

(1999) 01 AP CK 0007
In the Andhra Pradesh High Court
Case No : EP No. 1 of 1995

Raghuramireddy Settipalli

APPELLANT

Vs

Duggireddi Lakshmireddigaari Ravindra Reddy and others

RESPONDENT

Date of Decision : 18-01-1999

Acts Referred:

Conduct of Elections Rules, 1961 — Rule 38, 56, 64

Evidence Act, 1872 — Section 151

Representation of the People Act, 1951 — Section 100, 101, 123, 80, 81

Citation : (1999) 2 ALD 431 : (1996) 2 ALT 88

Hon'ble Judges : Motilal B. Naik, J

Bench : Single Bench

Advocate : Mr. E. Ella Reddy, Mr. K. Venkataramaiah and Mr. K. Vijayakumar Reddy, for the Respondent

Judgement

1. This Election Petition is filed under Sections 80, 80-A, 81, 82, 83, 99, 100 and 101 of the Representation of People Act, 1951 and the Rules made thereunder read with Rules to regulate the trial of Election Petitions and the rules made by the High Court of Andhra Pradesh.

2. Petitioner - Raghurami Reddi Seltipalli, has assailed the election of the first respondent- Dr. D.L. Ravindra Reddy to the Andhra Pradesh Legislative Assembly from 156-Mydukur Assembly Constituency, in this Election Petition. Petitioner also seeks a declaration that he be declared as having been duly elected as a member of the A.P. Legislative Assembly from 156-Mydukur Assembly Constituency by setting aside the election of the first respondent.

3. The relief sought in this Election Petition is as under:

(a) call for the entire records pertaining to and in connection with the election that was held on 1-12-1994 from 156-Mydukur Assembly Constituency to Andhra Pradesh Legislative Assembly;

(b) order inspection and scrutiny of all ballot papers both valid and invalid of all

polling stations of 156-Mydukur Assembly Constituency of A.P. Legislative Assembly by way of directing recount which has been illegally rejected by (he returning officer;

(c) to declare that the election of 1st respondent herein from 156-Mydukur Assembly Constituency to A.P. Legislative Assembly as void;

(d) to further declare that the petitioner herein has been duly elected from 156-Mydukiir Assembly Constituency to A.P. Legislative Assembly;

(e) to award costs of this petition; and

(f) to pass such other order or orders as this Honourable Court may deem fit and proper in the circumstances of the case.

4. Brief averments relating to the case of the petitioner which are necessary are traced as under:

The Election Commission of India has notified 1 -12-1994 and 5-12-1994 as the dates on which poll would take place in respect of all the Assembly constituencies in Andhra Pradesh. Insofar as 156-Mydukur Assembly Constituency is concerned, the date of poll was notified as 1-12-1994. According to the petitioner, though there were 35 contesting candidates, including himself in the fray, the main contest was between himself and the first respondent.

5. After the election process is completed including counting of votes, the Returning Officer of the 156-Mydukur Assembly Constituency has declared the first respondent as having been duly elected in Form 21-E under Rule 64 of the Conduct of Election Rules, 1961. The first respondent-turned candidate contested the election on behalf of the Indian National Congress Party and the petitioner contested on behalf of the Telugu Desam Party. The first respondent secured 47,046 votes..as against 47,018 votes secured by the petitioner. Thus, the first respondent was declared to have won the election with a slender margin of 28 votes. Apart from the election petitioner and the first respondent, respondent Nos. 17, 28 and 34 were also set up by other political parties, viz., B.S.P., Janata and B.J.P. respectively. However, none of the other candidates, excluding the petitioner and the first respondent, secured their deposits.

6. According to the petitioner, the total number of electors in 156-Mydukur Assembly Constituency are 1,36,599. Out of them, 98,001 votes were considered to be validly polled. Rejected votes are 1,683. There were 7 tendered votes. Out of these 98,001 valid votes, the election-petitioner and the first respondent-turned candidate together secured 94,064 valid votes whereas, all the remaining 33 contesting candidates secured only 3,937 valid votes.

7. According to the petitioner, he submitted a representation as early as on 26-11-1994 to one Sri Gangadas, Central Observer of the Election Commission of India in respect of 156-Mydukur Assembly Constituency alleging that the first respondent is indulging in irresponsible and violent activities by scaring the

voters of the constituency with an object of rigging the votes in his favour. Petitioner further stated that he suggested for treating certain polling stations as sensitive and necessary precautions be taken to prevent the possibility of rigging in those polling stations.

8. Petitioner submits that when he received complaints about the rigging activity indulged in by the congress party workers by resorting to violence and using bombs, on the date of polling i.e., on 1-12-1994, he made a representation to the District Collector and District Election Officer, Cuddapah in this regard and prayed for conducting of repoll in respect of booth Nos.32, 33, 38, 59, 60, 132, 133 and 145. Petitioner claims that he has also mentioned specific cases in his complaint where the Congress Party workers resorted to illegal activities of bombing and use of fire-amis and scaring the voters to achieve their object of rigging the votes. However, petitioner complains that the authorities have not ordered any repoll.

9. Petitioner has also narrated various incidents of irregularities indulged in by the Congress Party workers. Petitioner claimed that he brought these irregular activities to the notice of Tclugu Desam Party Member of Parliament Mr. Tulasi Reddy who in turn brought the same to the notice of the District Collector and also sent a fax message to the Chief Election Commissioner of India. These alleged irregularities, according to the petitioner, amount to corrupt practices within the meaning of Section 123 of the Representation of People Act, 1951. Petitioner further alleged that the Congress workers have also kidnapped his polling agents and in some polling booths, his polling agents were forced to leave the polling booths so that rigging could be resorted to by the Congress Party activists. Petitioner alleges that all these illegal activities were done only with the aim and furtherance of the electoral prospects of the first respondent.

10. Petitioner complains that even during the time of counting of the votes relating to 156-Mydukur Assembly Constituency in the Zilla Parishad Meeting Hall, Cuddapah, certain irregularities were committed by the counting staff. Petitioner states that on 9-12-1994, when the process of counting was commenced, 12 tables were arranged for counting of votes and one supervisor and three assistants were allotted to each table. The contesting candidates were also asked to appoint one agent for each counting table besides one agent at the Returning Officer's table.

11. On 10-12-1994, when the counting was in progress, the first respondent made an application to the Returning Officer complaining malpractices in respect of polling in Polling Station No.88 of Kesalingayapalli village. According to the petitioner, the first respondent alleged in his complaint that there was abnormal percentage of polling in Polling Station No.88 of Kesalingayapalli and the henchmen of the petitioner have rigged the entire votes and therefore, requested the authorities to verify the pattern of the counter-foils and counter-foils of ballot papers. The first respondent further alleged that ballot papers were taken forcibly from the Presiding Officer and they were forcibly inserted into the ballot

boxes by booth " capturing and rigging even though the Presiding Officer has not signed on them. The first respondent, therefore, requested the Returning Officer to consider the fact of rigging in polling Station No.88-Kesalingayapalli village by the henchmen of the petitioner and reject the votes in total in the said polling booth.

12. According to the petitioner, on the basis of the complaint made by the first respondent to the Returning Officer, counting of votes relating to Polling Station No.88 of Kesalingayapalli was not taken up along with other votes, but was only taken up at the end of all rounds despite strong protest by the petitioner.

13. Petitioner alleges that the Returning Officer to 156-Mydukur Assembly Constituency was a highly placed revenue official who worked under the first respondent while the first respondent was a minister and as such, the Returning Officer was biased towards the first respondent and has helped the first respondent even during the counting process also.

14. Petitioner further complains that on a complaint made by the first respondent, the Returning Officer has rejected 30 ballot papers on the ground that they did not contain the signature of the Presiding Officer though 29 out of those 30 votes were cast in favour of the petitioner. Petitioner stated that while rejecting those 30 ballot papers despite his protest, the Returning Officer did not say that those rejected ballot papers did not contain both the mark and the signature as contemplated under sub-rule (1) of Rule 38 of the Conduct of Election Rules, 1961. Petitioner claims that when a procedure is contemplated under Rule 38 of the said Rules governing the issuance of ballot papers to the electors and Rule 56 of the said Rules gives a discretion to the Returning Officer to accept such of those ballot papers even though they do not contain either the signature of the Presiding Officer or the identifying mark depending upon the circumstances, the Returning Officer without exercising his discretion has malafidely rejected those 30 votes thereby affecting the electoral prospects of the petitioner. Petitioner further claims that the Returning officer has unduly abused his power and rejected 30 ballot papers out of which 29 were cast in favour of the petitioner. If these 29 votes are to be treated as valid votes in favour of the petitioner, the petitioner would have been declared elected by a majority of one vote against the first respondent. Petitioner, therefore, complains that the Returning Officer did not act fairly and reasonably but has acted arbitrarily in refusing to direct recounting of the votes including the votes which were rejected in respect of Polling Station No. 88.

15. Petitioner claims that despite his objection against the request made by the first respondent in his complaint on 10-12-1994 about keeping the ballot boxes relating to Polling Station No.88 of Kesalingayapalli aside and counting of such votes be taken up separately, the Returning Officer has brushed aside his objection and kept those ballot boxes separately, and also took up separately the counting of votes of Polling Station 88 only to favour the first respondent.

16. Petitioner further claims that certain ballot papers were found loosened from the bundles during the counting process and such loosened votes are the result of certain discrepancies during the process of counting. Petitioner complains that when these discrepancies were brought to the notice of the Returning Officer, the Returning Officer did not heed to his request as he was hand-in-glove with the first respondent who ensured the success of the latter.

17. Petitioner nextly pointed out that as per the understanding reached between the petitioner and the first respondent, any unsigned ballot papers by the Presiding Officer, if the franchise was exercised by the voters, such unsigned votes were accounted to the candidate to whom they were cast. However, when the 30 ballot papers relating to Polling Station 88 of Kesalingayapalli were found not having the signature of the Presiding Officer, the Returning Officer rejected them though 29 of them were cast in favour of the petitioner. Petitioner, therefore, claims that the Returning Officer has acted in an arbitrary manner thereby defeated the electoral prospects of the petitioner.

18. With all these allegations, petitioner filed the present Election Petition seeking appropriate reliefs as indicated above.

19. The first respondent-turned candidate has filed his detailed written statement denying the allegations levelled by the election-petitioner. The first respondent-turned candidate has denied the allegation of rigging indulged in by his supporters by using bombs and forcibly sending out the polling agents in various booths. On the contrary, the first respondent has alleged that there was large-scale rigging of votes in Polling Station No.88 of Kesalingayapalli village by the henchmen of the petitioner and only four to five persons after threatening the voters have rigged the entire votes. It is further alleged that 30 ballot papers which were found unsigned by the Presiding Officer of Polling Station 88 of Kesalingayapalli were forcibly rigged by the supporters of the petitioner and inserted unauthorised into the ballot boxes. The first respondent in his written statement has submitted that the pattern of polling in the entire constituency goes to show that the fight between the election petitioner and the first respondent was neck to neck and by the time the last round of counting was completed leaving aside the counting of votes relating to Polling Station No.88 of Kesalingayapalli, the first respondent was leading by 554 votes. It is further alleged that the pattern of voting in Polling Station No.88 clearly indicates that there was rigging as abnormal rate of polling of more than 90% was reported. The first respondent submitted that as per the instructions issued by the Election Commission of India from time to time that whenever more than 90% of poll is reported from any polling station, such ballot boxes be kept separately and counting be taken up later on, and as such the Returning Officer has rightly kept the ballot boxes pertaining to Polling Station 88 separately and took up counting also separately. It is further stated by the first respondent that the total votes polled in Polling Station No.88 of Kesalingayapalli are 602 and out of them the petitioner secured 549 and only 23 votes were polled in favour of the first

respondent, which fact has led to the suspicion that the henchmen of the petitioner have rigged the votes in Polling Station 88 without allowing the genuine voters to exercise their franchise.

20. The first respondent-turned candidate has also denied that there was irregular or careless counting. The ballot papers which were found loosened from the bundles at the time of counting in round Nos.2 to 8 were counted in the 9th round. It is further stated in the written statement that the petitioner did not allege that there is any variation with regard to the number of votes polled and the number of votes counted and, as long as there is no variation, it cannot be said that any irregularity had taken place in the counting. It is further submitted that the petitioner cannot take into account the invalid/ rejected votes in his favour and contend that the election of the first respondent is illegal. The first respondent has also submitted that immediately after the election when he went to the village Kesalingayapalli, the villagers informed him about the rigging of votes by the supporters of the election-petitioner and preventing them from exercising their franchise. It is stated that the first respondent on the basis of such information lodged a complaint to the Returning Officer about the rigging in Polling Station No.88 and about the pattern of voting in Polling Station No.88. The Returning Officer was satisfied and after discussion with the election petitioner, he postponed the counting of votes relating to Polling Station 88 and took up counting of those votes only after completion of counting of votes relating to other polling stations. The first respondent stated that in view of the instructions issued by the Election Commission of India, such counting is permissible and no irregularity can be attributable to the Returning Officer. The first respondent, under these circumstances, prayed for dismissal of the Election Petition with exemplary costs.

21. Apart from refuting the allegations made by the election petitioner specifically, the first respondent has also filed a Recrimination Petition in this Election Petition No.1 of 1995 alleging that the election petitioner has indulged in rigging and malpractices during the process of electioneering and praying for the following reliefs:

- (a) to declare the election of the Respondent-Election Petitioner would have been void if he had been the returned candidate;
- (b) to pass an order allowing the Recrimination Petition;
- (c) to award the costs of the Recrimination Petition; and
- (d) to pass such other order or orders as this Court may deem fit and proper.

22. On the basis of the pleadings in the Election Petition, written statement and also on the basis of (he pleadings in the Recrimination Petition filed by the first respondent-turned candidate, the following consented issues are framed for deciding the Election Pclition as well as the Recrimination Petition, viz.,

- (1) Whether counting of ballots pertaining to Polling Station No.88 separately is

not in accordance with law?

(2) Whether the action of the Returning Officer in rejecting 30 ballot papers with St.No.065201 to 065230 pertaining to Polling Station No.88 is illegal, materially affecting the result of the election?

(3) Whether the election of the 1st respondent is materially affected by improper reception of large number of votes in his favour though they do not bear the signature of the Presiding Officer in various polling stations?

(4) Whether the election petitioner is entitled for ordering recount of all ballot papers both valid and invalid of all polling stations of 156-Mydukur Assembly constituency?

(5) Whether the election of the 1st respondent is liable to be declared void and whether the election petitioner is entitled for declaration as duly elected?

(6) Whether there was any booth capturing and rigging of ballot papers in favour of the election petitioner in Polling Station No.88 of Kesalingayapalli?

(7) Whether the action of "he Returning officer in accepting the ballots pertaining to Polling Station No.88fis contrary to law?

(8) Whether the votes polled by 15 persons at Sl.No.130, 134, 157 to 161, 168, 169, 172, 173, 215 and 355 to 357 in the voters list of Polling Station No.88 ought to have been treated as void?

(9) Whether the votes polled in the name of six dead persons pertaining to the Polling Station No.88 ought to have been rejected as invalid votes?

(10) Whether the election petitioner is gallyt of booth capturing and comipt practice of bribery as averred in the Recrimination Petition disentitling him for declaration of being elected?

(11) Whether the election petitioner is guilty of commission of corrupt practice in entering into a deal with the elders of Muslim community of Mydukur Town for payment of an amount of Rs.l lakh for purchasing a site for construction of"Shadi Khana" at Mydukur town?

(12) Whether the election petitioner is guilty of commission of corrupt practice by way of propogating that the demolition of Babri Masjid was done at the instance of the Congress Party and they are created hatred against the Recriminator while seeking to vote for him?

(13) Whether the election petitioner, his agents or his supporters with his consent have threatened the voters from exercising their franchise and captured Polling Station Nos.46, 48, 55, 61, 71, 97, 127, 165 and 166 and thereby committed any corrupt practice?

(14) To what relief?

23. Since the election petitioner has given up the allegations of corrupt practices against the first respondent, no issue to that effect is framed. As both the learned Counsel appearing on behalf of the election petitioner and the first respondent have agreed to proceed with the trial of the Election Petition at the first instance, and as such, out of 14 consented common issues, the following 9 issues are relevant for the purpose of deciding the Election Petition, viz.,

(1) Whether counting of ballots pertaining to Polling Station No.88 separately is not in accordance with law? -

(2) Whether the action of the Returning Officer in rejecting 30 ballot papers with Sl.Nos.065201 to 065230 pertaining to polling station No.88 is illegal, materially affecting the result of the election?

(3) Whether the election of the 1st respondent is materially affected by improper reception of large number of vote in his favour though they do not bear the signature of the Presiding Officers in various polling stations?

(4) Whether the election petitioner is entitled for ordering recount of all ballot papers both valid and invalid of all polling stations of 156-Mydukur Constituency?

(5) Whether the election of the 1st respondent is liable to be declared as void and whether the election petitioner is entitled for declaration as duly elected?

(6) Whether there was any booth capturing and rigging of ballot papers in favour of the election petitioner in Polling Station No.88 Kesalingayapalli?

(7) Whether the action of the Returning Officer accepting the ballots pertaining to the Polling Station No.88 is contrary to law?

(8) Whether the votes polled by 15 persons at Sl.No.130, 134, 157 to 161, 168, 169, 172, 173, 215 and 355 to 357 in the voters list of Polling Station No.88 ought to have been treated as void?

(9) Whether the votes polled in the name of six dead persons pertaining to the Polling Station No.88 ought to have been rejected as invalid votes?

24. In support of his pleadings, the election-petitioner examined himself as PW1 and also examined PWs.2 to 5. PW2 -P. Nagaraja, was the Presiding Officer of Polling Station 88 of Kesalingayapalli village,1 PW3 - M. Udaya Kunuir, Advocate who acted as counting agent of the petitioner, PW4 -Kataru Veeranna and PW5 - K. Rama Chaidra Reddy were also the counting agents of the petitioner. Exs.At to A28 are also marked on behalf of the petitioner.

25. On behalf of the first respondent, the first respondent himself examined as RW1 and also examined RWs.2 to 18. RWs.2 to 14 and 18 are the voters of Polling Station 88-Kesalingayapalli village and RWs.1 5,16a and 17 are the counting agents of RW1. This apart, Exs.B 1 to B3 are also marked on behalf of the first respondent.

26. CWs.1 to 3 are examined as Court witnesses and Exs.C.1 to C.133 are also

marked. CW1 -C.J. Are/zr" was the Returning Officer of 156-Mydukur Assembly Constituency, CW2-G. Bahrain, is the Finger Print Expert and CW3 - B. Sai Prakash is the Handwriting Expert.

27. Immediately after completion of the trial on the issues relating to the election petition, on behalf of the first respondent, an application in EA No. 1280 of 1996 was filed in this EP No.1 of 1995 under Order

26 Rule 10(A) read with Section 151 of CPC and Section 45 of the Evidence Act seeking to refer certain counter-foils of the ballot papers to the Handwriting/ Fingerprint Expert, Government of Andhra Pradesh, for comparison of the signatures/thumb impressions found therein with reference to the signatures/ thumb impressions of certain witnesses (RWs.) found on their deposition sheets, and for their opinion. However, that application was opposed by the election-petitioner. On an elaborate hearing of both the Counsel on the said application, this Court by an order dated 3-3-1997 allowed the said application with the following direction, viz.,

"Accordingly, I direct the counter-foils and deposition sheets of the following witnesses be sent to the Fingerprint/ Handwriting Expert for his opinion.

RW4 - Counter foil No.065534

RWS - Counter foil No.065287

RWS - Counter foil No.065192

RW9 - Counter foil No.065212

RW12- Counter foil No.065448

The Fingerprint/Handwriting Expert, Government of Andhra Pradesh shall examine the thumb impressions/signatures of the witnesses as indicated above and compare them with the thumb impressions/signatures available on the deposition sheets and shall send his detailed opinion within 15 days from the date of receipt of the documents referred to above from the Registry of the High Court. The Fingerprint/Handwriting Expert shall also give his opinion whether the impression of the finger prints appearing on the counter-foils relate to thumb impressions or the impression of any other fingers."

This order dated 3-3-1997 passed in EA No. 1280 of 1996 was carried to the Supreme Court of India by the election petitioner in Special Leave to Appeal (Civil) No.6589 of 1997. The Supreme Court, though initially stayed the order passed by this Court dated 3-3-1997, but subsequently dismissed the said Appeal (Civil) No.6589 of 1997.

28. After dismissal of the said Appeal (Civil) by the Supreme Court, the opinion of the Fingerprint and Handwriting Experts was obtained in two separate reports under Exs.C.t25 and C.I 33 respectively, as per the order passed by this Court on 3-3-1997 in EA No. 1280 of 1996.

29. As indicated earlier, though nine issues are relevant for the purpose of deciding this election petition, issue Nos.1, 2, 6, 7, 8 and 9 which are related to Polling Station No.88 of Kesalingayapalli, I propose to decide these issues at the out-set.

30. Sri M.R.K. Chowdhary, learned senior Counsel appearing on behalf of the election petitioner has contended that the Returning Officer of 156-Mydukur Assembly Constituency has erroneously and illegally rejected 30 ballot papers pertaining to Polling Station-88 of Kesalingayapalli out of which 9 were polled in favour of the petitioner on the ground that there was no signature of the Presiding Officer on those ballot papers. Learned senior Counsel contended that as per Rule 38 read with Rule 56 of the Conduct of Election Rules, 1961, the Returning Officer cannot reject the ballot papers on the ground of non-availability of the signature of the Presiding Officer on them. According to the learned senior Counsel, on all those rejected 30 ballot papers, the voters have exercised their franchise indicating their will and as such, they ought not to have been rejected and ought to have been accounted to the candidates to whom they were cast. It is further contended that as the margin of victory of the first respondent over the petitioner is only 28 votes and had the Returning Officer accounted those 29 votes out of the rejected 30 votes which are polled in favour of the election petitioner, the election petitioner would have won the election by a majority of one vote. However, learned senior Counsel contended that the Returning Officer has given a go-bye to the procedure contemplated under Rules 38 and 56 of the Conduct of Election Rules as he was biased towards the first respondent and also rejected the objections raised by the petitioner when a complaint is made by him in respect of the rigging activities of the supporters of the first respondent. Learned senior Counsel, therefore, submitted that those rejected 29 votes which were polled in favour of the petitioner in Polling Station 88 of Kesalingayapalli be ordered to be accounted in favour of the petitioner and the petitioner be declared as elected after declaring the election of the first respondent from 156-Mydukur Assembly Constituency as void. Learned senior Counsel next submitted that in terms of Rule 56(h) of the Conduct of Election Rules, 1961, the Returning Officer is bound to give reasons when he rejects any votes on any grounds. However, Counsel contended that no reasons were assigned by the Returning Officer when he rejected the 30 votes polled in Polling Station No.88 of Kesalingayapalli, which has materially affected the electoral prospects of the petitioner. It is the next contention of the learned senior Counsel for the petitioner that the Returning Officer has maliciously and with a view to help the first respondent, separately took up the counting of votes relating to Polling Station No.88 by frustrating the electoral prospects of the petitioner. Learned senior Counsel contended that even though there was no report from the Presiding Officer of Polling Station No.88 who was examined as PW2 about any activity of rigging or booth capturing of Polling Station No.88, yet, the Returning Officer illegally and unauthorisedly took up separate counting of those votes with a view to frustrate the electoral prospects of the petitioner. Learned senior Counsel alleged that

rejection of those 30 votes relating to Polling Station No.88 of Kesalingayapalli by the Returning Officer is contrary to the law laid down by the Supreme Court in a decision reported in Arun Kumar Bose Vs. Mohd. Furkan Ansari and Others, , and pleaded this Court to rectify the anomaly caused by the Returning Officer.

31. On the contrary, Sri E. Ella Reddy, learned Counsel appearing on behalf of the first respondent vehemently contended that the supporters of the petitioner have forcibly entered into Polling Station No.88 of Kesalingayapalli village, prevented the genuine voters from exercising their franchise and rigged the entire votes in favour of the petitioner. Counsel further submitted that the first respondent has specifically pleaded this aspect in para-9 of his written statement and also in his Recrimination Petition and therefore, a separate issue in this regard has been framed as issue No.6. It is the contention of the learned Counsel that the evidence adduced on behalf of the first respondent through RWs.2 to 14 and 18 amply established the fact of rigging taking place in Polling Station No.88 as all these witnesses who belonged to Polling Station No.88 of Kesalingayapalli village were prevented from exercising their franchise by four to five strangers who rigged the entire votes in Polling Station No.88. Learned Counsel further stated that pursuant to the order of this Court dated 3-3-1997 in EA No. 1280 of 1996 certain counter-foils along with the deposition sheets were sent to the Fingerprint and Handwriting experts who were examined as CWs.2 and 3 and they have sent their reports under Exs.C. 125 and C.133. Placing strong reliance on those reports Exs.C.125 and C.133, learned Counsel contended that these reports would go to show that the signatures/thumb impressions obtaining on deposition forms of some of the voters who were examined as RWs. in this Court were not tallied with the signatures/thumb impressions on the counter-foils of the ballot papers said to have been made in their names. Counsel, therefore, strenuously contended that this fact itself would clinchingly establish that rigging has taken place in Polling Station No.88. This apart, learned Counsel appearing on behalf of the first respondent justified the action of the Returning Officer in rejecting 30 votes polled in Polling Station No.88 on the ground that they did not contain the signature of the Presiding Officer. On the allegation of the petitioner that the Returning Officer has illegally kept the ballot boxes pertaining to Polling Station No.88 separately and also took up counting of such votes separately, learned Counsel justified this action of the Returning Officer and contended that in view of the instructions issued by the Election Commission to take up separate counting of votes relating to polling booths where more than 90% of polling is reported, the Returning Officer was justified in keeping the ballot boxes of Polling Station No.88 separately and also counting those votes separately. Counsel further submitted that in view of the complaint made by the first respondent to the Returning Officer about the large scale rigging that has taken place in Polling Station No.88, the Returning Officer on being satisfied that the percentage of polling in Polling Station No.88 was more than 90%, has taken up separate counting of those votes which is within the powers of the Returning Officer. Sri Ella Reddy, learned Counsel also contended that in view of the clinching evidence

adduced on behalf of the first respondent that rigging had taken place in Polling Station No.88, all the votes polled in Polling Station No.88 ought to have been rejected by the Returning Officer. Learned Counsel, therefore, contended that there are no merits in the Election Petition and the same may be dismissed with exemplary costs.

32. In Arun Kumar Base's case (supra), the Supreme Court had held that rejection of certain ballot papers by the Returning Officer on the ground of non-availability of the signature of the Presiding Officer, was improper. In that case, it was brought on record through the evidence of the Presiding Officer who was examined as PW2 that he was away from the polling station for some time during which time the polling process continued and ballot papers were issued to the voters without the signatures of the Presiding Officer. The Supreme Court, therefore, held that failure on the part of the Presiding Officer to put his signatures on the ballot papers, the candidate in whose favour the voters have exercised their choice cannot be made to suffer as the voters have put the distinguishing mark on those votes and exercised their franchise.

33. However, the facts and evidence adduced in this case totally present a different picture. The Presiding Officer of Polling Station No.88 Kesalingayapalli has been examined as PW2. He has deposed that in all 602 ballot papers were used on the election day i.e., on 1-12-1994. According to PW2, he prepared a diary in connection with the election to Polling Station No.88. 671 ballot papers were allotted to the said Polling Station No.88 which were received by him. He further deposed that he signed on all the ballot papers. When he was confronted in the cross-examination that 30 ballot papers were found to be unsigned by him and he was asked to explain the circumstances under which his signature on those 30 ballot papers was missing, PW2 merely said that he signed on all the ballot papers. Thus, according to PW2, he signed on all the ballot papers. The fact, however, remains that 30 ballot papers with Sl.Nos.065201 to 065230 were not having the signature of PW2. Therefore, it is clear that the statement of PW2 is incorrect. This apart, PW2 has deposed that he was present throughout the voting time on the polling day i.e., from 7.00 a.m. to 5.00 p.m. He further deposed that no police constable was posted for duty at the polling station on that day. Though PW2 denies the suggestion that only 10 to 15 people rigged the entire votes in Polling Station No.88, but however, he admits the fact of 15 to 20 persons came into the polling booth, surrounded the polling clerks and Assistant Polling Officer and himself. PW2 further deposed that he did not observe if five or six persons out of a group of 15 to 20 persons took the ballot papers for affixing their signatures or thumb impressions and stuffed them in the ballot boxes. He also admits the fact of 100 to 150 persons shouting outside the polling booth. The evidence of PW2 further reveals that as per the diary maintained by him which is marked as Ex.C.23, he has noted under column 10(1) that 671 Assembly ballot papers are issued to voters as per the marked copy of the electoral rolls. He also admits the fact of mentioning about 602 ballot papers actually issued to the voters. PW2 further admits the fact of the figure 671 in

column 10(1) of Ex.C.23 reads the total number of votes issued to Polling Station No.88. It is in the evidence of PW2, as per the calculation prepared by the staff, the total voters in the polling station is 677. To a suggestion, PW2 admitted that if there are 677 voters, normally 10 to 20 extra ballot papers will be sent over and above the total number of voters. However, PW2 stated that in this case, actually 671 ballot papers were issued as against 677 total voters. In his cross-examination, PW2 stated that though the total number of ballot papers used are 605, he has shown as if only 602 votes were used. He admits the fact of ballot papers containing Sl.Nos.065130, 065131 and 065132 are missing in the bundle containing ballotpapersNos.065101 to065150. When the counter foils of the ballot papers bearing No.065130 to 065132 were put to PW2 stating that those ballot papers are not missing but they have been pulled out by tearing out, PW2 answered that "he observed that there are three pieces found in the bundle and those three pieces pertain to the missing three votes". Thus, it is clear from the evidence of PW2 that he is not coming out with actual facts and his evidence is self-contradictory and full of inconsistencies.

34. On the other hand, the returned candidate-first respondent in support of his stand that rigging has taken place in Polling Station 88 of Kesalingayapalli village by only four to five persons who are supporters of the petitioner, has examined RWs.2 to 14 and 18 who are the voters of Kesalingayapalli village. It is in the evidence of RWs.2 to 14 and 18 that by the time they went to Polling Station 88, they were informed by some strangers that their votes have already been caste by somebody and they can go to their houses. It is also in their evidence that when some of them tried to enter the Pol ling Station 88, the doors of the said polling station were closed and they were informed that their votes have already been cast by somebody. In the cross-examination of these witnesses, viz., RWs.2 to 14 and 18, on behalf of the petitioner, no suggestion was made to them that they actually participated in the voting and the signatures/thumb impressions available on the counter-foils of the ballot papers said to have been cast on their names, actually belonged to them. Significantly, no attempt was also made on behalf of the petitioner to examine any voter from Polling Station 88 of Kesalingayapalli to say that no rigging had taken place in the said polling station and the entire poll was free and fair.

35. CW1 -C.J. Nehru was the Returning Officer of 156-Mydukur Assembly Constituency. He deposed that counting of votes of Polling Station 88 was taken up on 9-12-1994. According to CW1, there were two stages of counting. In first stage, verification of ballot papers with reference to the ballot paper account prepared by the Presiding Officers, by the counting supervisor, bundle them into 25 each and certifying about the correctness of the account and sending it to the officer-in-charge of the drum. In second stage, each table would be given ballot papers of 40 bundles for sorting and counting. CW1 further deposed that when the first stage of counting commenced, i.e., removing the ballot papers from the ballot boxes and bundling them, and sending them to the drum-man for mixing, the first respondent-turned candidate pointed out to him that large-scale

rigging has taken place in Polling Station 88 on the polling day and requested him to take up the counting of votes of Polling Station 88 after completing the counting of votes relating to other polling stations. At page-2 of his evidence, CW1 has deposed thus:

"During the first stage of counting, while the ballot boxes were being sent to the table, when the turn of Polling Station No.88 came. Sri D.L. Ravindra Reddy, contesting candidate, reported that there is rigging in this polling station PS 88 and requested counting of ballot papers pertaining to Polling Station 88 be taken after counting of other ballot papers. The matter was discussed with the other contesting candidates and it was agreed to keep the boxes of Polling Station No.88 aside and to take up after the completion of counting of all other polling stations is over".

36. This piece of evidence of CW1 goes to show that the counting of votes relating to Polling Station 88 was postponed at the request of Respondent No.1 only after consulting all other contesting candidates, which includes the petitioner as well. Therefore, when the petitioner was also consulted in this regard for which, admittedly, he agreed for keeping the ballot boxes pertaining to Polling Station 88 separately and taking up counting of those votes after completion of counting of all other votes it is not open for the petitioner now to contend that the Returning Officer has illegally and biasedly took up the counting of votes of Polling Station 88 separately.

37. In the evidence of CW1 it is found that in the last round of counting, the drum incharge informed him that some ballot papers which were loosened, were found. CW1 deposed that he informed the drum incharge to tie such loosened ballot papers and hand them over for counting in the last round of counting. The evidence of CW1 further reveals that the total number of votes counted were tallied with the ballot papers account received by him. CW1 has stated that while rejecting the 30 ballot papers pertaining to Polling Station 88 of Kesalingayapalli on the ground that they did not contain the signature of the Presiding Officer, he has given reasons under Hx.C.6. A perusal of Ex.C.6 reveals that doubtful ballot papers from S.Nos.065201 to 065230 did not contain the signatures of the Presiding Officer and as such the Returning Officer rejected them terming them as unauthorisedly inserted into the ballot box.

38. Apart from CW1, CWs.2 and 3 are also examined as Court witnesses. CW2 -G. Balarani, who is a finger print expert and Inspector working in Finger Print Bureau, Hyderabad deposed that he received the deposition of RWs.4 and 5 and counter foil Nos.065534 and 065287. He further deposed that he gave his opinion under Ex.C.125. On a perusal of Ex.C.125 it is revealed as under:

"(a)The finger impression marked as "DI" against the name T. Lakshamma on the counter foil No.065287 S.No. of Elector: 674 is not identical with the specimen finger impression marked as S.I said to be of Thummalakshamma on the second page of deposition of witness sheet.

(b) The finger impression marked as D2 against the name P. Venkata Lakshumma on the counter-foil No.065534 S.No.734 is not identical with the specimen finger impression marked as S2 said to be of P. V. Lakshamma on the second page of deposition of witness sheet in Election Petition No.1 of 1995...."

39. CW3-5. Sai Prakash is an Handwriting Expert and Assistant Director of Forensic Science Laboratory, Hyderabad. He deposed that he has examined the depositions of RWs.8, 9 and 12 and the counter foil bearing Nos.065192, 065212 and 065448. His opinion is marked as Ex.C.133. He deposed that in his opinion the signatures of the witnesses on the deposition and the signature on the respective counter-foils are not tallying with each other, which means they are not written by the same persons respectively.

40. Thus, on a careful scrutiny of the evidence of CWs.2 and 3 coupled with Exs.C.125 and C.133, it is manifestly clear that there was rigging in Polling Station 88 of Kesalingayapalli village and the votes of RWs.4, 5, 8, 9 and 12 have been cast by some others.-- Therefore, the reasons given by the Returning Officer for rejecting those 30 ballot papers which did not contain the signature of the Presiding Officer on the ground that they are unauthorised ly inserted into the ballot boxes seem to be justified. On a careful scrutiny of the evidence-of PW2, it is amply established that his evidence is full of contradictions and untrustworthy. Though PW2 deposed that he was present in Polling Station No.88 of Kesalingayapalli throughout, he has not explained the circumstances under which the ballot papers containing SI.Nos.065201 to 065230 pertaining to Polling Station No.88 did not find his signatures on them.

41. Therefore, tn the light of the evidence of PW2, CWs. I to 3, coupled with the evidence of RWs,2 to 14, and 18 and also having regard to the report in Exs.C.125 and C.133,1 have no hesitation to hold that rigging has taken place in Polling Station No.88 of Kesalingayapalli village. Accordingly, I answer issue No.6 in the affirmative.

Issne Nos.1 and 2:

In view of my discussion in the foregoing paragraphs on issue No.6, I am inclined to hold on issue No.1 that counting of ballots pertaining to Polling Station No.88 separately is in accordance with law. On issue No.2, I hold that the Returning Officer is justified in rejecting the 30 ballot papers with SI.Nos.065201 to 065230 of Polling Station No.88 of Kesalingayapalli village.

Issue No. 3:

This issue relates to the improper reception of large number of votes in favour of the first respondent-retuned candidate though they do not bear the signature of the Presiding Officers of various polling stations.

42. Sri M.R.K. Chowdary, learned senior Counsel appearing on behalf of the petitioner contended that there was an understanding between the supporters of the election petitioner and the supporters of the first respondent that even

though the signature of the Presiding Officer was not found on any ballot papers, if the indelible mark of the voter is found on the ballot paper indicating the choice, such ballot papers are accounted to the respective candidates. However, learned Counsel for the first respondent denied that no such agreement was entered into. He contended that even if there was any such agreement, such procedure is impermissible under the Election Law.

43. Except making the oral statements before the Court in his evidence by the petitioner as PW1 and in his pleadings in the election petition, no corroborative evidence is adduced on behalf of the petitioner to substantiate his allegation that the first respondent has received large number of votes in his favour though they were not signed by the Presiding Officers of various polling stations. CWI-Returning Officer of 156-Mydukur Assembly Constituency has categorically deposed that except the 30 votes relating to Polling Station No.88 which were rejected by him, no votes from other polling stations were accounted to the respective candidates even though they did not contain the signature of the Presiding Officers. CW1 further deposed that at the time of bundling all the votes, some votes were loosened from the bundles and they are 39 in number. When the in-charge of the Drum has brought about the loosened votes to his notice, he directed the in-charge to hand over those votes for counting in the 9th round. He further deposed that all the votes counted were tallied with the ballot paper accounts furnished by all the Presiding Officers of all the polling stations of the entire constituency.

44. In view of the evidence of CW1 and in the absence of any corroborative evidence on behalf of the petitioner to substantiate his charge in this regard, I am inclined to hold that no improper reception of votes by the first respondent has been established by the petitioner which has materially affected his electoral prospects. Accordingly, I decide issue No.3 against the petitioner.

Issue Nos.4 and 5:

These issues relate to ordering recount of all votes in the entire constituency of Mydukur and also for declaring the election of the first respondent as void and consequently to declare the petitioner as duly elected in place of the first respondent.

45. Sri M.R.K. Chowdary, learned senior Counsel appearing on behalf of the petitioner contended that certain irregularities and act of carelessness have crept in the process of counting, on account of which 39 votes were found loosened from their bundles and were accounted only in the 9th round. As a result of this act, learned senior Counsel contended that the entire counting process has been vitiated. He pleaded before this Court for ordering recount of all the votes pertaining to 156-Mydukur Assembly Constituency, so that the discrepancies pointed out by him could be unearthed. Learned senior Counsel, therefore, contended that when irregularities were established in the counting process and discrepancies were galore, it is a case for ordering recount in the entire

constituency. In support of his contentions, learned senior Counsel has relied upon the following decisions of the Supreme Court reported in Beliram Bhalaik Vs. Jai Beharilal Khachi and Another, , Chanda Singh Vs. Choudhary Shiv Ram Verma and Others, , Mohanraj Boid Vs. Eswar Charan Patnaik and Others, , S. Raghubir Singh Gill Vs. S. Gurcharan Singh Tohra and Others, and in M.R. Gopalakrishnan Vs. Thachady Prabhakaran and Others, , besides the decision Arun Kumar Bose v. Mohd. Furkan Ansar cited (supra). I do not think, the submissions of the learned senior Counsel appearing on behalf of the petitioner in this regard could be accepted. CWI who is the Returning Officer of 156-Mydukur Assembly Constituency, in his evidence has deposed that during the last round of counting, the drum incharge informed him that some loosened ballot papers were found. CWI further deposed that he informed the drum incharge to tie such loosened ballot papers and hand them over for counting in the last round of counting. CWI has categorically stated that the total number of votes counted were tallied with the ballot papers accounts received from the Presiding Officers of all the polling stations. Therefore, incidentally when some ballot papers were loosened From the bundle which were however, counted during the last round and the total votes also tallied with the ballot papers accounts received from the Presiding Officers, it cannot be said that there were irregularities and deficiencies in the counting process. Even otherwise, the petitioner has not stated that there is any variation with regard to the number of votes polled and the number of votes counted and as long as there is no variation and the figures tally, it cannot be said that any irregularity had taken place in the counting process which has materially affected the electoral prospects of the petitioner. It is not even the case of the petitioner that those 39 loosened votes were polled in his favour and they were unauthorised ly accounted in favour of the first respondent. Therefore, I am of the considered view that the election petitioner is not entitled to seek a declaration for ordering recount of all the ballot papers in 156-Mydukur Assembly Constituency. The decisions cited (1 to 6) supra by the learned senior Counsel for the petitioner in support of his contentions, present different set of facts and circumstances and the ratio laid down in those decisions does not lend any support to the case of the petitioner as the facts and circumstances of the instant case are entirely different. Accordingly, I answer issue No.4 against the petitioner.

46. Insofar as issue No.5 is concerned which relates to declaring the election of the first respondent as void and further declaring the petitioner as duly elected in place of the first respondent, having regard to my discussion on other issues, particularly on issue No.6, I am of the considered view that no justifying reasons are shown by the election petitioner to grant this relief to him. On the contrary, as discussed by me .on issue No.6, rigging activity has taken place in Polling Station No.88 of Kesalingayapalli village iiv favour of the petitioner and therefore, he is not entitled for any relief in this regard. Accordingly, I answer this issue also against the petitioner.

Issue Nos. 7. 8 and 9:

Issue No.7 relates to the action of the Returning Officer in accepting the ballot papers pertaining to Polling Station No.88. Issue Nos.5 and 9 also relate to the votes polled in Polling Station No.88 by impersonation.

47. On issue No.6 I have elaborately discussed about the instances of rigging in Polling Station No.88 of Kesalingayapalli and held that rigging has taken place in the said Polling Station No.88 on the basis of the evidence on record and decided issue No.6 against the election petitioner. On issue No.2, I have also held that the Returning Officer is justified in rejecting 30 ballot papers with Sl.Nos.065201 to 065230 pertaining to Polling Station No.88 of Kesalingayapalli village, as a result of which the claim of the petitioner that 29 votes which were polled in his favour without the signature of the Presiding Officer on them pertaining to Polling Station No.88 should have been included in his total number of votes, also stood rejected. In view of my findings on issue Nos.2 and 6 which were held against the election petitioner, I am of the view that no further finding is necessary on issue Nos.7, 8 and 9 which also relate to Polling Station No.88 of Kesalingayapalli village as it will not affect the electoral prospects of the first respondent who is the returned candidate.

48. In the result, this Election Petition is dismissed with costs.