

Court No. - 6

Case :- WRIT - C No. - 24880 of 2023

Petitioner :- Archana Singh

Respondent :- Prescribed Authority And 5 Others

Counsel for Petitioner :- Girdhar Prasad Tripathi, Sr. Advocate

Counsel for Respondent :- CSC, Dhirendra Bahadur Singh

Hon'ble Mrs. Manju Rani Chauhan, J.

List revised. None appears on behalf of the petitioner to press this case.

Heard Mr. Dhirendra Bahadur Singh, learned counsel for the respondent no.2 and learned Standing Counsel for the State-respondents.

The writ petition has been filed challenging the order dated 12.07.2023 passed by respondent no.1 whereby direction has been issued for recounting of votes.

Earlier order dated 16.08.2023, though the Court had directed that the recounting as scheduled may be held, however, the result of the same was to be kept in abeyance. The aforesaid order dated 16.08.2023 is reproduced herein below:-

"Heard Shri H.N. Singh, learned Senior Advocate, assisted by Shri Girdhar Prasad Tripathi, learned counsel for the petitioner and Mr. Vijay Kumar Singh, learned Senior Advocate assisted by Shri Dhirendra Bahadur Singh, learned counsel for the respondent no. 2.

The writ petition has been filed challenging the order dated 12.07.2023 passed by respondent no.1 whereby direction has been issued for recounting of votes.

Learned counsel for the petitioner has challenged the aforesaid order on the following grounds:-

(i) The election petition has been preferred by respondent no.2 with a prayer for recounting of votes without there being any prayer for setting aside the election and declaring the winning candidate accordingly. In support of his submission, he has relied upon a judgment of Lucknow Bench of this Court passed in the case of Anita Vs. State of U.P. and Ors. reported in 2023 (1) ADJ 87 (LB).

(ii) The allegations in the election petition are vague and there is no basis for

proving the same.

(iii) There is vague allegation with respect to 15 valid votes of the election-petitioner being declared invalid.

(iv) The fee required has not been deposited under the right head and lastly the total votes cast are 1401 whereas total counted votes were said to be 1374, there being no basis for the same as the returning officer and polling officer have not been examined. Therefore, the order directing for recounting of votes cannot be sustained.

(v) There is no finding with respect to the allegations as made by the election-petitioner for directing of recounting of votes.

On the other hand, the learned counsel for the respondent no. 2 submits that the affidavits as submitted by the counting agents of both the parties, i.e. the winning and the defeating candidate, go to show that there is difference in the number of votes cast and counted which is not being denied by the counting agent of the petitioner, which itself was a sufficient ground for directing recounting of votes.

Matter requires consideration.

Put up as fresh on 04.09.2023.

In the meantime, learned counsel for the parties will bring on record the affidavits, filed by the counting agents of both the sides.

As an interim measure, recounting as scheduled to be held on 21.08.2023 shall go on, however, result of the same shall be kept in abeyance."

Today, learned standing counsel has placed the entire record before this Court and the result of recounting is in a sealed cover, which is opened before the Court, wherein it is found that the total votes cast are 1381 out of which 1330 votes are valid and 51 are invalid. The total votes secured by the petitioner are 407, whereas the respondent no. 2; Mrs. Suman Singh has secured 403 votes. The result has been perused and returned to the Standing Counsel.

From the result, it is found that the petitioner has won by four votes, therefore, no useful purpose would be served to keep this writ petition pending.

Considering the facts and circumstances of the case, without expressing any opinion on the merits of the case, this writ petition stands ***disposed of*** with a direction to the respondent no.1; Prescribed Authority/Up-Ziladhikari, Bansdih, District-Ballia to decide the petitioner's election petition bearing No.4 of 2021, (Computerized No.T202115090602499 (Suman Singh vs. Archana Singh and others) (Case No.02499 of 2021) on its own merit, after

hearing all the parties, in accordance with law, by a reasoned and speaking order, preferably within a period of six months from the date of production of certified copy of this order.

It is made clear that this Court has not examined the merits of the case of the petitioner and the authority concerned shall apply its own mind strictly in accordance with law.

Order Date :- 16.10.2023

Jitendra/-