
(1989) 07 AP CK 0004

In the Andhra Pradesh High Court

Case No : Writ Petition No. 5361 of 1989

Jonnala Venkatarami Reddy

APPELLANT

Vs

Siriveni Basivi Reddy and Others

RESPONDENT

Date of Decision : 26-07-1989

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (1992) 2 ALT 203

Hon'ble Judges : M.N. Rao, J

Bench : Single Bench

Advocate : M. Chandrasekhara Rao, for the Appellant; S. Venkat Reddy, for T. Subrahmanyam, for the Respondent No. 1 and The Govt. Pleader for Co-op. for the Respondent Nos. 2 to 4, for the Respondent

Final Decision : Dismissed

Judgement

M.N. Rao, J.—The petitioner Venkatarami Reddy, is seeking a writ of certiorari to quash the order passed by the fourth respondent, Election Tribunal (First Addl. District Munsif, Vijayawada) in O.P.No. 53/87 declaring the first respondent herein Basivi Reddy as the successful candidate in the election held on 30-6-87 for the office of President, Devarpally Primary Agriculture Co-operative Society Limited after setting aside the election of the petitioner. The election to the office of President of the Society was held on 30-6-87; the petitioner and the first respondent were the contestants. In the first count, it appears, the petitioner secured 2 votes more than the first respondent and after recount it was declared that the petitioner secured 725 votes and the first respondent 724 votes. 74 votes were found to be invalid. The Election Officer, the third respondent declared the petitioner as the successful candidate. (For purpose of convenience the petitioner and the first respondent herein are referred to as the returned candidate and the defeated candidate respectively). The defeated candidate thereafter filed O.P.53/87 challenging the election of the returned candidate contending that several irregularities and illegalities had crept into the process of

election and in the counting of votes. The declaration of the returned candidate as successful by the third respondent was illegal since he (R-1) secured majority votes; had the counting been done properly as per the procedure prescribed by the Act and the Rules, he would have been the successful candidate. He claimed to have secured more than 725 votes whereas the returned candidate secured 722 votes. He alleged that the election officer intentionally rejected valid votes polled in his favour without following the procedure. He alleged that the election officer colluded with the returned candidate having been influenced by Sri Kakani Rammohan Rao, President of the Mandala Praja Parishad Vuyyur and Movva Mohan Rao, President Mandala Praja Parishad, Totla Vallur.

2. The returned candidate in his counter denied the allegations levelled in the election petition contending that in accordance with the prescribed procedure the counting was done and declaration made. The Election Officer, the third respondent in his counter denied the allegation that he colluded with the first respondent and committed irregularities and malpractices.

The defeated candidate filed two interlocutory applications I.A.Nos. 348 and 362 of 1988 before the Election Tribunal requesting for production of the boxes containing ballot papers and inspection of the ballot papers and they were allowed by the Election Tribunal. The returned candidate filed W.P.Nos. 4484 and 4485 of 1988 questioning the said two orders. A learned single judge of this court allowed the two writ petitions setting aside the orders and directed the Election Tribunal to follow the guidelines laid down by the Supreme Court in Bhabhi Vs. Sheo Govind and Others, . and dispose of the matter afresh on merits after notice to both sides. The learned judge also observed:

"The setting aside of the orders impugned does not mean that this court expressed the view that the Tribunal has no jurisdiction to pass the orders."

Thereafter, three applications were filed by the defeated candidate (1) I.A.348/88 for production of the ballot boxes, (2) I.A.362/88 for recalling R.W.2 Election Officer for further cross-examination; and (3) I.A.670/88 for general recount. The Election Tribunal after referring to the said Supreme Court decision and after considering the contentions advanced by both sides allowed the three applications. In the further cross-examination of Election Officer R.W.2, it was found that Exs.X-25 to X-32, eight ballot papers, did not contain either the seal of the society or signature of the Presiding Officer. These ballot papers were found in the packet containing the valid votes polled in favour of the returned candidate. At that stage the returned candidate filed LA. 1145/88 for recounting of all the ballot papers. That application was rejected by the Election Tribunal observing that the returned candidate ought to have filed petition for recrimination within 14 days after the election on the analogy of Section 97 of the Representation of People Act. Questioning that, the returned candidate filed W.P.No. 18990/88 before this court. A learned single judge (Venkatarami Reddy, J.,) disposed of the writ petition on 30-1-1989 observing that the Election Officer R.W.2 should be recalled for cross-examination by the counsel for the returned

candidate and for that purpose.

"the bundle containing invalid votes which were specifically referred to in the cross-examination of R.W.2 should also be made available to him."

On the question of recounting of all the votes, the learned judge rejected the contention of the returned candidate observing:

"R.W.2 was examined with respect to certain invalid votes. It is open to the petitioner (returned candidate) to further cross-examine R.W.2 only with reference to the bundle of invalid votes. To that extent there shall be a direction that the ballot boxes should be brought before this court to enable the writ petitioner to cross-examine R.W.2 with reference to invalid votes."

The said order of the learned judge, it is stated, was upheld by a Division Bench of this Court. The Election Tribunal, after the matter was remitted, permitted cross-examination of R.W.2 and after considering the contentions urged by both sides held that Exs.X-25 to X-32 (8 ballot papers) were invalid because they did not bear either the seal of the society or signature of the Presiding Officer, which is a mandatory requirement as per the Rules 22(7) and 22(8)(3)(c)(ii). As the majority between the returned candidate and the defeated candidate as per the declaration made by the Election Officer was only one vote and in view of the finding by at the trial that Exs.X-25 to X-32 (8 ballot papers) were invalid, the Election Tribunal declared the defeated candidate (the election petitioner) as the successful candidate.

3. Shri Chandhrasekhar Rao, learned counsel for the petitioner contends that the Election Tribunal ought not have permitted the opening of ballot boxes and inspection of votes when there is no specific plea with regard to the alleged invalidity of votes, including Exs.X-25 to X-32, on the ground of absence of the seal of the society or signature of the Presiding Officer. Unless a specific plea is made with all material particulars and acceptable evidence in that behalf is adduced, it is not open to the Tribunal to order inspection of ballot papers. He also contends that when once the Election Tribunal had permitted general recount on the application filed by the defeated candidate, it ought to have allowed general scrutiny of all the votes, instead of confining the scrutiny only to a limited number of votes counted in favour of the returned candidate. There should not be two different yard-sticks in the ascertainment of the invalidity with regard to the votes polled at the election, if on a particular ground- absence of the seal of the society or signature of the Presiding Officer-certain votes which were earlier counted in favour of the returned candidate were declared invalid, the same test should have been applied in the case of the votes polled in favour of the defeated candidate and for seeking such an equitable relief there is no need to resort to a recrimination petition as is done u/s 97 of the Representation of the People Act. Such a procedure is alien to the provisions of the A.P.Co-operative Societies Act or the rules made there under. In any event Exs.X-25 to X-32, eight ballot papers, which were counted in favour of the returned candidate

by the Election Officer should not have been declared invalid by the Election Tribunal on the flimsy ground of absence of the seal of the society or signature of the Presiding Officer on them. The will of the majority of the electors reflected in the majority of the votes secured by the returned candidate should not be scuttled on the ground of the aforesaid technicality for which the returned candidate was in no way responsible; a technical lapse on the part of the officers should not be a factor to set at naught the opinion expressed by the majority of the voters. On a true interpretation of the Rules 22(7)(f) and 22(8)(3) the eight votes in question should be counted in favour of the returned candidate and the election of the returned candidate should not be disturbed.

4. Countering these contentions Shri Venkat Reddy learned counsel for the defeated candidate (petitioner before the Election Tribunal and R-1 herein) contends that in election matters equitable considerations have no application; the statutory provisions must be interpreted strictly. It is incumbent under the rules that each ballot paper should bear on its reverse the seal of the society or signature of the Presiding Officer as per the mandatory requirement of Rule 22(7) and no deviation from this requirement is permissible. In breach of this mandatory requirement Exs.X-25 to X-32 should not be counted in favour of the returned candidate as was illegally done by the Election Officer. On the analogy of the provisions of the Representation of People Act and the rules made there under the issues raised in this writ petition should not be decided since the statutory provisions under the A.P. Co-operative Rules are not in pari materia with the rules framed under the Representation of People Act. When the returned candidate did not object, at the time of the counting, to the validity of the votes counted by the Election Officer in favour of the defeated candidate, it was not open to the former to contend before the Tribunal that the votes counted in favour of the defeated candidate should also be inspected in order to ascertain whether any of those votes" are afflicted with the legal infirmity attributed to Exs.X-25 to X-32. The learned counsel also says that the returned candidate is precluded from raising any contention in this behalf after having deposed in the witness box that no illegality was committed by the Election Officer at the time of counting of votes or declaration of the results. The action of the Election Tribunal in permitting the inspection of ballot papers counted in favour of the returned candidate and its refusal to permit the returned candidate to seek inspection of the ballot papers counted in favour of the defeated candidate have been judicially tested and concluded by a judgment of a learned single judge of this court (Venkatrami Reddy, J.,) in W.P.No. 18990/88 which, it is not in dispute, has been affirmed by a Division Bench. In this writ petition it is not, therefore, open to the returned candidate to question the direction of the Election Tribunal ordering inspection of the votes counted in favour of the defeated candidate. Even otherwise, the learned counsel says no case was made out by the defeated candidate for recount.

5. After Shri Chandrasekhar Rao, learned counsel for the returned candidate has completed his principal submissions, both the counsel - he and Shri Venkat

Reddy- jointly represented that all the votes- valid as well as invalid - should be inspected by this court in order to ascertain the correct fact as to how many votes should strictly be treated as valid and how many should be declared invalid. In view of this representation I did not insist upon a joint memo being filed and so I passed the following order on 8-6-89:

"Both the counsel agree that all the ballot boxes containing valid as well as invalid votes relating to the election of the President Devarapalli Primary Agricultural Co-operative Credit Society Limited, Devarapalli should be produced before this Court with the seals in tact and the recounting of all the votes should be done in this court in the presence of the counsel for both sides and the Election Officer. The first Addl. District Munsif, Vijayawada (Election Tribunal) shall take steps for the production of the ballot boxes before this Court along with the entire record positively before 22-6-89. The Election Officer, respondent No. 3 shall be present in this court on 22-6-89. Call on 22-6-89".

The Election Officer was present at the time of the opening of the box containing the ballot papers. In the presence of the counsel for both sides, the Election Officer and two officers deputed by the Registrar (Judicial) besides the Court master and the Court Officer, the inspection of the ballot papers was done in the open court on 29-6-89. The election symbol of the returned candidate is "Bell" and that of the defeated candidate is "Aeroplane". At the recount it was found that the returned candidate whose symbol is "Bell" secured 6% votes of which 11 votes do not contain the seal of the society or signature of the Presiding Officer. The defeated candidate secured 724 -votes of which 30 votes do not contain the signature of the Presiding Officer or seal of the society. The above votes i.e., 6% and 724 are exclusive of Exs.X-1 to X-32. Exs.X-1 to X-3 were declared invalid by the Election Officer and Exs.X-4 to X-24 be counted in favour of the returned candidate. Exs.X-25 to X-32 although counted in favour of the returned candidate by the Election Officer, were declared invalid by the Election Tribunal. The counsel for both sides and the Election Officer, soon after the recount was over in this court recorded the following duly appending their signatures:

"In the presence of the counsel for both sides and the Election Officer votes have been recounted and the following are the details.

1) Bell:- $685 + 11 = 696$ (Elevent votes do not contain the signature of the Presiding Officer).

2) Aeroplane:- $694 + 30 = 724$ (The thirty votes do not contain the signature of the Presiding Officer) Counting was done by Court Officer, Court Master and the two officers deputed by Registry.

We were present at the time of counting and the details given above are true and correct.

1) Counsel for petitioner. Sd/- xxxxxxxx (G.V. Shankara Rao) Dt. 29-6-89

2) Counsel for respondent. Sd/- xxxxxxxx (S. Venkata Reddy) Dt. 29-6-89

3) Election Officer. Sd/- xxxxxxxxx (M. Satyanarayana (R.3) Dt. 29-6-8:/ "

If Exs.X-4 to X-32 to the 696 votes secured by the returned candidate (Bell Symbol) the total would come to 725 as against the 724 total votes secured by the defeated candidate (Aeroplane symbol). At the next date of adjourned hearing the counsel for both sides in the presence of the Court master scrutinised Exs.X-4 to X-24. Their objections are recorded by the Court master in their presence.

6. Shri Chandrasekhar Rao contends that it is not open to the counsel for the defeated candidate (R.1) to raise objections regarding the validity of the votes Exs.X-4 to X-24 on any ground other than the absence of the seal of the society or signature of the Presiding Officer. In other words, this court ordered recount only for the limited purpose of ascertaining the invalidity pertaining to the said objection but not for discovering any fresh grounds of invalidity of the votes secured by both sides. If this court is to accede to the request of the counsel for the opposite side and invalidate all or any of the votes Ex.X-4 to X-24 he should He permitted once again to scrutinize all the votes counted in favour of the defeated candidate for the purpose of pointing out fresh defects. In view of this strange and regrettable turn of events, albeit the joint representation made by the learned counsel for both sides which as recorded in the order dated 8-6-89 extracted supra clearly indicates that a general recount was to be done and that it was not limited only for the purpose of ascertaining the absence of the seal of the society or signature of the Presiding Officer, I am constrained to ignore what was disclosed by the recount and confine consideration only to the issues arising out of the impugned order passed by the Election Tribunal.

7. By Section 61(3)(a) disputes pertaining to election to Managing Committees of the class of societies specified in Clause (a) of Sub-section (3) of Section 31 shall be decided by the Subordinate judge having jurisdiction over the place where the main office of the society is situated; Clause (b) of Sub-section (3) of Section 61 lays down that disputes in relation to other societies shall be derived by the District Munsif having jurisdiction over the place where the main office of the society is situated. There are no rules governing the procedure in respect of election disputes arising u/s 61(3) of the Co-operative Societies Act. But the Court of District Munsiff is constituted as the appellate tribunal u/s 76 of "the Act to hear appeals in respect of orders passed under Sub-section (1) of Section 60 (surcharging members and employees of a society for misappropriation, breach of trust etc.), Sub-section (2)(3)(4) of Section 62 (action taken on the disputes referred to the Registrar), Section 71 (recovery of debts) and Section 73 (attachment of property before decision). Rule 49-A of the Cooperative Societies Rules regulates the procedure of the Tribunal; it says that the proceedings:

"shall be summary and shall be governed as far as practicable by the provisions of the Code of Civil Procedure, 1908."

When appeals have to be disposed of in a summary way by the civil court acting as *persona designata*, it would be reasonable to infer that the election disputes also should be tried summarily. It is, therefore, difficult to take the view that the C.P.C, in its entirety is applicable to the trial of election petitions. By their very nature the disputes regarding elections shall have to be decided as expeditiously as possible as otherwise they will become in fructuous having regard to the limited tenure for which members are elected. Application of the complex and time consuming procedure envisaged in the CPC will necessarily protract the trial and defeat the very purpose of adjudication. It would, therefore, be totally unrealistic to hold that the entire gamut of the C.P.C, applies to election petitions. The Legislature has thought it fit not to lay down the procedure in the Act, nor the Government felt it expedient to frame rules in that behalf. Only such of those provisions of the C.P.C, which are absolutely necessary for speedy and summary disposal alone are applicable but not the entire procedural gamut. This view accord s with the fact that the District Munsif is constituted as special tribunal u/s 61(3) of the Co-operative Societies Act with finality attached to the decisions rendered by him. In *Gadde Venkateswara Rao Vs. K. Venkata Rao and Another*, . the question arose whether the District Munsif functioning as Special Tribunal under the A.P.Gram Panchayat Rules has power to grant a temporary injunction under Order 39, Rule 1 and Section 151 of the C.P.C. The Gram Panchayat Rules contain elaborate procedure for the trial of election petitions. Answering the question in the negative Kondaiah, J., (as he than was) held:

"The District Munsif is functioning as a *persona designata* but not as a Court having the jurisdiction and powers of a Civil Court... As the election court is not a civil court for all purposes, it must be held that it has no inherent powers analogous to those exercisable by a civil court u/s 151 of the CPC nor can the provisions of Order 39, Rule 1 of the Civil Procedure Code, be invoked by the election court... the election court is not competent to function as a civil court to exercise the powers under the CPC in general and the provisions of Section 151 and Order 39, Rule 1 of the CPC in particular."

8. The contention of Shri Chandrasekhar Rao, leaned counsel for the returned candidate that in the absence of a specific pleading the Tribunal had no power to invalidate the votes polled in favour of the petitioner herein (returned candidate) is based on the decisional law concerning election disputes under the Representation of the People Act. What Shri Chandrasekhar says although impressive at first sight becomes less so on closer examination. The analogy ought to be pressed into service, I think, is inappropriate. The Representation of the People Act, 1951 incorporates elaborate procedure, by Part VI, regarding election disputes (Sections 79 - 122). Section 80 says that, no election shall be called in question except by an election petition presented in accordance with the provisions of Part VI. By Section 81 it is made mandatory that the election petition shall be presented only on grounds specified in Sub-section (1) of Section 100 and Section 101. Section 83 makes it mandatory that the election petition shall contain a concise statement of material facts on which the

petitioner relies and it shall set forth particulars of any corrupt practice alleged, including a statement of the names of the parties alleged to have committed such corrupt practices and the date and place of the commission of each such practice. The nature of the relief that can be claimed is incorporated in Section 84 - apart from a declaration that the election of the returned candidate is void, the petitioner can further ask for a declaration that he himself or any other candidate has been duly elected. Chapter III comprising Sections 86 - 107 deals with trial of election petitions, by Section 86 it is made obligatory on the part of the High Court, the forum enjoined by Section 80A, to dismiss the election petition which does not comply with the provisions of Section 81 or 82 or 117. Section 87(1) says that subject to the provisions of the Act and the rules made there under, every election petition shall be tried as nearly as may be in accordance with the procedure applicable under the Code of Civil Procedure. The proviso thereto confers discretion on the High Court to refuse examination of any witness. By Sub-section (2) the provisions of the Indian Evidence Act are made applicable subject to the provisions of the Representation of the People Act. Section 94 mandates that the secrecy of voting shall not be infringed. Section 97 deals with the procedure of filing recriminating petition and when it can be filed. Withdrawal and abetment of election petitions are dealt with in Chapter IV. The Conduct of Election Rules 1961 incorporate all the procedural details encompassing every relevant aspect. Part II deals, inter alia, with filing of nomination papers, allotment of symbols, list of validly nominated candidates, appointment of polling agents, time fixed for polling etc. Part IV contains details regarding voting, design of ballot boxes, the form of ballot papers, arrangement of polling stations, preparation of ballot papers, identification of electors, safeguards against personating, issue of ballot papers to electors, maintenance of secrecy of voting within the polling station and voting procedure, spoilt and returned ballot papers, sealing of ballot papers, account of ballot papers, issue of ballot papers etc. The procedural particulars regarding counting of votes are dealt by Part V comprising Rules 50 to 66. Every important aspect concerning counting is taken care of. Part V inter alia refers to appointing of counting agents, counting of votes, rejection of ballot papers, sealing of used ballot papers, recount of votes and declaration of results.

9. Right to seek an elective office is a statutory right *stricto sensu*; the principles governing adjudication of claims founded on common law or equity have absolutely no application in the adjudication of election disputes. This principle is firmly settled by the dicta and *rationes decedendi* of the decisions concerning elections. Interpreting Sections 100, 101, 102 and 92 of "Representation of the People Act and Rule 63 of the Conduct of Elections Rules, 1961, a two Judge Bench of the Supreme Court in *Bhabhi's case* (1 *supra*) after reviewing the case law laid down the following guidelines for granting inspection of 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 if any 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."

In that case no application was made before the Returning Officer by the defeated candidate seeking recount of votes. The "solitary circumstance" that weighed with the learned trial judge in that case was that the returned candidate was declared elected by a narrow margin and that itself was sufficient for ordering sample inspection. The Supreme Court rejected that ground observing:

"(Sic)"

Shri Jitendra Bahadur Singh Vs. Shri Kirshna Behari and Others, . also concerns with inspection of ballot papers (This case was referred to in Bhabhi's case (1 supra). The trial court in that case had taken the view that it was enough if the election petitioner furnished some figures as to the rejection of valid votes and acceptance of invalid votes and there was no need to disclose any further details as to the basis on which the figures were mentioned. After advertent to the ratio of the previous decisions and after noticing the relevant provisions in the Representation of the People Act and Conduct of Elections Rules the Supreme Court held that the election petition must contain an adequate statement of the material facts on which the petitioner relies and the election court must be 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. The Supreme Court therefore, set aside the view taken by the trial judge observing that:

"There is absolutely no proof in this case to support the allegations on the basis of which the scrutiny of the ballot papers was prayed for. The trial court did not mention in its order even a single reason in support of its satisfaction as to the need for inspecting the ballot papers."

In Hari Ram Vs. Hira Singh and Others, . Interpreting Sections 169, 100 and 101 of the Representation of the People Act and Rule 93 of the Conduct of Elections Rules, it was held by the Supreme Court that inspection of ballot papers should

be allowed very sparingly and only when it is absolutely essential to determine the issue. 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. *Mithilesh Kumar Vs. R. Venkataraman and Others*, . concerns with the election of the President of India governed by the provisions of the Presidential and Vice-Presidential Elections Act. As the election petition filed in that case did not contain even an allegation that the act of undue influence had been committed by some persons with the connivance of the elected candidate and as the petition was bald, the Supreme Court rejected the same on the ground that it did not disclose any cause of action. The question whether after the recount and scrutiny of all the ballot papers of all the candidates as per the direction of the High Court, the returned candidate was entitled to the benefit of additional votes in the absence of recriminatory petition u/s 97 has arisen in *N. Gopal Reddy Vs. Bonala Krishnamurthy and Others*, . A two judge Bench of the Supreme Court expressed disagreement with the view taken in the earlier decisions and, therefore, referred the matter to a larger bench preferably of 7 judges. *P.K.K. Shamsudeen Vs. K.A.M. Mappillai Mohindeen and Others*, . are under the Tamilnadu Panchayats Act, 1958. The law report does not contain what are the statutory provisions governing the election: it is not known whether those statutory provisions are in para materia with the Representation of the People Act and the Conduct of Elections Rules. Presumably the position is similar under both the enactments and that is the reason why the Supreme Court after referring to the case law concerning Representation of the People Act and Conduct of Elections Rules, observed:

"Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hind sight and by the result of the recount of votes. On the contrary the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before the order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the re-count of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or court should not order the recount of votes. Viewed in the light of these well enunciated principles, we find that the petitioner has neither made such averments in the petition nor adduced evidence of such a compulsive nature as could have made the Tribunal reach a prima facie satisfaction that there was adequate justification for the secrecy of ballot being breached in the petitioner's case."

(Paras 13 and 14 at P.643)

The position obtaining under the Representation of the People Act or other enactments concerning elections to Municipalities and Panchayats bears no acceptable analogy to elections conducted under the Co-operative Societies Act. In the election to Parliament and Assemblies the number of voters is very large; elaborate arrangements are made for conducting the elections. Meticulous care is taken by the statutory provisions to incorporate every relevant detail. In the trial of such election petitions all questions raised are determined with reference to the statutory provisions. The "*rationes deci dendi*" of the rules under the Representation of the People Act cannot in full measure be extended to the trial of election petitions under the Co-operative Societies Act which does not, as already noticed, contain any procedure regulating the trial nor any rules made in that regard. Even with regard to the application of the provisions of the C.P.C, the Act and the Rules are silent. As already observed by me *supra*, the District Munsif being *persona designata*, the application of C.P.C, must be limited to achieving the object of expeditious trial of election disputes by summary procedure. When appeals by the District Munsifs and Subordinate Judges acting as *persona designata* under the Co-operative Societies Act in respect of non-election matters are to be dealt in a summary way under Rule 49-A, necessarily it must be inferred that the same procedure applies for trial of election disputes also.

10. The material facts as stated in the election petition filed by the defeated candidate are that the election officer suppressed the fact that the defeated candidate secured majority of the votes and the declaration in favour of the returned candidate was made illegally. Had the counting been done properly by following the procedure prescribed by the Act and the Rules, he would have been declared as the successful candidate. He secured more than 727 votes as against 722 votes, votes secured by the returned candidate. The election officer without declaring the result after the counting, *suo motu* started rechecking of the votes polled in favour of the election petitioner and in the guise of that rechecking a number of votes polled in his favour were rejected. Although the mark on the ballot papers was clear the Election Officer rejected the same on flimsy grounds. Without showing the ballot papers to his agents they were sorted out. He, therefore, reasonably believed that the Election Officer committed mischief by counting his valid votes illegally in favour of the returned candidate. In the counter affidavit the returned candidate has merely denied these allegations. He did not call upon the petitioner to furnish better particulars. Under what circumstances ballot paper shall be rejected is set out in Rule 22(8)(3)(c) of the A.P. Co-operative Societies Rules. Clause (f) of Sub-rule (7) says that the ballot paper shall bear the seal of the society and also the signature of the Presiding Officer and shall further contain a column for the voter to inscribe a mark "X" against the symbol to which the voter wants to vote. Clause (I) lays down that the voter "*shall mark with the marker*" provided for the purpose against the symbol of the candidate or candidates as the case may be, of his choice. These are the relevant rules which the petitioner, by necessary implication, alleged in

the election petition have been breached.

In the absence of any specific statutory rules as to what an election petition should contain, it is for the election tribunal to judge in the light of the special facts in each case whether the petition filed contains material facts. The election petition should disclose what are the allegations the opposite parties have to meet. Beyond this no rigid principle can be formulated. If the returned candidate felt that some more particulars were necessary in the election petition to enable him to meet the case effectively he should have filed an application before the Tribunal for a direction to the election petitioner to furnish better particulars. But that has not been done. Both the parties went to trial on the allegations set out in the election petition. In the first instance, the Election Tribunal permitted the inspection of ballot papers without stating any reasons and when that was questioned by the returned candidate by filing W.P.Nos. 4484 and 4485 of 1988 the same were disposed of by a learned single judge of this court observing:

".....the question of violating the law of secrecy does not arise while considering the validity or invalidity of votes cast. In the petition itself the petitioner alleged that he has mentioned in the main petition that some votes were declared invalid and so it is for the Tribunal to consider it before arriving at the conclusion whether the ballot boxes have to be summoned and the witnesses have to be cross examined."

Thereafter by a reasoned order the Tribunal allowed the plea of the defeated candidate for inspection of the ballot papers and for cross examination of the Election Officer R.W.2. Considering the fact that the total number of votes is only about 1500 and in the absence of statutory provisions analogous to the Representation of the People Act and the Conduct of Elections Rules, it cannot be said that the material facts stated in the election petition are vague subjecting the returned candidate to the disability of not knowing the case he has to meet;

11. R.W.2 the Election Officer, in his evidence stated that one valid vote might have been mixed up with the invalid votes and in the recount it was traced and counted in favour of the defeated candidate. The returned candidate was declared by a majority of one vote and both sides adduced oral evidence without reference to ballot papers which were kept in sealed boxes. There was also discrepancy between what was stated by the returned candidate in his evidence as R.W.1 and the election officer as R.W.2. One of the specific allegations levelled in the election petition is that the Election Officer added the valid votes polled by the defeated candidate in favour of the returned candidate illegally in violation of the prescribed procedure. One other circumstance on record is that the defeated candidate by Ex.X-33 demanded the Election Officer to recount the votes on the ground that several lapses had occurred in relation to the identity of the symbols and counting of votes. These circumstances, I think, clearly constitute a prima facie case for ordering inspection of the ballot papers.

12. The reasoned order of the Tribunal directing the inspection of votes polled in favour of the returned candidate has not been questioned. The returned candidate merely wanted scrutiny of all the ballot papers for the purpose of ascertaining whether there are any votes afflicted with the invalidity attributed to Exs.X-25 to X-32 and, therefore, seeking that relief he filed LA.1145/88 which was dismissed by the Election Tribunal. That application was in the nature of a recrimination petition. In the absence of a statutory provision in the Co-operative Societies Act or in the Rules made there under enabling the returned candidate to make an application in the nature of a recrimination petition he is forbidden from raising a plea that the votes polled in favour of the defeated candidate were invalid and, therefore, no declaration could be made in favour of the election petitioner. In a recrimination petition the returned candidate assumes the role of a counter petitioner. The Election Tribunal because of the absence of a statutory provision in this behalf rightly dismissed I.A.I 145/88. That order was unsuccessfully questioned by the returned candidate by filing W.P.18990/88 in this Court. My learned brother Venkatarami Reddy, J., disposed of the writ petition rejecting the plea of the returned candidate for scrutiny of all the votes. The only relief granted by the learned Judge was that the election officer, R.W.2, should be recalled for cross-examination with reference to the invalidity of votes specifically referred to in his evidence. That view of the learned judge, it is admitted, was affirmed by a Division Bench of this Court. I must also mention in this context that the view taken by the learned judge VenkataramiReddy,J.,inW.P.18990/88 is supported by the decision of the Supreme Court in Shri Banwari Dass Vs. Shri Sumer Chand and Others, . That case arose out of an election petition filed under the Delhi Municipal Corporation Act which did not contain in provision analogous to Section 97 (right for a recrimination petition) of the Representation of the People Act. The Supreme Court after noticing the observations of Gajendra Gadkar, C.J., in Jabar Singh Vs. Genda Lal, . regarding the interpretation of Section 97(1) of the Representation of the People Act, 1951 and the consequences that flow from the absence of recrimination petition, observed:

"Although the above observations were made in a case under the People Act, but the principle enunciated therein applies with greater force to the problem in hand. If the failure to comply strictly with the requirements of a statutory provision as to recrimination, precludes the returned candidate from recriminating, a fortiori, in the absence of such statutory provision in an election law, the returned candidate has no right to recriminate."

13. The plea that the refusal on the part of the Election Tribunal to permit inspection of all the votes polled for the purpose of ascertaining how many invalid votes were counted in favour of the defeated candidate, amounted to applying double standards, is untenable. In view of the judgment of Venkatarami Reddy, J., in W.P.18990/88 which was confirmed by a Division Bench of this Court, such a plea is not available to the returned candidate. Further, it must also be mentioned that the returned candidate in his evidence admitted that the

entire election process was conducted in accordance with the law and that no illegalities were committed at the time of counting of votes. He specifically stated in his evidence:

"It is not true to suggest that I got only 723 votes and the petitioner (defeated candidate) secured 727 and that the Election Officer illegally declared me as elected to the post of President.... It is not correct that R.3 (Election Officer) illegally rejected the votes of the petitioner (defeated candidate). It is not true to suggest that due to illegal practices of myself and R.2 (Election Officer) I won the election."

Having stated so in unmistakable terms, he cannot now contend that some of the votes secured by the defeated candidate were illegal and in order to ascertain the invalidity of the votes he should be permitted to inspect them.

14. The ruling of the Supreme Court in *Km. Shradha Devi Vs. Krishna Chandra Pant and Others*, . relied upon by Shri Chandrasekhar Rao is of no assistance. That case which arose under the Representation of the People Act concerns with elections to Rajya Sabha (Council of States). The election petitioner furnished proof of some errors in respect of some ballot papers. But the High Court did not grant inspection of all the ballot papers counted in favour of the returned candidate; the inspection was confined only to the ballot papers in respect of which proof was furnished about invalidity. After referring approvingly to the statement of law contained in Halsbury's Law of England that:

"a recount is not granted as of right, but on evidence of good grounds for believing that there has been a mistake on the part of the Returning Officer"

the Supreme Court set aside the view taken by the High Court observing:

"Even at the cost of repetition it must be said that it is not the requirement of law that in respect of each ballot paper rejected as invalid a specific averment must be so made as to identify the ballot paper and only those that can be correlated to the allegations in the petition specifically and not generally shall be recounted. That is contrary to the requirement of the Act and the Rules."

The next aspect to be considered is whether Exs.X-25 to X-32 are invalid. Sub-Rule (7) of Rule 22 of the A.P.Co-operative Rules deals with voting procedure. Clauses (f) and (i) lay down that the ballot paper shall bear the seal of the society and also the signature of the Presiding Officer and that the voter shall mark with the marker provided for the purpose against the symbol of the candidate of his choice. The clauses read:

"(f) Every member who desires to exercise his right of vote shall be supplied with a ballot paper. The ballot paper shall also bear the seal of the society and also the signature of the Presiding Officer and further contain a column for the voter to inscribe a mark "X" against the symbol to which he wants to vote.

Provided xx xxx xxxx

(g) xx xx xx xx xx

(h) xx xx xx xx xx

(i) On receipt of ballot paper, the voter shall proceed to the polling compartment set apart for the purpose and shall mark with the marker provided for the purpose against the symbol of the candidate or candidates, as the case may be, of his choice. He shall then fold the ballot paper and put it in the ballot box kept for the purpose outside the voting compartment. If, owing to blindness or other physical infirmity, a voter is unable to inscribe the mark on the ballot paper, the Presiding Officer/ Polling Officer shall ascertain from him the candidate or candidates in whose favour he desires to vote, inscribe the mark "X" on his behalf and put the ballot paper in the ballot box."

Sub-Rule (8) deals with declaration of results. Sub-clause (c) of Clause (3) which is relevant reads:

"(c) A ballot paper shall be rejected, if-

(i) it bears any mark or writing by which the member who voted can be identified; or

(ii) it does not bear the seal of the society or the signature of the Presiding Officer; or

(iii) the mark indicating the vote thereon is placed in such a manner as to make it doubtful to which candidate the vote has been cast; or

(iv) is damaged or mutilated that its identity as a genuine ballot paper cannot be determined."

It is not in dispute that Exs.X-25 to X-32 do not contain either the seal of the society or signature of the Presiding Officer. Shri Chandrasekhar Rao contends that the statutory requirement contained in Clause (f) Rule 22(7) and 22(8)(3)(c) (ii) extracted supra is only directory and, therefore, the rejection of these eight ballot papers was illegal. In support of this contention he relies upon Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, . a case decided under the Representation of the People Act. Rule 38(1) of the Conduct of Elections Rules, 1961 lays down that every ballot paper before it is issued to an elector and the counter foil attached thereto shall be stamped on the back with a distinguishing mark as directed by the Election Commission and every ballot paper before its issue shall be signed in full on its back by the Presiding Officer. Rule 56(2)(h) lays down that the Returning Officer shall reject a ballot paper:

"if it does not bear both the mark and signature which it should have borne under the provisions of Sub-rule (1) of Rule 38."

The two provisos to Sub-rule (2) read as follows:

"Provided that where the returning officer is satisfied that any such defect as is mentioned in Clause (g) or (h) has been caused by any mistake or failure on the

part of a presiding officer or polling 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 indistinct 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."

It is very clear from the above two provisos that the Returning Officer is conferred with discretion in the matter of rejection of ballot papers. The second proviso specifically lays down that the Returning Officer shall ascertain the intention of the voter before rejecting a ballot paper. In Arunkumar's case (11 supra) 74 ballot papers were in dispute on the ground that they did not contain the signature of the Presiding Officer. It was brought in the evidence of P. W.2, the Presiding Officer that for the first time he acted as a Presiding Officer and on that day he did not put his signatures on all the ballot papers and that he was absent from the booth for 5 to 10 minutes. The Supreme Court observed that the polling process must have continued during absence and as the genuineness of the 74 ballot papers was not in doubt the same were not liable to be rejected as the proviso to Rule 56(2) applied. It must be noticed that the A.P.Cooperative Societies Rules do not contain any provisions analogous to the provisos to Sub-rule (2) of Rule 56 of the Conduct of Elections Rules. An election petition is a statutory proceeding and the adjudication must be done only with reference to the statutory provisions but not on the basis of either common law or principles of equity. The observations made by the Supreme Court with reference to Rule 56(2) of the Conduct of Elections Rules in Arunkumar's case (11 supra) do not apply to the case on hand. Even with regard to Rule 56(2) of the Conduct of Elections Rules, an earlier three judge Bench of the Supreme Court in Shri Ram Autar Singh Bhadauria Vs. Chaudhari Ram Gopal Singh and Others, . emphasised its mandatory nature observing:

"It will be sufficient to reiterate that the provisions of Rules 38 and 56(2)(a) and (b) with which we are concerned in this case are mandatory and strict compliance therewith is essential. Once it is established that the fault specified in Clause (a) or (b) of Rule 56(2) has been committed, there is no option left with the Returning Officer but to reject the faulty ballot paper. We would further make it clear that even if any such defect as is mentioned in Clause (a) or (b) of Rule 56 is caused by any mistake or failure on the part of the Returning Officer or Poll Officer, the Returning Officer would be bound to reject the ballot paper on the ground of such defect. That such is the imperative of Rule 56(2) is clear from the fact that the said Clauses (a) and (b) have advisedly been excluded from the first Proviso to Rule 56(2) which gives a limited discretion in the matter of rejection to the Returning Officer only where the defect is of a kind mentioned in Clauses (g) and (h) of this sub-rule."

(Para 22 at P.2188)

This ruling was not noticed by the two judge Bench which decided Arunkumar's case (11 supra). The requirement under Rule 22(0) of the A.P. Cooperative

Societies Rules that the ballot papers shall bear the seal of the society and also the signature of the Presiding Officer being mandatory, every ballot paper which does not comply with that requirement must necessarily be rejected under Rule 22(8)(3)(c)(ii). The view taken by the Election Tribunal about the invalidity of Exs.X-25 to X-32, thus fully accords with the extant legal position. The contention raised by Shri M. Chandrasekhar Rao in this regard does not merit acceptance.

15. For the foregoing reasons the writ petition fails and accordingly it is dismissed. The order and decree passed by the First Additional District Munsif, Vijayawada (Election Tribunal) in O.P.53/87 are affirmed. There shall be no order as to costs.