

N. Velu Vs. G. Velu and Others

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Court : Chennai

Decided On : Apr-28-2016

Judge : The Honourable Dr.(Mrs.) Justice. S. Vimala

Appeal No. : Civil Revision Petition (NPD) Nos. 3935 & 4518 of 2015 & M.P.Nos. 1, 2 & 3 of 2015

Appellant : N. Velu

Respondent : G. Velu and Others

Judgement :

(Prayer in CRP No.3935 / 15: Civil Revision Petition (NPD) filed under Article 227 of the Constitution of India to set-aside the fair and decreetal orders, made in Election O.P.No.205 of 2011, dated 23.04.2015 on the file of the Principal District Judge, Tiruvallur.

CRP No.4518 / 15:-Civil Revision Petition (NPD) filed under Article 227 of the Constitution of India to set-aside the fair and decreetal orders, made in Election O.P.No.205 of 2011, dated 23.04.2015 on the file of the Principal District Judge, Tiruvallur, in so far as imposing the cost of Rs.25,000/- against the petitioner / R-1.)

Common Order:

It's not the voting that's democracy; it's the counting.

- TOM STOPPARD, Jumpers

1.1. Taking the same plea, the petitioner has filed Election Petition No.3935 of 2015, seeking for a declaration that the election of the fourth respondent, as Village Panchayat President of Kumararajapettai Village, is null and void, and for recounting of votes polled, including the postal votes.

2. Election O.P.No.205 of 2011 has been filed under Sections 258 and 259 of The Tamil Nadu Panchayats Act, 1994, [Tamil Nadu Act 21 of 1994] (hereinafter referred to as the Act) read with Rule 12 of the Tamil Nadu Panchayat (Election) Rules, 1995, (hereinafter referred to as the Rules) by the unsuccessful candidate, G.Velu, against the returned candidate, N.Velu (R-4), and the Election Officers (R-1 to R-3), seeking for the relief, as stated supra.

3. The said Election Petition was allowed by the judgment, dated 23.04.2015, while imposing the costs of Rs.25,000/- upon the first respondent / the Block Development Officer, Pallipattu Taluk, Tiruvallur District. Challenging the imposition of costs, the first respondent has filed the Revision Petition in CRP (NPD) No.4518 of 2015. Challenging the order, declaring the election of the fourth respondent as null and void, the fourth respondent has filed the Revision Petition in CRP (NPD) No.3935 of 2015.

4. As the common question of law and fact arises for consideration, common order is pronounced. The parties are referred to as per the legal status assigned to them in the Original Petition.

5. The facts, leading to the filing of the Civil Revision Petitions, are as follows:-

The petitioner contested the election for the post of Village Panchayat President of Kumararajapet Village, along with respondents 4 to 6 under the symbol of 'hand roller'. Respondents 4 to 6 were assigned the symbols of Scissors, lock-and-key and ladder, respectively. Since the petitioner and the fourth respondent secured equal votes, the fourth respondent was declared elected by adopting the method of choosing 'by lot'.

5.1. The first respondent (Revision Petitioner in CRP No.4518 of 2015) adopted corrupt practice in counting of the votes and colluded with the other officials in order to defeat the rights of the petitioner. The counting was not done properly and many votes were declared invalid. This was protested and objected by the petitioner, but it was not considered. The Returning Officer made corrections in the secured votes and thereby the petitioner was defeated. The postal votes were also not counted properly. The counting was not done according to the Rules. The application for recounting of votes was not considered.

5.2. Respondents 4 to 6 remained exparte. The Application was opposed by the first respondent. The counter filed by the first respondent was adopted by respondents 2 and 3.

5.3. The application was opposed by the first respondent on the following grounds:-

As each of the petitioner and the fourth respondent secured equal votes, i.e., 604 each, selection 'by lot' was resorted to. The petitioner did not come forward to attend the lot and escaped from that place. However, the agent of all candidates were present. 75 votes were invalid. The agents did not raise any objection at the time of counting. The petitioner did not file any written objection with regard to the invalid votes. There is no violation of any rules or regulations / laws and there was no irregularity in the counting of votes including postal ballot votes.

6. Therefore, the issue to be considered is, (i) whether the petitioner has made out a ground, as contemplated under sub-section (1) (d) (ii) and (iii) of Section 259 of the Act; i.e., whether corrupt practice has been committed in the interest of the returned candidate by the first respondent, along with others, by the improper acceptance or refusal of vote or reception of any void vote; and (ii) whether a case for recounting has been made out.

7. In view of the issues raised, it is necessary to consider Sections 259 and 260 of the Act, and their provisions, which read thus:-

Section 259 - Grounds for declaring elections to be void.-

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

(a) that on the date of his election a returned candidate was not qualified or was disqualified, to be chosen as a member under this Act, or.

(b) that any corrupt practice has been committed by a returned candidate or his agent or by any other person with the consent of a returned candidate or his agent, or

(c) that any nomination paper has been improperly rejected, or

(d) that the result of the election in so far as it concerns a returned candidate has been materially affected--

(i) by the improper acceptance of any nomination, or

(ii) by any corrupt practice committed in the interests of the returned candidate by a person other than that candidate or his agent or a person acting with the consent of such candidate or agent, or

(iii) by the improper acceptance or refusal of any vote or reception of any vote which is void; or

(iv) by the non-compliance with the provisions of this Act or of any rules or orders made thereunder, the court shall declare the election of the returned candidate to be void.

(2) If in the opinion of the court, a returned candidate has been guilty by an agent of any corrupt practice, but the court is satisfied--

(a) that no such corrupt practice was committed at the election by the candidate, and every such corrupt practice was committed contrary to the orders, and without the consent of the candidate;

(b) that the candidate took all reasonable means for preventing the commission of corrupt practice at the election; and

(c) that in all other respects the election was free from any corrupt practice on the part of the candidate or any of his agents, then, the court may decide that the election of the returned candidate is not void.

Section 260 - Corrupt practices:

The following shall be deemed to be corrupt practice for the purposes of this Act:-

(1) Bribery as defined in clause (1) of section 123 of the Representation of the People Act, 1951 (Central Act XLIII of 1951).

(2) Undue influence as defined in clause (2) of the said section.

(3) The systematic appeal by a candidate or his agent or by any other person to vote or refrain from voting on grounds of caste, race, community or religion or the use of or appeal to, religious symbols, or, the use of or appeal to, national symbols such as the national flag or the national emblem, for the furtherance of the prospects of that candidate's election.

(4) The publication by a candidate or his agent or by any other person of any statement of fact which is false, and which he either believes to be false or does not believe to be true, in relation to the personal character or conduct of any candidate, or in relation to the candidate, or withdrawal from contact of any candidate being a statement reasonably calculated to prejudice the prospects of that candidate's election.

(5) The hiring or procuring whether on payment or otherwise of any vehicle or vessel by a candidate or his agent or by any other person for conveyance of any elector (other than the candidate himself, and the members of his family or his agent) to or from any polling station provided in accordance with the rules made under this Act:

Provided that the hiring of a vehicle or vessel by an elector or by several electors at their joint costs for the purpose of conveying him or them to or for any such polling station shall not be deemed to be a corrupt practice under this clause if the vehicle or vessel so hired is a vehicle or vessel not propelled by mechanical

power:

Provided further that the use of any public transport vehicle or vessel or any tram, car or railway carriage by an elector at his own cost for the purpose of going to or coming from any such polling station shall not be deemed to be corrupt practice under this clause.

Explanation - In this clause the expression "Vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise and whether used for drawing other vehicles or otherwise.

(6) The holding of any meeting in which intoxicating liquors are served.

(7) The issuing of any circular, playcard or poster having a reference to election which does not bear the name and address of the printer and publisher thereof.

(8) Any other practice which the Government may by rules, specify to be corrupt practice.

8. It is equally necessary to consider the provisions / Rules dealing with rejection of ballot papers and recounting of votes (Rules 63 and 66 of the Rules):-

63. Rejection of ballot papers.-

(1) A ballot paper shall be rejected-

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

(b) if no vote is recorded thereon, or

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

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

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

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

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

(h) if it does not bear both the distinguishing mark and / or the signature of the Presiding Officer which it should have borne under the provision of sub-rule (1) of Rule 51 or the words 2 [E.D.C.] under the sub-rule (1) of Rule 52, or (i) if it is not the relevant ballot paper:

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

Provided further that a ballot paper shall not be rejected merely on the ground that the mark indicating the vote is not distinct or made more than once, if the intention that the vote shall be for a particular Candidate clearly appears from the way the paper is marked. (2) All ballot papers rejected under this Rule shall be made into a separate bundle. (3) The decision of the Returning Officer under this Rule shall be final, subject only to the decision of the competent court on an election petition.

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

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

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

(4) If the Returning Officer decides under sub-rule (2) to allow an application either in whole or in part, he shall- (a) count the votes again in accordance with his decision; (b) amend the result sheet in Form 22 to the extent necessary after such re-count; and (c) announce the amendments so made by him.

(5) After the total number of votes polled by each Candidate has been announced under sub-rule (1) or under sub-rule (4) of this Rule, the Returning Officer shall complete and sign the result sheet in Form 22 and no application for a re-count shall be entertained thereafter: Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates or the election Agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

9. Therefore the issues to be considered are: (a) whether the corrupt practices as enumerated in Section 260 of the Act has been made out providing grounds for declaring elections to be void under Section 259 of the Act; (b) whether a case for recounting of votes as provided under Section 66 of the Act has been made out by the petitioner.

10. It is the allegation of the petitioner that the ballot papers were incorrect, since the names of four candidates were not found. But, it is pointed out by the Revision Petitioner that, even while opening the postal votes, three votes were found in the damaged condition in the cover itself and therefore, the said votes were rejected, as contemplated under Rule 63(f) of the said Rules.

11. It is the case of the first respondent that selection 'by lot' was resorted to exercising the power under Rule 67 (1) (c) of the Rules and hence, there is no violation. Section 67 of the Rules reads as under:-

67. Declaration of result of election.-

(1) (a) In the case of election of members of District Panchayat or Panchayat Union Council, after the Returning Officer has completed the scrutiny and counting

of votes, he shall declare the contesting Candidate to whom the largest number of valid votes have been given as elected and complete and certify the return in Form 23 and send the signed copy thereof to the District Election Officer and the State Election Commission.

(b) The Returning Officer shall also forthwith cause to be affixed a copy of the declaration referred to in clause (a) in his office and in the office of the District Panchayat, or the Panchayat Union, as the case may be.

(c) If there is an equality of votes between two or more contesting Candidates, and the addition of one vote will entitle any of these Candidates to be declared elected, the Returning Officer shall decide between these Candidates by lot and the Candidate on whom the lot falls shall be deemed to have received an additional vote. The Returning Officer shall then declare the result accordingly. (d) Any contesting Candidate or his election Agent or his counting Agent, on application, be permitted to take a copy or an extract from the statement in Form 22.

11.1. The learned counsel for the Revision Petitioner would submit that neither the petitioner (Election Petition) nor the petitioner complained of malpractices in counting, at any time, immediately after declaration nor after issuance of Form-22 and therefore, they are not entitled to claim recounting.

12. At this juncture, it is also relevant to consider Rule 130 of the Rules, which provide for Trial of Election Petition:-

130. Trial of election petition.-

(1) Every election petition shall be inquired into by the election Court in accordance with the procedure applicable under the Code of Civil Procedure, 1908 (Central Act 5 of 1908) to the trial of suits:

Provided that it shall only be necessary for the election Court to make a memorandum of the substance of the evidence of any witness examined by it: Provided further that the election Court shall have the discretion to refuse, for reasons to be recorded in writing, to examine any witness or witnesses, if it is of the opinion that the evidence of such witnesses is not material for the decision of

the petition or that the party tendering such witness or witnesses is doing so on frivolous grounds or with a view to delaying the proceedings.

(2) The provisions of the Indian Evidence Act, 1872 (Central Act of 1872) shall be deemed to apply in all respects to the trial of an election petition.

(3) Notwithstanding anything in any enactment to the contrary, no document shall be inadmissible in evidence at the trial of an election petition on the ground that it is not duly stamped or registered.

(4) No witness or other person shall be required to state for whom he has voted at an election.

(5) The reasonable expenses incurred by any person in attending to give evidence may be allowed by the election Court to such person and shall, unless the said Court otherwise directs, be deemed to be part of the costs.

13. It is the contention of the Revision Petitioner herein that the petitioner in the Election O.P. (R-1 herein) did not point out any corrupt practice, as contemplated under the provisions of Section 260 of the Act.

13.1. The Revision Petitioner ought to have raised this issue to be decided as a preliminary issue before the Election Court itself. That has not been done. Therefore, this issue should be framed for consideration during trial.

14. Therefore, the issue to be decided is, whether the ingredients of the petition make out the eligibility criteria of Section 123 of the Representation of People's Act, 1951, which speaks about corrupt practice and undue influence and it is suffice to point out clause 2 (7) of the said Act:-

Section 123 in The Representation of the People Act, 1951

123. Corrupt practices. The following shall be deemed to be corrupt practices for the purposes of this Act:

...

(2) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right: Provided that

(7) The obtaining or procuring or abetting or attempting to obtain or procure by a candidate or his agent or, by any other person with the consent of a candidate or his election agent, any assistance other than the giving of vote for the furtherance of the prospects of that candidate's election, from any person in the service of the Government and belonging to any of the following classes, namely:

(a) gazetted officers;

(b) stipendiary judges and magistrates;

(c) members of the armed forces of the Union;

(d) members of the police forces;

(e) excise officers;

(f) revenue officers other than village revenue officers known as lambardars, malguzars, patels, deshmukhs or by any other name, whose duty is to collect land revenue and who are remunerated by a share of, or commission on, the amount of land revenue collected by them but who do not discharge any police functions; and

(g) such other class of persons in the service of the Government as may be prescribed:

Provided that where any person, in the service of the Government and belonging to any of the classes aforesaid, in the discharge or purported discharge of his official duty, makes any arrangements or provides any facilities or does any other act or thing, for, to, or in relation to, any candidate or his agent or any other person acting with the consent of the candidate or his election agent (whether by reason of the office held by the candidate or for any other reason), such arrangements, facilities or act or thing shall not be deemed to be assistance for the furtherance of the prospects of that candidate's election.

(8) Booth capturing by a candidate or his agent or other person.

Explanation. (1) In this section the expression agent includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate.

15. The next grievance of the learned counsel for the petitioner is with reference to mode of disposal of the case by the learned District Judge.

15.1. It is submitted by the learned counsel for the Revision Petitioner that the learned District Judge, simply appointed a Commissioner without anybody asking for it and gave a suo motu decision itself based upon the report of the Advocate Commissioner, without even calling for objections to the Commissioner's report from the respective parties.

15.2. The next grievance is that, when the petitioner in the Election Petition has sought for recounting of entire votes, the District Court has ordered recounting of only postal votes.

15.3. It is not known, on what basis the Election Petition was decided, by ordering the recounting of postal votes only.

15.4. It is the grievance of the learned counsel for the petitioner that the fourth respondent did not file any counter repudiating the allegations made in the Election Petition.

15.5. This grievance is answered by raising a contention that as there was no allegation of corrupt practice against the fourth respondent, it is neither necessary for him to file any counter nor it is necessary to offer himself as a witness.

15.6. The contention regarding non-filing of objection by the Revision Petitioner herein is not a valid objection, because election is an essential part of the democratic process. The Election Petition is not a matter, in which, only, persons interested are the candidates who strove against each other at the election, but the public is also substantially interested. The Election Petition is not a suit between the parties, but it is a proceeding in which the constituency itself is the

principal party interested, as held in the case of **K.Kamaraj Nadar v. Kunju Devar (14 ELR 270, 284 SC)**. Therefore, just because the first respondent did not file any counter, it does not exonerate the petitioner from offering evidence when an allegation is made against public officials and the electoral process itself.

16. It is the contention of the learned counsel for the Revision Petitioner that the election petition itself is barred by limitation.

16.1. This contention is not correct, as the period of limitation commences, not from the date of election, but from the date of declaration of results of the election. Under Section 258 of the Act, the period of limitation is 45 days from the date of declaration of the results, hence the petition is filed well within the time.

17. The other contention of the learned counsel for the Revision Petitioner herein is that (who filed the Election Petition), the first respondent did not come forward to offer any oral evidence; in other words, the contention is that, there is deliberate withholding of the petitioner from offering himself as a witness only in order to avoid cross-examination by the Revision Petitioner and the Election Officials, therefore, on the sole ground, the Election Petition should have been dismissed.

17.1. It is settled law that the party who alleges allegation against the system and the process should substantiate it by offering convincing evidence. The nature of the allegations made in the Election Petition certainly requires evidence, which could originate only from the petitioner. It is the case of the unsuccessful candidate that the Election Officials colluded together and with an intention to defeat him, they engaged in corrupt practices. When such a serious allegation is made, the first respondent ought to have offered himself as a witness.

17.2. Moreover when the unsuccessful candidate is asking for recounting of all votes, it is for him to explain, when Form-22 was supplied to him, what was his action or what was the action of his agent.

17.3. Whether any objection was made either by him or by his agent? If not, why not? These questions remain unanswered, by non-examination of the first respondent herein.

17.4. It is appropriate to quote the decision reported in MANU/AP/0087/1967 : AIR 1967 AP155 : 1967 CriLJ691 (**Chadalavada Subba Rao v. Kasu Brahmananda Reddy and Ors.**), where-in the implication of non-examination of a primary witness has been considered and the relevant observation reads as follows:-

....In **D. Muralidhar Reddy v. Paga Pulla Reddy**, MANU/AP/0177/1964 : MANU/AP/0177/1964 : AIR 1964 AP530 to which one of us was party. At page 535 it was observed thus:-

"..... clear and positive proof is required to make out a case of corrupt practice. In the absence of affirmative and unequivocal evidence, the allegations of corrupt practices have to be rejected as baseless and the election upheld. It cannot be overlooked that, it is for the person, who impugns the election on the ground of corrupt practices to establish the commission of such practices, beyond a reasonable doubt. Since allegations as to corrupt practices within the contemplation of Section 123 of the Representation of the People Act are of a quasi-criminal character, very strict proof is necessary to bring home the charge as in a criminal case."

...

(92) To the same effect was the view of this Court in Mohan Reddy v. Narayan Reddy MANU/AP/0087/1964 : MANU/AP/0087/1964 : AIR 1964 AP190 , where it is observed that recount is not granted as of right but order on the evidence of good grounds for believed that there has been mistake on the part of the Returning Officer. A party cannot ask for count on the off chance of being able to defect mistakes. The proceedings before the Tribunal cannot be converted into a forum for fishing out any possible defects. What is said of recount the same principle should apply to the case of scrutiny as well.

(93) It is thus clear that inspection or scrutiny can be permitted only if there is sufficient basis for the plea in the pleadings and further a prima facie case is made out and the Court thinks it necessary in the interests of justice to order the same. The principle, thus, is well settled that unless a strong prima facie case is made out the order for inspection cannot be granted nor scrutiny made. Even in cases

such an order is made, observance of the statutory restrictions about the secrecy of ballot papers prescribed by Ss. 94 and 128(1) is sacrosanct. It is indisputable that at the time when counting was made no protest was lodged by respondent No. 2 or his agent. The petitioner here is not the defeated candidate but a voter in the constituency. He could not be present at the time. So the absence of protest is not fatal to his case. However, it is obligatory on him to make out a prima facie case for inspection or for scrutiny. It seems the petitioner did seek to make out such a case by examination of witnesses. The Tribunal then prevented him from having recourse to the same on the assumption that the ballot paper will itself be evidence of existence of thumb impressions or any marks of identification thereon. If the party was so precluded from letting in evidence, failure to examine witnesses in that behalf will not be raised as a ground against him. Having regard to the enormous delay which the enquiry has already undergone, we did not think it mete to remand the case for the limited purpose of taking such evidence as the party was precluded from adducing in this regard. We thought that interests of justice would be better served if we looked into the ballot papers ourselves. Accordingly we after removing the seal inspected the ballot papers of Kanaparru in Court in the presence of the parties. We found no traces of marks of any kind of those ballot papers polled in favour of respondent No. 1. That being the result of our inspection, we are of the view that the plea set up in this behalf is wholly unfounded. We therefore reject this plea covered by issue 9(c)....

17.5. Having regard to the nature and extent of proof required, as held in the above decision, it is clear that non-examination of the petitioner is a fatal to the Election Petition and it is liable to be dismissed on this ground also. But, since the court has not framed the issue focussing the attention of the petitioner (Election Petitioner) that the burden of proof lies on him, this Court is of the view that opportunity must be given to the petitioner to adduce evidence.

18. It is the grievance of the learned counsel for the Revision Petitioner that the Court below has not even framed the issues or point for determination. The decisions, explaining the importance and object of framing issues, are relevant to be considered and those decisions, along with relevant observations, are as under:-

18.1. In **2011 (11) SCC 786 (Kalyan Singh Chouhan v. C.P.Joshi)**, it has been held as follows:-

18. This Court in *Bachhaj Nahar v. Nilima Mandal and Ors.*, AIR 2009 SC 1103, held as under:

"The object and purpose of pleadings and issues is to ensure that the litigants come to trial with all issues clearly defined and to prevent cases being expanded or grounds being shifted during trial. Its object is also to ensure that each side is fully alive to the questions that are likely to be raised or considered so that they may have an opportunity of placing the relevant evidence appropriate to the issues before the court for its consideration.

The object of issues is to identify from the pleadings the questions or points required to be decided by the courts so as to enable parties to let in evidence thereon. When the facts necessary to make out a particular claim, or to seek a particular relief, are not found in the plaint, the court cannot focus the attention of the parties, or its own attention on that claim or relief, by framing an appropriate issue..... Thus it is said that no amount of evidence, on a plea that is not put forward in the pleadings, can be looked into to grant any relief.

The jurisdiction to grant relief in a civil suit necessarily depends on the pleadings, prayer, court fee paid, evidence let in, etc."

19. In *J.K. Iron and Steel Co. Ltd, Kanpur v. The Iron and Steel Mazdoor Union, Kanpur*, AIR 1956 SC 231, this Court observed:

"It is not open to the Tribunals to fly off at a tangent and, disregarding the pleadings, to reach any conclusions that they think are just and proper."

20. Order XIV Rule 1 CPC reads:

"Issues arise when a material proposition of fact or law is affirmed by the party and denied by the other.

18.2. It is true that no issues have been framed by the trial court. Even in cases where no issues are framed / issues are omitted to be framed, if evidence has

been let in, which reflect parties have understood the case they have to meet, then the Court may not remand the matter. In this case, non-framing of issues is material and fatal because parties did not lead any evidence, perhaps, on account of non-framing of issues also.

18.3. The remand of the Election Petition is opposed on the ground that, the unsuccessful candidate (Election Petitioner) did not ask for declaration that he is the successful candidate and that no useful purpose will be served if the entire election case is accepted, i.e., even if fourth respondent in the Election Petition is declared unsuccessful that does not mean that the Election Petitioner has been successful.

18.4. This contention cannot be accepted, as the Election petition should be construed not as a litigation between two parties alone, but a litigation concerning the Electoral Public, whose votes / wishes must find a place in the result. Moreover, the tenure of the Office of the Presidentship is not over and it is stated that it will be over by October 2016.

19. Under the stated circumstances, the order passed by the District Court, allowing the Election Petition, is hereby set-aside and CRP No.3935 of 2015 is partly-allowed and the Election Petition is remanded to the trial court with a direction for re-trial, based on the issues which have been already framed by this Court and also issues to be framed, if any, after hearing both parties.

19.1. Consequently, the cost imposed on the Revision Petitioner in CRP No.4518 of 2015 is set-aside and CRP No.4518 of 2015 is allowed. No costs.

19.2. Consequently, the connected MPs are closed.

19.3. As it is submitted that the period of five years to hold office of the President of Kumararajapettai Village is over by October 2016, the trial court is directed to give top priority in the disposal of the case, preferably within a period of one month from the date of receipt of a copy of this order.