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P.V. Thambidurai Vs. K. Paramasivan and the Returning Officer, Block Development Officer Pollachi North Union

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Court : Chennai

Decided On : Nov-14-2005

Reported in : (2005)4MLJ689

Judge : A. Kulasekaran, J.

Acts : Tamil Nadu Panchayats Act - Sections 87, 94, 100, 101, 102, 128, 130, 135A, 259 and 260; [Representation of the People Act, 1951](#); Tamil Nadu Panchayat Rules, 1995 - Rules 15 and 18(2); Conduct of Election Rules, 1961 - Rules 63, 93, 93(1) and 93(2); Code of Civil Procedure (CPC) - Order 11, Rule 14; [Constitution of India](#) - Article 227

Appeal No. : C.R.P. (PD) No. 1148 of 2005, C.M.P. No. 14012 of 2005 and V.C.M.P. No. 15410 of 2005

Appellant : P.V. Thambidurai

Respondent : K. Paramasivan and the Returning Officer, Block Development Officer Pollachi North Union

Advocate for Def. : Alagirisamy, Sr. Counsel for ;C. Prakasam, Adv. for R1

Advocate for Pet/Ap. : Srinath Sridevan, Adv.

Judgement :

ORDER

A. Kulasekaran, J.

1. The first respondent in El.OP No. 171 of 2001 on the file of the I Additional District Court, Coimbatore, who is the successful candidate, is the revision petitioner. The first respondent herein, who is the nearest unsuccessful candidate has filed the above said Election Petition to call for the records namely the entire ballot papers, polled and unpolled, valid and invalid, in respect of the election for the post of President of R. Ponnapuram Panchayat and other connected records pertaining to the conduct of election and to declare that the first respondent herein is duly elected President of the said Panchayat in the election held on 16-10-2001 by declaring the election of the revision petitioner herein as President of R. Ponnapuram Panchayat as void and for other reliefs. In the said election petition, the first respondent herein has filed I.A. No. 61 of 2002 under Section 130 of Tamil Nadu Panchayat Rules, 1995 to send for the ballot papers and connected records, which was allowed by the court below, hence the present revision is filed under Article 227 of The [Constitution of India](#).

2. Mr. Srinath Sridevan, learned counsel appearing for the revision petitioner submits as follows:-

The revision petitioner herein was duly elected as President in the election held on 16-10-2001; that the first respondent herein has also contested to the same post; that after the election was over, votes were counted on 21-10-2001; that in booth No. 24, the total number of votes polled wrongly entered by the second respondent as 586 instead of 587, hence decided to recount, after recounting he found as 586; that at the end of counting both the petitioner and first respondent found secured 648 votes each; that the first respondent sought for recounting, in which the petitioner was found secured 650 votes and the first respondent secured only 648 votes, with the result, the revision petitioner was declared won the election; that aggrieved by the said result, the first respondent herein has filed the election petition; that in the said election petition, I.A. No. 61 of 2002 was filed by

the first respondent praying to call for the ballot papers and connected records, which was erroneously allowed by the trial court; that the court below did not appreciate the legal implications arising from the order; that the reasons assigned by the court below for allowing the application are invalid; that the impugned order was passed on frivolous, vague and indefinite allegations, which amounts to affecting the secrecy of ballot which is sacrosanct and prayed for setting aside the impugned order.

3. In support of the above contentions, the learned counsel for the petitioner relied on the below mentioned decisions:-

i) (Ram Sewak Yadav v. Hussain Kamil Kidwai and Ors.) : [1964]6SCR238 wherein in para Nos. 6 and 7, it was held thus:-

6. An election petition must contain a concise statement of the material facts on which the petitioner relies in support of his case. If such material facts are set out the Tribunal has undoubtedly the power to direct discovery and inspection of documents with which a Civil Court is invested under the Code of Civil Procedure when trying a suit. But the power which the civil Court may exercise in the trial of suits is confined to the narrow limits of Order 11 of the Code of Civil Procedure. Inspection of documents under Order 11 of the Code of Civil Procedure may be ordered under Rule 15, of documents which are referred to in the pleadings or particulars as disclosed in the affidavit of documents of the other party, and under Rule 18(2) of other documents in the possession or power of the other party. The returning officer is not a party to an election petition and an order for production of the ballot papers cannot be made under Order 11 of the Code of Civil Procedure. But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the returning officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers: that power is clearly implicit in sections 100(1)(d)(iii), 101, 102 and Rule 93 of the Conduct of Election Rules, 1961. This power to order inspection of the ballot papers which is apart from Order 11 of the Code of Civil Procedure may be exercised, subject to the statutory restrictions about the secrecy of the ballot paper prescribed by Sections

94 and 128(1).

7. An order for inspection may not be granted as a matter of course: having regard to the insistence upon the secrecy of the ballot papers, the court would be justified in granting an order for inspection provided two conditions are fulfilled:

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.

ii) (Bhabhi v. Sheo Govind and Ors.) : AIR 1975 SC2117 wherein in para-15, it was held thus:-

'15. Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a court can grant inspection, or for that matter sample inspection, of the ballot papers:

(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.

If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper.

iii) (Basanagouda v. Dr. S.B. Amarked and Ors.) : [1992]2SCR397 wherein in paras. 6, 7 and 9, it was stated thus:-

'6. The diverse contentions give rise to the question whether the order of the High Court is legal. Under Section 87 of the Act the High Court, subject to the provision of the Act and the Rules, if any, made thereunder, shall try the election petition as if it is the trial of the suit adopting as nearly as may be the procedure applicable to the suit under the Code. Order XI Rule 14 CPC empowers discovery and inspection of the records and Rule 14 is as under:

'14. Production of Documents. It shall be lawful for the Court, at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.'7. The Court, therefore, is clearly empowered and it shall be lawful for it to order the production, by any party to the suit, such documents in his possession or power

relate to any matter in question in the suit provided the court shall think right that the production of the documents are necessary to decide the matter in question. The court also has been given power to deal with the documents when produced in such manner as shall appear just. Therefore, the power to order production of documents is coupled with discretion to examine the expediency, justness and the relevancy of the documents to the matter in question. These are relevant considerations which the court shall have to advert to and weigh before deciding to summoning the documents in possession of the party to the election petition. At the same time the election petition - proceedings being of quasi-criminal nature the allegations in the petition must be pleaded clearly and with full particulars, especially the grounds of corrupt practices cannot be permitted to be tried on the basis of deficient pleadings or by filing applications for production of record to fish out grounds as material which is not part of the pleadings. In any case secrecy of the ballot boxes cannot be tinkered unless an iron-cast case is made out in the election petition. Section 135-A which was brought on statute with effect from March 15, 1989 under Amendment Act 1 of 1989, prescribes booth-capturing to be an offence and the person committing it shall be punishable with imprisonment for a term which shall not be less than six months and which may be extended to a maximum of two years and fine. Where such offence was committed by a person in the service of the Government, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and fine. Booth-capturing has been explained in its explanation thus:

'For the purpose of this section 'booth-capturing' includes, among other things, all or any or the following activities, namely:

(a) seizure of a polling station or a place fixed for the poll by any person or persons, making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of election;

(b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting;

(c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) seizure of a place for counting of votes by any person or persons, making the counting authorities surrender the ballot papers or voting machines and the doing of anything which affects the orderly counting of votes;

(e) doing by any person in the service of Government, of all or any of the aforesaid activities of aiding or conniving at, any such activity in the furtherance of the prospects of the election of a candidate.'

9. This Court while considering the effect of Rule 93 held in Hari Singh v. Hira Singh that a perusal of this Rule clearly shows that the Legislature intended to make clear distinction between one set of documents and another. So far as counterfoils and the marked copy of the electoral rolls were concerned, there was a strict prohibition for opening these documents unless the court was fully satisfied that a cast iron case was made out for the same; whereas documents mentioned in clauses (a) and (d) of sub-rule (2) of Rule 93 could be liberally allowed to be inspected. This was also the view in Ram Sewak Yadav v. Hussain Kamil Kidwai. Thus to maintain the secrecy of ballot papers unless adequate material facts are on record which alone would afford adequate basis to exercise the discretion by the court; the packets or the used ballot papers with counterfoils attached thereto or the packets of used ballot papers whether valid, tendered or rejected cannot be opened. Equally the packets of declarations by electors and the authorisation of their signatures shall not be opened unless ordered by the court in that behalf. The court shall not permit a roving enquiry to enable the defeated candidate/election petitioner to have access thereto to fish out the grounds. The High Court, would therefore, be circumspect to order summoning the records covered under Rule 93(1). To effectuate the objects of Section 135-A of the Act it may be open to the rule making authority to have fresh look into the mandatory language of Rule 93(1), so as to bring it in conformity with Section 135-A of the Act.'

iv) (Charan Dass v. Surinder Kumar and Ors.) 1995 Supp (3) Supreme Court Cases 318 : wherein in para-5, it was held thus:-

'5. In order to appreciate the contention raised by the learned counsel for the appellant, we went through the election petition very carefully but we do not find the required concise statement of material facts demanding the grant of inspection of the votes or recount as prayed for by the appellant. The learned counsel appearing on behalf of the respondent has resisted the above contention relying on the decision of this Court in Ram Sewak Yadav v. Hussain Kamil Kidwai wherein it has been held:

'... that an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. ...To establish a case so pleaded, an order for inspection may undoubtedly, if the interest of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.'v) (Hari Ram v. Hira Singh and Ors.) : [1984]1SCR932 wherein in para-4 it was held thus:-

'4. It is now well-settled by a long course of decisions of this Court that inspection of ballot papers and counterfoils should be allowed very sparingly and only when it is absolutely essential to determine the issue. This Court has further laid down that in the garb of seeking inspection the defeated candidate should not be allowed to make a roving inquiry in order to fish out materials to set aside the election. In the case of Bhabhi v. Sheo Govind this Court clearly observed thus: (1976 (1) SCC at P. 693, para 15)'Para-15 already extracted.

4. Mr. Alagirisamy, learned Senior counsel appearing for the first respondent submitted as follows:-

Originally, the first respondent herein was declared elected as he secured 653 votes and the revision petitioner has obtained only 652 votes; thereafter, the revision petitioner has sought for recounting of invalid votes, which was ordered and he was declared won by a margin of one vote; that again, the revision petitioner insisted for recounting of entire ballot papers, which was also accepted and counted and again declared the first respondent herein has won, as he secured 648 votes and the revision petitioner herein has secured only 647 votes;

that the second respondent herein after declaring the result had gone to his chamber from the counting place but delayed to issue declaration certificate; that the first respondent went to his village to offer thanks to the Villagers since the time was 9.30 p.m. already; that the newspapers next day i.e., 22-10-2001 published the news item that he was elected; that to the shock and surprise of the first respondent, on 22-10-2001, the first respondent came to know that the second respondent herein declared the revision petitioner herein has won the election; that the first respondent came to know that local MLA influenced to include invalid votes in favour of the petitioner thereby it was announced that the petitioner has secured 650 votes; that unless the election materials is summoned and perused, it is difficult for the first respondent to substantiate the plea; that the first respondent immediately reported to the District Collector and Election Commissioner at Chennai, but no action has been initiated, hence, he filed the above said election petition. It is also stated by the learned Senior counsel that the revision petitioner has dragged on the case successfully for the past four years; that the trial court, on proper consideration of the concise averments in the election petition and also the evidence let in by both sides entertained doubt in its mind and came to the conclusion that the documents sought for by the first respondent herein are necessary to decide the issues involved in the main election petition and allowed the application as prayed for.

5. In support of his contentions, the learned Senior counsel appearing for the first respondent also relied on the below mentioned decisions.

i) (Bhabhi v. Sheo Govind and Ors.) : AIR 1975 SC2117 wherein in para-4, 15 and 16 it was held thus:

'4. While the election petition was being heard by the High Court an application was filed by the Respondent 1 praying that a sample inspection of the ballot papers may be allowed. In support of this application some witnesses, counting agents of the respondent and other persons were examined and some affidavits were filed. The appellant also produced some evidence. The learned Judge has mentioned in his order that this sort of evidence was led before him but he has not at all given any finding on the credibility of the evidence. The learned Judge further

noticed very prominently that in respect of the allegations made that the counting of votes was wrong and the rejection of the ballot papers was improper, yet the respondent filed no application for recounting of votes as provided by Rule 63 of the Conduct of Elections Rules, 1961. The learned Judge also noticed that the respondent had not given serial number of a single ballot paper which is said to have been improperly accepted or improperly rejected. The Judge, however, allowed the application because he thought that the ends of justice required it. In this connection the learned Judge observed as follows:

'But before I advert to consider the election petition, the affidavit and the oral evidence to decide whether there should be an order for the general inspection of the used ballot papers, I think it will be in the interests of justice to order a sample inspection of ballot papers counted in favour of Respondent 1 as also a sample inspection of the rejected ballot papers in this case.

These observations clearly show that the learned Judge made no attempt at all to give any finding whether he was prima facie satisfied regarding the credibility of the evidence or the materials adduced before him but ordered a sample inspection in order to test the validity of the allegations made by the respondent. It seems to us that in passing this order the learned Judge, while noticing some of the leading cases of this Court on the point which he has cited in his judgment viz. Ram Sewak Yadav v. Hussain Kamil Kidwai; Jagjit Singh Dr v. Giani Kartar Singh; Jitendra Bahadur Singh v. Krishna Behari; and Sumitra Devi v. Shri Sheo Shanker Prasad Yadav has made no attempt to apply the principles laid down in those cases to the facts of the present case.

16. In the instant case we find that the learned Judge while passing the order of sample inspection made no attempt to apply the principles mentioned above to the facts of the present case. What is more important is that the Court actually noticed some of the important decisions of this Court which we have discussed and yet it did not try to test the principles laid down on the touchstone of the allegations and the material facts pleaded by the respondent. Another error into which the learned Judge had fallen was that he did not realise that by allowing sample inspection he had provided an opportunity to the respondent to indulge in a roving inquiry in

order to fish out materials to justify his plea in order to declare the election to be void - a course which has been expressly prohibited by this Court, because it sets at naught the electoral process and causes a sense of instability and uncertainty amongst the duly elected candidates. Thirdly, while the learned Judge has observed that the Court must be prima facie satisfied regarding the truth of the materials, but it did not choose to record its satisfaction on the application of the respondent at all and has readily accepted the suggestion of the respondent for sample inspection on the ground that it was necessary for the ends of justice. Such an approach, in our opinion, is legally erroneous. While indicating in his order that both the parties had produced some affidavits before him in support of their pleas, the learned Judge has not at all tried to appreciate or consider the evidence in order to find out whether it was worthy of credence. In the absence of any such finding it was not open to the learned Judge to have passed an order for sample inspection just for the asking of the respondent.'

6. In view of the contention of the counsel on both sides, it is necessary to decide as to whether the impugned order of the trial court is legal or not. It is seen that after examination of witnesses on both sides, the impugned order was passed by the trial court summoning the election materials.

7. The trial court has to try the election petition as if it is the trial of a suit adopting procedure applicable to the suit under the code of Civil Procedure. Order XI Rule 14 CPC empowers the Court to order for production of documents by any party thereto, if it thinks fit:-

8. Rule 14 of Order 11 CPC runs as follows:-

'Production of documents:- It shall be lawful for the Court at any time during the pendency of any suit, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in questio each suit, as the Court shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.'

9. The averments are relating to corrupt practice, hence, Section 259 and 260 of the Tamil Nadu Panchayats Act are extracted below:-

'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 insofar 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.

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 (contest) 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.'

10. The judgments of the Honourable Supreme Court referred to above indicate relevant consideration before ordering production of election materials. An order of inspection may not be granted as a matter of course until adequate statement of material facts, on which the election petitioner relies in support of his case. Mere vague pleas made in the election petition not supported by material facts or to fish out evidence to support such pleas in respect of ballot papers cannot be granted. The election petition is quasi criminal nature, hence, the allegations must be pleaded clearly and with full particulars. If the allegations made against the elected candidate is clear and specific and supported by adequate statement of material facts, the court must prima facie satisfy on the materials produced before it regarding the truth of allegations made for recount. The court must come to the conclusion that in order to grant the relief of inspection it is necessary and imperative to do full justice between the parties. The discretion conferred on the Court should not be exercised in such a way to enable the election petitioner to indulge in a roving inquiry with a view to fish materials for declaring the election to be void. The Court also given power to deal with documents when produced in such a manner as shall appears just. Therefore, the power to order production of document is coupled with discretion to examine the expediency, justness and the relevancy of the documents to the matter in question. In any case secrecy of the ballot boxes cannot be tinkered unless an iron-cast case is made out in the election petition.

11. The learned counsel for the revision petitioner Mr. Srinath Sridevan, brought to the notice of this Court the counter filed by the second respondent before the court below and submits that there was some discrepancy in the total number of votes polled in booth No. 24, hence, the second respondent decided to recount, after recounting, the total votes polled in the said booth were 586 and not 587; that there was no objection from either side pertaining to the said total; that in the first round of counting, the petitioner and the first respondent have secured 648 votes

each, immediately, the revision petitioner gave a requisition for recounting of votes, which was ordered and the counting took place in the presence of both the parties agent and other counting officers, in which the revision petitioner secured 650 votes and the first respondent secured 648 votes; that the other allegation that the first respondent secured 648 votes and the revision petitioner secured 647 votes is false; that the second respondent never declared the first respondent as a elected candidate and the first respondent came to know the result only on 22-10-2001 at 4 a.m. is also false; that the second respondent did not count the votes again in the presence of the agent of the revision petitioner at the instance of the local MLA as alleged by the first respondent and it is nothing but false; that there was no necessity for the second respondent to do so; that the invalid votes were counted in favour of the revision petitioner was also denied by the second respondent; that no complaint to the Collector or Election Commissioner was lodged by the first respondent to the knowledge of the revision petitioner and the second respondent; that mere vague pleas made in the election petition not supported by material facts; that the court below ought not to have ordered for summoning the election materials; that the allegations are neither clear nor specific nor supported by adequate statement of material facts.

12. It is brought to the notice of the Court by the learned senior counsel Mr. Alagirisamy appearing for the first respondent that the averments in the election petition that recounting was ordered by the second respondent at the instance of the local MLA and the votes were recounted behind the back of the first respondent, besides that votes originally rejected as invalid were included as valid votes in the account of the petitioner herein, which amounts to corrupt practice committed in the interest of the petitioner and on verification of the said definite allegations with precision and evidence on record, the trial court ordered summoning of election materials.

13. In order to appreciate the contention raised by the counsel on either side, this Court perused the election petition carefully. It is the case of the first respondent that 'in the interest of the revision petitioner, corrupt practice was committed, unless the election material is summoned and perused, it would be difficult for the first respondent to substantiate the plea.'

14. The power to order production of document is coupled with discretion to examine the expediency, justness and the relevancy of the document to the matter in question. The Hon'ble Supreme Court in the decision reported in (Basanagouda v. Dr. S.B. Amarked and Ors.) : [1992]2SCR397 held that the relevant consideration, which the Court shall have to advert to and weigh before deciding to summoning the documents is to keep it in mind that the election petition proceedings being of quasi criminal nature, the allegations in the petition must be pleaded clearly and with full particulars, especially while summoning the election materials on the alleged grounds of corrupt practice cannot be permitted to be ordered on the basis of deficient pleadings or by filing application for production of record to fish out grounds as material which is not part of the pleadings. It is well settled that secrecy of ballot boxes cannot be tinkered unless an iron-cast case is made out in the election petition.

15. The first respondent has made vague allegations that recounting was ordered altogether for three times. Even though it is alleged that he was declared won by a margin of one vote in two counting, the declaration certificate was not issued by the second respondent and even before getting the declaration certificate he left the place to offer thanks to the villagers voted and he came to know on the next day morning i.e., on 22-10-2001 at 4.00 am that the second respondent declared the revision petitioner has won the election; that it was revealed on enquiry by him that the second respondent again recounted entire ballot papers in the presence of the agent of the revision petitioner at the instance of local MLA; that further he came to know that there were invalid ballot papers in which no stamp was affixed to any of the candidates and that few of the said invalid ballot papers were utilised for the purpose of increasing the number of votes secured by the revision petitioner; that the said misuse of invalid ballot papers by the second respondent amounts to fraud committed by the second respondent and it was at the instance of the ruling party people.

16. The above said allegations are vague and general and not supported by any material facts. This court do not find any concise statement of material facts demanding the grant of inspection of the records. If the material facts are not stated, it cannot be permitted to make out a case for fishing out evidence from an

inspection of election materials. The said factors are relevant for consideration for summoning documents, which were not considered by the trial court before passing the impugned order. Until a iron-cast case is made out the secrecy of ballot box cannot be tinkered. Followed (Charan Dass v. Surinder Kumar and Ors.) 1995 Supp (3) Supreme Court Cases 318 : . Such material facts are not found in this case for justifying summoning of election materials.

17. For all the reasons stated above, the order passed by the trial court is set aside. The civil revision petition is allowed, but no costs. Consequently, connected CMP and VCMP are closed. It is made clear that certain observations are made in this order to the limited purpose of disposing of the revision petition, which no way fetters the hands of the trial court while deciding the election petition on merits. Considering the fact that the election petition is of the year 2001, already four years lapsed, the trial court is directed to dispose of the main Election Petition No. 171 of 2001 on merits within a period of one month from the date of receipt of a copy of this order.

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