

(2012) 12 MAD CK 0015

In the Madras High Court

Case No : Writ Petition (MD) No. 14029 of 2011 M.P (MD) . No. 1 of 2011 and
M.P. (MD) . No. 1 of 2012

M. Srinivasan

APPELLANT

Vs

The State Election Commissioner, The District Electoral
Officer-cum-District Collector, The Returning Officer-cum-
Special Deputy Collector, Sedapatti Panchayat Union and
Santhakumari

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Constitution of India, 1950 — Article 14, 226

Penal Code, 1860 (IPC) — Section 171(E), 188

Representation of the People Act, 1951 — Section 123, 133

Citation : (2013) 2 LW 860

Hon'ble Judges : S. Tamilvanan, J

Bench : Single Bench

Advocate : Veera Kathiravan in W.P. MD. No. 14029 of 2011 and Mr. S. Ramu in
W.P. MD. No. 12133 of 2012, for the Appellant; K. Chellapandian, Additional
Advocate-General for Mr. K. Mahendran, Spl. G.P (W) for R1 to R3 and No
appearance for R4, for the Respondent

Final Decision : Dismissed

Judgement

S. Tamilvanan, J.—Writ Petition in W.P. (MD). No. 14029 of 2011 has been filed
under Article 226 of the Constitution of India, seeking

an order in the nature of writ of mandamus, directing the respondents 1 to 3 to
declare the petitioner as elected Vice-Chairman of Sedapatti

Panchayat Union and consequently, direct the respondents 1 to 3 to take
appropriate action against the fourth respondent in accordance with law.

Writ Petition in W.P. (MD). No. 12133 of 2012 has been filed under Article 226 of
the Constitution of India, seeking an order in the nature of

writ of certiorari, to call for the records pertaining to the impugned notice, dated

10.09.2012 issued by the Commissioner, Sedapatti Panchayat

Union, the fourth respondent in the said writ petition and quash the same.

2. Heard Mr. Veera Kathiravan, learned counsel appearing for the petitioner and Mr. K. Chellapandian, learned Additional Advocate-General

appearing for R1 to R3. In spite of service of notice, there was no representation for the fourth respondent in W.P. (MD). No. 14029 of 2011,

and the fourth respondent was also called absent.

3. In both the writ petitions, the petitioner and the respondents 1 to 3 are the same authorities, however, the fourth respondent in W.P. (MD). No.

14029 of 2011 is the rival candidate, Mrs. Santhakumari and the fourth respondent in W.P. (MD). No. 12133 of 2012 is the Commissioner,

Sedapatti Panchayat Union. In the common order, for the sake of convenience, considering the earlier writ petition, the term writ petitioner and the

fourth respondent respectively shall refer the writ petitioner and the fourth respondent in W.P. (MD). No. 14029 of 2011, unless the same is

specifically stated.

4. It is an admitted fact that the respondents 1 to 3 had notified the election for the post of Vice-Chairman, Sedapatti Panchayat Union being

conducted on 30.11.2011. There were 18 councilors to select the Vice-Chairman of the Panchayat Union. Out of the said councilors, the

petitioner, Mr. Srinivasan was elected for ward No. 17 and the fourth respondent, Mrs. Santhakumari was elected for ward No. 8 of Sedapatti

Panchayat Union. It is also not in dispute that the petitioner and the fourth respondent have contested for the post of Vice-Chairman of Sedapatti

Panchayat Union and the election was conducted by the authorities, who are respondents 1 to 3 on 30.11.2011 at 2.00 p.m. The third

respondent, Returning Officer-cum-Special Deputy Collector, Sedapatti Panchayat Union, Madurai District was the Election Officer for the

election of Vice-Chairman of the panchayat union, Sedapatti.

5. The petitioner herein has stated in the accompanying affidavit that after the polling of votes in the election at Sedapatti Panchayat Union office,

the third respondent conducted counting of votes there itself, in the presence of all councilors with the assistance of the concerned officers, deputed

for the purpose. According to the petitioner, during the counting, it was found that the petitioner secured 10 votes and the fourth respondent

secured only 7 votes and one vote was declared invalid. However, just before declaring the petitioner as elected candidate for Vice-Chairman, knowing the same, the fourth respondent suddenly made a quarrel and resorted to booth capturing and torn the ballot papers in the presence of the other councilors and officers, who conducted the election. The petitioner has further stated in the accompanying affidavit that the entire polling and counting conducted by the third respondent was videographed by the officers of the respondents 1 to 3. The third respondent gave a criminal complaint before Sedapatti Police Station against the fourth respondent aggrieved by her illegal act and a case was registered in Cr. No. 213/2011 on the file of the-Sedapatti police station, against the fourth respondent for the offence committed by her by booth capturing and for torn ballot papers.

6. Mr. Veera Kathiravan, learned counsel appearing for the petitioner filed M.P. (MD). No. 2 of 2012 in the main writ petition and submitted that

the respondents 1 to 3 have properly video-graphed the entire election process for the post of Vice-Chairman and if it was send for, the same

would clearly show that the petitioner has got 10 votes out of 18 votes and the fourth respondent got only 7 votes and one vote was declared

invalid and that was announced by the third respondent, while counting each vote and the act of the fourth respondent voluntarily took out the

ballot papers and torn the same only, with the view to prevent the Election Officer from declaring the result in favour of the petitioner herein.

7. The counsel for the petitioner submitted that there is a clear proof beyond reasonable doubt that the petitioner has got sufficient votes to be

declared him as winner in the election for the Vice-Chairman of the Sedapatti Panchayat Union and the fourth respondent had indulged in the said

illegal activities, hence, she should be punished in accordance with law. However, the fourth respondent was not even arrested for her illegal act of

booth capturing and torn the ballot papers, in the presence of officers and all other councilors, since she had the support of the ruling party and

only a criminal case was registered against her for booth capturing and for torn the ballot papers, on the complaint given by the third respondent.

8. According to Mr. Veera Kathiravan, though the video-graph of the respondents 1 to 3 would clearly establish that the petitioner has got

sufficient votes in the election to declare him as Vice-Chairman of the Panchayat Union, he was not declared so by the respondents 1 to 3. In the

aforesaid circumstances, there was no other remedy available to the petitioner, except to file this writ petition, seeking an order in the nature of writ

of mandamus, directing the respondents 1 to 3 to declare the petitioner as elected Vice-Chairman of the Sedepatti Panchayat Union.

9. The second respondent, District Electoral Officer-cum-District Collector, Madurai District filed counter for respondents 1 to 3, wherein he has

stated that the third respondent herein conducted the election for the post of Vice-Chairman of Sedapatti Panchayat on 30.11.2011, however, the

second respondent has not admitted the averments made by the petitioner that he secured 10 votes and the fourth respondent herein got only 7

votes out of 18 votes. The second respondent, District Electoral Officer-cum-District Collector, Madurai has admitted the fact that the third

respondent, Returning Officer-cum-Special Deputy Collector, Sedapatti, Panchayat Union, Madurai District, by his proceedings in Na.Ka. No.

500/2011/Aa.2, dated 30.11.2011 sent intimation to the second respondent, stating that the fourth respondent herein had torn ballot papers at the

time of counting of votes for the post of Vice-Chairman of the Sedapatti Panchayat Union and the said incident was video-graphed by the third

respondent. He has further stated that after the said incident, there was no quorum ,hence, the same was recorded in the minutes book on

30.11.2011 and the election for the post of Vice-Chairman of the Sedapatti Panchayat Union was adjourned.

10. The second respondent, District Electoral Officer-cum-District Collector, has admitted the fact that the third respondent herein Returning

Officer-cum-Special Deputy Collector, Sedapatti Panchayat Union had given complaint to the Inspector of Sedapatti Police Station against the

fourth respondent that she had involved in booth capturing and torn ballot papers. Hence, case in Crime No. 213 of 2011 on the file of the

Sedapatti police station was registered against the fourth respondent, Mrs. Santhakumari. The second respondent has further stated that FIR was

registered by the said police on the same date, 30.11.2011, on the complaint given by the third respondent. On receiving the letter from the third

respondent on 30.11.2011, the second respondent sent his letter in Na.Ka. No. 69214/2011/Oo.Va.18, dated 30.11.2011 to the first respondent

stating the entire incident, that had taken place on 30.11.2011 during the counting process. The second respondent has specifically stated in the

counter that the entire election process had been video-graphed. According to the second respondent, since the counting of votes was not

completed, no one was declared as Vice-Chairman of the Panchayat Union by the respondents 1 to 3.

11. The writ petitioner filed M.P. (MD). No. 2 of 2012, seeking direction to the respondents 1 to 3 to produce the original Compact Disc, that

was video-graphed on 30.11.2011 during the counting process of the election for the Vice-Chairman of Sedapatti Panchayat Union, with the CD

player before this Court. Having considered the facts and circumstances and also the submissions made by both the learned counsel, this Court

directed the respondents 1 to 3 to produce the original Compact Disc and CD, that was video-graphed on 30.11.2011, during the counting

process of election for Vice-Chairman of Sedapatti Panchayat Union with CD. player. In fact, Mr. K. Chellapandian, learned Additional

Advocate-General fairly submitted to this Court that the counting of votes was properly video-graphed by the officers of the respondents 1 to 3, in

order to maintain transparency in the election process and that the respondents 1 to 3 are also ready to produce the same in a sealed cover to be

played in this Court.

12. As per order, dated 06.12.2012 passed in M.P (MD). No. 2 of 2012 in W.P. (MD). No. 14029 of 2011, this Court directed the

respondents 1 to 3 to produce the Compact Disc on 12.12.2012 at 4 p.m. along with the CD player and other equipments. Accordingly, the same

were produced by the respondents 1 to 3, through Additional Advocate-General. The CD relating to the videograph of the polling and counting of

votes on 30.11.2011 for Vice-Chairman election of Sedapatti Panchayat Union was properly produced in a sealed cover by the respondents 1 to

3 and the same was opened in the presence of both the counsel for the petitioner and Additional Advocate-General appearing for respondents 1 to

3 and other Advocates are also present in the open Court. Accordingly, the CD was played three times to access the fact properly, that was

covered under the CD. It is seen that the incident was video-graphed properly by the Returning Officer-cum-Special Deputy Collector, the third

respondent herein with the help of technical experts.

13. While playing the CD and viewing the video-graphed scenario of the incident, that occurred on 30.11.2011 during counting process of the

election, Mr. Veera Kathiravan, learned counsel appearing for the petitioner identified a middle aged women, who was capturing the ballot papers

from the custody of the Election Officer and torn the same, as Mrs. Santhakumari, the fourth respondent in W.P. (MD). No. 14029 of 2011.

14. Mr. K. Chellapandian, learned Additional Advocate-General also confirmed that the said middle aged women is the fourth respondent, Mrs.

Santhakumari. With regard to the identification of the women, who snatched the ballot papers just before the end of the election process is

undoubtedly identified as Mrs. Santhakumari, who was also a candidate in the election. Apart from both the officers, who were present in the open

court also confirmed the identity of the women, Mrs. Santhakumari, the fourth respondent in the writ petition.

15. It is not in dispute that all the 18 councilors have voted in the election for Vice-Chairman of the Sedapatti Panchayat Union. The visual scenario

of the CD played shows that 18 councilors polled their votes one after another by maintaining proper decorum. The Court could see that the ballot

papers were properly folded by each voter (councilor) and inserted in the box at the place meant for voting. Subsequently, the votes are being

counted and being has announced by the counting officer by showing each ballot paper to all the persons present there. It is seen that first tray was

allotted to the fourth respondent, Mrs. Santhakumari and the second tray was allotted to the petitioner, Mr. Srinivasan, for placing the counted

votes. It is further seen from the video clipping that the election officer has announced properly one by one of the votes declared in favour of the

said two candidates, namely the fourth respondent and the petitioner respectively.

It is undoubtedly clear that the petitioner, who was allotted second tray got 9 votes and the petitioner, who was allotted first tray got only 7 votes

and the counting officer declared one vote as invalid. While the counting officer taking the last ballot paper, 18th ballot paper, to announce the

vote, at that stage, the fourth respondent, who is identified by Mr. Veera Kathirvan and also Mr. K. Chellapandian, Additional Advocate-General,

suddenly taking out the ballot papers from the custody of the counting officer, torn and throwing the same and also threw a tray down from its

place. The Officers are standing with shock without doing anything and that is the video-graphed scenario taken by the authorities, during the

counting process on 30.11.2011.

16. This occurrence shows the genuineness and correctness of the complaint given by the third respondent before the Sedapatti police against Mrs.

Santhakumari, the fourth respondent. It is crystal clear that the fourth respondent torn the ballot papers, while counting process was almost

completed by the counting officer, just before announcing the last vote.

The copy of the FIR relating to the case in Cr. No. 213 of 2011 registered by Sedapatti police station under Sections 171(E), 188 IPC, 123 r/w

133 of ROP Act, 1951 is also produced in the form of typed set. As per the complaint given by the third respondent before the police and the FIR

registered by the police, it is categorically stated that the fourth respondent, Mrs. M. Santhakumari suddenly torn the ballot papers illegally and her

activities are offence of booth capturing and torn of ballots papers, punishable under law.

17. The second respondent, District Electoral Officer-cum-District Collector in his counter has specifically stated that after receiving the report

from the third respondent, he sent a letter to the first respondent, State Election Commissioner in Na.Ka. No. 69214/2011/Oo.Va.18, dated

30.11.2011 about the incidence that had happened on 30.11.2011 during the counting process. He has also stated that the incident was properly

video-graphed. The complaint given by the third respondent before the police and the report sent by him to the second respondent and the written

communication sent by the second respondent to the first respondent and the videograph of the incident, that was viewed in the open court would

clearly establish beyond any reasonable doubt that the fourth respondent, Mrs. Santhakumari had illegally indulged in booth capturing and torn the

ballot papers, after knowing that the rival candidate, who is the petitioner herein has got more votes than the fourth respondent, which is sufficient

to declare the petitioner herein as Vice-Chairman of the Panchayat Union.

18. It is not in dispute that total councilors eligible to vote for the Sedapatti Panchayat Union for Vice-Chairman election was 18. Out of 18, one

vote was declared invalid and the balance was 17 votes and it is clearly seen from the videograph that the petitioner of the writ petition got 9 votes

and the fourth respondent got only 7 votes, during the process of counting by the Election Officer just before counting the last vote. It is clearly

seen from the videograph that when the last vote (18th vote) had to be declared, the fourth respondent illegally took out the ballot papers from the

custody of the counting officer and torn the same, whereby committed offence of booth capturing and torn of ballot papers. It is clear from the

visual scenario of the video that out of 18 votes, one vote was declared invalid and in the balance, the petitioner got 9 votes that was declared then

and there by the counting officer during the electoral process and similarly, the fourth respondent got only 7 votes and before the last vote (18th

vote), the fourth respondent indulged in booth capturing and torn the votes.

19. Mr. Veera Kathiravan, pointed out that the last vote was also in favour of the petitioner herein, as the fourth respondent says in the video,

how could it be possible for the petitioner to secure 10 votes against the ruling party candidate"". However, it is clear that the counting officer could

not announce as to whom the last vote was polled, due to the illegal act of the rival candidate, the fourth respondent. As contended by the learned

counsel for petitioner, even if the last vote is counted in favour of the fourth respondent for the sake of argument, it could be decided that the

petitioner could have been declared as the candidate elected for the Vice-Chairman, since his nine votes were declared one by one by the counting

officer, during the counting process and the fourth respondent got only 7 votes. It is only after knowing the fact that the petitioner as winning

candidate in the election, the fourth respondent suddenly adopted the illegal method of booth capturing and torn the ballot papers, in order to

prevent the counting officer from declaring the petitioner as Vice-Chairman of the said Panchayat Union.

20. It cannot be disputed that free and fair election process is the basis for the survival of democracy and hence, the illegal activities such as booth

capturing should be condoned, as the same is against Democracy and any person indulging in such activities shall be punished seriously according

to law.

21. Learned counsel appearing for the petitioner drew the attention of this Court

to Section 62(1) of the Tamil Nadu Panchayats (Election) Rules, 1995, which reads as follows :

62. Destruction or loss of ballot papers at the time of counting (1) If at any time before the counting of votes is completed, ballot papers used at polling station are unlawfully taken out to the custody of the Returning Officer or accidentally or intentionally destroyed or lost or damaged or tampered with to such an extent that the result of the poll of that polling station cannot be ascertained, the Returning Officer shall forthwith report the matter to the District Election Officer, State Election Officer and the State Election Commission.

22. In the instant case, the unruly behaviour and illegal act of booth capturing and torn the ballot papers by the fourth respondent, Mrs.

Santhakumari, resulted in filing criminal complaint by the third respondent, Returning Officer-cum-Special Deputy Collector himself. Based on the

complaint given, a case in Cr. No. 213 of 2011 is admittedly registered by the police. Even in the FIR registered, based on the complaint, booth

capturing and torn of ballot papers by the fourth respondent has been specifically stated, which is substantiated by the videograph, that was played

in the open court. Pursuant to the report by the third respondent, second respondent, District Electoral Officer-cum-District Collector, Madurai

has sent a report immediately to the first respondent, State Election Commissioner.

23. While discharging the duty as Election Officer, Election Commissioner or police authority dealing with Election process, they should function independently and decide everything based on the available facts.

24. In the instant case, it is strange that the concerned police officers have not even arrested the fourth respondent, who had deliberately indulged

in booth capturing and destroying the ballot papers in the presence of responsible election officers and other councilors, though the factum has

been categorically established by the complaint given by the third respondent and the subsequent report sent by the second respondent to the first

respondent and also the videograph taken by the respondents 1 to 3 during counting process.

25. This Court also find it reasonable to record its view that to strengthen democracy that all the political parties should act against booth capturing

and destroying ballot papers, irrespective of the political party of the person concerned, since the same is against the free and fair election process

in the democratic set up and no way should encourage illegality against the democratic process of conducting free and fair election.

26. It is seen that the Returning Officer, the third respondent and the second respondent, District Electoral Officer-cum-District Collector, Madurai

have acted properly as independent Election Officers. However, in spite of the complaint given by the third respondent, who is the Returning

Officer-cum-Special Deputy Collector, concerned police authority has failed to take immediate action to arrest the present, so as to create

awareness in the minds of the people and the candidates not to indulge in any illegal acts against the democratic process.

27. The videograph would clearly show that the fourth respondent, while the counting officer was about to declare the last vote suddenly, in an

unruly manner took out the ballot papers, torn the same and also threw a tray and the Election Officer and others could not do anything. However,

the third respondent gave the complaint against the fourth respondent, based on which a criminal case was registered. Merely registering a criminal

case would not be sufficient for the concerned police officers for properly discharging their duty in election process. Though the Returning officer,

the third respondent and the District Electoral Officer-cum-District Collector, the second respondent have acted in a responsible diligent manner, I

could see inaction from the police in this regard, which cannot be appreciated in the Democratic set up.

28. It is the duty of the State Election Commissioner to prevent this type of illegal activities, in order to ensure free and fair elections being

conducted for the survival of Democracy at the grass root level. In this regard, the Hon'ble Supreme Court has decided number of rulings.

29. A Division Bench of this Court in All India Anna Dravida Munnetra Kazhagam Vs. The State Election Commissioner and Others, has held as

follows:

156. ...Democracy contemplates that Elections should be free and fair, so that voters may be in a position to vote for the candidate of their choice.

Free and fair Elections are the very foundation of democratic institutions. The Elections should not only be fairly and properly held, but should also

seem to be so held to inspire confidence in the minds of the Electors that everything was above board. To ensure free and fair Elections, the

Constitution vests comprehensive responsibility in the Election Commission. The Election Commission, as part of fairness in Elections, has an

obligation to see that no wrong doer candidate benefits by his own wrong....

In the aforesaid decision, it has been further held as follows :

253...(2) Any decision taken by the Election Commission is subject to the judicial review by the High Court, of course within the known

parameters of such jurisdiction. However, the High Court is required to be very circumspect in such matters and interfere only in rarest of rare

cases. Where the High Court comes to the conclusion that free and fair election has not been held and there is a mockery of democracy and the

Election Commission has failed in its duty to protect democracy by ensuring free and fair election, the High Court can in order to protect the

concept of democracy, interfere in such matters, even after the election process is over, notwithstanding the fact that alternative remedy may be

available and notwithstanding the fact that some disputed questions are required to be decided. This again would obviously depend upon the facts

and circumstances of each case and such jurisdiction is to be exercised in rarest of rare cases where the monstrosity of the situation so compels.

30. In *Mohinder Singh Gill and Another Vs. The Chief Election Commissioner, New Delhi and Others*, the philosophy and the concept of election

in a democracy was highlighted in paragraph-23 of the judgment, as quoted hereunder:

23. Democracy is government by the people. It is continual participative operation, not a cataclysmic, periodic exercise. The little man, in his

multitude, marking his vote at the poll does a social audit of his Parliament plus political choice of his proxy. Although the full flower of participative

Government rarely blossoms, the minimum credential of popular government is appeal to the people after every term for a renewal of confidence.

So we have adult franchise and general elections as constitutional compulsions. The right of election is the very essence of the constitution" (Junius).

It needs little argument to hold that the heart of the Parliamentary system is free and fair election periodically held, based on adult franchise,

although social and economic democracy may demand much more.

31. Similar view was taken by the Supreme Court in Shri Kihota Hollohon Vs. Mr. Zachilhu and others, wherein the Court held :

179. Democracy is a part of the basis structure of our Constitution; and rule of law and free and fair elections are basic features of democracy.

One of the postulates of free and fair elections is provision for resolution of election disputes as also adjudication of disputes relating to subsequent disqualifications by an independent authority.

32. In Rampakavi Rayappa Belagali Vs. B.D. Jatti and Others, the Hon''ble Supreme Court has held as follows:

21. ...Free and fair elections are the very foundation of democratic institutions and just as it is said that justice must not only be done but must also

seem to be done; similarly elections should not only be fairly and properly held but should also seem to be so conducted as to inspire confidence in

the minds of the electors that everything has been above board and has been done to ensure free elections. It will be a sad day in the history of our

country when the police and the Government officers create even an impression that they are interfering for the benefit of one or the other

candidate....

33. It cannot be disputed that by adopting illegal methods, the fourth respondent cannot be entitled to take away the legitimate right accrued to the

petitioner under the Election process.

34. It is a well settled proposition of law that when there is direct and unimpeachable evidence available and the relief sought for relating to

Fundamental Rights guaranteed under the Constitution, writ petition under Article 226 is maintainable, which is applicable to this case on hand.

35. In Gujarat University Vs. N.U. Rajguru and Others, the Hon''ble Apex Court has held thus :

6. It is well settled that where a statute provides for election to an office, or an authority or institution and if it further provides a machinery or forum

for determination of dispute arising out of election, the aggrieved person should pursue his remedy before the forum the aggrieved forum provided

by the statute. While considering an election dispute, it must be kept in mind that the right to vote, contest or dispute election is neither a

fundamental nor a common law right, instead it is a statutory right regulated by the statutory provisions. It is not permissible to invoke the

jurisdiction of High Court under Article 226 of the Constitution bypassing the machinery designated by the Act for determination of the election

dispute. Ordinarily the remedy provided by the statute must be followed before the authority designated therein. But there may be cases where

exceptional or extraordinary circumstances, may exist to justify bypassing the alternative remedies....

36. The act done by the fourth respondent by booth capturing and destroying the ballot papers of the Panchayat Union is against the people of the

entire Sedapatti Panchayat Union and the elected councilors, apart from disrespecting the responsible Election Officers, who conducted the

election and also the rule of law. It has been made clear that without any reasonable doubt the petitioner has got 9 votes declared and the fourth

respondent has got only 7 votes and one vote was declared invalid. Before declaring the last vote (18th vote), the fourth respondent knowing the

fact that she cannot win in the election had indulged in the illegal activity of booth capturing and torn the ballot papers in the presence of Election

Officers and others. As discussed earlier, even if the last vote, which was in the hands of the counting officer to be declared in favour of the fourth

respondent, for the sake of arguments, considering the fact that the petitioner has already got 9 votes, even before declaring the last vote, he ought

to have been declared as elected candidate for the Vice-Chairman of Sedapatti Panchayat Union. However, in view of the provisions of the Tamil

Nadu Panchayats (Election) Rules, 1995, the third respondent could not declare the result of the election, on account of the illegal happening.

37. In the instant case, on the clear facts and circumstances established, there is no need for the petitioner for filing separate Election Petition. It has

been proved, as per the unassailable evidence available evidence, including the videograph, that the petitioner has got sufficient votes to declare

him as the elected candidate for Vice-Chairman, Sedapatti Panchayat Union.

38. In the aforesaid circumstances, as there is direct violation of Fundamental Right of the petitioner, under Article 14 of the Constitution, the

petitioner is entitled to get the relief as prayed for. Accordingly, the petitioner shall be declared elected for Vice-Chairman of Sedapatti Panchayat

Union, as he has established that he has got sufficient number of votes to declare him as elected candidate, apart from booth capturing and torn of

ballot papers by the rival candidate, the fourth respondent herein. It is made clear that this order is nothing to do with the criminal case pending

against the fourth respondent, as the same has to be decided independently on merits.

39. In view of the illegal act done by the fourth respondent, Election Commissioner, the first respondent had taken steps for conducting fresh

election and as there was no quorum for conducting election, another date was also announced. Challenging the same, hence, the petitioner has

filed the writ petition in W.P. (MD). No. 12133 of 2012. This Court, by order, dated 14.09.2012 made in W.P. (MD). No. 12133 of 2012 and

M.P. (MD). No. 1 of 2012 passed the order as follows :

Election may go on and the result shall not be declared until further orders of this Court.

40. In view of the booth capturing and torn of the ballot papers by the fourth respondent, which caused loss to the Election Commission, apart

from affecting the right of the petitioner, who secured more votes than the fourth respondent, which is also sufficient for declaring the petitioner as

Vice-Chairman of the Panchayat Union, I find it just and reasonable, to meet the ends of justice to impose a cost of Rs. 50,000/- against the fourth

respondent and the same shall be paid by the fourth respondent towards the State Election Commissioner, the first respondent herein. In the result,

the writ petition in W.P. (MD). No. 14029 of 2011 is allowed and the first respondent, State Election Commissioner, Chennai is directed to pass

suitable orders to declare the petitioner as elected Vice-Chairman of Sedepatti Panchayat Union, as per procedure known to law, within a period

of two weeks from the date of receipt of a copy of this order. Consequently, respondents 1 to 3 are directed to take appropriate action against the

fourth respondent, Mrs. Santhakumari, in accordance with law. The fourth respondent, Mrs. Santhakumari is directed to pay a sum of Rs.

50,000/- (Rupees Fifty Thousand only) as cost to the first respondent, the State Election Commissioner, Chennai. It is also made clear that the

criminal case pending against the fourth respondent is nothing to do with this order, since the same has to be disposed of, as per law by the

competent Court. Consequently, connected miscellaneous petition is closed. The Registry is directed to keep the sealed cover containing the

video-graphed CD in safe custody, as it is a vital piece of evidence in this case.

In view of the order passed in W.P. (MD). No. 14029 of 2011, W.P. (MD). No. 12133 of 2012 is ordered to be closed and it is declared that

the subsequently conducted election became nullity. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs

in W.P. (MD). No. 12133 of 2012.