

HIGH COURT OF CHHATTISGARH, BILASPUR

WPC No. 949 of 2015

Khilawan S/o Kriparam Aged About 48 Years R/o Village Bhalesar, Tahsil And Police Station Mahasamund, Civil And Revenue District Mahasamund (Chhattisgarh)

---- Petitioner

Versus

1. Daulal S/o Nohar Sinha Aged About 50 Years Caste- Kalar, R/o Village Bhalesar, Police Station & Tahsil Mahasamund, Civil And Revenue District Mahasamund (Chhattisgarh)
2. Krishlal S/o Bhagatram Sinha Aged About 37 Years R/o Village Bhalesar, Tahsil, Civil And Revenue District Mahasamund (Chhattisgarh)
3. Devendra S/o Hemlal Tandekar Aged About 25 Years R/o Village Bhalesar, Tahsil, Civil And Revenue District Mahasamund (Chhattisgarh)
4. Pawan S/o Mansharam Sinha Aged About 42 Years R/o Village Bhalesar, Tahsil, Civil And Revenue District Mahasamund (Chhattisgarh)
5. Baldev S/o Ramu Sahu Aged About 60 Years R/o Village Bhalesar, Tahsil, Civil And Revenue District Mahasamund (Chhattisgarh)
6. Manharan S/o Gajanand Sinha Aged About 35 Years R/o Village Bhalesar, Tahsil, Civil And Revenue District Mahasamund (Chhattisgarh)
7. Satish S/o Temanlal Sinha Aged About 26 Years R/o Village Bhalesar, Tahsil, Civil And Revenue District Mahasamund (Chhattisgarh)
8. Presiding Officer, Polling Booth Centre No. 69, Bhalesar, Block- Mahasamund, Civil And Revenue District Mahasamund (Chhattisgarh)
9. Presiding Officer, Polling Booth Centre No. 68, Bhalesar, Block- Mahasamund, Civil And Revenue District Mahasamund (Chhattisgarh)
10. Sub-Divisional Officer-Cum-Prescribed Officer Mahasamund, District Mahasamund (Chhattisgarh)
11. State Of Chhattisgarh, Through: The Secretary, Panchayat And Rural Development, Mahanadi Bhawan, Naya Raipur (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri P.P. Sahu, Advocate
For Respondent No.1	:	Shri Shivendu Pandya, Advocate
For respondents No.8 & 9	:	Shri Shokie Yadav, Advocate

Order

09/09/2015

With the consent of the parties, the matter is heard finally.

1. This petition is directed against order dated 29.04.2015 by which the Election Tribunal has directed recount of votes.
2. Submission of learned counsel for the petitioner is that the order of recount ordered by the Election Tribunal is illegal and in excess of jurisdiction. It is submitted that no trial was held. Neither issues were framed nor evidence was recoded and by recording that the parties have no objection to recount, recount has been ordered. Reliance is placed on decision **in the case of Chironjilal v. SDO Vijaypur [1996 (I) MPWN 109], Chandra Bai vs. State of M.P. and others [2002 (1) J LJ 407] and Udey Chand vs. Surat Singh and another [2009(10) SCC 170]**.
3. On the other hand, learned counsel for the respondents submitted that the petition is liable to be dismissed because the petitioner did not raise any objection to the recount, therefore, the Election Tribunal passed the order of recount. Therefore, the order does not warrant interference.
4. After hearing learned counsel for the parties, in the considered opinion of this Court, the impugned order passed by the Election Tribunal cannot be sustained in law.
5. In the case of Udey Chand (*supra*), it was held that the Tribunal is required to record a prima facie satisfaction based on the pleadings and evidence collected during trial that in order to decide the issue raised in the petition and in order to do complete justice between the parties the scrutiny and computation of the votes recorded in favour of each candidates is necessary. The need to record reasons in support of the satisfaction can hardly be over emphasized because reasons are the soul of the order/ judgment.
6. As to whether no objection of the other party could be made sole basis to order recounts of votes, the legal position in this regard is to well settled. In the case of Chandra Bai (*supra*), the Supreme Court decisions **in the case of Ram Sewak Yadav Vs. Hussain Kamil Kidwai [AIR 1964 SC 1249], Bhabhi v. Sheo Govind and others [(1976) 1 SCC 687]**,

P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen and others [AIR 1989 SC 640] and number of judgments of various High Courts including Madhya Pradesh High Courts it has been consistently held that recount cannot be ordered as a matter of routine and even where there is a consent of party that would also not confer jurisdiction on Election Tribunal to direct recount.

7. In view of the above settled legal position as held in the case of Chandra Bai (*supra*) as above, the impugned order is clearly in excess of jurisdiction and cannot be sustained and therefore, set aside. The recount, if any, held in the meantime, or elections held in the meantime are declared illegal and inoperative in law. The case, however, is remanded to the Election Tribunal to hold proper trial by framing issues allowing the parties to lead oral and documentary evidence and then decide, whether a case of recount is made out or not.

Sd/-

Manindra Mohan Shrivastava

J U D G E