



2025:AHC:178018

HIGH COURT OF JUDICATURE AT ALLAHABAD

WRIT - C No. - 35227 of 2025

Shayada Khatoon

.....Petitioner(s)

Versus

State Of Uttar Pradesh And 3 Others

.....Respondent(s)

Counsel for Petitioner(s)	: Ashutosh Mishra, Vrindavan Mishra
Counsel for Respondent(s)	: Amrendra Pratap Singh, C.S.C., Tarun Agrawal

Court No. - 9

HON'BLE ARUN KUMAR, J.

1. The present petition is being heard on a mention made by learned counsel for the petitioner, as by the impugned order the recounting of votes is to be held today i.e. 8.10.2025 at 10.00 am.

2. Heard Sri R.C. Singh, learned Senior Counsel assisted by Sri Ashutosh Mishra, learned counsel for the petitioner, Sri Kartikeya Saran, learned Additional Advocate General for the respondent nos.1 and 2, Sri Krishna Agrawal, holding brief of Sri Tarun Agrawal, learned counsel for the respondent no.3 and Sri Amrendra Pratap Singh, learned counsel for the respondent no.4.

3. The present writ petition has been filed challenging the order of the respondent no.2 dated 22.9.2025 passed in Case No. 2040 of 2021, by which during the pendency of the election petition, the Sub-Divisional Magistrate, Tehsil Mehdawal, District Sant Kabir Nagar has passed an order for recounting of votes for the election of Gram Pradhan relating to Gram Panchayat Jungle Dushhar, Tehsil Mehdawal, District Sant Kabir Nagar, which is scheduled to be held today i.e. 8.10.2025 at 10.00 am.

4. The case of the petitioner is that respondent no.4 challenged the election of petitioner as Gram Pradhan by filing an election petition on the grounds stated in paragraph 7 of the application filed under Section 12(C)(1) of the U.P. Panchayat Raj Act, 1947. The respondent no.2 proceeded to decide all issues, except issue no.1, by the impugned order dated 22.9.2025. Issue no.2 was, whether on the averments made in the plaint of election petition the election petitioner was entitled for getting recounting of votes in respect of

the election held for the aforesaid Gram Panchayat. While deciding the said issue, respondent no.2 has stated that none of the parties have filed any evidence on the said issue, nor their arguments have any force, therefore, the issue is decided in favour of plaintiff. In discussion part of the impugned order, the direction for recounting of votes has been issued by stating that as there are allegations against the State Officials, therefore, to remove the doubts, recounting of votes appears to be justified. It has been further stated that defendants have not filed any cogent evidence as to why 49 votes were ignored during the counting.

5. Sri Amrendra Pratap Singh, learned counsel for the respondent no.4- election petitioner has vehemently argued in support of the order of respondent no.2 directing recounting relying upon the judgment of the Hon'ble Supreme Court passed in Civil Appeal 14311 of 2024 (Vijay Bahadur Vs. Sunil Kumar and others), dated 6.3.2025. He has placed reliance on paragraph nos.14, 15 and 17 to support the finding of the Sub-Divisional Magistrate in the impugned order, which are reproduced hereinafter:-

"14. Having considered the law as aforesaid, let us now consider, in light thereof, the prayer for recount which has been allowed by the Sub-Divisional Magistrate, but the said direction, set aside by the High Court in view of the impugned judgment. The allegation made is that there is a disparity in the count of votes informed to the appellant and that finally disclosed in the official form. It relates to 19 votes, i.e., the difference between 1193 and 1213. The margin of victory of the respondent was 37 votes, and so, in a sense, victory of position would remain yet elusive of the appellant. However, this Court's concern lies away from who is in power, and instead is in how one got to power. This process has to be in accordance with constitutional principles and established norms - if not, then such a person has to be deprived of the power, and the decision-making by the people must begin once more.

15. When the officer was present there and he informed the candidate, appellant herein, of the number of votes cast, why should there be any difference? We have already observed that each vote has its own value irrespective of its effect in the final outcome of the election. Its sanctity has to be protected. It was a four-sided election, i.e., four persons were contesting for the post of 'Pradhan'. Three of the four persons submitted by way of affidavit that they had doubts regarding the propriety of the election, and they would support a recount of votes.

17. The candidates in the election wanting to keep an eye on voting during the day and inspect records of the same is something which cannot be denied to them. If the Presiding Officers' records are missing and cannot be verified, it can be found that the final conclusion is within the realm of questionability. Each and every document pertaining to an election is important and all efforts should be made to preserve the same.
"

6. Learned counsel for the petitioner has placed reliance on the judgments of the Hon'ble Supreme Court in Ram Adhar Singh Vs. District Judge and others, 1985 AWC 246; Ranjankumar Shankarrao Taware Vs. Ajit Anantrao Pawar, 2002 (4) SCC 631 and P.H. Pujar Vs. Kanthi Rajashekar Kidiyappa, 2002(3) SCC 742 stating that election petition seeking recount of ballot paper must contains statement of all the material facts on which the allegations of irregularity and illegality in counting of votes are founded, and on the basis of evidence adduced in support of the allegation, the Tribunal must be, prima facie, satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making such an order is imperatively necessary.

7. With the consent of parties, the writ petition is being decided finally without inviting any counter affidavit from the parties.

8. I have perused the records and the judgments cited by the authorities. The law relating to recounting of votes has been settled by the Hon'ble Supreme Court, as is evident from the judgments placed before me by the counsel for the petitioner.

9. In Ram Adhar Singh (supra), the Hon'ble Apex Court has observed in paragraph 19 as under:-

"[19] Applying the principle with regard to inspection of ballot papers enunciated by the Supreme Court in cases arising under the Representation of the People Act to an election petition dealt with under the provisions of the U.P. Panchayat Raj Act, there is no escape from the conclusion that before an authority hearing the election petition under the said Act can be permitted to look into or to direct inspection of the ballot papers, following two conditions must co-exist:

(1) that the petition for setting aside an election contains the grounds on which the election of the Respondent is being questioned as also the summary of the circumstances alleged to justify the election being

questioned on such ground; and

(2) the authority is, prima facie, satisfied on the basis of the materials produced before it that there is ground for believing the existence of such ground and that making of such an inspection is imperatively necessary for deciding the dispute and for doing complete justice between the parties.

It. therefore, follows that in the absence of any specification with regard to the ground on which the election of the Respondent is being questioned together with summary of the circumstances alleged to justify the election being questioned on I such ground, it is not open to the authority dealing with an application under Section 12-C of the U.P. Panchayat Raj Act, either to look into or direct inspection of ballot papers merely on the ground that it feels that it would be in the interest of justice to look into or permit inspection of the ballot papers. In the context, such satisfaction has necessarily to be based on specific averments made in and the materials indicated in the election petition which could, prima facie, satisfy the authority about the existence of the ground on which the election is sought, to be questioned."

10. In *Ranjankumar Shankarrao Taware (supra)*, the Hon'ble Apex Court has observed in paragraph nos.4, 5, 6 and 7 as under:-

"4. Before we proceed to examine the facts of the present appeal, we may refer to the position of law. In Ram Sewak Yadav v. Hussain Kanil Kidwai & Ors., 1964(6) SCR 238 a Constitution Bench of this Court held that power to order inspection of ballot papers is clearly implicit in Sections 100(1)(d)(iii), 101 and 102 of the Act and Rule 93 of the Conduct of Election Rules, 1961 and an order for inspection under the Act may not be granted as a matter of course, having regard to the insistence upon the secrecy of the ballot papers. It was further held that the Court would be justified in granting an order for inspection provided two conditions are fulfilled:

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

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

5. The Constitution Bench also held that an order for inspection of ballot

papers could not be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas.

6. in Smt. Sumitra Devi v. Shri Sheo Shanker Prasad Yadav & Ors., 1973(3) SCC 330 a three-Judge Bench of this Court held in an appeal under Section 116A of the Act that it has been the consistent practice of the Supreme Court not to interfere with findings on questions of fact unless there is some grave or palpable error in appreciation of the evidence on the basis of which the findings were arrived at.

7. While interpreting clause (d) of sub-section (1) of Section 100 of the Act, this Court has consistently held that in view of clear language of the provision even if the allegations in the election petition are found to be proved, the election petitioner should also establish that the result of the election was materially affected."

11. In P.H. Pujar (supra), the Hon'ble Apex Court has observed in paragraph 12, 13 and 14 as under:-

"12. As can be seen from the aforesaid except making a general and vague averment that respondent No. 4 (Returning Officer) refused to follow the mandatory provision of law in relation to the counting the election petitioner has failed to plead any material fact whatsoever. There is not a whisper about the non-filing of the check memos by the Counting Supervisors or its effect. It has not been stated how and which mandatory provision of law of counting was not followed by the Returning Officer. There is total lack of pleading as to material fact in the election petition.

13. In Vadivelu v. Sundaram and others, 2000(8) SCC 355 this Court speaking through one of us Balakrishnan, J. considered the question whether recount was justified or not, the circumstances under which it could be ordered, on a survey on some of the earlier decisions held that the recount of votes could be ordered very rarely and on specific allegations in the pleading in the election petition that illegality or irregularity was committed while counting. The petitioner seeking recount should allege and prove that there was improper acceptance of votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the said allegations 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 and irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the

Court can resort to recount of votes under such circumstances to do justice between the parties. In T.H. Musthaffa v. M.P. Verghese and others, 1999(8) SCC 692 upholding the view taken by the High Court that the pleadings are insufficient to order recount, it was noticed that the pleadings raised in the case did not refer to either Rule 39 or Rule 56 of the Rules much less to the "Pamphlet Showing Illustrative Cases of Valid and Invalid Postal and Ordinary Ballot Papers issued by the Election Commission of India nor are there any specific allegations found in the case and the allegations made in the course of the petition that there is wrong acceptance of invalid votes without clarifying as to how many votes were liable to be rejected for using wrong instrument by the voters by expressing their preference, it was said in absence of such plea, the learned Judge could not have granted the relief for recount. It was further said that in this view, the evidence could not be looked at in this regard in absence of appropriate pleadings. The Court said "unless the appellant had put fourth his case in the pleadings and the respondents are put on notice, the respondents cannot make an admission at all and there in no such admission in the course of the pleadings. If the pleadings did not contain the necessary foundation for raising an appropriate issue, the same cannot go to trial. Any amount of evidence in that regard will be futile."

14. The recount of the votes cannot be ordered in a casual manner. It cannot be ordered only because the margin of defeat is meagre. For seeking recount, proper foundation is to be laid in the pleadings by setting out material facts and later proving it by adducing requisite evidence. The recount cannot be ordered on the ipso dixit of the election petitioner. It can be ordered in rare cases where specific allegations are made and proved so as to do complete justice between the parties."

12. In the recent judgment of the Hon'ble Supreme Court, relied by learned counsel for the respondent no.4, the Hon'ble Apex Court has not deviated from the earlier settled position of the Hon'ble Supreme Court. The Hon'ble Supreme Court in the judgment of Vijay Bahadur (supra) has referred to the allegation that there is a disparity in counting of votes, informed to the appellant, which relates to 19 votes and the margin of victory of respondent was of 37 votes. The Hon'ble Supreme Court while upholding the order of recount has observed that each vote has its own value irrespective of its effect in the final outcome of the election. Its sanctity has to be protected. It was a four-sided election, i.e., four persons were contesting for the post of 'Pradhan'. Three of the four persons submitted by way of affidavit that they had doubts regarding the propriety of the election, and they would support a

recount of votes..

13. However, in the facts of the case, there is no such pleading in the election petition nor finding recording by the respondent no.2 that 49 votes were ignored before the counting commenced. The aforesaid finding is absolutely vague and has not been supported by any plea or evidence on record. The reasons recorded for directing the recounting itself says that it is only for the purposes of removing the doubts regarding allegations on State officials. The order of recounting touches upon the secrecy of ballots which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations and such discretion should not be exercised by the Courts to indulge in roving the fishing enquiry. The aforesaid finding for directing recounting is in teeth of the law laid down by the Hon'ble Supreme Court, as such, the order of respondent no.2 directing for recounting of votes is unsustainable and is liable to be set aside.

14. Writ petition, accordingly, is allowed. Order passed by respondent no.2 dated 22.9.2025 is set aside. However, the respondent no.2 is directed to decide the said issue afresh, after considering all the evidence on record and hearing the affected parties, within four weeks from the date of presentation of a certified copy of this order.

15. Learned Additional Advocate General is directed to inform about this order to the Sub-Divisional Magistrate, Sant Kabir Nagar with immediate effect, so that further proceedings in pursuance of the order of the Sub-Divisional Magistrate, Mehdawal, District Sant Kabir Nagar shall not take place.

October 8, 2025
Anil

(Arun Kumar,J.)