

**HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

**WRIT PETITION No.4103 of 2024**

**ORDER:**

Preliminary Order dated 12.01.2024 passed in Election O.P.No.1 of 2021 by the Election Tribunal-cum-Principal Junior Civil Judge, Ongole, whereby and whereunder the box containing the election material is directed to be opened to examine the marked copy of Electoral Roll to proceed further in the matter, is assailed in this Writ Petition.

2. The parties hereinafter will be referred to as per their status in this writ petition.

3. The Election O.P.No.1 of 2021 was filed by the 1<sup>st</sup> respondent herein seeking the following reliefs:

- (i) For setting aside the election of respondent no.1 (petitioner herein) as null and void for the malpractices and manipulations conducted in the election;
- (ii) For ordering recounting of votes of M.Muppalla Village for the post of Sarpanch conducted on 09.02.2021 and verification of valid and invalid votes out of polled votes in public Court;
- (iii) Consequently to declare the petitioner (1<sup>st</sup> respondent herein) as elected candidate for the post of Sarpanch of M.Muppalla Village.

4. Along with the main election O.P., the respondent no.1 filed I.A.No.368 of 2021 to reopen the matter for opening the box which contain election material in presence of both the parties and their respective counsel to ascertain double casting of the votes by two individuals and casting vote by impersonation of the person, who is residing in Foreign country on the date of election, and other malpractices committed by respondent no.1 therein (petitioner herein) with the support of respondent nos.2 to 4 and I.A.No.369 of 2021 to recount the votes by opening ballot box.

5. Both the above said petitions were dismissed by the Election Tribunal vide common order dated 18.05.2023. Feeling aggrieved, the respondent no.1 preferred filed Civil Revision Petition nos.1433 & 1434 of 2023. The said CRPs were disposed of by this Court by common order dated 08.08.2023, setting aside the impugned common order dated 18.05.2023 and directing the election tribunal to dispose of the I.A.Nos.368 & 369 of 2023 along with the main election petition within two (02) months from the date of receipt of copy of the order.

6. In pursuance thereof, the election tribunal passed the preliminary order dated 12.01.2024 now impugned in this writ petition.

7. Heard Ms.Akhila Naidu, learned counsel, representing Sri N.Ravi Prasad, learned counsel for the petitioner, Sri Ambati Sudhakara Rao, learned counsel for respondent no.1 and Sri Venkata Reddy Gajjala, learned Standing Counsel for respondent no.4.

8. Ms.Akhila Naidu, learned counsel for the petitioner, while reiterating the contents of the writ petition, contended that the impugned order is unsustainable and untenable, since the same was not passed within the time line fixed by this Court and also in conformity with the direction given by this Court to the Election Tribunal vide common orders dated 08.08.2023 passed in CRP Nos.1433 & 1434 of 2023, since this Court had directed the Election Tribunal to dispose of the I.As. along with the main E.O.P. within two months from the date of receipt of copy of the order. Whereas the impugned orders were passed after lapse of five (05) months and that too a preliminary order in main Election O.P. was passed instead of passing final orders in the main Election O.P.and in I.As.

The learned counsel would further contend that the mandate contained in the preliminary order for opening the box containing election material in order to examine the marked copy of the electoral roll; is illegal and unjust, since the election petition does not contain adequate material

and further the petitioner in the election O.P.also failed to adduce legally acceptable evidence affording grounds for believing that there has been a mistake in counting. The sole ground of repetition of names in voter list cannot at all be taken to mean that those persons had cast their votes twice or thrice and that too in favour of the petitioner. Thus, the election tribunal committed a grave error in ordering opening of box containing election material, without there being any factual foundation in the election petition and without any legally acceptable evidence let in by the petitioner therein. Therefore, the orders impugned are liable to be set aside.

The learned counsel would further contend that the preliminary order failed to provide adequate safeguards to ensure the integrity and confidentiality of the election material kept in the box, as once it is opened there may be possibility of tampering or manipulation of the election material, and therefore the preliminary order is untenable, having been passed lacking procedural fairness.

The learned counsel for the petitioner would further contend that the main election petition does not contain a relief for verification of the election material and as such, as the relief granted vide preliminary order

is beyond the main relief sought in the election O.P., the same is unsustainable and is liable to be set aside.

Accordingly, the learned counsel for the petitioner prayed to allow the writ petition by declaring the preliminary order impugned as illegal, arbitrary and unconstitutional.

9. On the other hand, Sri Ambati Sudhakara Rao, learned counsel for 1<sup>st</sup> respondent, on counter, would submit that it is no doubt true that the preliminary orders were passed beyond the time line fixed by this Court vide common orders dated 08.08.2023 in Civil Revision Petition Nos.1433 & 1434 of 2023, but the same is not a valid ground to assail the orders.

The learned counsel would further submit that the Election Tribunal has got power to order for opening the box for verification of the election material once it comes to the conclusion that malpractices were committed. Accordingly, the Election Tribunal, having satisfied that the 1<sup>st</sup> respondent could place high degree of prima facie evidence to probablize her contentions regarding malpractices by letting in legally acceptable evidence, has passed the preliminary orders, delineating the circumstances that warranted opening the trunk box containing the election material.

Therefore, there is neither impropriety nor procedural irregularity in passing the impugned orders.

The learned counsel would further submit that the Election Petition was filed for ordering recounting of votes of M.Muppalla Village for the post of Sarpanch conducted on 09.02.2021 and verification of valid and invalid votes out of polled votes in public Court. Therefore, the contention of the petitioner that the relief granted vide preliminary orders is beyond the relief sought in the election petition, is untenable and unsustainable.

The learned counsel would further submit that the petitioner during her cross-examination, while being examined as R.W.1 before the Election Tribunal, categorically deposed that she had no objection for recounting of ballot papers in open Court. In view of the same, the petitioner is estopped from assailing the preliminary orders passed for opening of the box containing the election material.

The learned counsel would further submit that the guidelines laid down by the Hon'ble Supreme Court in ***R. Narayana vs. S.Semmala and others*** as to in what circumstances recounting can be ordered, are squarely applicable to the facts and circumstances existed in the Election

O.P. and accordingly, the Election Tribunal had rightly ordered for opening the box.

The learned counsel would further submit that the election tribunal, upon perusing the evidence let in by both the parties, having found that the petitioner in the election O.P. could plead and establish malpractices to unsettle the election, rightly passed the preliminary order. No valid grounds are either raised or urged in this writ petition warranting interference of this Court.

The learned counsel would further submit that the Election Tribunal having found malpractices such as some of the voters voted twice or thrice and that a voter who was staying abroad was impersonated, had ordered for verification of the counter foils of the said votes in order to find to whom the said votes were cast to proceed further in this matter. The orders impugned have been passed keeping in view the guidelines laid down by the Hon'ble Supreme Court.

The learned counsel would further submit that no doubt, verification of counter foils is a drastic step, in view of the fact that preservation of secrecy of ballot is sacrosanct, however to strike a balance between secrecy of ballot and the purity of election, the secrecy of ballot can be

violated as per the observations made by their Lordships in the decision in ***Ram Sewak Yadav v. Hussain Kamil Kidwai and others*** and (2) ***Dr. Jagjit Singh v. Giani Kartar Singh***, provided basic requirements to the satisfaction of the election tribunal. In the instant case, the basic requirements that are essential for inspection of ballot papers are very much exist and upon due satisfaction only the election tribunal ordered for inspection of ballot papers.

The learned counsel would further submit that since the evidence let in by the parties clinchingly established that malpractices did occur in the election in the form of impersonation and also voting by same person twice and thrice, the election tribunal had passed the preliminary order ordering verification of the election material to find out in whose favour those votes were cast so as to dispose of the election O.P. The election tribunal had given proper and sufficient reasons for arriving at the decision. No proper and justifiable grounds were raised nor urged before this Court seeking interference of this Court with the impeccable orders passed by the election tribunal. There are no merits in this writ petition and the same deserves dismissal.

Accordingly, prayed to dismiss the writ petition.



10. Whereas, Sri Gajjala Venkata Reddy, learned Standing counsel for 4<sup>th</sup> respondent, contended that authorities have followed the guidelines issued by Election Commission of India for publishing voters' list, for conducting election as well as for counting. The 4<sup>th</sup> respondent did not commit any irregularities and he and other officers discharged their duties as per the guidelines issued from time to time, right from the starting point of voting till declaration of results. There is no cause of action for filing election O.P. and the Election O.P. itself is liable to be dismissed. Accordingly prayed to pass appropriate orders.

11. Perused the material available on record and the orders impugned in this writ petition. The same would indicate that pursuant to the notification dated 08.01.2021 issued by the State Election Commission of Andhra Pradesh for electing members and Sarpanchas for the respective gram panchayats in the State, the 1<sup>st</sup> respondent and the petitioner contested for the post of Sarpanch of M.Muppalla Gram Panchayat. Elections for gram panchayat M.Muppalla were held on 09.02.2021. After completion of counting, the petitioner was declared as elected by a margin of two votes.

12. Aggrieved thereby, the 1<sup>st</sup> respondent filed Election O.P. under Section 233 of A.P.Panchayat Raj Act, 1994, read with Rules 1 to 7 of Conduct of Election Rules of Grampanchayats of A.P. and Zilla Parishad Rules, 1995 seeking to set aside the election of the 1<sup>st</sup> respondent as null and void, for ordering recounting after verification of valid and invalid votes out of polled votes in public Court and consequently to declare her as elected candidate for the post of Sarpanch of M.Muppalla Village, alleging that the petitioner with the support of the election officers had resorted to malpractices and manipulations during the election as well as counting.

13. The malpractices pointed out by the 1<sup>st</sup> respondent, in brief, are that the published voters list contains double entries and triple entries and one Talluri Gopi Krishna was figured as voter thrice in the list at Serial Nos.64, 616 & 618 and he cast his vote twice and similarly, Chinnam Ramyasree was enrolled as voter twice at Serial Nos.265 & 1740 and she cast his vote twice. The vote of Vykunta Sujatha, who was staying abroad, was franchised by impersonation by daughter-in-law of petitioner. Though the same was brought to the notice of the Returning Officer by the 1<sup>st</sup> respondent and her supporters, the officials did not prevent them from

such illegal practices of voting second time and impersonation. Therefore, the impersonated vote and the votes of the persons voted twice are to be excluded from counting. Further, the 1<sup>st</sup> respondent was not allowed to sit at the time of counting and her agents were made to stand as mute spectators to the malpractices conducted by the petitioner as well as officials. While counting postal ballots, the Stage-II election officer in collusion with the petitioner had removed the affidavits attested by the Gazetted Officers appended to five postal ballots, which were voted in favour of the 1<sup>st</sup> respondent, and were excluded from counting. Moreover, eighteen (18) votes cast in favour of the 1<sup>st</sup> respondent with swastika marks on the symbol allotted to the 1<sup>st</sup> respondent, were excluded from counting declaring them invalid on the ground that thumb impressions were affixed on the symbol of the 1<sup>st</sup> respondent. In fact, those thumb impressions were created on the ballots by the petitioner in collusion with the counting staff. Adding to the same, two (02) votes cast in favour of the 1<sup>st</sup> respondent were rejected on the ground that the swastika mark is appearing lightly on the ballot, whereas four empty ballot were counted in favour of the petitioner though swastika stamps is not clearly visible on the ballots. Furthermore, the counting of votes was intentionally delayed till midnight, only to facilitate the petitioner. In view of the illegal activities,

manipulations and fabrications conducted by the election officers and other officials participated in conducting the elections and counting, had resulted in defeat of the 1<sup>st</sup> respondent in the election.

14. The petitioner repudiated the averments made in the election petition by filing counter contending therein that the 1<sup>st</sup> respondent who had not questioned the voters list prior to conducting the elections, is estopped from doing so after completion of election that too after losing the election. Further, the 1<sup>st</sup> respondent must have raised objection when the voters, whose names appeared twice or thrice in the voters list, came to franchise their votes on the second or third time. Simply because a voter's name is entered twice or thrice by itself does not mean that they have franchised the votes twice or thrice. Anyhow, the voters whose names are entered twice or thrice in the voters' list are not the voters of the petitioner and infact Gopi Krishna, whose name was entered thrice in the voters' list is relative of the 1<sup>st</sup> respondent. The daughter-in-law of the petitioner had not franchised the vote impersonating Vykunta Sujatha, who was residing abroad. The petitioner had not resorted to any sort of malpractices and she had never encouraged anybody to vote twice or thrice. The counting agents appointed by the 1<sup>st</sup> respondent were present

throughout the process of counting votes and they never raised any objection. The postal ballots voted in favour of the petitioner as well as 1<sup>st</sup> respondent were invalidated as affidavits were not there and it is false to state that the affidavits are removed. The ballot papers which did not contain swastika symbol were not counted, irrespective of the fact whether they were cast in favour of the petitioner or the 1<sup>st</sup> respondent. All the votes polled in favour of the petitioner as well as the 1<sup>st</sup> respondent were verified and counted. After completion of counting process, the petitioner was declared as elected candidate. The total votes polled are 1575 but not 1576. The total votes polled in the 8<sup>th</sup> ward are 161 only but it was mistakenly mentioned as 162. No irregularities or illegalities as alleged by the 1<sup>st</sup> respondent did occur either during election or counting. The election petition is not maintainable for non-compliance of Rule 5(1) of A.P.Panchayat Raj (Election Tribunal) in respect of Grampanchayat of Mandal Parishad and Zilla Parishad. The 1<sup>st</sup> respondent has not followed Rule 6 of Panchayat Raj Rules. The election petition is misconceived and filed only to harass and blackmail the petitioner.

15. The 2<sup>nd</sup> respondent in the election O.P. filed counter refuting the averments of the election petition by filing counter contending that they

followed the guidelines issued by the election authority in conducting the elections as well as counting. No complaint was received from any of the agents from the respective wards about the alleged impersonation or double voting. The respective counting agents of the petitioner and the 1<sup>st</sup> respondent were present from starting to end of counting. The 2<sup>nd</sup> respondent had followed the rules framed by the election authorities. None of the counting agents have raised any objection about improper alleged rejection of postal ballot votes. After completion of counting, it was found that the petitioner secured 782 votes and the 1<sup>st</sup> respondent secured 780 votes and as per the guidelines, the petitioner was declared as sarpanch. The allegations made by the 1<sup>st</sup> respondent are afterthought innovations. There are no merits in the petition and prayed to dismiss the Election Petition.

16. The respondent nos.3 to 5 filed counter contending that no irregularities were committed in conducting the election and they strictly followed the guidelines issued by the election authority in conducting the election. The election petition is bad for non-compliance of Rule 5(1) (G.O.Ms.No.111 of Panchayat Raj Act, 1955) of A.P.Panchayat Raj (Election Tribunals in respect of Grampanchayat, Mandal Parishads and

Zilla Parishads). The court fee paid is against Rule 5(1), which is a mandatory, and the 1<sup>st</sup> respondent had also not taken summons as required under Rule-6. The election petition is liable to be dismissed.

17. Basing on the pleadings, the election tribunal framed the following issues for trial:

1. Whether R2 to R4 have committed any irregularities in conducting elections as contended by the petitioner (1<sup>st</sup> respondent herein)?
2. Whether the petitioner (1<sup>st</sup> respondent herein) is entitled for setting aside the Election of R1 as null and void as prayed for?
3. Whether the petitioner (1<sup>st</sup> respondent herein) is entitled for recounting of votes as prayed for?
4. Whether the petitioner (1<sup>st</sup> respondent herein) is entitled to be declared that she is the returned candidate to the post of Sarpanch of M.Muppalla Village?
5. To what relief?

18. During the course of trial, the 1<sup>st</sup> respondent besides examining herself as P.W.1 got examined P.W.2 to P.W.8 and got marked Ex.P1 to P18. On the other, the petitioner besides getting herself examined as R.W.1, got examined R.Ws.2 to 5, the 2<sup>nd</sup> respondent got himself examined as R.W.6 and fourth respondent got himself examined as R.W.7 and got marked Exs.R1 to R4.

19. The election tribunal, upon analyzing the evidence and material placed before it by both the parties, having found that verification of the marked copy of the electoral roll, which is the official and undisputed document, is essential to ascertain as to whether two individuals had cast their vote twice and whether the person, who was staying abroad as on the date of election was impersonated; passed the preliminary order, directing the respondent nos. 2 to 5 to produce the key of the Iron Trunk Box containing election material, which was already produced before the election tribunal in a sealed condition, so as to open the box in open Court in presence of both the parties and their counsel in order to examine the Marked Copy of Electoral Roll (Marked Voters List) to proceed further in the matter.

20. The said preliminary order is called in question in this writ petition for declaring it to be illegal, arbitrary and unconstitutional.

21. Regarding the contention that the order impugned was not passed within the time line fixed by this Court while disposing of CRPs is concerned, the same by itself does not invalidate the order. Moreover, this Court vide orders dated 01.02.2024 passed in I.A.No.1 of 2024 in Civil Revision Petition No.1555 of 2022, has extended the time granted for



disposal the Election O.P.No.1 of 2021 for a further period of four (04) months from the date of receipt of copy of that order. Therefore, the said contention raised by the petitioner is untenable and hence rejected.

22. Regarding the further contention of the petitioner as to passing of preliminary order by the Election Tribunal instead of passing final orders in the Election O.P. as well as I.As.is concerned; no doubt, this Court disposed of Civil Revision Petition Nos.1433 & 1434 of 2023 and while setting aside the common orders dated 18.05.2023 passed in I.A.No.368 & 369 of 2023 impugned in those Civil Revision Petitions, directed the Election Tribunal to dispose of the said I.As.afresh along with the main E.O.P. However, the Election Tribunal had passed preliminary order in the Election Petition No.1 of 2021 alone without passing any orders in I.A.Nos.368 & 369 of 2023. I.A.No.368 of 2023 was filed to reopen the matter and I.A.No.369 of 2023 was filed for granting permission to open the box that contained election material. It would have been appropriate if the Election Tribunal passed common orders in Election O.P. and in both the I.As. However, though not specifically referred to I.As.in the preliminary orders, the reliefs sought in the said I.As. have been granted while passing preliminary orders. It is also relevant here to note that the

Election Tribunal had settled as many as five (05) issues for determination and while answering issue Nos.1 & 3, the Election Tribunal had categorically held that issue Nos.2,4 & 5 could be answered only upon verification of the election material. As rightly held by Election Tribunal, the issue as to whether the election has to be set aside and the 1<sup>st</sup> respondent can be declared as returned candidate could only be answered after verification of the election material. Therefore, there is no procedural lapse in passing the preliminary orders, since final orders cannot be passed at that stage of the proceedings. Accordingly, the contention of the petitioner in this regard is also rejected.

23. The further contentions raised by the petitioner and respondent nos.2 to 5 before the Election Tribunal that the election petition is not maintainable for non-compliance of Rule 5(1) of A.P.Panchayat Raj (Election Tribunals) in respect of Grampanchayat of Mandal Parishad and Zilla Parishad, was rejected by the Election Tribunal holding that there was due compliance of the said Rule. The petitioner did not either plead or urge any grounds challenging the said finding in this writ petition.

24. Before going into the facts of the case, it is relevant here to mention the settled principles of law for recounting of votes and

verification of ballot papers in violation of the sacrosanct principle of preservation of secrecy of ballot.

25. In ***P.K.K.Shamsudeen vs. K.A.M.Mappillai Mohindeen***<sup>1</sup>, the Hon'ble Supreme Court held thus:

“Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from high sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interest of justice, a Tribunal or Court should not order the recount of votes.”

26. In ***Vadivelu vs. Sundaram***<sup>2</sup>, the Hon'ble Supreme Court held thus:

“The petitioner who seeks recount should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the Court is satisfied about the truthfulness of the above allegation, it can order recount of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has been materially affected the result of the election whereby the defeated

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<sup>1</sup> . (1989) 1 SCC 526

<sup>2</sup>.AIR 2000 SC 3230

candidate is seriously prejudiced, the Court can resort to recount of votes under such circumstances to do justice between the parties.”

27. In ***Ram Sewak Yadav vs. Hussain Kamil Kidwai & others***<sup>3</sup>, the Hon’ble Supreme Court held thus:

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

28. In ***Kattinokkula Murali Krishna vs. Veeramalla Koteswara Rao***<sup>4</sup>, the Hon’ble Supreme Court held that having regard to the consequences emanating from the direction of recounting, which may even breach the secrecy of ballot, the doctrine of prejudice is an irrelevant factor for ordering recount.

29. In ***Kagitha Bhanu vs. The Principal Junior Civil Judge-cum-Election Tribunal, Gudivada, Krishna District and others***<sup>5</sup>, a coordinate bench of this Court while at Hyderabad held as follows:

*“Keeping in view of the nature of allegation, there cannot be any direct evidence expected to be adduced by respondent no.6 to show that all the*

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<sup>3</sup> . 1964 AIR SC 1249

<sup>4</sup> . AIR 2010 SC 24

<sup>5</sup> . 2011 SC OnLine AP 186

*six persons have cast their votes twice or that they have exercised their choice in favour of the petitioner only. As rightly observed by the Election Tribunal, a definite conclusion in this regard can be arrived at only after opening of the ballot boxes because the counter foils of ballot books are in sealed cover. Without verification of those ballot books with reference to the marked voters' list, also kept in the sealed cover, it is not possible to know with certainty whether the petitioner's averments are correct or not."*

30. From the observations made in the above citations by the Hon'ble Supreme Court as well as this Court, it is evident that an order for inspection of election material cannot be granted as a matter of course, as the secrecy of ballot, which has always been considered sacrosanct in a democratic process of election may be disturbed, unless the affected candidate could allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes and purity of election has been tarnished and it has been materially affected the result of the election.

31. It is relevant here to note that the contentions raised by the 1<sup>st</sup> respondent in the election O.P. regarding exclusion of valid postal votes and other votes from counting, which actually were voted in her favour; were rejected by the Election Tribunal on the ground that the 1<sup>st</sup> respondent failed to substantiate them by placing cogent and convincing material. Consequently, the Election Tribunal held that the 1<sup>st</sup> respondent is not entitled for recounting and reverification of votes on the said counts.

32. It appears that the 1<sup>st</sup> respondent did not choose to challenge the verdict of the Election Tribunal so far as it relates to negating her contentions for recounting and reverification. This being a writ petition filed by the petitioner, it is needless to delve into the aspects of the election petition that went against the 1<sup>st</sup> respondent, since became final, for the said findings were not challenged.

33. So far as the contentions that two individuals voted twice and one individual, who was staying abroad on the date of election, was impersonated by daughter-in-law of the petitioner; the 1<sup>st</sup> respondent got examined P.W.2 to P.W.5, who had acted as polling agents for the 1<sup>st</sup> respondent for Ward Nos.2,4,1 and 10 respectively. It is their evidence that though they raised an objection that the individuals, whose names appear twice and thrice in the voters' list, had already cast their vote in other ward and thus they cannot be permitted to vote again, the Polling Officer permitted them to cast their vote for the second time. It is the further evidence of P.W.4 that daughter-in-law of the petitioner, cast the vote of Vykunta Sujatha, who was staying abroad, by impersonating her and though he raised objection, the polling officer allowed her to vote. The above witnesses were cross-examined by the learned counsel for the

petitioner and respondent nos. 2 to 5 herein, however, they could not elicit any material to discredit the trustworthiness of their testimony, except making suggestion.

34. As stated above, R.W.2 to R.W.4 were got examined by the petitioner. R.W.2 is the election agent in ward No.1, R.W.3 is the polling agent in ward No.2 on behalf of the petitioner. It is their evidence that Talluri Gopi Krishna and Chinnam Ramyasree had not cast their votes in the wards wherein they were acting as election agents on behalf of the petitioner. However, the said factum that the above two individuals did not come and cast their votes in the above wards was not specifically pleaded by the petitioner in her counter. Further, despite making a specific allegation that daughter-in-law of the petitioner cast her vote by impersonating a person staying abroad, the petitioner did not choose to examine her to disprove the testimony so made by P.W.4.

35. The testimony of P.W.8-Assistant Foreigners Regional Registration Officer, Hyderabad coupled with Ex.P18- Letter dated 21.11.2022 addressed by the Assistant Foreigners Regional Registration Officer, Bureau of Immigration, Hyderabad, and so also the evidence of R.W.1 to R.W.5 clinchingly established that Vykunta Sujatha @ Muddana

Sujatha, who was said to have been impersonated by daughter-in-law of the petitioner, was abroad on the date of election. Therefore, it is not possible for her to vote in the election held in the subject village.

36. By setting out adequate statement of material facts in support of her case and by letting in the above evidence, the 1<sup>st</sup> respondent could place high degree of prima facie evidence sufficient for ordering recounting and reverification of election material violating the sacrosanct principle of preservation of the secrecy of the ballot.

37. The Election Tribunal had scanned the evidence let in by both the parties in proper perspective and rightly came to the conclusion that the 1<sup>st</sup> respondent could place high degree of prima facie evidence on the above three counts.

38. Therefore, as held by a coordinate bench of this Court in Kagitha Bhanu (supra 5) that without verification of the ballot books with reference to the marked voters' list, kept in trunk box, it is not possible to know with certainty whether the 1<sup>st</sup> respondent's averments are correct or not.



39. In view of the above, the order impugned does not require interference of this Court and therefore, the writ petition is liable to be dismissed.

40. Accordingly, the writ petition is dismissed. There shall be no order as to costs. The Election Tribunal shall make every endeavour to dispose of Election Petition No.1 of 2021 with utmost expedition, at any rate not later than three (03) months from the date of receipt of copy of this order.

This Court places on record the sincere appreciation for the efforts put in by Ms.Akhila Naidu, learned counsel for the petitioner.

As a sequel, Interlocutory Applications, pending if any, shall stand closed and interim orders, if any, shall stand vacated.

2<sup>nd</sup> July, 2024  
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**JUSTICE RAVI CHEEMALAPATI**

**HON'BLE SRI JUSTICE RAVI CHEEMALAPATI**

**WRIT PETITION No. 4103 of 2024**

2<sup>nd</sup> July, 2024

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