



AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WA No. 72 of 2022

Babli Sahu

---- Appellant

Versus

1. State Of Chhattisgarh Through Its Secretary, Department Of Panchayat And Rural Development, Chhattisgarh Rajya Mantralaya, Mahanadi Bhawan, Police Station Mandir Hasaud, Naya Raipur, District Raipur, Chhattisgarh.
2. Sub Divisional Officer (Revenue) Mungeli, District Mungeli, Chhattisgarh.
3. Tehsildar Mungeli, District Mungeli, Chhattisgarh.
4. Dharmin Bai Kashyap
5. Draupati W/o Jhaduram
6. Gangotri Vaishnav
7. Parmin Manikpuri
and District Mungeli
8. Sunita Chandrakar
District Mungeli

---- Respondents

For appellant	:	Shri Sudhir Verma, Advocate.
For Respondent/State	:	Shri Ayaj Naved, G.A.
For respondent No.4	:	Shri Praveen Kumar Tulsian, Advocate.



Hon'ble Shri Justice Goutam Bhaduri &

Hon'ble Shri Justice N.K. Chandravanshi

Judgement

Per Goutam Bhaduri, J.

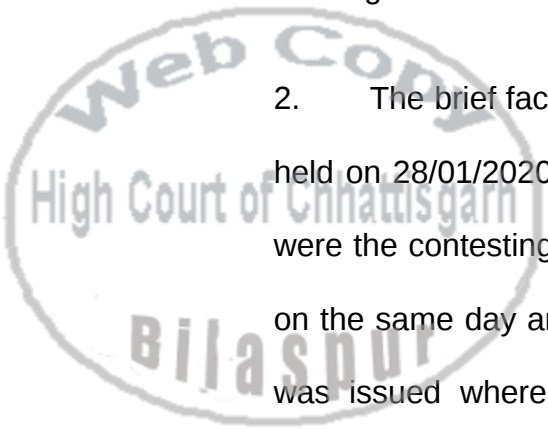
25/04/2022

Heard.

1. The present writ appeal is against the order dated 6/01/2022 passed in WPC No.9/2022 wherein the petition preferred by the petitioner was dismissed. The challenge was made to the removal of the petitioner from the post of Sarpanch of village Semarkona, District Mungeli, by an order dated 31/12/2021.

2. The brief facts of this case are that an election for the post of Sarpanch was held on 28/01/2020 wherein the appellant and the respondent No.4 primarily they were the contesting candidates. After the election, the counting of votes was done on the same day and result was declared on the same day and lastly a certificate was issued whereby the appellant Babli Sahu, the appellant was held to be elected.

3. Subsequently, an election petition was filed before the SDO (Revenue) with a prayer to recount the votes of polling booth Nos.3, 4 and 5 of gram panchayat Semarkona. In such election petition, the election tribunal by its order dated 18/10/2021 directed for recount of the votes of the Sarpanch in said booths. The said order was subject of challenge before the learned Single Bench in WPC No.4384/2021 wherein this Court by order dated 08/11/2021 quashed the order of 18/10/2021 and directed that the proceeding be decided in a election petition in accordance with the provisions of Rule 11 of the Rules, 1995 within a specified time. It is under those circumstances the witnesses were examined in the election petition by the contesting parties. After the examination of the statement, initially





order dated 20/12/2021 was passed whereby the SDO has directed for recount of the votes. The said order was also subject of challenge by the appellant in WPC No.5548/2021, however before the hearing of the said writ petition, the order of removal of petitioner dated 31/12/2021 was passed. On 31/12/2021, recounting of votes was carried out and the appellant's vote was reduced from 404 to 400 whereas the votes of respondent No.4 herein Dharmin Bai Kashyap remained to that of earlier one of 403. In a result, Dharmin Bai Kashyap the respondent No.4 herein was declared elected Sarpanch. The appellant herein challenged the said order under different grounds.

4. Learned counsel for the appellant would submit that in a election petition under Chhattisgarh Panchayat Raj Adhiniyam as per the Rule 6 of the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995, specified relief is required to be claimed i.e. declaration of the election of returned candidate is void and in addition thereto further declaration is required to be claimed to declare petitioner or other contesting candidates as wining candidate. He would submit that the petition before the election tribunal was only confined to recounting of votes without following the mandate of Rule 6 of Rules, 1995, as such the petition itself was not maintainable only for recount of votes. He would further submit that in the process of recount, the validity of the votes secured by the appellant was gone into and the number of votes secured by the appellant from 404 was reduced to 400 whereas the number of votes secured by the respondent who was subsequently declared elected remained the same as 403. He placed reliance in a decision rendered by this court reported in 2013(1) CGBCLJ 99 and would submit that this Court has reiterated the principle rendered in a case of **Ram Sukh v. Dinesh Aggarwal** reported in (2009) **10 SCC 541** which laid down that the candidate who won the election should not be lightly interfered with and any petition seeking such interference must be strictly



confirmed to the requirements of the law. He would submit that the learned Single Bench has failed to take into account those facts and has dismissed the petition, thereby the instant appeal.

5. Per contra, learned counsel for the respondent No.4, Dharmin Bai Kashyap would submit that the order of recount is implicit. He would submit that as per the law laid down in case of **Sohan Lal v. Babu Gandhi and others** reported in **AIR 2003 SC 320** wherein it has been held that the court or tribunal can always direct the recount of votes as the parties may not know that the recounting is necessary till the result is declared, therefore the provisions of sub-rule (5) of Rule 80 of Chhattisgarh Panchayat Nirvachan Niyam, 1995 to be interpreted in such line of principles. He would further submit that the evidence rendered on behalf of the appellant would show that witness examined by appellant were not present in person during the initial counting of votes and therefore the order passed by the learned tribunal is well merited. He further submits that the learned Single Bench has also held that during the course of recounting the appellant was present, therefore no objection can be raised at a belated stage and the order passed by the learned Single Bench is just and legal.

6. We have heard the learned counsel for the parties at length and perused the necessary provisions.

7. Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 defines that an election to the Sarpanch can be challenged under the Rules and the Rule 6 which prescribes the relief to be claimed reads as under:-

“Rule 6. Relief that may be claimed by the petitioner. A petitioner may claim-

(a) a declaration that the election of all or any of the returned candidates is void; and



(b) in addition thereto, a further declaration that he himself or any other candidate has been duly elected.

8. Now when the relief claimed in the election petition by the respondent No.4 (Annexure P-4) is examined, it shows that the relief is confined to the fact that in the election held on 28/01/2020 of gram panchyat Semarkona, Tehsil and District Mungeli recounting be ordered to be carried out of booth Nos. 3, 4 and 5. The relief claimed by respondent No.4 therefore apparently was not in conformity to the Rule 6 of Rules, 1995 which mandates that not only the declaration of the elected candidate is required to be prayed to be void but the declaration to any candidate as elected is required to be made. Therefore the legislature in its wisdom has used the word 'and' in addition to (b) to Rule 6. The addition of such Rule purports that further declaration that he himself or any other candidate duly elected is required to be prayed. Consequently, as per the legislative intent dual prayer is a substantive addition which is required to be prayed. The requirement, therefore, is with certain object that in case of recounting and change of result, fresh election is not called for again.

9. Learned counsel for the appellant before this court has raised objection that the tribunal did not have the jurisdiction to go into the matter as the prayer itself was not in conformity to the Rules of 1995. The Supreme Court in the matter of **B.Y. Narasimha Prasad Vs. M. Veerappa and another (2008) 9 SCC 372** while dealing with the jurisdictional issue has observed that when the question of maintainability of the proceeding becomes a jurisdictional issue, the court was legally bound to address it regardless of the fact as to whether any objection has been made or not. Reading of Rule 6 of the Rules, 1995 mandates a dual prayer to be made, in absence thereof in order to decide the question of maintainability the jurisdictional point will emerge and in absence of proper prayer the petition may touch the red line laid down by the legislature.

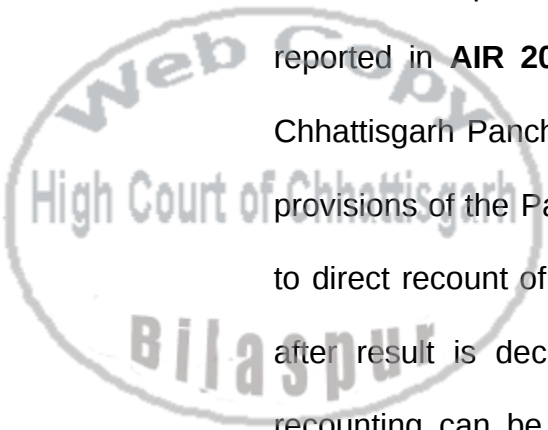


10. Further in respect of recount of votes, it is provided under sub-rule (5) of Rule 80 of Chhattisgarh Panchayat Nirvachan Niyam, 1995 which reads as under:-

“(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of rule 77 of sub-rule (4) the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter:

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

11. The Supreme Court in the matter of **Sohan Lal v. Babu Gandhi and others** reported in **AIR 2003 SC 320** while interpreting the sub-rule (5) of Rule 80 of Chhattisgarh Panchayat Nirvachan Niyam, 1995 observed that the Rules and the provisions of the Panchayat Raj Adhiniyam do not prohibit the court or the tribunal to direct recount of votes as the party may not know that recounting is necessary after result is declared. The question therefore comes to fore as to whether recounting can be ordered and was justified only because of the fact that the prayer was made. The Supreme Court in **AIR 1966 SC 773** in between **Dr. Jagjit Singh v. Giani Kartar Singh** held that on mere asking the ballot paper may not be allowed to be inspected and the order of recounting cannot be ordered. Admittedly, in this case the demand for recounting was not asked for immediately after the result were declared on 28/01/2020 or on 30/01/2020 when the certificate of election was issued. The result of election was directly challenged on 7/02/2020 by a election petition. The Supreme Court in the case of **Baldev Singh Vs. Shinder Pal Singh** reported in **(2007) 1 SCC 341** has observed that while ordering for recounting, maintaining the secrecy of ballot papers should be kept in tact and the direction for recounting shall not be issued only because the margin between the returned candidate and the election petitioner is narrow. Further the Supreme





Court in **(1989) 1 SCC 526** in between **P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen and others** held that it is settled position of law that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hindsight 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 the 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 paper is sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of 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 ballot paper 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 election tribunal in the interest of justice, a tribunal or court should not order for recount of votes.

12. Now translating the principles laid down by the Supreme Court, we have perused the facts of this case. The order of the learned tribunal would show that the tribunal while ordering for recounting, primarily relied on the statement of one Hira Singh, Vinay Pandey and Vikas Burman. All the three people, who were examined by the election petitioner were the agents of the losing candidate i.e. Dharmin Bai Kashyap. The people who were in-charge of the recounting process and were the independent witness were not called for evidence. When the election petitioner was sanguine of the fact the counting of votes was not properly carried out, the independent witnesses should have been brought to remove all ambiguity and to avoid one side probe cry. Perusal of the statement of the said witnesses would show that initially while the counting was made no objection was made in



writing but they say in the cross-examination that oral objection was made about insufficiency of the light while counting. The uniform statement have been made that they were shown the rejected votes and again admitted the fact that in respect of the illegal votes no objection was made. The result which is been shown after recounting on 31/12/2021, it shows that vote of the appellant was reduced from 404 to 400. It was not the case of the election petitioner before the tribunal that the votes were favourably counted in favour of the appellant but a general omnibus allegation was made that the counting was not correct. In absence of clear unambiguous statement and for want of independent witness, apart from the witness Hira Singh, Vinay Pandey and Vikas Burman, who were on behalf of the election petitioner/agent no sanctity can be given as to their statement being interested witness. The votes which has been reduced of the appellant also speaks writ large that some new factor of consideration came to fore when the recounting was made. Simply because of the fact that the appellant was present during the recounting, there cannot be estoppel against the law.

13. In a result, for the reasons stated supra we allow this writ appeal and set aside the order dated 6/01/2022 passed in WPC No.9/2022 and consequently, set aside the order of the learned SDO dated 20/12/2021 and subsequent result of recount order 31/12/2021. The consequences shall follow.

Sd/-

(Goutam Bhaduri)
Judge

Sd/-

(N.K. Chandravanshi)
Judge



Head Note

WA No. 72 of 2022

In challenge to the election of Sarpanch under the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995, the relief requires to be made as per Rule 6, in absence, it would be a jurisdictional issue to consider.

छत्तीसगढ़ पंचायत (निर्वाचन अर्जियों, भ्रष्टाचार और सदस्यता के लिए निरर्हता) नियम, 1995 के तहत सरपंच के निर्वाचन को चुनौती देने वाली याचिका में वांछित अनुतोष नियम 6 के अनुसार होना चाहिए, ऐसा न होने पर यह अधिकारिता का विषय होगा जिस पर विचार किया जाना चाहिए।

