

Case :- WRIT - C No. - 8953 of 2024

Petitioner :- Sunita

Respondent :- Ramapati And 5 Others

Counsel for Petitioner :- Rajeiu Kumar Tripathi, Pankaj Kumar Tiwari

Counsel for Respondent :- Angrej Nath Shukla, C.S.C.

Hon'ble Pankaj Bhatia, J.

1. Heard learned Counsel for the petitioner as well as Sri Angrej Nath Shukla, learned Counsel for the caveator-respondent no.1 and the learned Standing Counsel.
2. The present writ petition has been filed challenging the order dated 27.09.2024 passed by the Revisional Authority/ Additional District Judge, Court No.3, Gonda in Civil Revision No.35 of 2024, whereby the matter has been remanded with certain directions for recounting the votes; as also the consequential order dated 15.10.2024 passed by the District Magistrate, Gonda and contained as Annexure-2 to the writ petition.
3. At the very outset, the Counsel for the caveator Sri Angrej Nath Shukla, who had filed the election petition, which has led to passing of the impugned order, specifically made a statement that he does not want to file counter affidavit. In view thereof, the averment of the writ petition is treated to be correct and the matter is proposed to be decided on merits as the other respondents are proforma respondents.
4. The facts in brief are that the petitioner and the respondent no.1 had contested an election for the post of Gram Pradhan, Gram Panchayat Chilbila Khattipur, Block Pandari Kripal, Pargana Tehsil and District Gonda in the year 2021, in which, the petitioner was declared as a winner for the post of Gram Pradhan. Against the said election result, the respondent no.1 filed an election petition under Section 12-C of

the Uttar Pradesh Panchayat Raj Act, 1947 (hereinafter referred to as 'the 1947 Act') read with Rule 3(1) of the Uttar Pradesh Panchayat Raj (Settlement Election Disputes) Rules, 1994 (in short 'the 1994 Rules') seeking cancellation of the result dated 02.05.2021.

5. From the record, it transpires that vide order dated 13.04.2022, the election petition filed by the respondent no.1 was dismissed, against which, the respondent no.1 preferred a revision under Section 12-C of the 1947 Act before the District Judge, Gonda, which was subsequently transferred to the Additional District Judge. The said revisional court by means of an order dated 28.10.2022 allowed the revision and set aside the order dated 13.04.2022 and remanded the case with a direction to the Prescribed Authority to pass a fresh order within a period of one month after affording opportunity of hearing to the parties.
6. It also transpires from the record that against the remand order dated 28.10.2022, the petitioner herein had approached this Court by filing Writ-C No.596 of 2023, however, the same came to be dismissed, vide judgment and order dated 30.01.2023. In pursuance to the remand order passed by the revisional court, the Prescribed Authority vide order dated 07.05.2024 again dismissed the election petition filed by the respondent no.1. The respondent no.1 once again filed revision before the District Judge under Section 12-C (6) of the 1947 Act, which came to be allowed by means of the impugned order dated 27.09.2024 and in pursuance to the directions given in the impugned order, the consequential orders have been passed by the District Magistrate, vide order dated 15.10.2024 fixing 19.10.2024 as a date for recounting of the votes.
7. Challenging the said two orders, the submission of the Counsel for the petitioner is that the entire election petition was filed, premised upon

two grounds, the first being that the petitioner had failed to make a fair and true disclosure of the criminal cases pending against her and the second being that there were discrepancies in votes shown in the website of the election commission and the report submitted by the Election Officer, as such, there was material for recounting, which has been wrongly refused. Against the said, he submits that the Prescribed Authority had adequately dealt with the said submission of the respondent no.1 and had held that it is the report of the Election Officer, which is final and the discrepancies as shown in the website of the election commission comes within disclaimer as was noticed by the Prescribed Authority and thus, the same cannot be in any case a ground for recounting of the votes. He further argues that the issue with regard to the claim for recounting was adequately dealt with by the Prescribed Authority in his order passed after remand, however, while exercising the revisional jurisdiction, although the revisional court had noticed the said version of the Prescribed Authority, however no reasoning whatsoever has been recorded for remanding the matter, which directions to recount the votes, which according to the petitioner is bad in law.

8. The Counsel for the petitioner further argues that power of revision vested in the Revisional Authority by virtue of Section 12-C(6) is not an appellate power and is a limited revisional power which can be exercised in conditions specified in Clauses (a), (b) and (c) of Section 12-C (6) of the 1947 Act and clearly the revisional court had exceeded the said jurisdiction and the other conditions that the orders suffers from the vice of non-consideration and non-recording of the reason, is one of the main ground argued by the Counsel for the petitioner.
9. Sri Angrej Nath Shukla, learned Counsel for the respondent-caveator specifically argues that the order impugned is a mere order of remand and there is no harm, if the recounting is done which would not

prejudice the petitioner in any manner if, the votes based upon which the petitioner, claimed to be elected are found to be true in recounting, he still continued to be an elected candidate, however, if in the recounting, the contention of the respondent no.1 is found to be correct, the transparency of the election petition would be ensured. He further argues that with regard to the first ground that the petitioner had not disclosed the criminal antecedents, the same cannot be a ground for recounting and the issue in the present writ petition is confined only with regard to the second foundation led by the respondent that there was discrepancies in the rejected votes as displayed in the website of the Election Commission and the report submitted by the Election Officer and, thus, no error has been committed in recounting the votes.

10. The Counsel for the respondent draws my attention to the specific pleadings as contained in paras 17 and 18 of the election petition filed the respondent no.1 to argue that certain votes were wrongly rejected and in view of the said pleadings, no harm would be caused to the petitioner, if the recounting is done as has been directed by means of the impugned order. He thus argues that the writ petition is devoid of merits and is liable to be dismissed.
11. In rejoinder, the Counsel for the petitioner draws my attention to the certificate given by the Election Officer, which is contained in Annexure-3, which discloses the votes in favour of all the candidates. He further argues that even as per the respondent, during the counting period, there was discrepancies as displayed in the website of the Election Commission, however, subsequently the discrepancies was rectified and the votes as reflected in the website is similar to report given by the Election Officer as such the arguments of the Counsel for the contesting respondent cannot be accepted. My attention is drawn to the Full Bench judgment of this Court rendered in the case of **Ram**

Adhar Singh vs District Judge, Ghazipur and others; 1985 AWC 246 All., wherein this Court for issuance of directions of recounting was duly considered.

12. The Counsel for the petitioner has further relied upon the judgment in the case of ***M. Chinnasamy vs K.C. Palanisamy and others; (2004) 6 SCC 341***, wherein, the Hon'ble Supreme Court had held that the recounting of votes should not be ordered on mere asking or merely because margin of votes between the returned candidate and election petitioner is narrow. Paragraph 15 in this regard is quoted below:

“15. It is not in dispute that in relation to an election petition, the provisions of the Code of Civil Procedure apply. In terms of Order VI Rule 2 of the Code of Civil Procedure which is in pari materia with clause (a) of sub-section (1) of Section 83 an election petition must contain concise statement of material facts. It is true as contended by Mr. Mani that full particulars are required to be set forth in terms of clause (b) of sub-section (1) of Section 83 of the Act which relates to corrupt practice. The question as to what would constitute material facts would, however, depend upon the facts and circumstances of each case. It is trite that an order of recounting of votes can be passed when the following ingredients are satisfied : (1) If there is a prima facie case; (2) material facts therefor are pleaded; (3) the court shall not direct recounting by way of roving or fishing inquiry; and (4) such an objection had been taken recourse to.”

13. The Hon'ble Supreme Court further noticed in paras 28, 43 and 46 as under:

“28. The law operating in the field is no longer res integra. Inspection of ballot papers can be ordered when in the facts and circumstances obtaining in the case, the Tribunal finds it necessary to so direct in the interest of justice. Discovery and inspection of documents with which the civil court is invested with power under the Code of Civil Procedure when trying a suit may be applied but such an order would not be granted as a

matter of course having regard to the insistence upon the secrecy of the ballot papers. Such an inspection may be ordered when two conditions are fulfilled:

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

*43. Furthermore, the High Court has not arrived at a positive finding as to how a prima facie case has been made out for issuing a direction for recounting. It is well-settled that prima facie case must be made out for scrutiny and recounting of ballot papers where it is of the opinion that the errors are of such magnitude as to materially affect the election. [See **M.R. Gopalakrishan vs Thachady Prabhakaran-1995 Supp.(2) SCC 101**].*

*46. Even if on recount it was found that the returned candidate has not secured majority of the votes, the result could not have been disturbed, unless prima facie case of high degree of probability existed for recount of votes. [See **P.K.K. Shamsudeen vs K.A.M. Mapillai Mohindeen-(1989) 1 SCC 526 at 530, 531**].”*

14. Reliance is further placed upon the judgment in the case of **Kattinokkula Murali Krishna vs Veeramalla Koteswar Rao and others; (2010) 1 SCC 466**, wherein the Hon’ble Supreme Court rejected the general principle applicable for recounting of votes. A similar view was taken by the Hon’ble Supreme Court in the case of **Arikala Narasa Reddy vs Venkata Ram Reddy Reddygari and another; (2014) 5 SCC 312**. In the light of the said, it is argued by the Counsel for the petitioner that the order impugned passed in revision is bad in law and contrary to the settled principle and is liable to be quashed.
15. The Counsel for the respondent has placed reliance on the judgment of the Hon’ble Supreme Court dated 21.01.2015 rendered in the case

of *Krishnamoorthy vs Sivakumar and others [Civil Appeal No.1478 of 2015 arising out of SLP (C) No.14918 of 2009]*, in which, directions were issued by this Court, which according to the petitioner has no application to the facts of the present case as the same pertains to interpretation of a provisions of State of Madras.

16. In the present case, the impugned order of recounting is passed by the Revisional Court while exercising powers under Section 12-C (6) of the 1947 Act, which is as under:

“12-C (6) Any party aggrieved by an order of the prescribed authority upon an application under subsection (1) may, within thirty days from the date of the order, apply to the District Judge, for revision of such order on any one or more of the following grounds, namely: -

(a) that the prescribed authority has exercised a jurisdiction not vested in it by law.

(b) that the prescribed authority has failed to execute a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercised of its jurisdiction illegally or with material irregularity.”

17. While passing the impugned order, in the entire revisional order, the Court had noticed the conduct of the petitioner in filing as many as 12 adjournment applications and has also noticed that in the order passed by the Prescribed Authority, it was held that there was an error in uploading of the votes and therefore the court held that it was a fit case for directing recounting of the votes. The said order for both the reasoning is bad in law, inasmuch as, recounting cannot be ordered only because of the conduct of the elected candidate in delaying the proceedings. Furthermore the order is perverse, inasmuch as, the Prescribed Authority in the order challenged in revision had never

held that there was error in uploading of the documents in fact the Prescribed Authority had held that in the website displaying the votes secured by the candidates, it was mentioned at the footnote that the information displayed is only for the convenience of the public and no claim can be raised based upon the said votes displayed on the website. He also noticed that the Election Officer in Form No.46 filed on 02.05.2021 had specifically certified the number of the votes obtained by each of the candidates including the number of votes, which were declared to be invalid. There was no pleading in the election petition filed that the certificate issued by the Election Officer was bad for any reason. In the absence of any specific pleadings to that effect, recounting could not have been ordered in view of the settled position of law relating to the recounting. The order of Revisional Authority is further bad in law, inasmuch as, it does not record that the prescribed authority has exercised its jurisdiction not vested in it by law, has failed to execute a jurisdiction so vested or has exercised his jurisdiction illegally or with mater irregularities.

18. In view of there being no material for the District Judge to have directed recounting as has been done by means of the impugned order, the contention of the Counsel for the respondent that a mere recounting would not adversely effect the petitioner cannot be accepted, as such, the writ petition deserves to be allowed.
19. According the writ petition stands *allowed*. The impugned order dated 27.09.2024 passed by the Revisional Authority/ Additional District Judge, Court No.3, Gonda in Civil Revision No.35 of 2024 and the consequential order dated 15.10.2024 passed by the District Magistrate, Gonda are quashed. The order passed by the Prescribed Authority is upheld.

Order Date:25.10.2024
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(Pankaj Bhatia,J.)