



No. 371] CHENNAI, MONDAY, DECEMBER 13, 2010
Karthigai 27, Thiruvalluvar Aandu-2041

Part V—Section 4

Notifications by the Election Commission of India.

NOTIFICATIONS BY THE ELECTION COMMISSION OF INDIA

JUDGEMENT OF THE HIGH COURT OF JUDICATURE AT MADRAS
IN ELECTION PETITION No. 1 OF 2006.

No. SRO G-41/2010.

The following Notification of the Election Commission of India, Nirvachan Sadan, Ashoka Road, New Delhi-110 001, dated 18th November, 2010 [27 Kartika, 1932 (Saka)] is published:—

No. 82/TN-LA (1/2006)/2009.—In pursuance of Section 106 (b) of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement of the High Court of Madras dated 02-10-2010 in Election Petition No. 1 of 2006.

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Friday, the 22nd Day of October 2010

THE HON'BLE MRS. JUSTICE R. BANUMATHI

ELECTION PETITION No. 1 OF 2006

and

OA. No. 825 of 2010.

ELP. No. 1 of 2006

M. Varalakshmi, wife of V.T. Margabandu, residing at New No. 52, Old No. 25/1, Thatha Theru, Saidapettai, Vellore-12—*Petitioner*

-VS-

1. K. Pandurangan, residing at Devikapurm Village, Madhanur Post, Vanniyambadi Taluk.
2. J. Kumaresan, residing at 29, Pillaiyar Koil Street, Vadapudupatti Village and Post, Vanniyambadi Taluk.
3. C. Sivam, residing at 1/414, New Street, Abdullahapuram Post and Village, Vellore-10.
4. M. Venkatesan, residing at 4/49, Vinayagar Koil Street, Palapadi Village, Gururajapalayam Post, Vellore Taluk.
5. V. Kali Selvan, residing at New No. 1176, Old No. 161, Thendral Nagar, Vengikkal Post, Thiruvannamalai.
6. P. Deivasigamani, residing at New No. 31, Old No. 11, Thoppasami Koil Street 1, Saidapettai, Vellore-632 012.
7. T. Natarajan, residing at No. 92, Mullai Nagar, Virupatcharam, Vellore-623 002.
8. S. Panneer Selvam, residing at 59A/1-94, Bajanai Koil Street, Sitheri, Vellore-632 002.
9. G. Veramani, residing at M.M. Nagar, Mathanoor Village and Post, Vaniambadi Taluk.
10. The Returning Officer, 47, Anaicut Assembly Constituency Vellore and Assistant Commissioner (Excise), Vellore.

* R10 is ordered to be struck off from the array of respondents as per the order of this Hon'ble Court, dated 18-08-2007 made in O.A. No. 916/2007 in Election Petition No. 1/2006—*Respondents*.

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

(i) Declare the election of the Returned candidate, namely, the first respondent herein from No. 47, Anaicut Assembly Constituency (Tamil Nadu) in the election held on 08-05-2006 in which results have been declared on 11-05-2006 as void and set aside the same.

(ii) Pass an order directing fresh poll in polling station No. 13, Chinnapallikuppam in 47 Anaicut Assembly Constituency (Tamil Nadu) as per provision of Representation of People Act 1951 and Conduct of Election Rules, 1961 and order consequential counting and declaration of results.

(iii) Declare the petitioner as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 47 Anaicut Assembly Constituency (Tamil Nadu) in the election held on 08-05-2006 (in which results have been declared on 11-05-2006).

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

O.A. No. 825 of 2010.

K. Pandurangan—*Applicant / Respondent*

-VS-

M. Varalakshmi—*Respondent/Petitioner.*

This Original Application praying that this Hon'ble Court be pleased to send the deposition of Mr. A.S. Prahalathan (P.W. 3) and Ex. P5 to the Government Handwriting Expert, Forensic Sciences Department, Kamaraj Salai, Chennai-4 for comparison and report.

The above Election Petition and Original Application No. 825 of 2010 coming on this day before this Court on various dates and finally coming on 22-10-2010 and upon hearing the arguments of M/s. T.V. Krishnamachari and V.K. Elangho, Counsel for the Election Petitioner and of M/s. P.N. Prakash for A. Saleem, Counsel for the 1st respondent and of M/s. T.S. Kannaiyan and D. Dayalan, Counsel for the 9th respondent and of Mr. M.R. Raghavan, Standing Counsel for Election (The Returning Officer) for the 10th respondent and respondents 2 to 8 called absent and set exparte and upon reading the Election Petition filed by the Election petitioner and counter statement of 1st respondent filed herein and upon perusing the evidence adduced therein and also the exhibits marked thereto and this matter having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this court having observed that the Election petitioner is not entitled to any declaration as sought for by her in the Election Petition.

The Court made the following order:—

Petitioner seeks to (i) declare the election of the Returned candidate, viz., the 1st Respondent from No. 47, Anaicut Assembly Constituency (Tamil Nadu) in the election held on 08-05-2006 in which results have been declared on 11-05-2006 as

4 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

void and set aside the same; (ii) pass an order directing fresh poll in Polling Station No. 13, Chinnapallikuppam in No. 47, Anaicut Assembly Constituency (Tamil Nadu) as per the provision of Representation of People Act, 1951 and Conduct of Election Rules, 1961 and order consequential counting and declaration of results; (iii) declare the Petitioner as duly elected as a member of the Tamil Nadu Legislative Assembly from No. 47, Anaicut Assembly Constituency (Tamil Nadu) in the election held on 08-05-2006.

2. Petitioner-Varalakshmi contested in the Tamil Nadu Legislative Assembly Election 2006 as Pattali Makkal Katchi (PMK) candidate from No. 47, Anaicut Assembly Constituency. Polling took place in 221 Polling Stations on 08-05-2006. Electronic Voting Machines (EVMs) have been used for polling of votes in those 221 Polling Stations and the polling was closed at 5.00 P.M. on 08-05-2006 and the EVMs were sent to Thanthai Periyar Polytechnic, Vellore on 08-05-2006 itself and kept in a strong room. Counting of votes polled took place on 11-05-2006 from 8.00 A.M. onwards. 1st Respondent-Pandurangan was declared as elected on 11-05-2006 with a margin of "53" votes.

3. The averments in the Election Petition are that EVM from Polling Station No. 13, Chinnapallikuppam was counted in Round No. 2 in Table No. 1. The said EVM was verified and found that it was pertaining to Polling Station No. 13, Chinnapallikuppam. The seals were removed, but when the button was pressed, there was some problem. One Ms. Geetha, technician was sent for and she came and verified and told that by mishandling of EVM, the result got erased. The said EVM for No. 13, Chinnapallikuppam was counted in Round No. 2 in Table No. 1 showed against each candidate "0-0-0" as the result. The result was also written in the black board which was noted by the Petitioner's counting agent Mr. Parthasarathy (PW4). Petitioner gave objection to the Election observer at 12.10 P.M. on 11-05-2006 seeking repolling. According to Petitioner, everyone reconciled to the position that there will be re-polling in Polling Station No. 13, Chinnapallikuppam and hence, the Petitioner and her Chief Election Agent and also the Counting Agents rushed to Chinnapallikuppam which was 35 to 40 km away from the place of counting.

4. At about 5.30 P.M., the Chief Election Agent of the Petitioner Mr. N.T. Shanmugam (PW2) received a call from the Collector asking them to come to the place of counting. When they came to the place of counting, 1st Respondent who was the then Minister was with the District Collector. The returning Officer and the District Collector told the Petitioner and her Chief Election Agent that some mistake has happened and that the votes polled in Polling Station No. 8, Gururajapalayam have not been counted and that the EVM pertaining to Polling Station No. 8, Gururajapalayam was kept in the adjoining room and that the votes polled in the EVM pertaining to Polling Station No. 13, Chinnapallikuppam was already counted and it has been mistakenly taken into account as Gururajapalayam. Petitioner and her Chief Election Agent made it clear that the votes polled in No. 8, Gururajapalayam have already been counted and that the new version is an afterthought and that the EVM pertaining to No. 8, Gururajapalayam has already been counted and the votes polled have been entered in the black board and filled up in Form-20. Further case

of Petitioner is that before 12.00 noon, the counting in all the EVMs was over and in so far as Polling Station No. 13, Chinnapallikuppam, the votes got erased because of mishandling and it showed "0-0-0" against each candidate. In so far as the votes polled in Polling Station No. 13, Chinnapallikuppam, fresh poll was the only remedy and the results should not have been declared. According to the Petitioner, EVM pertaining to Polling Station No.8, Gururajapalayam was already counted in the morning of 11-05-2006 in Table No.10 in Round No.1. After 5½ hours, it was stated that the EVM pertaining to Polling Station No.8, Gururajapalayam was not counted and that it is not permissible in law. For his own convenience, the Returning Officer cannot set aside the earlier proceedings followed in counting of votes polled in EVMs followed in Rule 55(C), 56(C) and 57(C) in Rule 66(A) of Conduct of Election Rules, 1961 and adopt a new procedure and this has materially affected the election.

5. As far as Polling Station No.13, Chinnapallikuppam is concerned, in the result sheet, the Returning Officer has made an entry that 413 votes have been polled in favour of the 1st Respondent while EVM showed "0-0-0" against each candidate and Part-II of Form 17-C is illegal and void. The said 413 votes has to be eschewed from consideration in which event the Petitioner is entitled to be declared since the margin of difference of votes is only "53" votes. Mishandling of EVM has materially affected the results of the election in so far as the Returned candidate is concerned. Petitioner seeks declaration of the election of Returned candidate as void and seeks for a direction for fresh poll in Polling Station No.13, Chinnapallikuppam and declare the Petitioner as duly elected candidate as a Member of Tamil Nadu Legislative Assembly from No.47, Anaicut Assembly Constituency.

6. Stating that he has learnt that there was interchange of EVMs, 1st Respondent has filed counter contending that at no point of time, re-poll was ordered for No.13, Chinnapallikuppam. Allegations of irregularities and illegalities in the counting of votes have been subsequently invented as an afterthought. Electronic Voting Machines for Polling Station Nos. 8 and 13 were transmitted to the strong room of the counting centre with seals intact. In so far as EVM of Polling Station No.8, Gururajapalayam, it was placed in the additional storage room and the Election Commission had been informed by the developments and that there was no illegality in the counting process. As mandated under Sec.83(1)(a) of R.P. Act, material facts have not been pleaded and the Election Petition is lack of material facts and the Petition is liable to be rejected. According to 1st Respondent, the final work of counting has been carried out as per law and neither the Petitioner nor any of her counting agents raised objection either orally or in writing about the details which is now being sought to be made belatedly in the Election Petition. The votes polled in Polling Station No.13, Chinnapallikuppam was properly counted and Petitioner cannot seek for fresh poll in respect of Polling Station No.13, Chinnapallikuppam. Case of 1st Respondent is that Election Petition has been filed with a vague and indefinite allegation on flimsy grounds and that the Petition is liable to be dismissed.

7. Respondent Nos.2 to 8 remained exparte. 9th Respondent—Veerasami entered appearance, but has not filed any counter. The 10th Respondent—Returning Officer of No.47, Anaicut Assembly Constituency was struck down as per the order made in O.A.No.916/2007 dated 18-08-2007.

8. On the above pleadings, the following Issues were framed.

(1) *Whether there is compliance of Rules 55(c), 56(c) and 57(c) in Rule 66(a) of the conduct of Election Rules, 1961 which has materially affected the result of the Returned candidate?*

(2) *Whether the Election Petition discloses material facts as required under sec. 83(1) (a) of R.P. Act, 1951?*

(3) *Whether the averments in the Election Petition discloses the grounds for declaring the election as void under Secs. 100 (1)(d) (iii) and (iv) of R.P. Act?*

(4) *whether the Election Commission ordered repolling in Polling Station No.13, Chinnapallikuppam on 11-5-2006?*

(5) *Whether the Petitioner is entitled to the relief of declaration that the election held on 8-5-2006 pertaining to 47, Anaicut Assembly Constituency is void?*

9. Issue Nos. 1 and 4 were re-cast as follows:—

(1) *Whether there was compliance of Rules 55(c), 56(c) and 57(c) in Rule 66(a) of the conduct of Election Rules, 1961?*

(2) *Whether re-polling in Polling Station No.13, Chinnapallikuppam was contemplated /declared as contended by the Election Petitioner?*

10. The following Additional Issues are framed for consideration:—

1. *Whether the votes polled in the EVM of Polling Station No.13, Chinnapallikuppam was mishandled which resulted in erasing of votes polled and consequently showing "0-0-0" against each candidate as contended by the Election Petitioner?*

2. *Whether there was non-compliance of Rules 55 (c), 56(c) and 57(c) in Rule 66(a) of the Conduct of Election Rules, 1961 which has materially affected the result of the returned candidate?*

3. *Whether the interchange of EVM has materially affected the election?*

11. Election Petitioner-Varalakshmi examined herself as PW1. The Chief Election Agent for the Petitioner viz., N.T. Shanmugam (former Minister) and the Counting Agents for the Petitioner viz., Prahalathan and A. Parthasarathy were examined as PWs.2 to 4 respectively. Mr. Narayanamoorthy, the then Returning Officer of 47, Anaicut Assembly Constituency was examined as PW5. Exs.P1 to P5 were marked on the side of the Election Petitioner. M.Os. 1 to 5 were also marked. On the side of contesting 1st Respondent, no oral evidence was adduced. Exs. R1 to R15 were marked.

12. Issue Nos. 2 and 3:—In No.47, Anaicut Assembly Constituency, there were 221 Polling Stations. Election Petitioner-Varalakshmi secured 59167 votes. 1st Respondent-Pandurangan secured 59220 votes and the 1st Respondent got declared elected by "53" votes. There is no dispute on facts.

13. In the counter-affidavit of 1st Respondent, it is alleged that the averments in Paragraphs (9) and (10) of Election Petition are not bonafide, lacks minimum material facts and material particulars to maintain the Election Petition. It is further averred that widen facts and issues leading to material particulars have not been averred by the Election petitioner and hence non-disclosure of material facts and withholding of material particulars are contrary to the very continuation of the Election Petition. 1st Respondent has further alleged that the Election Petition should contain adequate statement of material facts and there shall be no vague pleas made in the Petition in support of material fact and it is the duty of the Petitioner to plead with full particulars, how the counting was not done in proper manner and how the facts were wrongly accepted infavour of the Returned candidate. Contention of 1st Respondent is that the allegation of irregularities and illegalities in the counting of votes have been subsequently invented as an afterthought and the pleadings are not clear and precise on vital aspects and the Election Petition does not disclose the material facts which must be pleaded and failure to plead even a single material fact amounts to disobedience of mandate of Sec.83 (1) (a) of R.P. Act.

14. Section 83 of the Representation of the People Act, 1951 deals with contents of a petition and Rule 94-A of the Conduct of Elections Rules, 1961 deals with Form of affidavit to be filed along with Election Petition. Section 83 of the Act and Rule 94-A of the Conduct of Elections Rules read as under:

"83. Contents of petition: (1) An election petition-(a) shall contain a concise statement of the material facts on which the petitioner relies;

(b) shall set forth full particulars of any corrupt practice that the petitioner alleges including as full a statement as possible of the names of the parties alleged to have committed such corrupt practice and the date and place of the commission of each such practice; and

(c) shall be signed by the petitioner and verified in the manner laid down in the Code of Civil Procedure, 1908 (5 of 1908) for the verification of pleadings:

[Provided that were the petitioner alleges any corrupt practice, the petition shall also be accompanied by an affidavit in the prescribed form in support of the allegation of such corrupt practice and the particulars thereof.]

(2) Any schedule or annexure to the petition shall also be signed by the petitioner and verified in the same manner as the petition.

Rules

94-A. Form of affidavit to be filed with election petition:—*The affidavit referred to in the proviso to sub-section (1) of section 83 shall be sworn before a magistrate of the first class or a notary or a commissioner of oaths and shall be in Form 25."*

15. In (1969) 3 SCC 238 (Samant N. Balakrishna and another Vs. George Fernandez and Others], the mandatory nature of the provisions contained in Section 83 was dealt with and consequences flowing from any breach of provision

were set out. It was held by the Supreme Court that Section 83 is mandatory and requires the election petition to contain first a concise statement of material facts and then requires the fullest possible particulars. The word 'Material' shows that the facts necessary to formulate a complete cause of action must be stated. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad. The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action.

16. In (2004) 11 SCC 196 [Sardar Harcharan Singh Brar Vs. Sukh Darshan Singh and others], the supreme Court held as under:

"11. The principles have been reiterated recently in H.D. Revanna Vs. G. Puttaswamy Gowda and ors. (1999) 2 SCC 217, V.S. Achuthanandan Vs. P.J. Francis and Anr. (1999) 3 SCC 737 and Mahendra Pal Vs. Ram Dass Malander and ors. (2000) 1 SCC 261. We are tempted to quote the following passage from the three-Judge Bench decision in Mahendra Pal's case (Supra) wherein the learned Chief Justice has summed up the statement of law in the following words:

"Section 83 (1) (a) of the Act mandates that in order to constitute a cause of action, all material facts, that is, the basic and preliminary facts which the petitioner is bound under the law to substantiate in order to succeed, have to be pleaded in an election petition. Whether in an election petition, a particular fact is material or not and as such required to be pleaded is a question which depends upon the nature of the charge levelled and the facts and circumstances of each case. The distinction between "material facts" and "particulars" has been explained by this Court in a large number of cases and we need not refer to all those decided cases. Facts which are essential to disclose a complete cause of action are material facts and are essentially required to be pleaded. On the other hand "particulars" are details of the case set up by the party and are such pleas which are necessary to amplify, refine or explain material facts. The function of particulars is, thus, to present a full picture of the cause of action to make the opposite party understand the case that has been set up against him and which he is required to meet. The distinction between "material facts" and "material Particulars" is indeed important because different consequences follow from a deficiency of such facts or particulars in the pleadings. Failure to plead even a single material fact leads to an incomplete cause of action and incomplete allegations of such a charge are liable to be struck off under Order 6 Rule 16 of the Code of Civil procedure. In the case of a petition suffering from a deficiency of material particulars the court has the discretion to allow the petitioner to supply the required particulars even after the expiry of limitation. Thus, whereas it may be permissible for a party to furnish particulars even after the period of limitation for filing an election petition has expired, with the permission of the court, no material fact unless already pleaded, can be permitted to be introduced, after the expiry of the period of limitation."

[See also (1999) 1 SCC 666 (L.R. Shivaramagowda etc. V. T.M. Chandrashekar etc.); (1999) 3 SCC 737 [V.S. Achuthanandan V. P.J. Francis and another] and (2001) 8 SCC 233 Hari Shanker Jain v. Sonia Gandhi]

17. In a catena of decisions, it is well settled that Election Petition must set out all material facts where from inferences vital to the success of the Election Petition and enabling the Court to grant the relief prayed for by the Petitioner can be drawn subject to the averments being substantiated by cogent evidence. Concise and specific pleadings, setting out of material facts and then cogent affirmative evidence being adduced in support of such averments are indispensable to the success of the Election Petition. Of course, it is absolutely essential that all basic and primary facts which must be proved at the trial by the parties to establish the existence of cause of action or defence must be averred in the pleadings.

18. In the light of the above well settled principles, let us examine the averments and consider whether the material facts have been set out in the Election Petition. In the Election Petition, Petitioner has alleged that EVM from Polling Station No. 13, Chinnapallikuppam was brought in the morning itself and counted. The Specific case of Election Petitioner is that the votes pertaining to polling Station No.8, Gururajapalayam were counted in Table No. 10 in Round No.1 by opening the seal of the Electronic Voting Machine and everyone noted the same; but suddenly in the evening a new version was sought to be put that what was counted in the morning was in respect of Polling Station No.13, Chinnapallikuppam and that it has been wrongly taken as Polling Station No.8, Gururajapalayam.

19. In the Petition, the Election Petitioner further averred that the EVM was brought from the additional storage room which according to the Returning Officer (PW5) was due to interchange of EVMs. When the Election Petitioner has alleged that the EVM was brought "not from the strong room", it is for the Returning Officer to explain the same. Therefore, it cannot be said that the Election Petitioner has not averred the material facts. The facts which are alleged are material facts which are all the matters for adjudication. It cannot be said that the material facts are not pleaded. Earlier, 1st Respondent-Pandurangan has filed O.A.No.54/2007 to reject the Election Petition filed by the Election Petitioner-Varalakshmi for want of maintainability in as much as the material facts and material particulars as warranted in Secs. 80, 81, 82, 83, 100(1) (d) (iii), 8 (iv) and 101 of R.P. Act have not been pleaded. Election Petitioner has filed a detailed counter-affidavit referring to the material particulars averred in the Election Petition. The said Application O.A.No.54/2007 was later withdrawn and the same was dismissed. There is no force in the contention of 1st Respondent that the averments in the Election Petition does not disclose the material facts and this Issue is answered in favour of the Election Petitioner.

20. Issue No.1 (re-cast); Additional Issues 1 to 3 and Issue No. 4 (re-case):—
In order to understand and appreciate the evidence and allegations in the Election petition, it is necessary to have a understanding of functioning of EVM and as to how it is functioning as different from conventional system of voting.

21. Electronic Voting Machine is a simple and reliable equipment for use in electing a candidate from among many candidates. EVM consists of two Units viz.,

(i) Control Unit; (ii) Balloting Unit Joint by a five-meter cable. The Control Unit is with the Presiding Officer or a Polling Officer and the Balloting Unit is placed inside the voting compartment. Each Controlling Unit has a unique I.D. Number which is written on the Control Unit with a permanent marker. Instead of issuing a ballot paper, the Polling Officer in-charge of the Control Unit will press the Ballot button. This will enable the voter to cast his vote by pressing the blue button on the Balloting Unit against the candidate and symbol of his choice.

22. Voting by EVMs is simpler compared to the conventional system, where one has to put the voting mark on or near the symbol of the candidate of his choice, fold it vertically and then horizontally and thereafter put it into the ballot box. In EVMs, the voter has to simply press the blue button against the candidate and symbol of his choice and the vote is recorded. Rural and illiterate people had no difficulty in recording their votes and, in fact they have welcome the use of EVMs.

23. A special tag is prescribed to seal the inner door of "Result Section" in Control Unit. Each special tag shall have a unique serial number. That apart each Control Unit will have two pink tags. Regarding user of pink tags, P.W.5 has stated that the first pink tag on the top of the Control Unit which is a battery section is intended to protect the system ensuring that the batteries in the System are not removed, The second tag at the bottom will be prepared by the Returning officer and put in the carrying case of the Control Unit and sent to the respective Polling Stations. In the polling stations, the respective Presiding Officers after demonstration of the Unit will put the paper seal and put the second pink tag at the bottom of the Control unit. That apart, two extra pink tags will be prepared by the office of the Returning officer to be put in each carrying case of the Control Unit.

24. Distribution of EVMs including Reserve EVMs.—An Officer is put on duty to cover about 10 Polling Stations on the date of poll. In his evidence. P.W.5-Narayanamurthy [Returning officer] has stated that 221 Polling Stations were divided into 14 Zones. In each Zone, there was a Zonal Officer in the rank of Tahsildar/ Deputy Tahsildar. Returning officer maintains a Register of allocation of EVMs to Polling Stations. P.W.5 has further stated that the day prior to the polling day, the concerned Zonal Officer was entrusted with the EVMs for the Polling Stations in his Zone. The Zonal officer will go to the respective Polling Stations in his Zone and hand over the concerned EVM to the Presiding Officer of each Polling Station in his Zone on the day prior to the Election. Like any other Constituency, this exercise was carried out in No.47, Anaicut Assembly Constituency also.

25. Voting.—Before the Commencement of Polling, the Presiding Officer will demonstrate to all the Polling Booth Agents the EVMs and also demonstrate before them that previously no votes are recorded in the EVMs. After this process, the Control Unit will be sealed and made ready for actual polling. Before the commencement of poll, the Presiding Officer demonstrates to the Polling Agents present that there are no hidden votes already recorded in the machine by pressing the result button. Thereafter, he will conduct a mock poll by asking the polling agents to record their votes and will take the result to satisfy them that the result shown is

strictly according to the choice recorded by them. Thereafter, the Presiding Officer will press the “clear button” to clear the result of the mock poll before commencing the actual poll. As soon as the voter presses the ‘blue button’ against the candidate and simple of his choice, a tiny lamp on the left side of the simple glows red and simultaneously a long beep sound is heard. The polling booth agent of respective candidates will be allowed to sit in the Polling Station throughout the poll.

26. As soon as the last voter has voted, the Polling Officer in-charge of the control Unit will press the ‘Close’ button.’ There after, the EVM will not accept any vote. Further, after the close of poll, the Balloting Unit is disconnected from the Control Unit and kept separately. The Presiding Officer shall at the close of the poll prepare an Account of votes recorded in Form 17-C (part-I), and enclose it in a separate cover with the words “Account of Votes Recorded” superscribed thereon [*Rule 49S of conduct of Elections Rules, 1961.*] Again the Presiding Officer, at the close of the Poll, will hand over to each Polling Agent present an account of votes recorded. At the time of counting of votes, the total will be tallied with this account and if there is any discrepancy, this will be pointed out by the Counting Agents.

27. Sealing of EVM/Storage in strong room.—At the close of Poll and sealing of EVMs, the Presiding Officer will put the Control Unit and Balloting Units in their carrying cases and seal the carrying cases and fix address tags and hand it over to the concerned Zonal Officer with polled records and the Zonal Officer in turn will hand over the same safely to the storage room at the counting hall and other materials to the additional storage room including Reserve EVMs. In each counting hall, there will be one storage room exclusively for polled EVMs and vote of accounts in Form 17-C and one additional storage room for storing Reserve EVMs and other polled materials. Each EVM will have address tag containing the number and name of the Polling Station and the date of polling, which will be affixed by the Presiding Officer. It is the duty of the Returning Officer to supervise the verification and collection of all the polled EVMs by the Storage Officer and his Assistants. The Returning Officer is in overall control of the working of Reception Staff and Storage Officer. As per the instruction contained in 18.1 of Hand Book for Returning Officers, the EVMs including the “Reserve EVMs” should be kept and preserved in safe custody in strong room. Though the Hand Book contemplates one strong room, in practice EVMs are kept in additional storage room. They got permission from the District Election Officer to have one additional storage room even when they submitted the proposal for approval of counting hall and storage room.

28. Counting—On the date of counting, each EVM is brought to the counting table. Part-I, of Form 17-C, will also accompany and after verifying the seal on the EVM and Part-I, of Form 17-C, votes will be counted. The Counting Agents will be shown that the seals are intact and after they are satisfied, the counting will begin.

29. Control Unit has Balloting section, Result section, candidates set section, Display section and power ‘ON’ lamp. At the time of counting, bottom compartment is opened. Inside, we find socket for interconnecting the cable of battery unit. At the time of counting, the second pink tag at the bottom of the EVM will be taken away and the outer lid of the result section will be opened to know the result by pressing the result button. The result Section contains “Result button”.

30. In her evidence, PW1 has stated that on 11-5-2006 votes polled in No.8, Gururajapalayam were counted in Table No.10 in the presence of PW3 Prahalthan [Counting Agent of Election Petitioner] and that PW1 secured 377 votes and 1st Respondent secured 391 votes. P.W.1. has further stated that EVM pertaining to Polling Station No.9, Gururajapalayam was counted in Table No.11 in Round No.1, PW1 secured 155 votes and 1st Respondent secured 278 votes. In her evidence PW1 has further stated that at 8.30 A.M. the votes polled in Polling Station Nos.11 and 12 of Chinnapallikuppam were brought to the counting table and votes were counted. Thereafter, the votes polled in No.13, Chinnapallikuppam was brought to the counting Table in Round No.2 and PW4-Parthasarathy was her Counting Agent. She has further stated that the total number of votes polled mentioned on the cover of EVM was 667 and that when the EVM was opened and polled votes were counted, it was found only "000" as against each candidate in the EVM. PW1 has further stated that the officials called for one Geetha who is said to be a technician of EVM and the said Geetha checked the EVM and she has reported that EVM was not handled properly and all the votes polled therein got erased. According to the Election Petitioner, the result of Polling Station No.13, Chinnapallikuppam was written on the black board as "000" and therefore, P.W.4-Parthasarathy left blank as against Polling Station No.13, Chinnapallikuppam in Ex.P1 [Note Book.] PW1 has further stated that EVM of No.13, Chinnapallikuppam was kept aside and other EVMs were counted and the counting process was completed at about 12.30 noon and he gave representation [Ex.P2), requesting for conducting re-polling in Polling Station No. 13, Chinnapallikuppam. PW1 has also stated that the result was not declared at 12.30 noon and that since the District Election Officer announced re-polling can be held at Chinnapallikuppam, she along with her Chief Election Agent [PW2-N.T. Shanmugam] went to Chinnapallikuppam which is at a distance of 40 kms away from the counting place. PW1 has also stated that on the same day evening at about 5.30 P.M., the District Election Officer called her and her Chief Election Agent [PW2] and asked them to come to the counting place and when she and her Chief Election Agent came back to the counting place at about 7.00 P.M., she saw 1st Respondent was present with the District Election Officer in the counting hall itself. PW1 has further stated that the District Election Officer told them that counting of votes in No. 13, Chinnapallikuppam was already over in the morning and that only the votes counted in Polling Station No. 8, Gururajapalayam was not counted and that the EVM pertaining to No. 8, Gururajapalayam was kept in the adjacent room and the District Election Officer asked all of them to come forward for counting of votes of No.8, Gururajapalayam and the Election Petitioner raised objection for counting of votes polled in Polling Station No. 8, Gururajapalayam stating that counting for that Polling Station was already over in the morning. PW1 has further stated that they did not go to the adjacent room to bring the EVM pertaining to No.8, Gururajapalayam and she does not know whether the votes polled for Polling Station No. 8, Gururajapalayam was counted or not and that next day morning she came to know from the newspaper that 1st Respondent was declared elected for No. 47, Anaicut Assembly Constituency by a margin of "53" votes.

31. Case of PW1 is that for Polling Station No.13, Chinnapallikuppam, the votes polled got erased and the EVM showed only "000". PW1 would admit that for Polling Station No.13, Chinnapallikuppam, the total number of votes polled is 667, But in Form-20, for Polling Station No.13, Chinnapallikuppam the officials themselves appear to have written the number of votes casted in favour of each candidate and entries shown against each candidate are not correct.

32. PW2- Mr. N.T. Shanmugam, a former Minister in Central Government was the Chief Election Agent of the Election Petitioner. In his evidence PW2 has stated that the EVMs pertaining to Polling Station Nos. 8 & 9 of Gururajapalayam were brought to the counting Table Nos. 10 & 11 and in the EVM of Polling Station No.8, Gururajapalayam, total number of votes polled were shown to be 774 votes and the same were counted for each candidate and the Counting Agent Prahalthan (PW3) was present at Table No. 10. The votes polled in the EVM brought to the counting Table No. 11 were counted in respect of each candidate. PW2 has further stated that the EVM of Polling Station No.13, Chinnapallikuppam was brought to the counting Table No.1 at 8.30 A.M. for counting and the seal of EVM was verified by the officials and it was seen that the display only shown "000" and the officials called for technician Geetha to check the EVM and the said Geetha informed the officials that since the EVM was not handled properly, the total shows "000" and the technician has also stated that the votes polled there in have been erased due to mishandling of EVM.

33. Reiterating the version of PW1, PW2 has also stated that Election Petitioner has submitted a representation to the Election Observer requesting for re-poll in Polling Station No.13, Chinnapallikuppam and on coming to know about the problem, the District Election Officer came to the counting hall and stated that due to problem in the EVM pertaining to No. 13, Chinnapallikuppam, re-poll has to be conducted and since re-poll was intended to be conducted, Election Petitioner, PW2 and their party men left for Chinnapallikuppam. PW2 has also stated that when they reached Chinnapallikuppam at about 5.30 P.M., the District Election Officer called him over his cell phone and asked to come to the counting place at Thanthai Periyar Polytechnic, Vellore and when they reached the counting place, the 1st Respondent and District Election Officer were present. PW2 would further state that the District Election Officer told that the votes polled in No.13, Chinnapallikuppam were already been counted in the morning itself and that the votes polled in No. 8, Gururajapalayam are to be counted and he further told that the EVM pertaining to No. 8, Gururajapalayam is in the additional strong room and the same has to be brought for counting. PW2 would further state that they did not agree and objected for the same and submitted a representation forwarding a copy to the Election Commission, New Delhi and that they did not go to the counting hall and came out and on the next day, they saw the newspapers that the result was declared and 1st Respondent was declared elected. In his evidence, PW2 has further stated that as per the Rules, the polled EVMs should be kept in the strong room and only those EVMs have to be taken for counting. Since the EVM was brought from the additional storage room which has no safety measures, it amounts to violation of election rules and the same cannot be taken up for counting. As the votes polled thereon would have been manipulated or tampered with, the votes polled in respect of No.8, Gururajapalayam is not correct.

34. PW3-Prahalthan who was the Counting Agent of the Election Petitioner for Table No. 10 has stated that EVM of No.8, Gururajapalayam was brought to the counting Table No.10 and it was verified and the seals were checked and the votes were counted and number of votes against each candidate were recorded and the Counting Agents' signatures were obtained for each EVM. The gist of evidence of PW3 is that the votes pertaining to No.8, Gururajapalayam were counted in the morning itself.

35. Gist of evidence of PWs. 1 to 3 is that:—

Votes polled in EVM Pertaining to No. 8, Gururajapalayam was counted in Table No. 10 in the first round in the presence of PW3- Prahalathan, Counting Agent of Election Petitioner.

There is no Grievance about the number of votes polled and counted in respect of No.8, Gururajapalayam and that there is no grievance about the number of votes counted in the morning in respect of No.8, Gururajapalayam and that the Election Petitioner got 377 votes and 1st Respondent got 391 votes respectively.

EVM pertaining to No.13, Chinnapallikuppam was counted in Table No.1 of round No.1 in the presence of PW4-Parthasarathy, Counting Agent of Election Petitioner and the said EVM showed "000".

Re-election was ordered by the Retuning Officer for No.13, Chinnapallikuppam on the same day for which Election Petitioner and her party men had gone to Chinnapallikuppam.

On the evening of 11-5-2006, the District Collector/District Election Officer told the Election Petitioner and her Chief Election Agent (PW2) that No. 13, Chinnapallikuppam was already counted in the morning and No.8, Gururajapalayam remains to be counted.

36. Even though, PWS.1 and 2 have stated that the votes polled in EVM pertaining to No.8, Gururajapalayam was counted in the morning itself, it emerges from the evidence and other circumstances that the votes polled in respect of No.8, Gururajapalayam were counted only in the evening; whereas votes polled in EVMs pertaining to No.13, Chinnapallikuppam were counted in the morning.

37. In continuation of functioning of EVMs, we may refer to the evidence of PW5-Returning Officer. In his evidence, PW5 has stated that 221 Polling Stations have been divided into 14 Zones. An officer was put on duty to cover about 10 Polling Stations for one Zone. One or Two EVMs will be provided as "Reserve EVM" which will be in the custody of the Zonal Officer. The Zonal Officer will be having "Reserve EVM" and in case any EVMs is out of order, the said EVMs can be replaced with "Reserve EVM".

38. As pointed out earlier, each Control Unit and Balloting Unit has unique I.D. Number (Label) pasted by the manufacturer on the back. At the time when EVMs are prepared for Polling Stations, the said unique I.D. Number is written on the front cover of each Unit with permanent Marker. The said I.D. Numbers are to be noted in the

Registers/Address tags and Form 17-C (Part-I) etc. The Returning Officer maintains the Register of allocation of EVMs to Polling Station with the following particulars:—

- General/Bye-Election to.....
1. No. and Name of Lok Sabha Constituency.....
 2. No. and Name of Assembly Constituency.....
 3. Date of Poll.....

Sl. No.	No. and Name of Polling Station	Unique ID Nos. of Units Allocated to Polling Strn.		Remarks
		Control unit	Balloting unit	

39. In his evidence, PW5 has categorically stated that there was interchange of EVMs and that the same was noticed only on the date of counting. Interchange of EVMs are as under:—

Control Unit No.	Originally intended for	Handed over to	Used for	Counted for
D1843 (M.O.3)	P.S.No. 13, Chinnapallikuppam	Kept as Reserve by Zonal Officer	—	Showed "000"
D3208 (M.O.4)	Reserve EVM	P.S.No. 8, Gururajapalayam	P.S.No. 8, Gururajapalayam	P.S.No. 8, Gururajapalayam
D11920 (M.O.5)	P.S.No. 8, Gururajapalayam	P.S.No.13, Chinnapallikuppam	P.S.No.13, Chinnapallikuppam	P.S.No.13, Chinnapallikuppam

since the Returning Officer (PW5) is in-charge of preparation of EVMs and allocation of EVMs to Polling Stations, much weight has to be attached to his evidence as to the interchange of EVMs.

40. The points to be determined are whether the votes polled in EVM pertaining to No.13, Chinnapallikuppam got erased due to mishandling and whether the interchange of EVMs has materially affected the election to declare it as void.

41. Sec.49E of Conduct of Election Rules deals with preparation of EVM for polling which reads as under:-

Sec.49-E-Preparation of voting machine for poll.

(1) *The control unit and balloting unit of every voting machine used at polling station shall bear a label marked with -*

(a) *the serial number, if any, and the name of the constituency;*

(b) *the serial number and name of the polling station or stations as the case may be;*

(c) *the serial number of the unit; and*

(d) *the date of poll,*

(2) *Immediately before the commencement of the poll, the presiding officer shall demonstrate to the polling agents and other persons present that 0 voter has been already recorded in the voting machine and it bears the label referred to in sub-rule (4).*

(3) *A paper seal shall be used for securing the control unit of the voting machine, and the presiding officer shall affix his own signature on the paper seal and obtain thereon the signature of such of the polling agents present as are desirous of affixing the same.*

(4) *The presiding officer shall thereafter fix the paper seal so signed in the space meant therefore in the control unit of the voting machine and shall secure and seal the same.*

(5) *The seal used for securing the control unit shall be fixed in such manner that after the unit has been sealed, it is not possible to press the "result button" without breaking the seal.*

(6) *The control unit shall be closed and secured and placed in full view of the presiding officer and the polling agents and the balloting unit placed in the voting compartment.*

As pointed out earlier, case of Election Petitioner is that EVM for No.13, Chinnapallikuppam was counted in Tale No.1 in the presence of PW4-Parthasarathy and the EVM showed "000" and that technician Geetha was called who on checking of EVM has stated that the votes polled in No.13, Chinnapallikuppam got erased due to mishandling of EVM. As pointed out earlier, due to interchange of EVM (MO3) intended for Polling Station No.13, Chinnapallikuppam was kept as "Reserve EVM" by the Zonal Officer. The said Control Unit was not put in use and evidently, the same showed "000". Ofcourse, PW5-Returning Officer has stated that technician Miss. Geetha was called and on checking up the EVM, it showed "000".

42. The vital point for determination is whether the votes polled in EVM pertaining to No.13, Chinnapallikuppam could have been erased allegedly said by the technician Miss. Geetha as stated by PWs. 1 to 5?

43. The Returning Officer who is in-charge of EVMs prepares Balloting Unit, Control Unit as per the Manual of Instructions. Returning Officer seals the inner door of "candidates set section" and also outer door of "candidates set section" with address tag. After preparation of Balloting Unit and Control Unit and only after "test check", the Control Unit is made ready for distribution to the Polling Stations. After preparation of Control Unit and Balloting Unit, they are packed in their carrying cases. Address tag on the carrying cases are tied with threads and sent to the Polling Stations through the Zonal Officer. Presiding Officer check the Returning Officer's seals and the Presiding Officer check the Balloting Unit. Both the seals of Control Unit and Balloting Unit should not be opened by the Presiding Officer at any point of time.

44. As pointed out earlier, after the demonstration to the Polling Agents, Presiding Officer clear the EVM by pressing "clear button". Thereafter, Presiding Officer fixes paper seals and closes the inner compartment. After sealing with outer door strip seal, the Control Unit is ready for conducting poll. During or after the poll is over, paper strip seal is not removed. After the poll, over, paper strip seal is not removed. After the poll, the Control Unit with the seals intact is returned to the Returning Officer. When EVMs are brought to the counting table, the paper seal is pierced to know the results.

45. As pointed out earlier, in each of the Polling Stations before the commencement of polling, the Presiding Officer will conduct the "Mock Polling". Only those EVMs used for "Mock Polling" will be the ones used for actual polling on the polling day, after clearing the Mock Polls. Hence hardly, there are any possibilities for mishandling of EVM and the votes polled getting erased.

46. As pointed out earlier, the EVM D 18543 (MO3) with tag pertaining to No.13, Chinnapallikuppam was kept as "Reserve EVM" by the Zonal Officer. Since (M.O.3), Control Unit intended for Chinnapallikuppam was actually kept as "Reserve EVM" which was not used for polling, naturally, it showed "000". The version of Election Petitioner that the votes polled in EVM pertaining to No.13, Chinnapallikuppam got erased is not correct. From the evidence of PW5 and by demonstration of EVM in the open Court, what we find is the EVM has been specifically designed to collect, record, store, count and display voting data accurately. All mechanical, electronic, software security features are provided to ensure the accuracy of the voting data. After the poll, the Control Unit with the seals intact is returned to the Returning Officer. With much of safety measures taken, hardly, there any possibilities of being "mishandling" and polled votes getting erased.

47. Ex. P5 is the Form 17-C used for No.13, Chinnapallikuppam. In Part-I of Ex.P5 [Form 17-C], the Control Unit is clearly mentioned as D 11920. As is seen from Part-I of Ex.P5 Form 17-C, the total number of votes polled in No.13, Chinnapallikuppam

18 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

is stated as "667" and all the Polling Booth Agents and the Presiding Officer have signed in Part-I of Form 17-C. As is seen from Part-II of Ex.P5 [Form 17-C], out of 667 votes polled, the candidates secured the votes as under:—

<i>Sl.No.</i>	<i>Name of the Candidate</i>	<i>No. of votes recorded</i>
1.	Kumaresan, J.	12
2.	Sivam, C.	4
3.	Pandurangan, K.	413
4.	Varalakshmi, M.	194
5.	Venkatesan, M.	19
6.	Kalaiselvan, V.	2
7.	Deivasigamani, B.	6
8.	Natarajan, T.	4
9.	Pannerselvam, S.	4
10.	Veeramani, G.	9
	Total	667

In his evidence, PW5-Returning Officer has categorically spoken about Part-I of Ex.P5 [Form 17-C] and the number of votes polled thereon [667] and that the Polling Booth Agents and Presiding Officer have signed in Part-I of Ex.P5. The total number of votes polled actually tallied with the number of votes in the Control Unit, M.O.5, D11920 as is clear from Part-II of Ex.P5 Form 17-C.

48. As per Section 46 of R.P. Act read with Rule 13 of the Conduct of Election Rules, a contesting candidate or his Election Agent may appoint in the prescribed manner such number of polling agents as may be prescribed to act as polling agents of such candidate at each polling station provided under Section 25 or at the place fixed under sub-section (1) of Section 29 for the poll. As per Rule 13, every such appointment shall be made in Form 10 and shall be made over to the Polling Agent for production at the polling station or the place fixed for the poll, as the case may be. As stipulated under Section 49 read with Rule 13, The Election Petitioner/his Chief Election Agent would have nominated persons as Polling Agents for Polling Station No.13, Chinnapallikuppam.

49. When PWs. 1 and 2 were questioned as to the name of Polling Agents of Election Petitioner in No.13, Chinnapallikuppam, they were evasive. PW2-Chief Election Agent of the Election Petitioner feigned ignorance about the name of Polling Booth Agent for No.13, Chinnapallikuppam. As is seen from the evidence of PW5, at the end of poll, the EVM will be sealed in the presence of all the Polling Booth Agents and the seals of respective Polling Booth Agents will be affixed on the EVM and the Presiding Officer will give the true copy of Part-I of Form 17-C to each of the Polling Booth Agents. If Part-I of Ex.P5 Form 17-C does not pertain to No.13, Chinnapallikuppam, the Election Petitioner could have very well produced the copy of Part-I of Form 17-C given to her Polling Booth Agents, but that was not to be so.

50. In his evidence, PW5-Returning Officer has clearly stated that M.O.5 Control Unit No. D 11920 was actually used in Polling Station No.13, Chinnapallikuppam and in M.O.5 in the first pink tag on the top, three signatures of Polling Booth Agents are found and the signatures of Polling Booth Agents found in the first pink tag on M.O.5 [D11920] tallies with the signatures of Polling Booth Agents in Part-I of Ex.P5 Form 17-C. It was suggested to PW5 that Part-I of Form 17-C [Ex.P5] was prepared by the Returning Officer himself without any signature of Polling Booth Agents. But to substantiate the said suggestion, the Election Petitioner had not chosen to examine her Polling Booth Agents of No.13, Chinnapallikuppam.

51. In his evidence, PW4-Parthasarathy has stated that upto 12-30 P.M. the votes polled in the EVM pertaining to No.13, Chinnapallikuppam was not counted and that when the EVM of No.13, Chinnapallikuppam was brought and when the result button was pressed, it showed "000". PW3-Prahalathan has stated that EVM pertaining to No.8, Gururajapalayam was brought to the counting Table No.10 (in which he was the Counting Agent) and number of votes polled against each candidate were counted.

52. From the evidence of PW5, it is made clear that the EVM pertaining to No.13, Chinnapallikuppam was counted in Table No.10 in the morning itself. As pointed out earlier, Part-I of Ex.P5 [Form 17-C] contains Control Unit No.D11920. Part-II of Form 17-C contains votes polled against each candidate and the total number of votes polled as stated in Part-I. It is pertinent to note that in Part-II of Form 17-C [Ex.P5], PW3 Counting Agent of Election Petitioner has signed as Counting Agent. But during his evidence, PW3 has denied his signature in Ex.P5 and PW3 has stated that in Table No.10, only the EVM pertaining to No.8, Gururajapalayam was counted but not No.13, Chinnapallikuppam. Absolutely, there is no truth in the evidence of PW3 denying his signature in Part-II of Ex.P5 Form 17-C. In my considered view, the denial of signature in Part-II of Form 17-C [Ex.P5] is clearly an afterthought.

53. As pointed out earlier, after each round of counting, Part II of Form 17-C will be prepared in which the respective Counting Agents would sign in Part-II. To discredit P.W.3's evidence, Form 17-Cs of various Polling Stations counted in Table Nos.1 to 10 were summoned. Ex. R1 to R15 are the Part-II of Form 17-Cs pertaining to Polling Station No.22-F, Government Boys Higher Secondary School, Pallikondan; No. 32A (W), Vettuvanam; No. 44, Virinjipuram; No. 55(M), Ilavampadi; No. 65, Government Boys Higher Secondary School, Anaikattu; No. 77 (M), Thattankuttai; No. 87, Kilkothur; No. 99 KG Eriyur; No. 109, Athikuppam; No. 121, Abdullapuram PUM School; No. 134 (M), Athiyur; No. 144M; No. 47/154; No. 164, PU School, Baghayam and Arcoton Kudirai, Minjurpet respectively. Except Ex.R14 From 17-C, all Form 17-Cs from Ex. R1 to R13 and R15 and also Ex.P5 (From 17C of EVM counted in Table No. 10 in Round No. 1] contained the signature of PW3-Prahalathan. On being recalled, PW3 had also admitted his signature in Form 17-Cs i.e. Exs. R1 to R13 and R15. But PW3 denies his signature in Ex.P5. In his evidence PW5 has stated that at the time when the votes polled were entered in Ex.R14, PW3 might not have been available.

54. As Counting Agent of Election Petitioner in Table No. 10, PW3 has signed. Admittedly, in Exs. R1 to R13 and R15 the Signature of PW3 was obtained in

Part-II of Form 17-C in the official Course. In the ordinary course of conduct of official work in Part-II in Ex.P5 [Form 17-C] of No. 13, Chinnapallikuppam, the signature of PW3 must have been obtained. As per Sec.114-illustration (e) of Evidence Act, all the official and judicial acts are presumed to have been rightly and regularly done. Presumption under Sec.114 will come into aid where it is proved that the judicial or official act has been in effect done or performed. When the signature of PW3 in Exs.R1 to R13 and R15 is admitted, the presumption arises that Part-II of Ex.P5 Form 17-C was also performed in the official course of business, then the presumption under Sec.114, Illustration (e) arises. Denial of his signature in Part-II of Ex.P5 Form 17-C is clearly as afterthought and no weight could be attached for such denial. Part-II of Ex.P5 Form 17-C clearly shows that the votes polled in EVM pertaining to No. 13, Chinnapallikuppam was counted in the morning itself at Table No.10.

55. Case of Election Petitioner is that re-polling in No. 13, Chinnapallikuppam was ordered and therefore, she and her Chief Election Agent [PW2-N.T. Shanmugam] and their party men went to Chinnapallikuppam for re-polling. PW5-Returning Officer has categorically denied the suggestion that there was lot of discussion about re-polling in No.13, Chinnapallikuppam. Only the Election Commission of India has power to order re-poll. PW5 has categorically stated that even on the date of counting itself, re-polling cannot be ordered because the Electorate have to be informed in advance about the re-polling. When only the Election Commission of India has power to order re-polling, it is highly improbable that PW5-Returning Officer would have contemplated about re-polling in No. 13, Chinnapallikuppam. As soon as EVM showed "000", they must have noticed the mistake, since Part-I of Ex.P5 Form 17-C, 667 votes were polled in No. 13, Chinnapallikuppam after checking up with number of Control Unit, interchange of EVM came to light. The contention of Election Petitioner that re-polling of No. 13, Chinnapallikuppam was contemplated/declared is not acceptable and Issue No. 4 is answered accordingly.

56. M.O.4-D53208 which was intended to be kept as "Reserve EVM" was used for polling in No. 8, Gururajapalayam. As seen from Part-I of Ex.P4 [Form 17-C], 1035 votes were polled in No. 8, Gururajapalayam. Since the pink tag contained lable "Reserve EVM", even though M.O.4 was used in No. 8, Gururajapalayam as it was "Reserve EVM", the same was kept in the additional storage room. In his evidence, PW5 has stated that after noticing the interchange of EVM, M.O.4 was brought and found that the seals were intact. PW5 has further stated that in Part-II of Form 17-C in Ex.P4, Control Unit No. D5 3208 is written which tallies with the Control Unit number entered in Part-I of Form 17-C. Explaining upon the circumstances under which M.O.4 EVM pertaining to No. 8, Gururajapalayam was brought for counting, PW5 has stated as under:—

" ... The interchange of EVMs was noticed in the afernoon and the process was going on and after taking videograph, the Reserve Control Unit No. D53208 was brought to the counting table and the votes polled in Polling Station No. 8, Gururajapalayam was counted in the presence of all political parties including the contesting candidates, who were present at that time. The minutes of the said process

was recorded by me as the Returning Officer. All these facts with regard to interchange of EVMs was explained to the political parties and the contesting candidates and they have also agreed for the same and they have also signed in the minutes. Only after the minutes, the EVM Control Unit No. D53208 was brought from the additional storage room to the counting hall. I verified and satisfied that the seal was in tact and showed to all of them and only thereafter the votes were counted."

57. As per the evidence of PW5, M.O.4 EVM pertaining to No.8, Gururajapalayam was counted only in the evening. When PW5 was asked about the time gap from 12.00 noon to evening for counting of votes pertaining to No.8, Gururajapalayam, PW5 has explained the time gap. PW5 has stated that he sent a report to the Chief Electoral Officer, Chennai explaining the hardship faced by him for declaring the result when Control Unit D18543 showed "000" and after ascertaining the interchange of EVM, the above process was taken and another report was sent to the Chief Electoral Officer, Chennai explaining in detail and seeking clearance for declaration of result. PW5 would further state that the Chief Electoral Officer orally asked him to verify the Presiding Officer's diary and Vote of Accounts in Form 17-C and pursue further. PW5 has made it clear that interchange of EVM was explained to all the candidates and their Counting Agents and M.O.4 EVM was brought from the additional storage room to the counting hall and counted. Out of 1035 votes polled in No.8, Gururajapalayam, the candidates secured the votes as under:—

<i>Sl. No.</i>	<i>Name of the Candidates</i>	<i>No. of votes recorded</i>
1.	Kumaresan, J.	18
2.	Sivam, C	01
3.	Pandurangan, K.	391
4.	Varalakshmi, M.	377
5.	Venkatesan, M.	195
6.	Kalaiselvan, V.	08
7.	Deivasigamani, B.	06
8.	Natarajan, T.	07
9.	Pannerselvam, S.	09
10.	Veeramani, G.	23
	Total	1035

Total number of votes in M.O.4 Control Unit D53208 tallied with the total number of votes shown in Part-I. All the Counting Agents have not signed in Part-II of Ex.P4 [Form 17-C] with regard to No.8, Gururajapalayam. PW5 has stated that if any one of

the Counting Agent refuses to sign in Part-II in Form 17-C, it is not Mandatory for the Returning Officer to get his signature. The non affixture of signature of other candidates would not in any way invalidate the election.

58. Grievance of the Election Petitioner is that EVM pertaining to No. 8, Gururajapalayam was brought from additional storage room which would have no security measures and bringing the EVM from the additional storage room has materially affected the election insofar as the Returned candidate is concerned. It is the further case of Election Petitioner that No. 8, Gururajapalayam was already counted in the morning of 11-5-2006 in Table No.10 in Round No.1 and while so, bringing EVM from additional storage room on the ground that No. 8, Gururajapalayam was not counted is nothing but manipulation. The contention that No.8, Gururajapalayam was counted in the morning itself does not hold a ground. Ex.P1 is the note book maintained by PW4-Counting Agent. After each round of counting, total number of votes polled against each candidate round wise would be written in the black board. The particulars in Page No. 32 of Ex.P1 were written by PW4 by seeing the particulars written on the board in the counting hall. In the black board, the Returning Officer has written 3207 and 4367 as the votes polled in the first round by the Election Petitioner and the 1st Respondent which has been noted by P.W.4. The total votes secured by each in the first round are as under:—

S.No.	1	2	3	4	5	6	7	8	9	10
1	153	41	4367	3207	486	30	55	59	58	123

As pointed out earlier, votes pertaining to No.8, Gururajapalayam, was not counted in the morning and therefore the total number of votes polled in the above rounds were without inclusion of No. 8, Gururajapalayam.

59. In her evidence, PW1 herself has stated that the total votes polled by her in the first round excluding the votes polled in No. 8, Gururajapalayam and No. 13, Chinnapallikuppam will be 3013. To that if 377 votes polled in her favour in No. 8, Gururajapalayam are added, it will be only 3390 [3013+377]. Whereas in Page 32 of Ex. P1, PW4-Parthasarathy, Counting Agent of PW1 noted it as 3207. 3207 votes will come only if 194 votes polled by the Election Petitioner in No. 13, Chinnapallikuppam are added to 3013 (3013+194=3207). This is the same case with the votes polled by the first Respondent also. As pointed out earlier, the votes 3207 and 4367 polled in the first round will come only if the votes polled in No. 13, Chinnapallikuppam are added and not the voted polled in No. 8, Gururajapalayam, because No. 8, Gururajapalayam was not counted in the morning; but was counted in the evening by the Returning Officer himself. As rightly stated by PW5-Returning Officer, that is why in Form 17-C of No. 8, Gururajapalayam [Ex.P4], the signature of PW3-Prahalathan is not available. It is pertinent to note that PW3 has not produced the note book that was maintained by him during counting. Had he produced the note book, it would have been made clear that it was No. 13, Chinnapallikuppam EVM [MO5] that was counted in Table No. 10 in the first round.

60. Mere allegation that EVM pertaining to No. 13, Chinnapallikuppam was erased is unsustainable. Even though the EVM pertaining to No. 8, Gururajapalayam was kept in the additional storage room, when it was brought from the additional storage room, the seals were found intact. Since all safety features are available in the EVM, there is no question of tempering the votes polled and recorded in the Controlling Unit. Interchange of EVM has not in any way materially affected the election and Issue Nos. 1 and 4 (re-cast) and Additional Issue Nos. 1 to 3 are answered against the Election Petitioner.

61. Issue No. 5:—Election Petitioner has not established reasonable ground or made it to declare the election of the 1st Respondent as void. In the light of the above said discussions in the aforesaid Issues, the Election Petitioner is not entitled for any declaration as sought for by her.

62. In the result, the **Election Petition is dismissed.** Consequently, connected O.A. is also dismissed. However, there is no order as to costs.

List of Documents and Witnesses:

Petitioner's side:

Ex.P1/-	Note Book maintained during counting in Table No. 1.
Ex. P2/-11-05-2006	Representation given by Petitioner to the Election Petitioner.
Ex. P3/-	Form-20.
Ex. P4/- 08-05-2006	Form 17-C of No. 8, Gururajapalayam.
Ex.P5/- 08-05-2006	Form 17-C of No. 13, Chinnapallikuppam.
Ex.P6/- 08-05-2006	Form 17-C Pertaining to Table No. 1 for 15 rounds.

Respondents side :

Ex. R1/ 08-05-2006	Form 17-C Pertaining to P.S. No. 22-F in Table No. 10 for Round No. 2. [Pallikonda]
Ex. R2/ ,,	Form 17-C Pertaining to P.S. No. 32-A in for Round No. 3. [Vettuvanam].
Ex. R3/ ,,	Form 17-C Pertaining to P.S. No. 44 for Round No. 4. [Virinjipuram]
Ex. R4/ ,,	Form 17-C Pertaining to P.S. No. 55(M) for Round No. 5. [Ilavampadi]

24 TAMIL NADU GOVERNMENT GAZETTE EXTRAORDINARY

Ex. R5/	08-05-2006	Form 17-C Pertaining to P.S. No. 65 for Round No.6. [Anaikattu].
Ex. R6/	„	Form 17-C Pertaining to P.S. No. 77(M) for Round No.7. [Thattankuttai].
Ex. R7/	„	Form 17-C Pertaining to P.S. No. 87 for Round No.8. [Kilkothur].
Ex. R8/	„	Form 17-C Pertaining to P.S. No. 99 for Round No.9. [KG Eriyur].
Ex. R9/	„	Form 17-C Pertaining to P.S. No. 109 for Round No. 10 [Athikuppam].
Ex. R10/	„	Form 17-C Pertaining to P.S. No. 121 for Round No.11 [Abdullapuram].
Ex. R11/	„	Form 17-C Pertaining to P.S. No. 134(M) for Round No.12 [Athiyur].
Ex. R12/	„	Form 17-C Pertaining to P.S. No. 144 (M) for Round No.13.
Ex. R13/	„	Form 17-C Pertaining to P.S. No. 47/154 for Round No.14.
Ex. R14/	„	Form 17-C Pertaining to P.S. No. 164 for Round No.15. [Baghayam].
Ex. R15/	„	Form 17-C Pertaining to Polling Station of Arcotton Kudirai for Round No. 16.

Petitioner's side Witnesses:

- P.W.1/ Tmt. M. Varalakshmi - Election Petitioner.
P.W.2/ Thiru. N. T. Shanmugam - Chief Election Agent of Petitioner.
P.W.3/ Thiru A.S. Prahalathan - Counting Agent of Petitioner.
P.W.4/ Thiru A. Parthasarathy - Counting Agent of Petitioner.
P.W.5/ Thiru A. Narayanamoorthy - Returning Officer.

Respondents' side Witnesses: - Nil.

Material Objects:

- M.O. 1. Vedio Cassette produced by Returning Officer.
M.O. 2. Vedio Cassette produced by Returning Officer.
M.O. 3. EVM D 18543
M.O. 4. EVM D 53208
M.O. 5. EVM D 11920

WITNESS THE HON'BLE THIRU M. YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 22ND DAY OF OCTOBER 2010.

Sd/-
Assistant Registrar,
Original Side-II.

//Certified to be true copy//

Dated this the 28th day of October 2010.

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

MK-26/10/2010.

ELP.No.1. of 2006

and

OA.No. 825 of 2010.

ORDER

Dated: 22-10-2010.

The Hon'ble Mrs. Justice
R. BANUMATHI.

For Approval: 28-10-2010.

Approved on : 28-10-2010.

COPY TO:

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

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Ordinary Original Civil Jurisdiction)

Friday, the 22nd Day of October 2010

THE HON'BLE MRS. JUSTICE R. BANUMATHI

Election Petition No. 1 of 2006.

and

OA. No. 825 of 2010.

ELP. No. 1 of 2006:

M. Varalakshmi,
W/o. V.T. Margabandu,
Residing at New No. 52, Old No. 25/1,
Thatha Theru, Saidapettai, Vellore-12—*Petitioner*

-VS-

1. K. Pandurangan,
residing at Devikapuram Village,
Madhanur Post, Vanniyambadi Taluk.
2. J. Kumaresan,
Residing at 29, Pillaiyar Koil Street,
Vadapudupatti Village and Post, Vanniyambadi Taluk.
3. C. Sivam,
Residing at 1/414, New Street,
Abdullahpuram Post and Village, Vellore-10.
4. M. Venkatesan,
Residing at 4/49, Vinayagar Koil Street,
Palapadi Village, Gururajapalayam Post,
Vellore Taluk.
5. V. Kali Selvan,
Residing at New No.1176, Old No. 161,
Thendral Nagar, Vengikkal Post,
Thiruvannamalai.
6. P. Deivasigamani,
Residing at New No. 31, Old No. 11,
Thoppasami Koil Street 1,
Saidapettai, Vellore-635 012.

herein and upon perusing the evidence adduced therein and also the exhibits marked thereto and this matter having stood over for consideration till this date and coming on this day before this Court for orders in the presence of the said advocates for the parties hereto and this Court having observed that the Election Petitioner is not entitled to any declaration as sought for by her in the Election Petition.

It is ordered as follows:

1. That the Election Petition No. 1 of 2006 be and is hereby dismissed.
2. That the Original Application No. 825 of 2010 be and is hereby dismissed.
3. That there shall be no order as to costs in this Election Petition No. 1 of 2006.

WITNESS THE HON'BLE THIRU M. YUSUF EQBAL, THE CHIEF JUSTICE, HIGH COURT AT MADRAS AFORESAID, THIS THE 22ND DAY OF OCTOBER 2010.

Sd/-
Assistant Registrar
Original Side-II.

(By Order)

TAPAS KUMAR,
Principal Secretary,
Election Commission of India.

Secretariat,
Chennai-600 009,
13th December, 2010.

PRAVEEN KUMAR,
Chief Electoral Officer and
Secretary to Government,
Public (Elections) Department.