows.

"The nature of evidence required to prove corrupt practice envisaged under sec.123(7) is, there must be convincing evidence beyond reasonable doubt that the candidate or his agent or any other person with the consent of the candidate or his agent, should procure or attempt to obtain the assistance from the stated persons in the section which assistance must have a direct nexus to further the prospects of election.

In the instant case, there was mere allegation that the returned candidate sought assistance from the Government Official. This evidence was as vague as vagueness could be and on the basis of such evidence no Court could hold the returned candidate guilty of corrupt practice under S.123 (7) of the Act."

(d) In the decision Harsh Kumar V. Bhagwan Sahari Rawat and others, (2003) 7 SCC 709, at page 710, it is held as follows:

"The burden of proof of corrupt practice is very heavy on the appellant. The will of the people cannot be lightly set aside, though, of course, it is necessary to protect the purity of the election. In order to succeed on the ground of corrupt practice, the election petitioner has to lead cogent, reliable and satisfactory evidence. The standard of proof required is not of preponderance of probability but proof beyond doubt. In this case the appellant election petitioner has failed to prove the alleged corrupt practice on the part of the elected candidate."

(e) In the decision K.N.Nage Gowda V.D.C. Thammanna and others, AIR 2003 NOC 266 (Karnataka), it is inter alia, held that merely because some 16-A Forms were not signed by the returning Officer or the Asst. Returning Officer, it cannot materially affect the election of the returned candidate in the absence of particulars in the pleadings'.

Further, in the aforesaid decision, at page 267 (NOC), it is observed as follows:

"It is incorrect to say that all that the petitioner has to do with respect to sub-cl. (iv) of S. 100 (1)(d) is to prove that there was non-compliance of the Act or Rule and that would be sufficient to set aside the election under S.100 (1) (d) (iv). The Parliament in its wisdom has not treated the subclause under S. 100(1) (d) differently from each other. C1. (d) Sub-c1 (iii) relates to improper reception or rejection of votes. Sub-cl. (iv) deals with non-compliance of the provisions of the Act or Rules. Section 100(1) (d) indicates that any of the conditions under sub-c1s. (i) (ii) (iii) and (iv) must result in the election or the returned candidate being materially affected. In all the sub-c1s. (i) to (iv) mentioned under S. 100(1)(d) it must be shown to the satisfaction of the Court that the election in so far as it is concerned the returned candidate has been materially affected. It cannot be said that each sub-clauses in s.100(1)(d) can be read independently without reference to the main ground mentioned in S.100(1) (d). In all the sub-clauses under S.100(1) (d) it must be shown to the satisfaction of the Court that the election of the returned candidate has been Materially affected apart from mere violation of the sub clauses (i) to (iv). It cannot be said that the standard of proof in sub-clause (iii) is different from the standard of proof in sub-clause (iv). The same standard of proof shall apply to S. 100(1)(d) (iii) as it applies to S.100(1)(d)(iv)."

(f) In the decision of the Hon'ble supreme Court in Mahendra Pal V. Shri Ram Dass Malanger and others, AIR 2002 Supreme Court 1291 at special page 1294 & 1295, in paragraph 12 to 4, it is observed and held thus:

"12. The law on this aspect is well settled. While dealing with similar contention, this court in R. Narayanan V.S. Semmalai and others [(1980) 2 SCC537] held that election, being a technical matter, the authorities choose experienced persons to do the counting and took every possible care to see that the Members of the staff do not commit any error. Moreover, the relief of re-counting cannot be accepted merely on the possibility of there being an error. The Court observed, "it is well settled that such allegations must not only be clearly made but also proved by cogent evidence." The Court also held that the margin by which the appellant succeeded was very narrow. This was undoubtedly an important factor to be considered but would not by itself vitiate the counting of votes or justify recounting by the court. Thereafter the Court referred to earlier decisions and held (in para-26) thus:

"The Court would be justified in ordering re-count of the ballot papers only where:

(1) The election petition contains an adequate statement of all the Material facts on which the allegations of irregularity or illegality in counting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and (3) the court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

13. The aforesaid law is well settled and it does not require further elaboration. In *D.P. Sharma v. Commissioner and Returning Officer and others* [1984 (Supp.) SCC 157] the Court dealt with the discrepancy as regards finding of less ballot papers from the ballot boxes than what had been issued and used by the voters as well as the discrepancy which pertains to finding of excess ballot papers from the ballot boxes over and above those which had been issued and used by the voters and on the facts of that case observed that these discrepancies are insignificant in character and could be safely attributed to accidental slip or clerical or accidental mistakes that must have been committed at the time of counting and preparation of the statements in forms 16 and 20. The court pertinently further observed that these discrepancies by themselves do not make out a case for directing a recount of votes and that it is well established that in order to obtain recount of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate. In *P.K.K. Shamsudeen, v. K.A.M. Mappillai Mohindeen and others* [AIR 1989 SC 640] this Court in para 15 held that an order of recount of votes must stand or fall on the nature of the averments made and the evidence adduced before the order of recount is made and not from the results emanating from the recount of votes. In *Satyanarain Dudhani v. Uday Kumar Singh and others* [1993 Supp. (2) SCC 82] this Court observed that an order of recount cannot be granted as a matter of course and unless the High Court is satisfied on the basis of material facts pleaded in the petition and supported by contemporaneous evidence, recount cannot be ordered. Similarly, in *Vadivelu v. Sundaram and others* [(2000) 8 SCC 355], this Court (in para 16) held that re-count of votes could be ordered very rarely and the petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of

the allegation, it can order re-count of votes. But if it is proved that purity of elections has been tarnished and it has Materially affected the result of the elections 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, In V.S. Achuthapandan, v. P.J. Francis and another [(2001) 3SCC81], the Court held that the election petitioner cannot be permitted to make out a case for re-count of ballot papers on a ground for which there is no foundation laid by him, not even a whisper, in the pleadings and which does not appear to have a ring of truth, even prima facie.

14. In view of the aforesaid discussion, as the appellant has not led any evidence or laid foundation stating that there was improper reception of vote in favour of the respondent or improper rejection of any vote which were in his favour, and that he has not raised any objection at the time of counting of votes on the basis of so called excess of 8 ballot papers, the High Court rightly refused to recounting of votes. The discrepancy of 8 ballot papers could be attributed to accidental slip or clerical or arithmetical mistakes which might have been committed at the time of preparation of the statements in Forms 16 and 20.

(g) In the decision *Jai Nandan Singh V. Shankar Dayal Singh and others*, AIR 1999 Patna 231, at page 232, it is observed as follows:

"It is necessary that in order that inspection and recount of ballots is granted by the Court, election petitioner should not only state in the election petition the material facts which he intends rely respecting the allegation of improper or illegal reception of votes in favour of a returned candidate of wrongful rejection of votes of any other candidate or reception of votes which were void and such reception or rejection Materially influenced the election of the returned candidate, but he must also prove those facts by adducing strong, cogent, convincing and fool proof evidence in support thereof. In support of such allegation in the election petition, the court must also insist in proper cases some antecedent or contemporaneous documents to avoid granting order for inspection and recount on altogether concocted, imaginary and fanciful ground stated for the first time in the election petition"

Also in the aforesaid decision, at page 255, in paragraph 64, it is observed and held as follows:

"64 While disposing of issue No.2 it has been found that no further relief for declaration that the petitioner or any other contesting candidates is duly elected, having been sought, all the contesting candidates were not required to be impleaded as respondents in the present election petition, Any other defect in the frame of the election petition as pointed out by the learned counsel for R.No.1 is that it does not contain a concise statement of material facts on

which the petitioner has sought reliance inasmuch the details of the ballots which were either wrongly rejected or wrongly received and counted in favour of R.No. 1 is entirely lacking. Subsection (1) of Section 83 of the Act provides, inter alia, that an election petition shall contain a concise statement of the material facts on which the petitioner relies. I have already pointed out that keeping in view the small number of ballots which were counted and even smaller number of ballots which were allegedly improperly rejected and counted in favour of R. No. 1, it was imperative on the part of the petitioner of state in the election petition their serial numbers, if no other detail. Similarly in the election petition, the petitioner ought to have disclosed the source or sources From which he came to gather inFormation regarding the said irregularities/illegalities being committed at the time of the counting. Therefore, in absence of such details, the election petition certainly lacks in concise statement of the facts respecting the allegations relied upon for calling in question the election of R.No.1. Therefore, I find that the election petition in its present Form it not maintainable. This issue is also decided against the petitioner."

(h) In the decision L.R. Shivaramagowda V. T.M. Chandra shekar, AIR 1999 Supreme Court 252, at page 258, in paragraph 10, it is observed as follows:

"10 That apart, it is rightly pointed out by the appellant's counsel that in order to declare an election to be void under Section 100 (1) (d)(iv), it is absolutely necessary for the election petitioner to plead that the result of the election insofar as it concerned the returned candidate had been materially affected by the alleged non-compliance with the provisions of the Act or of the Rules. We have already extracted paragraph 39 of the Election Petition which is the only relevant paragraph, One will search in vain for an averment in that paragraph that the appellant had spent for the election an amount exceeding the prescribed limit or that the result of the election was materially affected by the failure of the appellant to give true and correct accounts of expenditure. In the absence of either averment it was not open to the appellant to adduce evidence to that effect. It cannot be denied that the two matters referred to above are material facts which ought to find a place in a election petition if the election is sount to be set aside on the basis of such facts."

(i) In the decision Ramdayal Prabhakar v. Mahendra Baudh and Twelve other, AIR 1992 Nadhya Pradesh 340, it is observed as follows:

"It is settled law that the charge of corrupt practice is to be proved like a criminal charge and that the same standard of proof as is required in a criminal case is to be applied in the testing the evidence of corrupt practice in an election petition. The charge has to be proved by cogent, clear and reliable evidence and it is to be proved beyond reasonable doubt. Unless the evidence adduced by the

election petitioner is satisfactory, on the mere weakness of the rebuttal evidence the charge cannot be held proved. On the balance of probabilities, the charge of corrupt practice cannot be held proved."

27. *In shore, in the light of qualitative and quantitative discussions, this Court comes to an inevitable conclusion that although the Form 17Cs supplied by the Returning Officer contained discrepancies as set out in para 15 of the Election Petition (filed by the Petitioner), these discrepancies, in the considered opinion of this Court, had not materially affected the result of the Election in favour of the 1st Respondent and furthermore, the Petitioner has failed to establish that the 1st Respondent indulged in corrupt practices and also not substantiated by necessary material facts and material evidence brought on record before this Court and further, he failed to prove that the 1st Respondent had tampered with the E.V.Ms with the connivance of the Election Officials and Issues No.1, 2, 4 and 6 are answered accordingly.*

Issue Nos. 7 to 9:

28. In view of the fact that this Court, while answering Issues No. 1 to 6, has held in a detailed fashion that the Petitioner had failed to prove his case to the effect that the 1st Respondent/Returned Candidate indulged in corrupt practices as set out in Section 123 of the Representation of the People Act etc., this Court comes to an inevitable conclusion that the Petitioner is not entitled to get the relief of declaration that he be declared as duly elected candidate From No. 63, Tiruvannamalai Constituency in respect of the Election that took place on 13-04-2011 and also the other relief that the Election of the 1st Respondent/Returned Candidate be declared as void.

29. In regard to the plea of conduct of re-poll in 26 Polling Stations because of the reason that the Petitioner and his Agents noted wholesale irregularities in Form 17Cs and paper seals which were brought to the notice of the District Election Officer the Returning Officer, who ignored them and went ahead with the counting and further when counting was stopped in respect of one Polling Station where there were clear discrepancies in the E.V.Ms. and records and when the counting process was begun without ordering re-poll etc., this Court pertinently points out that C.W.1 and C.W.2 in their evidence, had spoken about the mistaken entries and therefore, this by itself cannot Form the basis for seeking the relief of re-poll, in the considered opinion of this Court. Also that, the minor errors/discrepancies, in Form 17Cs in the present case, in the considered opinion of this Court, had not materially affected the result of the election and also that, a mere omission or failure on the part of the Election Officials in publishing the correct control unit number in Ex.P.4 would not affect the result of the Election and in any event, the Petitioner has not proved his allegation of manipulation of Electronic Voting Machines, as set out in the Election Petition and viewed in that perspective, the plea of re-poll sought for the whole of No. 63, Tiruvannamalai Assembly Constituency of for some of the polling stations alone is not acceded to by this Court. Also that, C.W.1 in his evidence, has stated that he inFormed the Collector over the phone that counting was stopped because of the objections

raised by the Elections Petitioner and his agents in respect of Polling station No.135 and further stated that objections were raised on behalf of the Petitioner in regard to the Polling Station No. 135 alone and not with regard to any other Polling Stations and as such, the contra plea taken on behalf of the Petitioner that C.W.1's evidence in this regard ought to be taken to the effect that entire counting process was stopped for two hours, does not merit acceptance in the hands of this Court.

30. That apart, C.W.1. in his evidence, had clearly stated that neither any candidate nor political party can interfere with the randomization process and further he had stated that he went on to add that after the polling was over, all the control units were brought to the counting center and stored in a strong room and police protection was arranged for 24 hours and that the candidates and agents were kept under watch on the strong room and that no complaint was received from the Petitioner for the deficiency in the protection provided for safeguarding the E.V.Ms. and accordingly, the Issues No. 7 to 9 are answered.

Issue No. 10:

31. The Petitioner has filed the present Election Petition before this Court under section 80, 81, 82, 83, 84, 100(1) (b) (d) (ii) (iii) (d) (iv) r/w Section 58, 58-A, 64-A of the Representation of People Act, 1950, Rule 66-A, r/w Rule 55-C(2), (3) (4) of Conduct of Election Rules, 1961, Rule 53 of the Conduct of Election Rules, 1961, Rule 49-T (2), 49-V(2) of the Conduct of Election Rules, 1961 Rule 49-S(2) of the Conduct of Election Rules 1961 seeking the following reliefs of (i) declaration that the election of the Returned Candidate, viz., E.V.Velu, the 1st Respondent herein from No. 63, Tiruvannamalai Assembly Constituency, Tamil Nadu, in election held on 13-04-2011 (in which results were declared on 13-05-2011) as VOID: (ii) Order Re-poll for the whole of No. 63, Tiruvannamalai Assembly Constituency or inter alia order re-poll in Polling Station Nos. 17, 20, 39, 41, 57, 61, 62, 69, 75, 88, 93, 98, 99, 104, 112, 135, 159, 166-A, 182, 187, 191, 204, 209, 215, 222 and 224; (iii) Declare the Petitioner as duly elected from No.63, Tiruvannamalai Assembly Constituency in the election held on 13-04-2011 (in which results were declared on 13-05-2011); (iv) Direct the 1st Respondent to pay the costs.

32. According to the 1st Respondent, the Election Petition filed by the Petitioner is a frivolous one and also that the Petitioner has not made out a case for grant of any relief as sought for by him in the Petition and further, a plea is taken that the election of a candidate can be set aside only for the reasons set out in the Representation of the People Act and non observance of any guidelines or notification by the Election Officials cannot be a cementing platform for a Court of Law to interfere inasmuch as the Court is not concerned with any irregularities and in any event, the Handbook for conduct of Elections is not a substitute for the Representation of the People Act.

33. Moreover, the right to challenge the Election Petition of a candidate flows from the provisions enshrined under the Representation of the People Act, 1951 and the Rules and not from any principle of common Law. To put it precisely,

the ingredients of section 100 of the Act envisages the grounds on which the Election of returned candidate can be declared as void. In fact, the Election Law is statutory in character and is to be strictly complied with because of the reason that the Election Petition is not to be guided by ever changing notions of common Law and the principles or equity, in the considered opinion of this Court.

34. It is to be pointed out that a reasonable cause of action is said to mean a cause of action with some chances of success when only the allegations in the pleadings are considered. However, so long as the claim discloses some cause of action or some questions to be determined by a Judge, the mere fact that the case is weak and not likely to succeed is no ground for striking it out, in the considered opinion of this Court.

35. Furthermore, the failure of the pleadings to disclose the reasonable cause of action is distinguished from the absence of full particulars. As a matter of fact, the material particulars are required only in respect of corrupt practice. The material facts *prima facie* must give foundation of an Election Petition for going into trial. An Election Petition cannot be dismissed at the threshold. The pleading should contain a statement in concise form of material facts relied on by a party but not the evidence not the Law on which a Court may take judicial notice.

36. In this connection, this Court pertinently points out that (a) the material facts mean facts which are necessary to formulate a complete cause of action; (b) all the principle facts which must be established by a litigant to establish a cause of action; (c) the basic facts which constitute the ingredients of particular corrupt practices; (d) all facts are essential to clothe the Petition with a complete cause of action; (e) the facts on the basis of which the Court could give a verdict in the form of petition in case the returned candidate fails to appear; and (f) facts which if not proved must fail.

37. Admittedly, the term 'Cause of Action' means a bundle of facts which are required to be established. Moreover, the entire bundle of facts pleaded, however, need not constitute a cause of action as what is necessary to be proved is his material facts upon which the Petitioner projects his case.

38. It is to be noted out that ingredients of Section 83(1) (a) and (b) are in well known pattern to Order VI, Rule 1, 2, and 4 and Order VII, Rule 1 (e) of the Civil Procedure Code.

39. It is to be pointed out that no power has been given to the High Court to make Rules provided for presentation Election Petition either in Article 329(b) of the Constitution of India or in the Representation of the people Act, 1951. Furthermore, a conjoint reading of the provisions in Article 329(b) make it clear that the presentation of an Election Petition has to be only in the manner provided in the Act 1951 of Parliament.

40. At this stage, this Court points out that the function involved in the presentation of an Election Petition is essentially clerical in nature and in reality, no exercise of judicial power is visualised in the Act of presentation of its acceptance

as per Section 80 of the Representation of the People Act. Inasmuch as the Petitioner in paragraph 22 of the Election Petition had averred that the cause of action for the present Election Petition arise in April 2011, when the Election to the State Assembly was held on 13.04.2011 and when the Presiding Officers of the Polling Stations issued Form 17Cs to the agents; when the Returning Officer did not provide proper security and safety to the E.V.Ms. were tampered and when during the counting, the Petitioner and his agents noted wholesale irregularities in Form 17Cs and paper seals which were brought to the notice of the District Election Officer and the Returning Officer, who ignored them and went ahead with the counting; and when counting was stopped in respect of one Polling Station where there were clear discrepancies in the E.V.Ms. and records and when the counting process was begun without ordering re-poll etc., it cannot be said that the Election Petition filed by the Petitioner is not maintainable in Law and on facts at the time of presentation of Election petition and also because of the reason that the Petitioner has invoked the aid of Section 100(1) (b) (d) (iii) (d) (iv) etc. alleging grounds for declaring the election of the Returned Candidate/1st Respondent to be void.

41. In regard to the plea taken on behalf of the 16th Respondent that the Returning Officer and the District Election Officer cannot be made parties in an Election Petition, the Learned Counsel for the 16th Respondent, in this connection relies on the decision of the Hon'ble Supreme Court in Michael B. Fernandes V.C.K. Jaffar Sharief and others, AIR 2002 Supreme Court 1041, whereby and whereunder, it is observed as follows:

"The public policy and legislative wisdom both point to an interpretation of the provisions of the Representation of the People Act which does not permit the joining, as parties, or persons other than those mentioned in Ss.82 and 85(4). If persons other than those mentioned in S.82 are permitted to be added as parties the necessary consequences would be an unending, disorderly election dispute with no hope of achieving the goal contemplated by S.86(6) of the Act. Therefore, the order of the High Court deleting the party respondents, the Election Commissioner, the Returning Officer and the Chief Electoral Officer From the array of parties cannot be interfered with."

42. At this juncture, this Court pertinently points out. that ordinarily no person other than the candidate in Election has to be impleaded in fact, the ingredients of Civil Procedure Code, which are supplementary and complementary in nature, cannot be applied with. In the present case, the Petitioner, in para 5 of his Petition, had averred that the 1st Respondent (Returned Candidate) managed to secure this Victory by corrupt practices and by bringing upon undue influence on the District Election Officer and the Returning Officer in his capacity as the State Cabinet Minister. Further, he had averred that the District Election Officer and the Returning Officer made a very well designed ground for ensuring the victory of the 1st Respondent by Manipulating the Electronic Voting Machines, Since the Petitioner the levelled allegation Against the 16th Respondent (Returning Officer) and the

District Election Officer, in the present Election Petition, he has arrayed the Returning Officer as one of the parties viz., 16th Respondent. However, he has not arrayed the District Election Officer (District Collector) as one of the Parties to the parties to the present Election Petition.

43. It is true that Special Law viz., the Representation of the People Act, 1951 Specifies and makes special provisions and directions to be impleaded, means no other persons have to be impleaded attracting the general ingredients of Order I, Rule 9 or Order I, Rule 10 of the Civil Procedure Code. In reality, even in such cases, resorting to the inherent powers of a court of law cannot be pressed into service. It is true that two provisions, under the Representation of the People Act, 1951 for impleading parties are Sections 82 and 99. As far as Section 82 of the Representation of the People Act, 1951 is Concerned, it speaks of only a candidate, who is returned candidate being made as party. Under Section 99 of the Act, if the Court comes to the conclusion that some third party as indulged in corrupt practices then alone he can be made as a party after giving him a notice about alleged corrupt practices. No. doubt, Section 87 of the Representation of the People Act provides that while treating an Election Petition, the Court can adopt a procedure applicable in Civil Procedure for trial of suits, but the Section commences with a close 'Subject to the provisions of this Act'. In short, the Representation of the People Act specifically provides as to who are the persons to be made as parties under Section 82 the Act. A Court cannot import the principles of Civil Procedure Code to make proper parties as parties to an Election Petition.

44. At this stage, this Court points out that the decision K.N. Nagegowda V.D.C. Thammanna, AIR 2001 Karnataka 349, Wherein it is held that Where the Election was questioned on the ground of improper receipts of votes and irregularities in counting process and declaration of result, held Chief Electoral Officer, District Election Officer and the Returning Officer were not necessary Parties, moreover, the concept of proper party to an Election Petition is alien to the provisions of the Representation of the People Act. In fact, only those may be joined as Respondents to the Election Petition who are mentioned in Section 82 and Section 86(4) and no others.

45. Inasmuch as the 16th Respondent (Returning Officer) is not mentioned in Section 82 of the Representation of the People Act as a party to be made in an Election Petition, even though the Petitioner has shown the 16th Respondent as one of the Respondents and parties to the present Election Petition notwithstanding the fact that the allegation of corrupt practices was made against him in para 5 of the Election Petition by the Petitioner, wherein the Petitioner has also mentioned the name of the District Election Officer in regard to the plea of corrupt practice, this court holds that the 16th Respondent and the District Election Officer are not the necessary parties for the present Election petition.

46. In the light of the aforesaid qualitative and quantitative discussions, this Court holds that the present Election Petition filed by the Petitioner is maintainable in Law and insofar as the 16th Respondent is concerned he is not the necessary party for the present petition and the Issue is answered accordingly.

Issue No. 11:

47. It is to be noted that on a conjoint reading of Section 81(1) of the Representation of the People Act, 1951 and Section 9 of the General Clauses Act, 1987, the first day of the declaration of the result for the period of limitation required to be excluded for counting of 45 days of limitation period. It cannot be forgotten that as per Section 81(1) of the Representation of the People Act, an Election Petition calling in question, any Election Petition may be presented on one or more of the grounds specified in (sub-section (1) of Section 100 and Section 101 to the (High Court) by any candidate at such election or any elector (within forty-five day From, but not earlier than, the date of election of the returned candidate, or if there are more than one returned candidate at the election and dates of their election are different, the later of those two dates.]. The present Election Petition was presented before this Court on 27-6-2011. In the present case, the result of the Election was 13-05-2011. Within 45 days, the present Election Petition has been filed by the Petitioner before this Court and resultantly, the Election Petition is not barred by Limitation and the Issue is so answered.

Issue No. 12:

48. In view of the findings arrived at by this Court in a qualitative and quantitative manner in respect of issues No. 1 to 11 as aforesaid, this Court holds that the Petitioner is not entitled to any of the relief's sought for by him in his Election Petition and accordingly, the issue is so answered.

Disposition:

In the result, the *Election Petition is dismissed*. Considering the facts and circumstances of the present case and also this Court, exercising its Judicial discretions, directs the contesting parties viz., the Petitioner and the 1st Respondent to bear their own costs.

LIST OF WITNESSES

On the side of the Petitioner

PW1 Mr. S. Ramachandran

PW2 Mr. K.R. Balasubramanian

On the side of the Respondent

RW1 Mr. E.V. Velu

COURT WITNESSES

CW1 Mr. V. Boopathy

CW2 Dr. M. Rajendran

LIST OF EXHIBITS

Documents marked on the side of Election petitioner

<i>Sl. No.</i>	<i>Exhibit No.</i>	<i>Particulars</i>
1	Ex. P1	Original identify card issued to the counting agent, Mr. K.R. Balasubramanian.
2	Ex. P2	Certificate given by the RDO (Election Officer) accepting the discrepancy in the number for the Polling Station No. 135, Good Shepherd Matriculation School, Vettavalam Road, Thiurvannamalai.
3	Ex. P3	Certified copy of the Form 17-C relating to Polling Station, No. 135, Good Shepherd Matriculation School, Vettavalam Road, Thiurvannamalai.
4	Ex. P4	Roundwise Tabulation Sheet for the 17 rounds of counting at the Tiruvannamalai Constituency.
5	Ex. P5	Certified copy of the Form 17-C given by the Election Commission pertaining to booth No. 20, Durgai Nammiyandar Village.
6	Ex P6 & Ex P7	Certified copy of the Form 17-C issued by the Election Commission and its original given by the Presiding Officer pertaining to Polling Station No. 679, Kanagambal Matriculation Higher Secondary School, Tiruvannamalai.
7	Ex. P8 & Ex P9	Certified copy of Form 17-C issued by the election Commission and its original issued by the Presiding Officer of booth No. 57.
8	Ex. P10 & Ex P11	Certified copy of Form 17-C issued by the Election Commission and its original issued by the Presiding Officer of the booth pertaining to Polling Station No. 61, RDO Complex.
9	Ex. P12 & Ex P13	Certified copy of Form 17-C issued by the Election Commission and its original issued by the Presiding Officer of booth pertaining to Polling Station No. 69, Municipal girls Higher Secondary School, Tiruvannamalai.
10	Ex.P14 & Ex P15	Certified copies of Form 17-C issued by the Election Commission and its original issued by the Presiding Officer pertaining to Polling Station No. 75, Rajaran Street, Tiruvannamalai.
11	Ex. P16 & Ex P17	Certified copies of Form 17-C issued by the Election Commission and its original issued by the Presiding Officer of booth pertaining to Polling Station No. 93, Municipal Elementary School, North Part, Samuthiram Colony, Tiruvannamalai.

<i>Sl. No.</i>	<i>Exhibit No.</i>	<i>Particular</i>
12	Ex. P18	Certified copy of Form 17-C issued by the Election Commission pertaining to Polling Station No. 159, Melkacharappattu, Tiruvannamalai.
13	Ex.P19	Certified copy of Form 17-C issued by the Election Commission pertaining to Polling Station No. 182, Su. Andappattu.
14	Ex. P20 & Ex P21	Certified copy of Form 17-C issued by the Election Commission and the original of Form 17-C issued by the Presiding Officer pertaining to Polling Station No. 191, Se. Kudalur.
15	Ex. P22 & Ex P23	Certified copy of Form 17-C issued by the Election Commission and the original of Form 17-C issued by the Presiding Officer to Polling Station No. 209, Pazhiyanoor.
16	Ex. P24 & Ex P25	Certified copy of Form 17-C issued by the Election Commission and the original of Form 17-C issued by the Presiding Officer pertaining to Polling Station No. 222, Paraiyampattuare.
17	Ex. P26	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 17, Childhood Centre, Iyyappan Nagar, Vengikal.
18	Ex. P27	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 41.
19	Ex. P28	Certified copy of Form 17-C issued by the Election Commission pertaining to Polling Station No. 62, Tiruvannamalai.
20	Ex.P29	Certified copy of Form 17-C issued by the Election Commission with regard to Polling Station No. 88, Saraswathi Matriculation School.
21	Ex.P30	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 98, M.M. Elementary School, Tiruvannamalai
22	Ex.P31	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 99, M.M. Elementary School, Tiruvannamalai
23	Ex.P32	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 104, Shanmugha Industries Higher Secondary School, Tiruvannamalai

<i>Sl. No.</i>	<i>Exhibit No.</i>	<i>Particulars</i>
24	Ex.P33	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 112, Natesan Pillai Aided Elementary School, Tiruvannamalai
25	Ex.P34	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 166-A, P.U.E. School, Kallarpalayam, Vishwanthangal
26	Ex.P35	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 187, Kattamboondi
27	Ex.P36	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 204, Perunduraipattu
28	Ex.P37	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 215, Velaimappakkam
29	Ex.P38	Certified copy of the Form 17-C issued by the Election Commission pertaining to Polling Station No. 224, Su. Pappampadi

DOCUMENTS MARKED THROUGH COURT WITNESSES

1	Ex.C1.	List of the EVMS in the second level of randomization published.
2	Ex. C2	Form 17C pertaining to the Election of Tamil Nadu Legislative Assembly From 63/135, Tiruvannamalai Constituency signed by the Presiding Officer, Polling station No. 135 dated 13-04-2011.
3.	Ex. C3	Report dated 06-05-2011 on poll day. EVM replacement sent by the Returning Officer of Tiruvannamalai, Assembly Constituency.
4	Ex. C4	Page (15) of the file (in directions communicated to all District Election Officers by the Chief Electoral Officers).
5	Ex. C5	The Entire file-directions communicated to all District Election Officers by the Chief Electoral Officers.
6	Ex. C6	Page 123 of (EX.C5) of the Proceeding dated 25-05-2011 concerning the refreshment charges for the first level checking.
7	Ex. C7	Page 115 of Ex. C5 is letter sent by the Joint Chief Electoral Officer to all District Election Officers asking them to sent a report regarding the EVM replacement on poll day in the specified Format therein.

<i>Sl. No.</i>	<i>Exhibit No.</i>	<i>Particulars</i>
8	Ex. C8	Photocopy of notice sent by Collector Office, Tiruvannamalai to all the candidates regarding the 1st level of randomization and the photocopy of the acknowledgement of the candidates.
9	Ex.C9	Photocopy of the list of candidate /this agents also allievated the 1st level of randomization on 7-4-2011 with their signatures.
10	Ex.C10	Photocopy of the letter dated 10-04-2011 sent by the Returning Officer to the Collector, Tiruvannamalai regarding the malfunctioning of 7 ballot units and seven control units along with replacements.
11	Ex.C11	Photocopy of the notice with acknowledgment sent to all the candidates before the second level of randomization.

WITNESS THE HON'BLE THIRU SANJAY KISHAN KAUL,
THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID,
THIS THE 25TH DAY OF SEPTEMBER 2014.

sd/-
ASSISTANT REGISTRAR.
Original Side-II

//Certified to be true copy//

Dated this the 12th day of November 2014

COURT OFFICER (OS)

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

//By Order//

TAPAS KUMAR,
*Senior Principal Secretary,
Election Commission of India.*

Secretariat,
Chennai-600 009,
Dated

SANDEEP SAXENA
*Chief Electoral Officer and
Principal Secretary to Government.*

MK-27/10/2014

ELP.No.2 OF 2011

ORDER DATED 25-9-2014

THE HON'BLE MR. JUSTICE

M. VENUGOPAL.

FOR APPROVAL: 31-10-2014

APPROVED ON: 31-10-2014.

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