
(2013) 12 AP CK 0036

In the Andhra Pradesh High Court

Case No : Election Petition No. 13 of 2009

Kommuri Pratap Reddy

APPELLANT

Vs

Ponnala Lakshmaiah and Others

RESPONDENT

Date of Decision : 18-12-2013

Acts Referred:

Citation : (2014) 2 ALD 692 : (2014) 4 ALT 594

Hon'ble Judges : R. Kantha Rao, J

Bench : Single Bench

Advocate : P. Kesava Rao, for Sri M. Chandrasekhar Rao, for the Appellant; A. Sudershan Reddy, for Sri Polisetty Radhakrishna, Advocate for the Respondent No. 1 and Sri V. Hari Haran, Advocate for the Respondent No. 2 and of Sri B. Papa Rao Goud, Advocate for the Respondent No. 4 and Government Pleader for General Administration for the Respondent No. 12, for the Respondent

Final Decision : Dismissed

Judgement

R. Kantha Rao, J.—This Election Petition is filed to direct the recount and scrutiny of all the ballot papers and to declare the election of the first respondent as elected from 98-Jangaon Assembly Constituency, Warangal District in the General Elections held in the month of April 2009 as illegal, null and void and to declare the petitioner as duly elected from 98-Jangaon Assembly Constituency, Warangal District in the said General Elections and to award the costs of the petition. The brief facts pleaded in the election petition are as follows:

In the General Elections to the A.P. Legislative Assembly held on 16.04.2009 through the system of Electronic Voting Machines, the petitioner contested as a nominee of T.R.S. party while the first respondent contested as nominee of Indian National Congress. In all, 11 candidates contested in the election.

2. It is submitted by the petitioner that he contested as a nominee of T.R.S. party in 2004 elections from 261-Cheryal Assembly Constituency. In the said election, there was alliance between T.R.S. party, Congress Party and both

communist parties. In that election, the petitioner was elected by huge majority of 25,254 votes against the T.D.P. candidate who was his nearest rival. Subsequently, on the issue of formation of separate Telangana State, all the T.R.S. party M.L.As. including the petitioner resigned their posts on the ground that the Congress Party went back on the promise of formation of separate Telangana. As a result, by-elections were held in May, 2008 to all the constituencies which fell vacant. In the said by-election, T.R.S. party contested on its own without any alliance with any political party. The daughter-in-law of the first respondent Smt. Ponnala Vaishali contested against the petitioner in the said election as a candidate of Congress Party and the petitioner had one the election by a large majority of 14,643 votes against her. It is submitted by the petitioner that the first respondent Ponnala Lakshmaiah by then was a Minister for Major Irrigation in the State Cabinet worked hard for the success of his daughter-in-law but she was defeated by the petitioner.

3. Nextly, it is submitted that prior to the general elections to the assembly in April, 2009, there was de-limitation of Assembly and Parliamentary Constituencies in the entire country as well as in the State of Andhra Pradesh. In the de-limitation, 261-Cheryal Assembly Constituency was abolished and in its place 98-Jangaon Assembly Constituency was constituted by including four mandals of erstwhile Cheryal Assembly Constituency viz. Cheryal, Maddur, Bachannapeta, Narmetta and Jangaon municipality and Jangaon Rural Mandal of the old Jangaon assembly constituency were included in the reconstituted Jangaon Assembly Constituency. According to the petitioner, the T.R.S. party was very strong in all the four mandals of erstwhile Cheryal Assembly Constituency as well as Jangaon municipality and Jangaon Rural Mandal. There was also an electoral alliance between T.R.S. party, T.D.P. and both communist parties in the general elections held in April, 2009. In the seat adjustment, Jangaon Assembly Constituency seat was allotted to T.R.S. party. Therefore, the version of the petitioner is that the petitioner who had support of other political parties in the alliance must secure large majority of at least what he had secured in 2004 general elections. It is further submitted by him that the survey reports of the government channels as well as the private channels also indicated that the petitioner would secure huge majority of votes and the defeat of the first respondent is almost certain. The counting of votes was held on 16.05.2009 in the premises of Agricultural Market Committee, Enumamula, Warangal. Twelve tables were arranged for counting of votes, a black board was fixed for displaying the votes secured by round-wise counting and telephone facilities were provided for the print and electronic media. Barricades were fixed for each table and the counting agents were made to sit beyond the barricades. The counting of votes was commenced from 8 A.M. onwards. The version of the petitioner is that the first respondent who was afraid of his defeat staring at him brought pressure on the 12th respondent, the Returning Officer and the counting personnel to manage that he is elected. It is further submitted by the petitioner that in the normal course, the counting of votes would be completed within a period of four

hours i.e. by about 12 noon. But, the Returning Officer and counting personnel purposely went on counting the votes slowly with a view to have some time for manipulation of votes and also to know the trend of counting of votes in other constituencies in the State. The counting took place for about nearly 8 hours from 8 A.M. to 4 P.M., the contest was mainly between the petitioner and the first respondent. The petitioner was securing huge majority of votes in each round of counting than the first respondent. But, the counting supervisors, instead of recording the correct number of votes secured, were inflating the votes secured in favour of the first respondent than what he actually received and proportionately decreasing the number of votes polled in favour of the petitioner than what he actually received. After three or four rounds of counting, the counting personal stopped displaying the votes counted in respect of other rounds of counting on the black board. The counting supervisors were taking the signatures of counting agents hurriedly stating that they must go for the next round of counting and if there are any mistakes they can be corrected at the Returning Officer's table. The Returning Officer was stating that he would look into the complaints at the end of counting of votes. This method of recording incorrect figures went on till the end of counting of all the votes. The 12th respondent did not count or correct the actual votes counted in spite of the request made by the election agent of the petitioner. In spite of all that it was found after totaling of all the votes that the petitioner secured majority of 44 votes than the first respondent. The 12th respondent announced that the petitioner secured majority of 44 votes than the first respondent.

4. It is the version of the petitioner that after the announcement that the petitioner secured majority of 44 votes, the 12th respondent gave a pause to see whether any candidate files a petition for recount of votes. There was no petition for recount of votes. In such an event, the 12th respondent ought to have declared the petitioner as duly elected within five minutes thereafter. But, at that stage, the first respondent came into the counting hall and had a long discussion with the 12th respondent. On account of the said long discussion, the declaration of the petitioner as elected was delayed for about 45 minutes. The first respondent was present at the returning officer's table till the declaration was made by a margin of 236 votes. It is further submitted by the petitioner that the counting of votes in 21st round and the postal ballots were simultaneously counted and the announcement was made that the petitioner secured majority of 44 votes. By that time, the votes counted in 21st round and the postal ballots counted in 22nd round were not entered in Part-II of Form-17C and in the result sheet. On account of the pressure brought by the first respondent, the 12th respondent and the counting supervisors inflated more number of votes in favour of the first respondent than the votes secured and further reduced the number of votes secured by the petitioner so as to see that the first respondent is elected. Afterwards, the entries were made regarding the votes polled in 21st and 22nd rounds of counting in the Part-II of Form-17C and in the result sheet. The version of the petitioner is that as per rules, the postal ballots have to be counted and

entered in the result sheet at the beginning of the counting of the votes in EVMs. But, in the present case the counting personnel purposely counted the postal ballots at the end of counting in order to manipulate the success of the first respondent. The counting of votes in rounds 19 and 20 are entirely from Jangaon Town where the petitioner secured large majority of 1867 and 845 votes respectively in spite of the manipulation of votes already made. According to the petitioner, he should have secured a majority of more than 1000 votes in 21st round of counting. But, on account of manipulation of the votes actually secured a majority of 326 votes only. According to him, out of 653 postal ballots, the petitioner could have secured more than 300 votes if properly counted. Out of 653 votes, 142 votes which were validly polled in favour of the petitioner were illegally declared as invalid. Another 52 votes polled in favour of the petitioner were counted in favour of the first respondent. 45 invalid votes were illegally counted in favour of the first respondent.

5. It is further submitted by the petitioner that the announcement made by the 12th respondent that the petitioner secured 44 votes majority was informed to the electronic media which had telecast the said news immediately by TV channels like TV9, TV5, NTV and Gemini TV. He specifically stated that the said news telecast by TV9, TV5 and NTV was recorded in one CD which is marked with its translation as Annexure-A-7 and A8 and the TV news telecast by Gemini TV which is recorded in another CD with its translation is filed as Annexure 9 and 10. The petitioner's version is that as the announcement was made initially that the first respondent lost by 44 votes and since nobody filed a petition for recount of votes, the returning officer ought to have declared the result of election within a maximum period of five minutes, but he had not done so. Nextly, it is submitted by him that when the 12th respondent and counting personnel were planning to declare the 1st respondent as elected, after arrival of the 1st respondent, the petitioner's election agent Sri K. Srinivasa Reddy informed the petitioner about the irregularities in the counting of votes from the beginning and that counting personnel were intentionally planning to declare the 1st respondent as elected, the petitioner sent a Fax message to the Chief Election Officer at 3.32 PM to recount immediately and take necessary action against the officers concerned. But, the petitioner learnt that no action was taken on his Fax message. The copy of the Fax message and the receipt are filed as Annexures 11 and 12. It is submitted by the petitioner that he could not be present at the time of counting on account of performing the final obsequies of his father who expired on 13.05.2009.

6. According to the petitioner, in the process of manipulation of votes by the 12th respondent and the counting personnel, they have counted 80 votes more than the votes actually polled. The total number of votes polled is 1,51,331 while the total number of votes counted is 1,51,411 votes. On account of irregular and illegal counting of votes, the first respondent was declared as elected. The version of the petitioner is that if all the control units of EVMs are reopened and counted properly, the petitioner would get elected with a huge majority of not

less than 25000 votes. Therefore, according to him, the election is materially affected on account of the irregular counting of votes.

7. Thus, in the election petition, the petitioner contends that:

a) Declaration of the result of the first respondent as elected is vitiated on account of collusion of the returning officer and the counting personnel with the first respondent. The first respondent was elected in 2004 elections from Old Jangaon Assembly Constituency and the 12th respondent has been working under him as Revenue Divisional Officer at Jangaon and the 12th respondent is under the influence of the 1st respondent;

b) The Returning Officer and counting personnel did not enter actual number of votes counted in favour of the petitioner and the 1st respondent in Part II of Form 17C and the Result Sheet, they inflated the votes polled in favour of the 1st respondent by reducing the number of votes secured by the petitioner, on account of which the result is materially affected. If all the votes secured by the petitioner and the 1st respondent are correctly counted, the petitioner could have been declared by a large margin of more than 25,000 votes which he secured in 2004 general assembly elections.

c) The Returning Officer after the counting of all the votes, announced that the petitioner secured majority of 44 votes than the 1st respondent which was telecasted immediately in the electronic media also. After announcing that the petitioner secured majority of 44 votes, the returning officer has no jurisdiction to recount the votes in the absence of any petition for recount and an order for recount of votes

d) The votes were irregularly counted is evident from the fact that excess of 80 votes were counted than the votes actually polled. The number of votes polled is 1,51,331 while the number of votes counted is 1,51,411 votes.

8. On the aforesaid grounds, the petitioner sought a direction for recount of votes and to set aside the election of the first respondent on the ground that it was materially affected due to illegal and irregular methods adopted in recounting of votes and to declare him as elected from 98-Jangaon Assembly Constituency, Warangal District in the General Assembly Elections held in 2009.

9. The first respondent-turned candidate and the 12th respondent-Returning Officer filed separate Written Statements. The remaining respondents have not chosen to file their written statements.

10. Apart from specifically denying the allegations mentioned in the election petition, the first respondent in his written statement contended as follows:- The averment made in the election petition that TRS party was very strong in all the four Mandals of erstwhile Cheryal Assembly Constituency as well as Jangaon Municipality and Jangaon Rural Mandal is stated to be absolutely incorrect and without any basis. According to the first respondent, the voting pattern will depend upon several factors and will be changing from time to time. He

submitted that there was an electoral alliance between TRS party, Telugu Desam Party and both Communist parties in the General Elections held in April, 2009 and Jangaon Assembly seat was allotted to TRS party in the seat adjustments. The assertion made by the petitioner that he was having the support of three other political parties and must secure large majority of at least what he has secured in 2004 General Elections is said to be not at all correct. According to the first respondent, it is nothing but own imagination of the petitioner, which is vague and on that hypothetical basis, the petitioner cannot plead that he will win the election with large majority of votes. The first respondent also denied that the survey reports of the Government channels as well as private channels indicated that the petitioner would succeed against the first respondent with huge margin of votes. As regards the survey conducted by News Channels, the first respondent stated that the voting pattern will depend upon the policies of the political parties, the reputation of the candidate and local factors etc., and therefore, it cannot be said that the petitioner had strong support in the constituency and ought to have been elected with huge majority of votes.

11. As to the allegation that the first respondent brought pressure on the 12th respondent-Returning Officer, it is submitted by the first respondent that he never brought pressure and that the petitioner failed to give any material facts or particulars whatsoever as to when and at what time and place the first respondent brought pressure on the Returning officer and counting personnel to manage that the first respondent be elected. In regard to the allegation that on the instructions of the Returning Officer, the counting personnel delayed the counting process so as to manipulate the winning of first respondent it is said to be vague, baseless and incorrect. According to the first respondent the time required for completing the counting process especially when EVMs were used depends upon the number of polling stations and number of tables arranged in that particular counting hall. He submitted that in the instant case, there are 251 polling stations in 98-Jangaon Assembly Constituency and 12 counting tables were arranged for counting purpose. It took 21 rounds to complete the counting apart from counting of postal ballots at the Returning Officer's Table in the beginning of the counting of regular votes itself. According to him for each round of counting, it takes about 20 minutes and as such, it took about seven hours to complete the counting. In the instant case, the counting was started at 8.00 AM., and completed by 3.15 or 3.30 P.M. And the contest was mainly between the Election Petitioner and first respondent.

12. As to the allegation that the petitioner was securing large majority of votes in each round of counting against the first respondent, but the Counting Supervisors instead of recording the correct number of votes secured were inflating votes secured in favour of the first respondent than what he actually secured and proportionately decreasing the number of votes polled in favour of the petitioner than what he actually received, the first respondent submits that the said allegation is absolutely false and invented for the purpose of filing the Election Petition. He stated specifically that the said allegations are vague and

bereft of material facts and particulars and without there being any supporting material as to how the counting personnel indulged in manipulating the votes and also the effect of the trend of the counting of votes in other constituencies in the State influence the counting process in the instant case. He submitted that the purpose of permitting the Counting Agents of the candidate is to observe the counting process and if any irregularities alleged to have been committed by the counting personnel, the counting agents of the respective candidates have to bring it to the notice of the Returning Officer or the Election Observer then and there itself for rectifying the said irregularities. In the instant case, neither the Election Agent of the petitioner nor the counting agents brought to the notice of the Returning Officer nor Election Observer in writing about the irregularities said to have been committed either by the counting personnel or the Returning Officer requesting them to rectify the same. It is further submitted that the petitioner failed to mention the details with regard to the irregularities alleged to have been committed by the counting personnel, the table number and number of round etc., and also the names of the counting Agents of the election petitioner who were present at the respective tables and how the Election Petitioner/Election Agent came to know about the alleged irregularities and the steps taken by them immediately. According to the first respondent, the said allegation is vague and without any supporting material and therefore, it has to be rejected.

13. As regards the allegation that after 3 or 4 rounds of counting, the counting personnel stopped displaying of votes counted in respect of other rounds of counting on the black board, the counting Supervisors are taking the signatures of counting agents hurriedly stating that they must go for the next round of counting and if there are any mistakes they can be corrected at the Returning Officer's Table and the Returning Officer was saying that he would look into the complaints at the end of counting of votes and this method of recording incorrect figures went on till the end of counting of all the votes, but the 12th respondent did not count or correct the actual votes counted in spite of the request made by the election agent of the petitioner, the first respondent submitted that all the said allegations are vague, bereft of material facts and particulars and without placing any supporting material and therefore, they have to be rejected.

14. In respect of the allegation that in spite of the irregularities committed by the counting personnel, the petitioner secured 44 votes than the first respondent and the 12th respondent announced that the petitioner secured majority of 44 votes than the first respondent is absolutely baseless and invented for the purpose of filing the Election Petition. According to the first respondent, the election petitioner having lost the election has resorted to file the election petition on frivolous, vague and baseless allegations with a view to harass him. He specifically stated that there is nothing on record to show that either the Election Agent or the Counting Agents of the petitioner made any complaint whatsoever in writing either to the Returning Officer or to the Election Observer about the various irregularities alleged in the Election Petition during counting and

requesting them to rectify the same.

15. As regards the representation sent by the Election Petitioner to the Chief Election Officer, Government of Andhra Pradesh on 16-5-2009, the first respondent submitted that in the said representation, there is no whisper about the irregularities alleged to have been committed by the counting personnel at the time of counting except stating that the officials intentionally planning to declare the first respondent as elected and requesting for recounting of votes. According to the first respondent, all the above circumstances clearly show that the election petitioner having lost the election filed the present Election Petition with vague and baseless allegations.

16. As to the allegation that after announcing that the petitioner secured majority of 44 votes over the first respondent, the 12m respondent gave a pause to see whether any candidate files a petition for recount of votes, since no petition was filed, he should have declared the petitioner as elected within five minutes thereafter and at that stage, the first respondent came into the counting hall and had a long discussion with 12th respondent, on account of which, the declaration of petitioner as elected was delayed for 45 minutes and first respondent was present at the Returning Officer's Table till the declaration was made that he was elected by a margin of 236 votes, the first respondent submitted that they are all baseless and invented for the purpose of filing the election petition. As to these allegations also, the first respondent submits that there is absolutely no supporting material whatsoever in respect of the various irregularities alleged to have been taken place in the counting process and therefore, they have to be rejected.

17. According to the first respondent, postal ballots were counted at the first instance itself i.e., from 8-00 A.M., onwards and thereafter regular counting of votes was commenced, he submitted that announcement of votes secured by each candidate will be done only when the entire counting process is completed and the votes secured by respective candidates will be entered in the result sheet. He further submitted that in the present case, the averment made by the petitioner that there was an announcement that the petitioner secured majority of 44 votes and by that time the votes counted in 21st round and the postal ballots counted in 22nd round were not entered in Part II of Form 17-C and in the result sheet runs counter to the own pleadings of the petitioner.

18. It is further submitted by the first respondent that one of the counting agents of the petitioner is no other than the son of the petitioner, who did not make any written complaint whatsoever either to the Returning Officer or to the Election Observer or to any other authorities during the entire process of counting when such serious irregularities alleged to have been taken place. Therefore, according to the first respondent, the allegation that counting supervisors inflated more number of votes in favour of the first respondent than the votes secured and further reduced the number of votes secured by the petitioner so as to see that the first respondent is elected and afterwards entries

were made regarding the votes polled in 21st and 22nd rounds of counting in Part II of Form 17C and the result sheet are vague, baseless and without there being any material whatsoever placed on record.

19. The allegation such as, the election petitioner should have secured huge majority and also in fact secured majority of votes, but the counting personnel and Returning Officer manipulated the win of the first respondent are stated to be frivolous and wild and without there being any supporting material whatsoever. The first respondent submits that since they are all invented for the purpose of filing the present petition, they have to be rejected. The first respondent denied the averment made in the election petition that the electronic media which telecasted the announcement of 44 votes majority secured by the petitioner. The petitioner specifically mentioned in the election petition that the said news telecast was recorded in another CD with its translation and it is filed along with Election Petition as Annexure 9 and 10, but the first respondent submitted that the said Annexures are not at all enclosed along with the election petition as such, the copy of the election petition served on the first respondent is not in conformity with Section 81(3) read with Section 83 of the Representation of People Act, 1951 and the Election Petition has to be rejected on this count itself. It is further submitted by the first respondent that the petitioner did not state in the election petition as to who made the announcement that the petitioner secured 44 votes majority, the time and place etc., hence according to him it is vague and bereft of material facts and material particulars. It is contended by the first respondent that in the absence of Annexures 7, 8, 9 and 10, he is handicapped in meeting the averments made in the election petition.

20. According to the first respondent, the Returning Officer never made any announcement that the petitioner secured majority of 44 votes over the first respondent, therefore, according to him, the Returning Officer declared the result of the election within a period of 5 minutes of the announcement that the petitioner secured 44 votes majority does not arise. The said averment according to the first respondent is frivolous and without any basis. The question of either the first respondent or any other candidate filing any application for recount of votes does not arise as no announcement was made that the petitioner secured 44 votes majority over the first respondent. According to the first respondent, the fact is that the first respondent secured majority votes than the petitioner and 12th respondent declared the first respondent as elected.

21. As regards the allegation about the irregularities in the counting of votes and counting personnel were intentionally planning to declare the first respondent as elected after the arrival of the first respondent it is submitted by the first respondent that it does not find place in the FAX message sent by the petitioner to the Chief Election Officer which is filed as Annexure 11. The said allegation according to him is invented for the purpose of filing this Election Petition only and there is no contemporaneous material filed along with the election petition to show that there was any attempt on the part of either election agent or counting

agents of the petitioner to bring it to the notice of either Returning Officer or Election Observer who were present at the counting hall.

22. It is further contended by the first respondent that it is not clear as to how the election petitioner arrived at the figure of 1,51,331 as total number of votes polled and the said allegation is vague, bereft of material facts and without any supporting material. According to the first respondent, to arrive at the authenticated figure of votes polled, ballot paper account as mentioned in Part I, Form 17C of each polling Station has to be obtained and added up the votes polled in all the 251 polling Stations including the total number of postal ballots received, but the petitioner failed to do the same. It is further submitted by him that to arrive at the number of votes polled in any Assembly Segment one has to verify the number of votes recorded in Form No. 17A, Form No. 17C Part I and Part II of Form 17C and in addition to the same, the postal ballots have to be included. It is contended by the first respondent that in the instant case, the petitioner did not place any material whatsoever on record to show that there is a variation in the votes polled including the postal ballots and the votes counted and as to how the same materially affected the result of the election. Therefore according to the first respondent, the said allegation is baseless, vague and the same has to be rejected.

23. It is submitted by the first respondent that unless and until the petitioner states the material facts and material particulars along with the supporting material, the petition itself has to be rejected. According to the first respondent, the petitioner miserably failed to place any material facts and particulars in support of various averments made in the election petition and therefore, prayed to dismiss the election petition with costs.

24. The 12th respondent-Returning Officer filed his written statement denying the allegations mentioned in the election petition and contended as follows:- He submits that the counting arrangements were made strictly in accordance with the rules and instructions issued to him. The allegation of the petitioner that the 1st respondent being afraid of the defeat staring at him brought pressure on 12th respondent and counting personnel to manage that he is elected is absolutely false, vague and bereft of material facts and particulars. The allegation that in normal course the counting of votes will be completed within 4 hours i.e., by 12 noon is not correct as it will depend upon the number of polling stations in the constituency and number of counting tables arranged. He submits that in the instant case there are 251 polling stations and 12 counting tables were arranged for counting purpose, as such, it took 21 rounds to complete the counting of votes in addition to counting of postal ballots at the Returning Officer's table before beginning of counting of regular votes. He further submits that it took about 20 minutes for completing each round of counting process and the entire counting process was completed by about 3.30 P.M., and the contest was mainly between the Election Petitioner and the 1st respondent. The averment that the 12th respondent and counting personnel purposely went on

counting the votes slowly with a view to have some time for manipulation of votes and also to know the trend of the counting of votes in other Constituencies in the State according to 12th respondent is nothing but wild allegation made against him and counting personnel without furnishing any details whatsoever about the alleged manipulations. He further submits that the petitioner failed to state the basis for the averment that he was securing large majority of votes in each round of counting than the 1st respondent but the counting supervisors instead of recording the correct number of votes secured were inflating the votes secured in favour of the 1st respondent than what he actually received and proportionately decreasing the votes polled in favour of the petitioner than what he actually received. He denied the allegation that after 3 or 4 rounds of counting the counting personnel stopped displaying the votes counted in respect of other rounds of counting on the black board and he also denied the allegation that the counting supervisors were taking the signatures of the counting agents hurriedly stating that they must go for the next round of counting and if there are any mistakes, they can be corrected at the Returning Officer's table and that 12th respondent stated that he will look into the complaints at the end of the counting of votes and this kind of recording incorrect figures went on till the end of counting of all the votes. He further submits that neither the election agent nor the counting agents of the petitioner made any complaint whatsoever either orally or in writing during the entire process of counting in respect of the alleged irregularities by the counting personnel or by 12th respondent either to him or to the Election Observer who is also present till the completion of the entire counting process. He also denied the allegation that he did not count or correct the actual votes counted in spite of the request made by the election agent of the petitioner. He further submits that the entire process of counting was done under his supervision and no irregularity whatsoever had taken place during the counting process. He denied the averment that in spite of all that it was found after totaling of all the votes, the petitioner secured 44 votes than the 1st respondent and 12th respondent announced that the petitioner secured 44 votes than the 1st respondent.

25. He denied the averment that after announcing that the petitioner secured majority of 44 votes, the 12th respondent gave a pause to see whether any candidate files a petition for recount of votes, since no petition was filed, the 12th respondent should have declared the petitioner as elected within five minutes thereafter. He submits that as the petitioner did not get majority of votes over the 1st respondent and no announcement as alleged was made by the 12th respondent, as such, the question of filing a petition for recount of votes by any candidate and also the question of declaring the petitioner as duly elected does not arise. He denied the allegation that at that stage the 1st respondent came into counting hall and had a long discussion with 12th respondent on account of which, the declaration of the petitioner as elected was delayed for about 45 minutes and the 1st respondent was present at 12th respondent's table till declaration was made that he was elected by a margin of 236 votes. He

also denied the allegation that counting of votes in the 21st round and the postal ballots were simultaneously counted and the announcement was made that the petitioner secured majority of 44 votes. He further submits that the postal ballots were counted before commencement of the regular process of counting and no announcement was made stating that the petitioner secured majority of 44 votes. He denied the allegation that by that time, the votes counted in 21st round and the postal ballots were not entered in Part II of Form 17C and in the result sheet. According to the 12th respondent the announcement of votes secured by each candidate will be made after completion of entire process of counting and after entering in the respective result sheet and the concerned forms and as such, the question of announcement that the petitioner secured majority of 44 votes does not arise.

26. According to the 12th respondent the postal ballots have to be counted at the beginning of the counting of regular votes and the same was done in the instant case but the postal ballots account will be entered after entering the regular votes round wise in Form No. 20 result sheet. He denied the allegation that in the instant case the counting personnel purposely counted the postal ballots at the end of counting in order to manipulate the success of 1st respondent. He further submitted that the counting of votes in round No. 19 and 20 are from Jangaon town and the petitioner got 1867 and 845 votes respectively and denied that in spite of manipulation of votes already made, he got that majority. The 12th respondent denied the allegation that the petitioner should have secured a majority of more than 1000 votes in 21st round, but on account of manipulation of votes actually secured, he is shown to have secured a majority of 325 votes only. It is also denied by the 12th respondent that the petitioner could have secured more than 300 votes out of 653 postal ballots and out of 653 votes 142 votes which were validly polled in favour of the petitioner were illegally declared as invalid. He further submits that in fact, out of 142 postal ballots which were declared as invalid, 140 postal ballots which do not contain declaration in Form 13A were declared as invalid without even opening Form 13B covers containing postal ballots and in one postal ballot, there is no mark on the ballot paper at all whereas in another postal ballot the voting mark was not properly done. He further denied the allegation that 52 votes polled in favour of the petitioner were counted in favour of 1st respondent and 45 invalid votes were illegally counted in favour of the 1st respondent. According to the 12th respondent, the counting agent of the petitioner along with other counting agents of the candidates were present at the Returning Officer's table when the postal ballots were counted at the beginning of the counting of votes and none of them made any complaint whatsoever with regard to the alleged irregularities in counting of postal ballots.

27. The 12th respondent further submits that he never made any announcement to the electronic media that the petitioner secured 44 votes majority and the said allegation is vague and the petitioner did not state as to who made the said announcement and the basis for the electronic media to telecast the same. He

further submits that the CDs and translation which were marked as Annexures 7 to 10 are not served on him and as such, he has no opportunity to look into the contents of the same and on that basis itself, the Election Petition has to be rejected. He denied the averment that as the 1st respondent lost by 44 votes and since nobody filed a petition for recount of votes, the Returning Officer shall have to declare the result of election within a maximum period of five minutes since no petition for recount was filed.

28. The 12th respondent further denied the allegation that he and the counting personnel were planning to declare the 1st respondent as elected after arrival of the 1st respondent, the petitioner's election agent K. Srinivasa Reddy informed the petitioner about the irregularities in the counting of votes and the counting personnel were intentionally planning to declare the 1st respondent as elected, the petitioner sent a FAX message to the Chief Election Officer at 3:32 P.M., to recount immediately and take necessary action against the officers concerned. He further submits that after completion of the entire counting process, he declared the 1st respondent as duly elected and there was no complaint or any petition for verification of votes or recounting filed by any of the candidates or the election agents or counting agents either orally or in writing before declaration of the result of election.

29. The 12th respondent also denied the allegation that due to manipulation of votes made by him and counting personnel, they have counted 80 votes more than the votes actually polled and that the total number of votes polled are 1,51,331 votes. He submitted that the total number of votes recorded in the Electronic Voting Machines are 1,50,758 and the total number of postal ballots are 653 which comes to 1,51,411 votes and out of which, 142 postal ballots were found to be invalid and it is clear from Form No. 20 of the result sheet that the total number of votes counted are 1,51,411 and the total number of valid votes are 1,51,269 and the total number of votes rejected are 142. The 12th respondent further submits that the election petitioner having lost the election, made wild allegations against him and the election personnel without placing any material whatsoever prima facie to support the said allegations and as such, the same has to be rejected as he failed to make out any case and therefore, the election petition deserve to be dismissed with costs.

30. Basing on the above pleadings, the following issues are framed for trial:--

- 1) Whether there is any kind of recording of incorrect figures at each round of counting?
- 2) Whether Respondent No. 12 announced that the petitioner secured majority of 44 votes than respondent No. 1?
- 3) Whether respondent No. 1 made long discussion with respondent No. 12 on account of which declaration of result was delayed by about 45 minutes?
- 4) Whether respondent No. 1 was present at the table of the Returning Officer

when the declaration of result was made that respondent No. 1 was elected by a margin of 236 votes?

5) Whether counting of postal ballot papers is correct?

6) Whether the petitioner securing 44 votes majority was informed to the electronic and print media?

7) Whether there is any irregularities in counting of votes from the beginning?

8) Whether counting personnel were intentionally planning to declare respondent No. 1 as elected?

9) Whether there is any irregular or illegal counting of votes?

10) Whether total number of votes polled are equal to the total number of votes casted?

11) To what relief?

31. Before the learned Single Judge, who was initially dealing with the Election Petition, the first respondent filed an application i.e., Election Application No. 873 of 2009 Under Order VI Rule 16 of the Code of Civil Procedure, 1908 read with Section 83 and 87 of the Representation of People Act. 1951 to strike off paras III (5) to III (11) in the Election Petition as they are vague, frivolous and vexatious and dismiss the Election Petition as there is no triable issue in the said Petition. The learned Single Judge, dismissed the said application, holding that the pleadings cannot be struck off as unnecessary and also the Election Petition-.discloses cause of action and could not therefore, be dismissed at the threshold. Challenging the said order, the first respondent filed Civil Appeal No. 4993 of 2012 by Special Leave before the Hon"ble Supreme Court. The Supreme Court dismissed the said appeal confirming the order passed by the learned Single Judge of this Court.

32. The Supreme Court after going through a long line of decisions rendered by it earlier, made certain observations and it is necessary to take note of certain important observations as they are essential for the purpose of disposing of the Election Petition. They are as follows:

The averments made in the plaint or petition cannot be read out of context or in isolation. They must be taken in totality for a true and proper understanding of the case set up by the plaintiff. Just because a corrupt practice has to be strictly proved, does not mean that a pleading in an election petition must be strictly construed. The Court cannot refuse to enquire into the allegations made by the election petitioner merely because the election petitioner or someone who prepared his brief did not know the language of the law. We need only to emphasize that the burden which lies on an election petitioner to prove the allegations made by him in the election petition whether the same relate to commission of any corrupt practice or proof of any other ground urged in support of the petition has to be discharged by him at the trial. There is no, dilution of

that obligation when the Court refuses to dismiss a petition at the threshold. All that the refusal to dismiss the petition implies is that the appellant has made out a case for the matter to be put to trial. Whether or not the petitioner will succeed at the trial remains to be seen till the trial is concluded.

There is no denying the fact that the election of a successful candidate is not lightly interfered with by the Courts. The Courts generally lean in favour of the returned candidates and place the onus of proof on the person challenging the end result of an electoral contest. That approach is more in the nature of a rule of practice than a rule of law and should not be unduly stretched beyond a limit. We say no because while it is important to respect a popular verdict and the Court ought to be slow in upsetting the same. It is equally important to maintain the purity of the election process. An election which is vitiated by reason of corrupt practices, illegalities and irregularities enumerated in Sections 100 and 123 of the Representation of People Act cannot obviously be recognized and respected as the decision of the majority of the electorate. The Courts are therefore, duty bound to examine the allegations whenever the same are raised within the framework of the statute without being unduly hyper-technical in its approach and without being oblivious of the ground realities. Experience has shown that the electoral process is, despite several safeguards taken by the Statutory Authorities concerned, often vitiated by use of means, factors and considerations that are specifically forbidden by the statute. The electoral process is vulnerable to misuse, in several ways, in the process distorting the picture in which the obvious may be completely different from the real.

33. In the judgment rendered by the Hon''ble Supreme Court in Civil Appeal No. 4993 of 2012, filed against the order of the learned Single Judge, it has been finally determined that the averments made in the election petition discloses the cause of action and therefore, it cannot be dismissed in limini. The said issue therefore cannot be re-agitated. However, while disposing of this election petition, the crucial observations made by the Hon''ble Supreme Court that there is no dilution of the obligation required to be discharged by the petitioner to prove the illegalities or irregularities allegedly took place in counting of votes by the requisite standard has to be kept in mind and this Court has to find out whether the petitioner by placing on record a cogent and convincing evidence in proof of the allegations made in the election petition could be able to discharge the said obligation.

34. Now, therefore, the aforementioned issues framed in the election petition have to be answered with reference to the pleadings and the evidence adduced on either side in proof of the respective contentions.

35. ISSUE No. 6: One of the main contentions raised by the election petitioner is that in respect of the irregularities committed by the counting personnel, an announcement was initially made by the returning officer that the election petitioner secured 44 votes majority over the first respondent and the said fact was informed to the electronic media which had been telecast in the respective

channels immediately. The T.V. channels are said to be TV9, TV5, NTV and Gemini TV. The election petitioner specifically stated in the election petition that the news telecast by TV9, TV5, NTV and Gemini TV was recorded in one CD which is marked with its translation as Annexures-A7 & A8 and T.V. news telecast by Gemini TV which is recorded in another CD with its translation is filed along with the Election Petition as Annexures-IX & X. According to the election petitioner after announcement that the petitioner secured majority of 44 votes, the returning officer has no jurisdiction to recount the votes in the absence of any petition for recount and an order for recount of votes. The case of the election petitioner is that after the said announcement initially made, as there was no petition for recount of votes filed on behalf of any of the candidates, the 12th respondent ought to have declared the petitioner as duly elected within 5 minutes thereafter, but at that time, the first respondent came into the counting hall and had a long discussion with the 12th respondent, on account of the long discussion, the declaration of the petitioner as elected was delayed for about 45 minutes.. The first respondent was present at the returning officer's table when the declaration was made that the first respondent had won the election by margin of 236 votes. Thus, according to the petitioner, the declaration of the first respondent as elected by 236 votes is on account of the pressure exerted by the first respondent on the returning officer. It is specifically contended by the first respondent in his written statement that in proof of the said allegation, no material has been placed on record by the petitioner. It is also specifically alleged in the written statement of the first respondent that the said annexures are not at all enclosed to the election petition and the copy of the election petition furnished to the first respondent is not in conformity with Section 81(3) r/w. 83 of the Representation of People Act, 1951 and the election petition has to be dismissed on this count itself.

36. Curiously, with reference to the said allegation made in the written statement, the petitioner did not make any averment in the chief examination affidavit. In the cross-examination, however, the petitioner who was examined as PW-1 volunteered to state that he filed CDs. with translation to the respondents. He admitted in the cross-examination that he stated in the chief examination affidavit that he mentioned that the announcement was made by the returning officer, but, he did not mention in the election petition that the announcement was made by the returning officer. As to this, the specific contention of the first respondent is that no such announcement was ever made and the declaration of result made only once to the effect that the first respondent had won the election by a majority of 236 votes, in such an event, it is obligatory on the part of the petitioner to produce the CDs. at the trial and to examine any of the reporters of the news channels to prove that such a news item had in fact been telecast. The petitioner, though stated in the cross-examination that he obtained the copies of the CDs. from the respective news channels and filed them into the Court, none of the persons of the news channels have been examined by the petitioner. He also stated in the cross-examination that he had no idea about the names of the

reporters of the news channels which are mentioned in the list of the witnesses. As the petitioner failed to adduce any authenticated evidence except his self-serving oral testimony, an adverse inference against him can safely be drawn to the effect that as rightly contended by the first respondent, no announcement that the petitioner secured 44 votes majority over the first respondent was initially made by the returning officer. Hence, this issue is answered in favour of the first respondent and against the petitioner.

37. Issue Nos. 1, 7, 8 and 9:

In fact, all these issues relate to a common question whether the petitioner could be able to prove any irregularity or illegality committed in the process of counting of votes by the counting personnel at the behest of the returning officer. The burden to prove that any such irregularities have taken place is squarely on the petitioner. The version of the petitioner is that the first respondent who was afraid of the defeat staring at him brought pressure on the 12th respondent and the counting personnel managed to see that he is elected. Thereupon, the returning officer-12th respondent and the counting personnel acceded to his request and slowed down the counting process with a view to gain some time to manipulate the votes. Accordingly, they resorted to reduce the votes secured by the petitioner and inflate the votes in favour of the first respondent. The evidence of the election petitioner and the witnesses examined on his behalf shows that the counting supervisors were not recording correct number of votes secured and they were inflating the votes secured in favour of the first respondent than what he actually received and proportionately decreasing the number of votes polled in favour of the petitioner. The election agent and some of the counting agents who were examined as witnesses on behalf of the petitioner stated in their affidavits filed in the chief examination that they raised objections against the irregularities committed by the counting personnel in the aforesaid fashion orally, but, the returning officer did not consider them and told them if there are any irregularities, they would be looked into at the end of the counting.

38. In this context, it is relevant to notice that admittedly the counting personnel would be selected on random basis by the election authority at about 5.00 a.m. on the date of counting and those counting personnel will be made known only in the morning hours as to where they will have to discharge their duties. Therefore, obviously, it cannot be said that the counting personnel who are favourable to the first respondent were only posted in the counting hall relating to the present election. The evidence adduced on behalf of the petitioner shows that from the beginning the election agent as well as the counting agents noticed the irregularities committed by the counting personnel. Obviously, they did not raise any objection in writing before the returning officer. The evidence let in by the petitioner is to the effect that though the election agent and the counting agents were raising objections orally, the returning officer was brushing aside the objections which were not filed at any time till the entire counting process was

over. Admittedly, media persons of various newspapers were also present in the seats provided for them in the counting hall. If continuously objections were being raised regarding the irregularities in the counting, certainly it would attract their attention, but, no such thing happened in the present case.

39. There is an election observer to whom the election agent or the counting agents had the opportunity to inform about the irregularities, if any, in the process of counting, but, there is no documentary proof showing that the election agent informed the election observer about the irregularities occurred in the counting process. As per the procedure, after recording in the relevant records the number of votes secured by each candidate in the EVM, they will be sent back to the stores. If the counting agent of the party wanted to know the votes polled of each candidate on any protest, the EVM will be shown to him, but, in the present case, it is not the version of the petitioner that at any point of time, any of the counting agent insisted to verify the actual votes polled from the EVMs. Admittedly, the forms containing the votes secured by each candidate for each count would be furnished to the counting agents for the purpose of verifying the correctness of the entry of number of votes made in the forms. In the instant case, all the counting agents signed in the said forms without any protest. The purpose of furnishing of those forms and obtaining the signatures of the counting agents is to afford an opportunity to the counting agent to verify the correctness of the votes mentioned in the said form and then to sign. Moreover, in this case, the contest was only between the petitioner and the first respondent. In such an event, the counting agents had sufficient time and opportunity to verify the forms and to examine the correctness of the votes polled in respect of the candidates in the forms. If there is any variation, the counting agent may refuse to sign in the said form or he can mention in the said form that the votes were not correctly mentioned in the said forms. But, in the instant case, any of the counting agents did not raise any such protest in the forms in writing nor did they refuse to sign in the forms. PW-2 admitted in the cross examination that the purpose of appointing election agent or the counting agents is to find out whether the votes were properly incorporated in the respective forms and if there is any irregularity to report the same to the returning officer in writing. He also admitted that if the votes were wrongly incorporated in the forms it is a serious irregularity. But, PW-2 sought to explain that though it was a serious irregularity, they informed the same to the returning officer orally, but they did not raise any objection in writing because the returning officer did not allow them to do so by saying that he would rectify it at a latter point of time. This explanation seems to be quite unconvincing. The evidence as let in on behalf of the petitioner is to the effect that from the beginning there had been in-correct recording of votes, but, curiously at no point of time, no written objection was raised either by the election agent or by the counting agents". PW-2 admitted in the cross examination that it is not mentioned in the election petition or in his chief affidavit that the returning officer did not allow them to raise objection as to the counting of votes in writing.

Therefore, obviously this theory is only an improvement which in fact did not find place in the basic version contained in the election petition. PW-1 was unable to state in his evidence the names of the counting agents who informed him about any specific irregularities came to their respective notice. PW-2 also admitted in the cross examination that either the election agent or the candidate will be having opportunity to move in the counting hall, interact with the counting agents and to raise any objection before the returning officer in writing if there are any irregularities. But, the fact remains that PW-2 the counting agent did not raise any objection in writing before the returning officer or the election observer. PW-2 also admitted in the cross examination that there was opportunity for the counting agents to note down any irregularity committed in the process of mentioning the votes in the required forms, but, none of the counting agents did specify the actual number of votes secured by the candidates and the number of votes which were incorporated in the forms.

40. PW-2 further admitted that the petition seeking recount can be filed by the candidate or by the election agent. He said that he knew that a petition for recount should be given in writing, but he did not file any petition in writing seeking recount of votes except requesting for recount orally. Except the bald assertion that irregularities took place. in the process of counting by inflating the votes in favour of the first respondent and reducing the votes and counting less number of votes for the petitioner than which he had actually secured, no details have been furnished either in the election petition or in the chief examination of any of the witnesses examined on behalf of the petitioner. The irregularity complained of is not confined to one counting table or one count. The evidence of the witnesses examined on behalf of the petitioner shows that the irregularity in the counting was through out the counting process and continued till the end of counting of votes. Normally, the counting agents would note down the votes secured by their candidate. But, in the instant case, the particulars of actual votes secured by the petitioner or the first respondent at any particular count and the particulars of the incorrect figures had not been mentioned. PW-1 admitted in his evidence that he was informed by the counting agent that once the District Collector visited the counting hall. He states that he does not remember whether his counting agent brought to the notice of the Collector about any irregularities in the manner of counting. The witnesses examined on his behalf did not state that they brought to the notice of the Collector about the irregularities committed in the process of counting.

41. PW-2 (Sri K. Srinviassa Reddy) the election agent of the petitioner is no other than his maternal uncle. PW-4 (K. Rakesh) one of the counting agents of the petitioner is the son of the petitioner.

42. The version of the petitioner which can be seen from the contents of the election petition and the evidence adduced on his behalf is to the effect that there had been irregularities in the counting in the entire process and it continued persistently despite the oral objections raised by the election agent

and the counting agents till the end of the counting. The evidence on record shows that there was opportunity for the election agent as well as the counting agents to raise objection in writing. Apart from other counting agents, there are PW-2, the election agent who is the maternal uncle and PW-4, the counting agent who is the son of the petitioner. If really the irregularities took place in the counting process, the normal course of conduct, more particularly of PW-2 and PW-4 would be to raise an objection in writing regarding the irregularities by furnishing the particulars which are available with the counting agents. But, admittedly no objection in writing was put-forth by them. No details or particulars as to the irregularities occurred in the counting process have been mentioned in the election petition are spoken to by the witnesses examined on behalf of the petitioner in the course of evidence. The entire evidence is only to the effect that the irregularities in the form of inflating votes in favour of the first respondent and reducing the votes secured by the petitioner took place in the counting of votes. Since the petitioner could not be able to furnish the details relating to irregularities and the entire evidence being the oral testimony of the witnesses, I am of the considered view that the petitioner failed to prove that the irregularities were committed during the process of counting of votes. Thus, these issues are answered against the petitioner.

43. ISSUE NOs. 2, 3 AND 4:

The contention of the petitioner is that initially the Returning Officer made announcement that the petitioner secured majority of 44 votes, no petition was filed by the first respondent or any other contesting candidate for recount of votes, in such an event, the 12th respondent ought to have declared the petitioner as duly elected within five minutes, but at that stage, the first respondent entered into the counting hall and had long discussion with 12th respondent. On account of the said discussion, the declaration of the petitioner as elected was delayed for about 45 minutes. The first respondent was present at the Returning Officer's Table till the declaration was made that the first respondent was elected by a margin of 236 votes. But according to the first respondent only once the declaration was made after the entire process of counting that the first respondent had won the election by a margin of 236 votes, the theory that the initial announcement was made to the effect that the petitioner secured 44 votes majority, then the declaration of the result was delayed on account of the interference of the first respondent is purposely invented for the purpose of this Election Petition. The aforesaid theory put forth by the petitioner was only orally supported by the witnesses examined on behalf of the petitioner, but there is no other evidence substantiating the version of the petitioner that initially there was an announcement made by the Returning Officer that the petitioner secured 44 votes majority and then at the interference of the first respondent, the declaration of result was delayed and the first respondent was declared as elected by a margin of 236 votes. There are counting agents of the other contesting candidates, but none of them was examined to establish the said fact. The petitioner also did not take any steps to examine the

Election Observer to prove his theory.

44. The petitioner mentioned in his Election Petition and also in his evidence that initially announcement of petitioner securing 44 votes majority had been transmitted in the electronic media and it had been telecast in the respective News Channels immediately, but the petitioner did not examine any of the media persons from the News Channels. While answering issue No. 1, it is held that on account of non examination of any of the media persons to prove the said fact, an adverse inference can be drawn against the petitioner to the effect that no announcement was made by Returning Officer that the petitioner secured 44 votes majority over the first respondent.

45. The Returning Officer was examined as RW.5 and he categorically stated in his evidence that no irregularities were committed in the process of counting of votes and no initial announcement to the effect that the petitioner secured 44 votes majority over the first respondent was ever made. RW.5 flatly denied the allegation that he and counting personnel were planning to declare the first respondent as elected. He specifically stated that after completion of the entire counting process, he declared the first respondent as duly elected. He also stated that no complaint or any objection was raised by any of the candidates or Election Agents or Counting Agents for recount of votes before declaration of the result of election. He further stated that the Election Petitioner having lost the election, made wild allegations against him and the counting personnel without placing any material whatsoever in support of the said allegations. He stated that no objection was raised by the counting agents of the petitioner to the effect that the counting personnel were hurriedly obtaining their signatures on the respective forms without properly allowing them to find out the details of votes secured by each candidate. For this contention, he explained that he and the election observer were moving in the counting hall and therefore there was ample opportunity for the counting agents of the petitioner to raise any objection, at the same time they can also endorse the objection if any on the respective forms. Since they have not brought to his notice any objection, he can say that they did not raise any objections at all. He further clarified that the election agents of the candidates will be sitting next to him and therefore they can bring it to his notice any objection and the election agent of the petitioner did not raise any objection before him.

46. The 12th respondent joined as Revenue Divisional Officer, Jangaon after getting through Group-I service in July, 2008 and worked there upto April, 2011 in the same capacity.

47. The 1st respondent was admittedly Minister in the State Cabinet. The contention of the petitioner is that 12th respondent was under the influence of the first respondent and therefore, he manipulated the counting of votes at the instance of the first respondent. The said fact has been denied by the 12th respondent in his evidence as RW-5. His version is that there is no truth in the said allegation and no irregularities have been committed in the process of

counting of votes, the petitioner having lost the election, resorted to make wild allegations against him for the purpose of filing the election petition.

48. Except the self-serving oral testimony of the witnesses examined on behalf of the petitioner, absolutely there is no material brought on record showing that 12th respondent committed any irregularities in the process of counting of votes. In his cross-examination he was questioned as to whether he rejected the nomination of one Loknath Reddy as counting agent of the petitioner on the ground that the said Loknath Reddy was made as an accused in the criminal case. He stated that he does not remember whether he accepted the nomination of one Muthyala Kistaiah as counting agent of first respondent though he was also an accused in connection with an election offence.

49. The 12th respondent was also cross examined on the point that he allowed RW-2-(Ponnala Murali Krishna) son of the first respondent to act as election agent of his father even though he was not qualified to be the election agent as he was not the voter of the assembly constituency. The 12th respondent replied that he does not know whether a person who is not a member of Assembly or Parliament Constituency can become election agent of a contesting candidate of the said constituency. He stated that he had not verified as to whether the election agent of the first respondent is a citizen of United States and not voter of Jangaon constituency and therefore, he was not eligible as election agent of the first respondent.

50. Even if the version of the petitioner is true on the aforesaid aspects, there is no evidence to show that an objection was raised before the 12th respondent about the ineligibility of the election agent or counting agent of the first respondent and despite the said fact, 12th respondent allowed them to act as agents on behalf of the first respondent.

51. On account of the aforesaid contention on this aspect, I am of the view that an opinion can not be formed that the 12th respondent was obliging the first respondent and resorted to irregularities in counting process and ultimately declared the first respondent as elected though the petitioner got majority over the first respondent. AS already stated except the self-serving oral testimony of the witnesses examined on behalf of the petitioner, absolutely there is no material worth consideration brought on record by the petitioner to prove that irregularities have been committed in the process of counting of voters to see that first respondent is elected.

52. As to the presence of the first respondent in the counting hall, the witnesses examined on behalf of the petitioner stated that the first respondent entered the counting hall exactly when the announcement was made by the 12th respondent that the petitioner secured 44 votes majority over the first respondent and had a long discussion with the returning officer and ultimately at the intervention of first respondent and on being influenced, the 12th respondent declared the first respondent as elected by a majority of 236 votes.

53. According to the petitioner's witnesses, the discussion went on for a period of 45 minutes before declaring the first respondent as elected. If such long discussion had taken place, certainly it would attract the attention of the election observer and it would be conveyed to the media persons present at the counting hall and when the discussion was going on, the election agents and counting agents would have informed the same to higher authorities that after the announcement was made by the returning officer that the petitioner secured 44 votes majority over the first respondent, a discussion was going on and there is possibility of manipulation of result. But, no such attempt was made either by the election agent or counting agents of the petitioner. Moreover, the agents of the other candidates who were present in the counting hall would have certainly protested against the first respondent's intervention and having a long discussion with 12th respondent.

54. The entire evidence available on record only discloses that the first respondent came to the counting hall. But, absolutely there is no evidence either to prove or enable the court to draw an inference that at the intervention of the first respondent and after he had a long discussion with the returning officer, the election result was manipulated and ultimately, the first respondent was declared elected. In the absence of any convincing and cogent evidence or the circumstances which were prevailing in the counting hall at the time of counting it is highly difficult to presume that such an irregularity had taken place. Any contesting candidate can enter into the counting hall. Merely because the first respondent entered the counting hall, it cannot be automatically presumed that he influenced the returning officer and manipulated the election result and ultimately got himself declared as elected by the returning officer by a margin of 236 votes.

55. For all these reasons, I have no hesitation to conclude that the petitioner failed to prove that initially the 12th respondent announced that the petitioner secured 44 votes majority than the first respondent and at that time the first respondent entered the counting hall and had a long discussion with 12th respondent and by influencing the returning officer got him declared as elected by a margin of 236 votes. The petitioner failed to prove this aspect also and as such, these issues are answered against the petitioner.

56. ISSUE NO. 5: The contention of the petitioner is that as per the rules the postal ballots will be counted in the first instance and only after completion of the counting of postal ballots, the counting of votes from EVMs will be commenced. According to the petitioner in order to manipulate the election result in favour of the first respondent, the returning officer got the postal ballots counted after the counting of votes from the EVMs was completed. As to the procedure, RW-5, the Returning Officer stated in the cross examination that the counting of postal ballots will be commenced prior to the commencement of counting of regular votes. In the instant case, he states that 15 minutes after the commencement of the counting of postal ballots, the counting of votes from the EVMs were

commenced. According to him, after completion of counting of postal ballots, they will enter the votes secured by each candidate from the postal ballots in the final result sheet. RW-5 does not admit that only after completion of postal ballots, the counting of votes from EVMs will be commenced.

57. Here it is necessary to examine the evidence of PW-4, a counting agent of the petitioner and he was in-charge of counting of postal ballots. He is no other than the son of the petitioner. He stated in his evidence that the postal ballots were not counted before the commencement of the counting of votes. When he asked the returning officer about the same, he informed that the postal ballots will be counted in due course. PW-4 deposed that the returning officer informed him that the postal ballots will be counted in due course but they were counted only after the completion of all the votes and he informed the said fact to his election agent. His version is that the total postal ballots polled were 653, out of 653 postal ballots, 142 postal ballots which were validly polled in favour of the petitioner were illegally declared as invalid without giving any reason, another 52 votes polled in favour of the petitioner under postal ballots were counted in favour of the first respondent. Further 45 postal ballots which were declared as invalid votes were illegally counted in favour of the first respondent. He said that when he raised objection on the irregularities, the returning officer ignored his objections saying that he is counting the postal ballots correctly. Even this aspect according to him was also informed to their election agent.

58. PW-4, as per his evidence in the cross examination he did Masters in Construction Management in U.S. He knows the procedure prescribed for counting of postal ballots. The counting agents of other candidates were also present on the dais of the returning officer and also the electronic media at the time of counting of postal ballots. The contesting candidates were also coming now and then to the returning officer's table. Their election agent PW-2 was also present at the returning officer's table. It took more than one hour for counting the postal ballots. He did not give any complaint in writing to the returning officer for not following the procedure viz. counting of postal ballots should be prior to counting of votes from EVMs. PW-4 sought to explain in the cross examination that because of the tense situation he could not give objection petition in writing regarding the irregularities took place in the counting of postal ballots. But, he informed the election agent about the same, who in turn told the returning officer and the returning officer said that he was getting the postal ballots counted correctly. But, PW-4 did not state in his chief affidavit that because of the tense situation he could not give any objection petition in writing. He admitted in the cross examination that if the declaration is not in accordance with Form No. 13-A the postal ballot will be rejected without opening the cover containing the ballot. He further admitted that it may be a fact that if the declaration is not in proper form the cover in which the postal ballot paper was put will not be opened and in such an event it is not possible to know in whose favour the voter exercised his franchise. He further stated that some times the counting personnel were counting the votes in favour of the first respondent

though the voter voted for the petitioner in the postal ballot and they were rectifying the mistake when he raised the objection and on some occasions when no objection was raised they were counting the votes in favour of the first respondent. He also stated in the cross examination that he noted down on a paper the particulars of votes wherein the mistake was not rectified by the counting personnel even-after his raising objection. He stated that he also noted down about 142 postal ballots validly polled in favour of the petitioner which were declared invalid. Thus, the evidence of PW-4 in the cross examination shows that he was noting on a paper about the irregularities committed in the counting of postal ballots but he stated that he did not give the said paper to his father as the paper was lost in the commotion which took place in the counting hall. He did not state the said fact in his chief affidavit. The fact was also obviously not mentioned in the election petition. His evidence further discloses that only basing on his remembrance he informed the figures to his father.

59. According to the first respondent, the aforesaid irregularities spoken to by PW-4 in his evidence are also a concocted story designed for the purpose of filing of the election petition. The returning officer as RW-5 stated in his evidence that 15 minutes prior to commencement of counting of votes from EVMs, the counting of postal ballots was commenced and at the end the votes secured by each candidate were incorporated in the final result sheet. For arguments sake even if it is accepted that the counting of postal ballots shall be completed prior to the commencement of counting of votes from EVMs and it is not followed, it is only an irregularity and it does not materially affect the result, unless it is shown that some irregularities have been committed by the counting personnel while counting postal ballots. Therefore, the basic requirement for the petitioner is to establish by reasonable standard that the counting personnel resorted to manipulation at the time of counting of postal ballots. The election agent is the maternal uncle of the election petitioner and PW-4 who was the counting agent for postal ballots is no other than the son of the election petitioner who did Masters in Construction Management in U.S. Both of them admitted that they knew about the procedure prescribed for counting of postal ballots. The evidence of PW-4 is that he was noting down the irregularities committed in the counting of postal ballots on a paper and he was also informing the irregularities to PW-2, the election agent. If that is so, it is not understandable as to what prevented either to PW-4 or PW-2 to give an objection petition to the returning officer about the irregularities. The figures mentioned by PW-4 are only based on his oral testimony and there is no documentary proof to show that he noted down the said figures on coming to know about the manipulation of postal ballots done by the counting personnel. In the absence of any objection petition given in writing to the returning officer and if the witnesses for the first time state some figures in their evidence presumably basing on their remembrance, they cannot be taken at their face value for the purpose of taking a decision in favour of the petitioner directing recount of votes. From the beginning the specific contention of the first respondent is that the facts spoken to by the witnesses of the petitioner are only

a concocted story designed for the purpose of election petition. According to PW-4, the postal ballots were counted after the count of votes from the EVMs. There was a keen contest between the petitioner and the first respondent. In such a situation, it is not possible to accept that if really manipulation had taken place in the process of counting of postal ballots, PW-4 who is no other than the son of the petitioner and PW-2, the maternal uncle of the petitioner would keep quiet without giving an objection petition in writing. The version of all the witnesses examined on behalf of the petitioner is to the effect that the irregularities were being committed by the returning officer and the counting personnel from the beginning of the counting and they were noticed by the counting agents and were also informed to the election agent. At no point of time, the agents of the petitioner raised any objection before the returning officer in writing. In the absence thereof, irrespective of the fact whether any petition in writing is a requirement or not, it has to be held that the petitioner failed to prove that the counting of postal ballots is not correct and his contention that irregularities took place in counting of postal ballots remains only a contention without any proof. Therefore, this issue is also answered against the petitioner.

60. ISSUE NO. 10:

The version of the petitioner is that on account of the manipulation of the votes made by the 12th respondent and the counting personnel, they have counted 80 votes more than the votes actually polled. The total number of votes polled is 1,51,331, whereas the total number of votes counted is 1,51,411. He submits that if all the EVMs are reopened and counted properly, he would get elected with a huge margin of not less than 25,000 votes.

61. As to this, the contention of the 1st respondent is that merely because there is a little variation in the total number of votes polled and total number of votes counted, it is not proper to presume that some manipulation has been done in the process of counting. According to the first respondent, basing on the variations, the petitioner is trying to project that some manipulation has been done and thus, the contention of the petitioner has to be rejected. When the authenticity of Form 17-C Part-I and Part-II was questioned in the cross examination of the returning officer-RW-5, the witness stated that the documents were issued by the Tahsildar, Jangaon and therefore, the Tahsildar, Jangaon will know about the authenticity of the said documents. The Tahsildar, Jangaon has not been examined by the petitioner. RW-5 admitted that in Ex. P-11 xerox copy of Form 17-C Parts I & II relating to polling station No. 38, there is a variation of votes mentioned in Form No. 17-C Part-I and Part-II, the number of the votes mentioned is 610 in form 17-C Part-I and the number of votes counted in form 17-C Part-II is 624. As to this question, the witness explains that whenever there is a difference of votes noted in Form 17-C Parts I and II, form 17-A would be verified which contains the signatures or thumb impressions of voters. In the present case, according to the witness, when the votes noted in

form 17-C, Part-II were tallied with form 17-A, the votes mentioned in form 17-a are also 624, therefore, the votes in form 17-C Part-II are correctly noted which should be mentioned in the form and accordingly it was mentioned by the counting supervisor which means he endorsed the same and it contains his signature.

62. According to RW-5, below the statement the counting supervisor's signature is not required as he filled up plus 4 in the column. He denied the suggestion that whenever there is discrepancy, the endorsement by the counting supervisor is required as per rules in the relevant column. Similarly, in Ex. P-20, the office copy of form 17-C Parts I & II relating to polling station Number 130, the total number of votes entered in form 17-C Part I and as per form 17-A register is 588. The number of votes which are not allowed is noted as only one. In form 17-C Part-II the total number of votes is mentioned as 586 instead of 587. RW-5 stated that in form 17-C Part I there is one more column which shows the votes recorded in the EVM, it is column No. 5. In the said column, the total number of votes mentioned is 586 which tallies with form 17-C Part II. Therefore, the entry made in column No. 6 showing 587 votes is incorrect. He admitted that there is no endorsement in form 17-C Part-II with regard to the above discrepancy. According to the witness, no such endorsement is required. Similarly, he admitted that in respect of polling station No. 173, the total number of votes mentioned in form 17-C is 490, whereas in the voters turn out report, total number of votes polled is mentioned as 1,51,331, whereas in the final result sheet the total number of votes are mentioned as 1,51,411. RW-5 explained that the votes mentioned in the voters turn out report is based on the telephonic information and stated that the votes recorded in the form 17-A is based on the votes retrieved from EVMs and as such the information in form 17-A is accurate and form No. 17-A is an authentic document. Similarly, in Ex. P-22, the office copy of form 17-C Parts I & II of polling station No. 82, there is a variation of 80 votes between the votes mentioned in voters turn out report and the final result sheet.

63. In the cross examination RW-5 stated that the presiding officer of every polling station will prepare form 17-C Part-I and form 17 C Part-I will be sent along with EVMs. The polling officer after completing the election process submits form 17C along with EVM to the returning officer. After receiving the EVMs and the relevant forms they will be sent to the strong room by the returning officer. On the counting day the documents will be handed over to the counting personnel along with the EVMs. The EVM with the seal and forms will be shown to the respective agents. The total number of votes displayed through EVMs will be entered in form 17-C Part II candidate wise. To this, the witness stated that if there is any difference of votes in form 17-C Parts I & II, then they will verify form 17-A register. If the votes recorded in form 17A and form 17C Part II are tallied they will treat it as correct. He admitted that the votes recorded in form 17-C Part I & II in respect of polling station No. 173 are tallied.

64. Speaking about the procedure, RW-5 stated that after completion of the voting, the returning officer will call for voters turn out report. The polling officers at the respective polling stations calculate the votes recorded in every two hours through out the polling and they will inform over the phone the total number of votes polled at the end in the voters turn out report. The voters turnout report will be received by the telephonic information. The persons working under the returning officer will prepare the voters turn out report and place it before the returning officer. In the present case, in Polling Station No. 173 the information collect after the entire polling showed that the total number of votes polled are 419, but the votes recorded in form 17-C Part I and Part II are one and the same i.e. 490.

65. Sri A. Sudershan Reddy, Senior Counsel appearing for the first respondent would submit that in every election, variations of this nature are bound to occur and basing on such variations, in the absence of any authentic proof, it cannot be presumed that the variation is the result of manipulation.

66. On the other hand, Sri D. Prakash Reddy, the learned Senior Counsel appearing for the petitioner would submit that since there is variation in the votes polled and votes counted, it is proper to order recount of votes.

67. The learned counsel appearing for the petitioner relied on I. Vikheshe Sema Vs. Hokishe Sema, wherein it is held as follows:

Once it is ascertained that the number of void votes which have been polled are more than the difference of votes polled by the returned candidate and the defeated candidate, then it has to be ascertained as to whether the void votes, which were polled and had been counted, if excluded from consideration would have materially affected the result of the election.

He relied on another decision in P.H. Pujar Vs. Dr. Kanthi Rajashekhar Kidiyappa and Others, wherein it is held as follows:

If there is improper reception, refusal or rejection of votes and non-compliance with R.P. Act, Rules and orders made thereunder and the returning candidate succeeded in the election with a narrow margin of votes, the Supreme Court expressed the view that the returning officer enjoined to find out intention of the voter from the way the ballot paper was marked and that having not been done, returning officer committed infirmity. Hence, recount of rejected ballot papers in the presence of the counsel for the parties directed.

He further relied on Chandrika Prasad Yadav Vs. State of Bihar and Others, wherein it is held as follows:

Non-filing of on application for, before the returning officer would not by itself preclude the election tribunal from going into a question of requirement of issuing the direction for re-count. But, in the said decision, the Hon"ble Supreme Court pointed out that where the petitioner is remis in availing such statutory remedies, of making an application for re-count of votes, the election Tribunal

may consider the same for rejecting the prayer.

68. In the case before the Hon''ble Supreme Court, the returning officer did not entertain an application made by the petitioner for re-count of votes and failed to make an enquiry and pass appropriate order in terms of sub-Rule (2) of Rule 79 of the Bihar Panchayat Election Rules, 1995. The Hon''ble Supreme Court was of the view that ordinarily it is expected that the statutory remedies provided for shall be availed of if such opportunity is not availed of by the election petitioner, he has to state the reason therefore. If no sufficient explanation is furnished by the election petitioner as to why such statutory remedies were not availed of, the election Tribunal may consider the same as one of the factors for accepting or rejecting the prayer for re-counting. An order of the prescribed authority passed in such application would render great assistance to the election Tribunal in arriving at a decision as to whether a prima facie case for issuance of direction for recount has been made out.

69. In the present case, however, the situation is altogether different. The allegation made by the petitioner is that from the beginning there had been manipulation of votes. The counting agents as well as the election agent of the petitioner have been objecting for the same. It appears from the manner in which the witnesses of the petitioner gave evidence, the manipulation of votes in favour of the 1st respondent continued till the end and the returning officer did not heed to their oral request of recount of votes. As I have already pointed out in such a situation, the further course of action expected of the election agent or counting agents of the petitioner would be to give an application in writing for recount of votes. In the situation which was sought to be projected by the petitioner in my view, if really such a manipulation of votes had in fact taken place, the agents of the petitioner would have certainly submitted an application for recount of votes before the returning officer. The explanation offered by the petitioner in his election petition as well as through his witnesses in the course of evidence is that the returning officer assured his agents that he would rectify the irregularities if any at the end and therefore they kept quiet without making an application raising objection for the irregularities committed in the counting process, in my view is quite unacceptable. Further, the aforesaid judgment does not lay down an absolute proposition, there need not be any application for recount of votes.

70. The Hon''ble Supreme Court also specified that it is expected that the statutory remedies provided for are availed of and if the petitioner fails to avail the statutory remedies by making an application for recount of votes for improper acceptance and rejection of ballot papers, the election Tribunal may consider the same or rejecting the prayer. The question before the Hon''ble Supreme Court was improper acceptance or rejection of ballot papers, but that is not the issue in the instant case. The issue in the instant case is that the counting personnel were manipulating the votes in favour of the 1st respondent, which came to the notice of the counting agents as well as election agents for

several times, but they kept quiet without making any objection in writing. Therefore, the aforesaid judgment is not applicable to the present case.

71. Even in another judgment in *Sathi Roop Lal Vs. Malti Thapar (Mrs)*, relied on by the petitioner, the Hon"ble Supreme Court expressed the view that unless prima facie evidence is led, we do not think that such a request would be justified and the learned Judge rejected the contention for valid reasons and therefore, recount of votes cannot be accepted.

72. In the instant case also as I have already explained that in respect of the allegations made orally which have been referred to hereinabove, absolutely no prima facie material has been brought on record by the petitioner in proof of his contention that at the instance of the 1st respondent, the returning officer and the counting personnel resorted to manipulate the votes in favour of the 1st respondent. The petitioner is under a duty to adduce prima facie evidence in proof of the allegations. It is not enough for him only to make some bald allegations, basing on such allegations, he cannot ask for the recount of votes.

73. According to the petitioner, the manipulation of votes had happened at all the tables. But, the petitioner did not adduce any evidence to show that how the votes "are manipulated. The petitioner has chosen to examine only a counting agent at table No. 4. He has not chosen to examine any other agent who had actually witnessed the manipulation of votes.

74. On the other hand, Sri A. Sudershan Reddy, the learned Senior Counsel appearing for the 1st respondent relied on the following judgments in support of his contention that merely because there are some discrepancies in the votes polled and counted, recount of votes cannot be directed.

75. In *D.P. Sharma Vs. Commissioner and Returning Officer and Others*, the Hon"ble Supreme Court held as follows:

It is well established that in order to obtain recount of votes a proper foundation is required to be laid by the election petitioner indicating the precise material on the basis of which it could be urged by him with some substance that there has been either improper reception of invalid votes in favour of the elected candidate or improper rejection of valid votes in favour of the defeated candidate or wrong counting of votes in favour of the elected candidate which had in reality been cast in favour of the defeated candidate.

When no such material is placed before the court by the petitioner, and the discrepancies pointed out in the statement required to be prepared under Rules 45 and 56 of Conduct of Election Rules (1961) do not make out a case for directing recount of votes. For that no prejudice is shown to have been caused to the appellant by the discrepancy pointed out in the statutory forms 16 & 20, particularly the discrepancy in regard to excess ballot papers found would not have affected or altered the result of the election.

In *Kattinokkula Murali Krishna Vs. Veeramalla Koteswara Rao and Others*,

wherein the Supreme Court held as follows:

Doctrine of prejudice is irrelevant factor for ordering recount, directing recount on the basis of no prejudice if ballot papers of recount is not proper. Similarly, narrow margin of votes between returned candidate and election petitioner does not per se give rise to a presumption that there has been irregularity or illegality in counting of votes.

In the present case, there was only a bald plea that some irregularities and illegalities have been taken committed in the counting. No material on record as basis whereof tribunal could have arrived at positive finding that case to order recount made out. Hence, the order of recount passed by the Tribunal is illegal and the High Court erred in upholding it.

According to the Hon"ble Supreme Court recount of ballot papers affect the result of election, hence, cannot be directed as a matter of course.

In Udey Chand Vs. Surat Singh and Another, , the Supreme Court held as follows:

Narrow margin of votes does not per se that there was an irregularity or illegality in counting of votes. No interference can be drawn as to the irregularity or illegality in counting of votes. The onus to prove the allegation of irregularity or illegality on the part of the returning officer was on the election petitioner which he failed to discharge. The allegation against the returning officer of obtaining the signatures of the election petitioner on a blank result sheet and filing of the same after the election petitioner had left the polling station was a serious allegation involving dereliction of duty. It could not be accepted as its face value and had to be proved with cogent material, which was not done.

In Mahendra Pal Vs. Shri Ram Dass Malanger and Others, 1 it was argued before the Hon"ble Supreme Court that since excess votes were found in ballot boxes than the ballot papers issued, the recount has to be ordered. The Supreme Court after examining the facts and evidence in the said case pointed out that no witness however examined to establish that excess ballot papers were unauthorisedly added by some one. The returning officer was not examined. No objection also taken during the course of counting, Therefore, according to the Supreme Court in the absence of any evidence showing improper reception, refusal or rejection of any vote, recounting of votes cannot be ordered merely on ground of discrepancy in number of votes found and number of ballot papers issued. Discrepancy could be attributed to accidental slip or clerical or arithmetical mistake which might have been committed at the time of preparation of the statements in Forms 16 and 20.

Similarly, in Hareram Pandey Vs. Ajit Chaudhary, before the Supreme Court the allegation was that 20,000 spurious ballot papers had been counted in favour of returned candidate in place of equal number of valid votes polled in favour of election petitioner were removed from ballot boxes. The Supreme Court pointed out that no objection was raised during counting by any of the counting agents of

petitioner and found after considering evidence on record and pleadings of parties that petitioner failed to prove the allegation. The Supreme Court pointed out that even if allegation was proved it could not have materially affected result of election, and therefore, the election of the returned candidate cannot be declared void. The Supreme Court held that it is an afterthought and it appears that the allegations which have been made in the election petition perhaps made with a view to somehow or the other bring the case within the parameters laid down by the Supreme Court.

76. Thus, if we examine the judgments relied upon by the learned counsel appearing for the petitioner and the learned counsel appearing for the 1st respondent, the recount of votes cannot be ordered as a matter of course. The petitioner who seeks recount of votes must be able to place on record prima facie proof in support of the allegations made in the election petition. Merely because some serious allegations have been made, it is not proper to order recount of votes on the premise that no prejudice would be caused to the returned candidate by ordering such recount. In the instant case, except the oral attributions regarding manipulation of votes in favour of the first respondent, no material worth consideration has been placed on record by the petitioner to make a prima facie case for recount of votes.

77. Much reliance has been placed by the petitioner on Ex. P-11 - a FAX message he sent to the Chief Election Commissioner at 3.32 p.m. on the counting day, stating that he had won as the Member of Legislative Assembly, Jangaon, Warangal District with majority of 44 votes, but the officers intentionally planning to declare Mr. Ponnala Lakshmaiah (the 1st respondent) as elected and requested therein to arrange for recount of votes immediately and take necessary action against the officers concerned.

78. In the cross examination, PW-1 stated that he prepared Ex. P-11 at his house at about 3.20 p.m. and it took him two to three minutes to prepare Ex. P-11. He received information from his election agent about 3.15 p.m. by phone. He received it on his Cell Phone and that he does not remember the cell phone number from which phone he received the information and also he does not remember whether it was cell phone of his election agent and he did not note down the information conveyed by his election agent on any paper whatever information he received from the election agent, he put the same in Ex. P-11. The Fax message need not be exhaustive containing each and every detail but it is pertinent to note that, there is not even brief mention about the alleged irregularities and manipulations in the counting of votes.

79. Even if it is considered that the petitioner sent Ex. P-11 to the Chief Election Commissioner at 3.32 p.m. on the date of counting, it cannot be said that the averments made in the said FAX message are true and the said FAX message would absolve the liability of the petitioner from proving the irregularities in counting process pointed out by him. He did not examine anybody from the News Channels in proof of his version that the respective news channels

mentioned by him had telecasted that the petitioner had won in the election over the 1st respondent. Even the election agent or counting agents were unable to state in their evidence as to how the petitioner got majority of 44 votes.

80. ISSUE NO. 11: To sum up, it is not enough for the petitioner to make serious allegations in relation to the process of counting of votes. He has to lay a proper foundation in support of the allegations made. Unless, he places prima facie proof in relation to the allegations made in the election petition, the Court would not order for recount basing on the seriousness of the allegations. As laid down by the Hon"ble Supreme Court in catena of judgments the recount of ballot papers affects secrecy of ballots and therefore, cannot be directed as a matter of course. The recount of voters cannot be directed on the assumption that no prejudice would be caused to any of the candidates.

81. As discussed in detail in the foregoing paragraphs, the petitioner attributed serious irregularities in the counting of votes but failed to substantiate the same by adducing satisfactory evidence. The allegations cannot be accepted at their face value in the absence of prima facie proof. Basing on the mere discrepancy in few votes polled and counted, in the absence of any precise material prima facie establishing the manipulation of the votes resorted to by the returning officer and the counting personnel, the Court is not supposed to take a decision ordering recount of votes basing merely on the seriousness of the allegations. The discrepancies in my view occurred in the present case in the votes polled and counted can be attributed to clerical or arithmetical mistakes. In this case, there is no contemporaneous evidence to the allegations made in the election petition. It would, therefore, in my considered view be improper to allow recount of votes on bare allegations. The Election Petition therefore fails, and consequently, it is dismissed without any order as to costs.