

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**WPC No. 2853 of 2016**

- Rakesh Sahu S/o Nemsingh Sahu, Aged About 30 Years R/o Village Pachbhaiya, Post Dadi, Tahsil & District Bemetara (Chhattisgarh)

---- Petitioner**Versus**

1. Dhanesh Chandrakar S/o Bhajiram Chandrakar
2. Jhaduram Jaiswal, S/o Samaru Ram Jaiswal,
3. Dhannu Sahu S/o Mehattar Sahu,
4. Baldau Ram Sen S/o Aajuram Sen
All candidates for the Post Of Sarpanch Of Village Panchayat Pachbhaiya And Agriculturist, R/o Village Pachbhaiya, Tahsil & District Bemetara (Chhattisgarh)
5. Returning Officer, (Panchayat) Bemetara (Chhattisgarh)
6. Presiding Officer, Village Panchayat Election, Pachbhaiya Booth No. 25 Shri Ramkhilawan Nishad, Teacher, Village Anandgaon, Tahsil Berla.
- 6A. Presiding Officer, Village Panchayat Election, Pachbhaiya Booth No. 26, Shri Rajesh Kumar Yadav, Teacher Primary School, Pahanda.
- 6B. Presiding Officer, Village Panchayat Election, Pachbhaiya Booth No. 27, Shri Dukalha Ram Sahu, Teacher, Village Bargaon, Tahsil Berla. Respondent No. 6 A Through Election Officer, Bemetara (Chhattisgarh)
7. Sub Divisional Officer (Revenue), Bemetara, District Bemetara, (Chhattisgarh)

---- Respondents

For Petitioner	:	Shri PP Sahu, Advocate
For Respondent No.1/caveator	:	Shri Rajnish Singh Baghel, Advocate
For Respondents-State	:	Shri Rajendra Tripathi, PL for the State

Hon'ble Shri Justice Prashant Kumar Mishra
Order On Board

15/12/2016

1. With the consent of learned counsel for the parties, the matter is heard finally at the motion stage.
2. Challenge in this petition is to the order passed by the Election Tribunal (for short 'the Tribunal') i.e. the Sub-Divisional Officer (R), Bemetara directing holding of recount of the ballots for election to the post of Sarpanch

Pachbhaiya, Tahsil & District Bemetara.

3. Learned counsel appearing for the parties have argued their respective cases, however, this Court is not reiterating the entire submissions for the reason that the impugned order, indisputably appears to be, an order passed without appreciating the evidence adduced by the parties. While trying the election petition, the Tribunal appears to have followed the procedure prescribed under Rule 11 of the Chhattisgarh Panchayats (Election Petition, Corrupt Practices and Disqualification for Membership) Rules, 1995 (for short 'the Rules, 1995'), however, while directing recount it has not appreciated the evidence led by the parties but has passed the order only for the reason that the number of invalid ballots being 103, which is substantially higher than the margin of 34 votes by which the returned candidate was declared elected. I am afraid, such reasoning for directing the recount would not suffice the requisites in law as held by the Supreme Court in the matter of **Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari And Another**¹ that the order of recount should not be passed in a routine manner and by way of roving and fishing enquiry, the following has been held by the Supreme Court in para 14 & 15:-

“14. Before the court permits the recounting, the following conditions must be satisfied:

- (i) The court must be satisfied that a prima facie case is established;
- (ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;
- (iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;
- (iv) An opportunity should be given to file objection;

¹ 2014 (5) SCC 312

and

(v) Secrecy of the ballot should be guarded.

15. This Court has consistently held that the court cannot go beyond the pleadings of the parties. The parties have to take proper pleadings and establish by adducing evidence that by a particular irregularity/illegality, the result of the election has been “materially affected”. There can be no dispute to the settled legal proposition that “as a rule relief not founded on the pleadings should not be granted”. Thus, a decision of the case should not be based on grounds outside the pleadings of the parties. In the absence of pleadings, evidence if any, produced by the parties, cannot be considered. It is also a settled legal proposition that no party should be permitted to travel beyond its pleadings and parties are bound to take all necessary and material facts in support of the case set up by them. Pleadings ensure that each side is fully alive to the questions that are likely to be raised and they may have an opportunity of placing the relevant evidence before the court for its consideration. The issues arise only when a material proposition of fact or law is affirmed by one party and denied by the other party. Therefore, it is neither desirable nor permissible for a court to frame an issue not arising on the pleadings. The court cannot exercise discretion of ordering recounting of ballots just to enable the election petitioner to indulge in a roving inquiry with a view to fish material for declaring the election to be void. The order of recounting can be passed only if the petitioner sets out his case with precision supported by averments of material facts. (Vide: *Ram Sewak Yadav v. Hussain Kamil Kidwai*.², *Bhabhi v. Sheo Govind*³ and *M. Chinnasamy v. K.C. Palanisamy*⁴.)”

4. Even a cursory peep into the order would disclose that after having recorded the facts pleaded in the election petition and reply as also the submissions made by the parties before the Election Tribunal, the Tribunal has concluded in the last paragraph that on consideration of the number of invalid votes and the difference in the votes secured by the elected candidate and the election petitioner, it is a case of recount. Thus, prima facie, the Tribunal has not culled out the reason based on the material on

²AIR 1964 SC 1249

³(1976) 1 SCC 687; AIR 1975 SC 2117

⁴(2004) 6 SCC 341

record as to why an order of recount is necessary.

5. Although other points have been urged by learned counsel for the petitioner and respondents, this Court is not mentioning those arguments or recording any finding because it may affect the case of either parties when the Tribunal passes afresh order on prayer for recount while deciding the election petition finally.
6. In view of the above, the impugned order is set aside and the matter is remitted back to the Election Tribunal for passing afresh orders in accordance with law.

Sd/-

Judge

Prashant Kumar Mishra

Ashu