AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Order reserved on: 29.9.2016

Order passed on: 26.10.2016

Writ Petition (C) No.989 of 2015

Yugal Kishore Verma son of Jhaggar Singh Verma, aged about 54 years, R/o Village Mudpar, Janpad Panchayat Simga, District Balodabazar-Bhatapara (CG)

----Petitioner

Versus

1. State of Chhattisgarh, through: The Secretary, Panchayat & Social Welfare Department, Mantralaya, Mahanadi Bhawan, New Raipur (CG)
2. Sub Divisional Officer & Prescribed Officer (Panchayat), Simga, District Balodabazar-Bhatapara (CG)
3. Chief Executive Officer, Janpad Panchayat Simga, District Balodabazar-Bhatapara (CG)
4. Block Education Officer, Block Simga, District Balodabazar-Bhatapara (CG)
5. Tahsildar, Simga, District Balodabazar-Bhatapara (CG)
6. Manoj Kumar Tiwari, son of late Koushal Prasad Tiwari
7. Dukhaharan Sahu, Son of Tika Ram Sahu
8. Santosh Kumar Son of late Vishram Dhruve
9. Sachchinanand son of Bhagwandeen Tiwari
10. Presiding Officer, Polling Booth No.181
11. Presiding Officer, Polling Booth No.182
12. Presiding Officer, Polling Booth No.183

No.6 to 12 are R/o Village Mudpar, Janpad Panchayat Simga, District Balodabazar-Bhatapara (CG)

13. Returning Officer, Panchayat Election, Janpad Panchayat Simga, District Balodabazar-Bhatapara (CG)

---- Respondents

For Petitioner	:	Mr. Raghvendra Pradhan, Advocate
For Res.No.1, 2, 4, 5 & 10 to 13	:	Mr. O.P.Sahu, Government Advocate
For Respondent No.3	:	Mr.Akhilesh Kumar, Advocate
For Respondent No.6	:	Mr.R.S.Marhas, Advocate
For Respondent No.8	:	Ms Priyanka Mehta, Advocate
For Res.No.7 & 9	:	None present

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. Impeaching legality, validity and correctness of the order dated 29.5.2015 (Annexure P/1) passed by respondent No.2 in Panchayat Nirvachan Case No.01B/151/2014-15 and order dated 4.6.2015 (Annexure P/2) passed by the respondent No.2 and Form 25 (Rule 83) (Annexure P/3) issued by the respondent No.3, the present writ petition has been filed under Article 226/227 of the Constitution of India by which the Specified Officer (Election Tribunal) has allowed the election petition filed by respondent No.6/Manoj Kumar Tiwari and directed for recounting of the votes of polling booth No.182 out of three polling booths polled for election for the post of Gram Panchayat Mudpar, Janpad Panchayat Simga, District Balodabazaar-Bhatapara.

2. The essential facts necessary to judge the correctness of the impugned orders are as under:-

(i) The election for the post of Sarpanch of Gram Panchayat, Mudpar, Janpad Panchayat, Simga, District Balodabazar-Bhatapara was held on 28.1.2015 in which Mr. Yugal Kishore Verma (petitioner herein) was declared elected. He will be referred hereinafter as Returned Candidate.

(ii) Mr.Manoj Kumar Tiwari (one of defeated candidate/respondent No.6 herein) filed the election petition under Section 122 of the Chhattisgarh Panchayat Raj Adhiniyam, 1993 (hereinafter called as “Act of 1993”) read with the Chhattisgarh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 (hereinafter called as “Rules of 1995”) questioning the election of the returned candidate. Specific ground was raised that in polling booth No.182, one of the candidate to the election Mr.Santosh Kumar Dhruve secured 39 votes and returned candidate Mr. Yugal Kishore Verma secured 144 votes, but at the time of issuing information in Form No.17 (Rule-77 (2), Yugal Kishore Verma/Returned Candidate was shown to have secured 164 votes and Santosh

Kumar Dhruve was shown to have secured 19 votes and thereby 20 votes cast in favour of Santosh Kumar Dhruve was counted in favour of Yugal Kishore Verma making it 164 votes and thereby he was declared Elected by margin of 8 votes, whereas election petitioner has secured 133 votes and if 20 votes are counted in favour of Santosh Kumar Dhruve/Election petitioner would be the Returned Candidate and therefore, prayer for recounting was made on behalf of respondent No.6/Manoj Kumar Tiwari (defeated candidate).

(iii) Returned Candidate Yugal Kishore Verma filed his written statement and disputed the averments made in the election petition and asserted that he has secured 164 valid votes and Santosh Kumar Dhruve secured only 19 votes. The Polling Officer of polling booth No.182 was also impleaded as a party in the election petition. He has filed his reply before the Specified Officer on 24.2.2015 and stated that he has suffered eye surgery in recent past (2014) and he has a weak eye-sight and there is difference in the counting slip issued and statutory Form 17 prepared under Rule-77 (2) of the Rules and he admitted his mistake in counting.

(iv) The Returning Officer being respondent No.8 in the election petition also filed his reply refuting the stand taken by the Polling Officer.

(v) Santosh Kumar Dhurve has filed his separate written statement and he has admitted that he has secured 39 valid votes in polling booth No.182.

(vi) On behalf of the Election Petitioner-Manoj Kumar Tiwari, election petitioner himself, Yashwant Kumar Sahu (counting agent of Election Petitioner) and Nem Singh Dhruve (counting agent of Santosh Kumar Dhruve) were examined and proved the documents Exs.A/6 to A/14, whereas on behalf of the returned candidate, returned candidate-Yugal Kishore Verma himself, Nathuram Dhruve and Ashwani Verma were examined.

(vii) The Returning Officer and the Polling Officer were not examined. No application for examination of the Polling Officer, Returning Officer and Presiding Officer by either of the party was filed.

(viii) The Specified Officer by its impugned order partly allowed the election petition mainly on the ground that in polling booth No.182 there is

irregularity in the votes cast in favour of Santosh Kumar Dhruve holding that in counting slip Ex.A/7, votes cast in favour of Santosh Kumar Dhruve are 39, whereas according to Form No.17 (Rule-77 (2), votes cast in favour of Santosh Kumar Dhruve have been shown to be 19 and votes cast in favour of Yugal Kishore Verma are 164 and directed recount of votes so far as polling booth No.182 is concerned.

(ix) In compliance of order impugned dated 29.5.2015, necessary recounting was made and result of recounting was produced before the Returning Officer on 4.6.2015. Thereafter, the writ petition was filed by petitioner-Yugal Kishore Verma against the order dated 29.5.2015 on 6.6.2015 and this Court by order dated 11.6.2015 granted interim order staying the effect and operation of the impugned order.

3. Mr.Raghvenda Pradhan, learned counsel appearing for the petitioner/returned candidate would submit that learned Specified Officer has committed grave legal error in directing for recounting as the condition precedent (s) necessary for recounting as required under Rule 80 of the Chhattisgarh Panchayat Nirvachan Niyam, 1995 (hereinafter

called as “Rules of 1995”) is missing. He would further submit that no objection was raised by the election petitioner before the Returning Officer, what has been raised for the first time before the Specified Officer. He would also submit that Rule 11 of the Rules of 1995 has not been followed and issues have not been framed while adjudicating the election petition and Rule 33 has also not been followed and election of the returned candidate has not been set aside. He contended that respondent No.6-Manoj Kumar Tiwari has not been duly declared elected candidate and therefore, impugned order deserves to be set aside/quashed.

4. Mr.R.S.Marhas, learned counsel appearing for respondent No.6- Manoj Kumar Tiwari, would submit that the fact of discrepancy in the votes cast in favour of Santosh Kumar Dhruv was admitted by the Polling Officer in the return filed before the Specified Officer. The returned candidate/election petitioner did not summon the Presiding Officer/Returning Officer along with records to examine him on oath and as such, the returned candidate/petitioner herein is precluded from disputing the correctness of the statement made in writing by the Presiding Officer before the Specified Officer in which it has been clearly admitted by the Presiding Officer that on account of weak eye-sight, mistake occurred in counting of votes. He would further submit that the election

petitioner has pleaded in election petition before the Tribunal that at the time of counting of votes, votes cast in favour of Santosh Kumar Dhruv have been counted in favour of Yugal Kishore Verma/returned candidate, but that was not considered and he was declared elected. He would also submit that both the parties have adduced oral and documentary evidence with respect to the dispute raised in the election petition and both the parties have led evidence and therefore, question of not framing the issue cannot be raised belatedly. He contended that the Specified Officer who is Election Tribunal designated under the Act of 1993 is duly empowered to direct recounting of votes on making prima-facie case for recounting and the election petitioner having established prima-facie case for recounting of votes, it has rightly been directed by the Specified Officer for recounting of votes in accordance with law and the Rules of 1995, therefore, the writ petition deserves to be dismissed.

5. Mr.O.P.Sahu, learned counsel appearing for respondents No.1, 2, 4, 5 and 10 to 13, would submit that the Presiding Officer and Specified Officer have acted in quasi-judicial capacity, therefore, no stand is being taken by the State in the election dispute between the parties.

6. Ms Priyanka Mehta, learned counsel appearing for respondent No.8, would submit that in polling booth No.182

Santosh Kumar Dhruve secured 39 votes and accordingly, counting slip was issued to him, but arbitrarily while issuing Form No.17 (Rule-77 (2), it has been reduced to vote 19 by adding 20 votes in favour of returned candidate/petitioner herein, which is not in accordance with law, therefore, learned Specified Officer has rightly made a limited direction for recounting of votes only in polling booth No.182 and in recounting Santosh Kumar Dhurve has secured 39 votes as claimed earlier, therefore, the writ petition deserves to be dismissed.

7. I have heard learned counsel appearing for the parties, cautiously analyzed the submissions made by learned counsel for the parties herein and gone through the records extensively and throughly.

8. Election for the post of Sarpanch of Gram Panchayat Mudpar was conducted in accordance with the Act of 1993 and Rule of 1995 made thereunder. Rule 80 of the Rules of of 1995 provides for recount of votes, which states as under:-

> “80. Recount of votes.-(1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of Rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer

authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.

(2) On such an application being made, the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(3) Every decision of the Returning Officer or such other officer authorised by him, under sub-rule (2) shall be in writing and contain the reasons therefor.

(4) If the Returning Officer or such other officer authorised by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall-

(a) count the ballot papers again in accordance with his decision;

(b) amend the result sheet to the extent necessary after such recount; and

(c) announce the amendment so made by him.

(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of Rule 77 or sub-rule (4) the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter.

Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

6. The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of Rule 77.

7. Result sheets in Forms 16, 17, 18 and 19 for Panch, Sarpanch, member of Janpad Panchaayat and member of Zila Panchayat respectively, prepared by such other officers as are authorised by the Returning Officer, shall be submitted by them, in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.

8. The Returning Officer on receipt of result sheets under sub-rule (7) shall enter or cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, member of Janpad Panchayat or member of Zila Panchayat at each polling station of the constituency concerned in subsequent part or parts of Forms 17, 18 and 19 respectively and complete and sign the result sheet."

9. The question whether the election petitioner after declaration of the result of the election can make an application for recounting of votes to the Election Tribunal directly without making an application before the Returning Officer, came up for consideration before the Supreme Court in the matter of **Ram Rati (Smt) vs. Saroj Devi and others**[1], in which it was held by the Supreme Court that it is essential that an application in writing for recounting giving reasons in support thereof must be made before the Returning

[1] (1997) 6 SCC 66

Officer and in absence of such application, the court or tribunal is not empowered to direct recounting even after adduction of evidence and consideration of alleged irregularities in the counting. It was held as under:-

> "8.....In the light of the mandatory language of Rule 76 of the Rules, it is incumbent upon a candidate or an agent, if the candidate was not present, to make an application in writing and give reasons in support thereof, while seeking recounting. If it is not done, then the tribunal or the court is not empowered to direct recounting even after adduction of evidence and consideration of the alleged irregularities in the counting. The essential condition-precedent is that an application in writing should be made and the Returning Officer should pass an order with reasons in support thereof either to recall the order or otherwise, in writing. The fact that the officer had not passed any order in writing would indicate that the respondent had not made any application....."

10. Later on, in the matter of **Sohan Lal vs. Babu Gandhi and others**[2], the decision rendered in **Ram Rati's** case (supra) was revisited by the Supreme Court and it has been held that in election petition after declaration of the result, the court or tribunal can direct for recounting of the votes and making an application in writing before the Returning Officer

[2] (2003) 1 SCC 108

is not necessary and it has been held that the ratio laid-down in **Ram Rati** case (supra) is not correct. It was held as under:-

> "14. In view of Section 122 and the Rules, we are unable to agree with the ratio laid down in Ram Rati case. It is not correct to hold that, in an election petition, after the declaration of the result, the court or tribunal cannot direct re-counting of votes unless the party has first applied in writing for re-counting of votes. There is no prohibition in the Act or under the Rules prohibiting the court or tribunal to direct a re-counting of the votes. Even otherwise, a party may not know that the re-counting is necessary till after the result is declared. At this stage, it would not be possible for him to apply for re-recounting to the Returning Officer. His only remedy would be to file an election petition under Section 122. In such a case, the court or the tribunal is bound to consider the plea and where a case is made out, it may direct re-count depending upon the evidence led by the parties. In the present case, there was obvious error in declaring the result. We, therefore, hold that the ratio laid down in Ram Rati case is not correct."

11. Subsequently, in the matter of **Chandrika Prasad Yadav vs. State of Bihar and others**[3], the Supreme Court has laid down the condition to be fulfilled before an order of recounting of votes can be passed. It was held as under:-

[3] (2004) 6 SCC 331

> “20. It is well settled that an order re-counting of votes can be passed when the following conditions are fulfilled:
>
> (i) a prima facie case;
>
> (ii) pleading of material facts stating irregularities in counting of votes;
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> (iii) a roving and fishing inquiry shall not be made while directing re-counting of votes; and
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> (iv) an objection to the said effect has been taken recourse to.
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> 21. The requirement of maintaining the secrecy of ballot papers must also be kept in view before a re-counting can be directed. Narrow margin of votes between the returned candidate and the election petitioner by itself would not be sufficient for issuing a direction for re-counting.”

12. The Supreme Court in the matter of **R. Narayanan vs. S. Semmalai and others**[4] has considered the question as to when recount can be directed by the Election Tribunal and held as under:-

> “26. Finally, the entire case law on the subject regarding the circumstances under which re-count could be ordered was fully summarised and catalogued by this Court in the case of Bhabhi v. Sheo Govind[5] to which one of us (Fazal Ali, J.) was a party and which may be extracted thus:-
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> The Court would be justified in ordering a recount of the ballot papers only where:
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> (1) The election petition contains an adequate statement of all the material facts on

[4] (1980) 2 SCC 537
[5] 1975 Supp SCR 202

which the allegations of irregularity or illegality in counting are founded;

(2) On the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) The court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties."

13. The Supreme Court in the matter of **P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen and others**[6] laid down the principles of law as to when the recount of votes should be permitted and held as under:-

"11. In Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors.[7], this Court has set out the circumstances when an order for inspection of ballot papers can be ordered in the following terms:

An order for inspection may not be granted as a matter of course; having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided 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

[6] (1989) 1 SCC 526
[7] AIR 1964 SC 1249

(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.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection."

12. In R. Narayanan v. Semmalai[8], the same principle has been reiterated. That was a case where the difference of votes between the candidates declared elected and his nearest rival, who filed an election petition was only 19 votes and which figure would have come down to 9 PG NO 957 votes only if the postal ballots were included. Even so this Court after referring to a number of decisions and Halsbury's Laws of England and Fraser on Law of Parliamentary Elections and Election Petitions held that without their being an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting of votes are

[8] (1980) 2 SCC 537

founded and such averments being backed by acceptable evidence and the Court trying the petition being prima facie satisfied that an order for recount of votes is imperatively necessary to decide the dispute and do complete justice between the parties, an order of recount of votes cannot be passed.

13. Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from high sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interests of justice, a Tribunal or court should not order the recount of votes."

14. The Supreme Court in the matter of **Udey Chand vs. Surat Singh and another**[9] has held that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, the following two basic requirements must be satisfied:-

> (i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and
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> (ii) on the basis of evidence adduced in support of the allegations, 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 of such an order is imperatively necessary, are satisfied."

15. The Supreme Court in the matter of **Kattinokkula Murarli Krishna vs. Veeramalla Koteswara Rao and others**[10] has held in no uncertain terms that in election process, the secrecy of ballot is sacrosanct and inviolable except where strong prima facie circumstances to suspect the purity, propriety and legaltiy in the counting of votes are made out. It was held as under:-

> "15. Before examining the merits of the issues raised on behalf of the parties, it would be appropriate to bear in mind the salutary principle

[9] (2009) 10 SCC 170
[10] (2010) 1 SCC 466

laid down in the Election Law that since an order for inspection and re-count of the ballot papers affects the secrecy of ballot, such an order cannot be made as a matter of course. Undoubtedly, in the entire election process, the secrecy of ballot is sacrosanct and inviolable except where strong prima facie circumstances to suspect the purity, propriety and legality in the counting of votes are made out. The importance of maintenance of secrecy of ballots and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases.

16. It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz. (i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and (ii) on the basis of evidence adduced in support of the allegations, 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 of such an order is imperatively necessary, are satisfied. Broadly stated, material facts are primary or basic facts which have to be pleaded by the election petitioner to prove his cause of action and by the defendant to prove his defence. But, as to what could be said to be material facts would depend upon the facts of each case and no rule of universal application can be laid down.”

16. Their Lordships also considered the decision of the Supreme Court rendered in the matter of **Vadivelu vs. Sundaram and others**[11] and held as under:-

> "16. The result of the analysis of the above cases would show that this Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the Court is satisfied about the truthfulness of the above allegation, it can order re-count 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 or 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 re-count of votes under such circumstances to do justice between the parties."

17. Very recently, in the matter of **Arikala Narasa Reddy vs. Venkata Ram Reddy Reddygari and another**[12], the Supreme Court has reiterated the conditions necessary for making an order of recounting and further held that the

[11] (2000) 8 SCC 355
[12] (2014) 5 SCC 312

secrecy of ballot is to be treated sacrosanct and indispensable adjunct of free and fair election. It was held as under:-

> “13. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to far the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and the courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a Government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if re-recounting of votes is made easy. The court has to be more careful when the margin between the contesting candidate is very narrow. “Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for

reopening of declared results." However, a genuine apprehension of miscount or illegality and other compulsions of justice may require the recourse to a drastic step.

14. Before the court permits the re-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; and
(v) Secrecy of the ballot should be guarded.

18. In the light of propositions of law laid down by the Supreme Court in the aforesaid judgments, if the facts of the present case are examined, it is quite vivid that the Specified Officer has clearly reached to the conclusion that 20 votes cast in favour of Santosh Kumar Dhruve/respondent No.8 herein were illegally counted in favour of Yugal Kishore Verma (returned candidate), which is apparent from difference of votes in counting slip issued to Santosh Kumar Dhruve and Form No.17 (Rule-77 (2) issued under Rule 197 of the Election Rules. Not only this, mistake in counting was admitted by respondent No.11/Presiding Officer of polling booth No.182 by filing reply before the Specified Officer and duly endorsed by

the Returning Officer of the Panchayat Election. It appears that no steps were taken by the petitioner/returned candidate to summon the said Presiding Officer of pooling booth No.182 to contradict him of what he has stated in the reply filed before the Specified Officer. Thus, the Specified Officer on the basis of difference of votes in counting slip and Form No.17 issued under Rule-77 (2) and further on the basis of the statement given by the Presiding Officer of polling booth No.182 reached to the conclusion that there is irregularity/mistake in counting of votes of polling booth No.182 and finding a prima-facie case directed for recounting of votes of only polling booth No.182 out of three polling booths. Thus, the condition precedent for recounting of votes as laid-down by the Supreme Court in the above-stated cases is fully satisfied and on the basis of prima-facie case having been made for counting of votes after giving an opportunity of hearing to the parties concerned the Specified Officer has clearly reached to the finding that limited recounting of votes only of polling booth No.182 is required to be made termination of purity in election and accordingly directed for recounting of votes and as such, there is no error of jurisdictional committed by the Specified Officer in directing such recounting. The Specified Officer is absolutely justified in directing such limited recounting confined to polling booth No.182.

19. Mr.Pradhan, learned counsel for the petitioner as faintly argued that while adjudicating the election dispute the Specified Officer did not frame issues and as such, committed illegality. The point urged by Mr.Pradhan is no longer res-integra and it is well settled law that where the parties to the dispute joins the issue and lead evidence on that issue knowing well the plea of his opposite party, the absence of issues and plea of mistrial cannot be permitted to be raised.

20. In the matter of **Kalyan Singh Chouhan Vs. C.P. Joshi**[13] the Supreme Court has clearly and succinctly held with regard to non-framing of the issues as under:-

> "25. The object of framing issues is to ascertain/shorten the area of dispute and pinpoint the points required to be determined by the Court. The issues are framed so that no party at the trial is taken by surprise. It is the issues fixed and not the pleadings that guide he parties in the matter of adducing evidence.
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> 27. There may be an exceptional case wherein the parties proceed to trial fully knowing the rival case and lead all the evidence not only in support of their contentions but in refutation thereof by the other side. In such an aventuality, absence of an issue would not be fatal and it would not be permissible for a party to submit that there has been mistrial and the proceedings stood vitiated."

[13] (2011) 11 SCC 786

21. The judgment of the Supreme Court rendered in the matter of **Kalyan Singh** (supra) has been followed with approval recently by the Supreme Court in the matter of **Arikala Narasa Reddy (**supra) and a Division Bench of this Court in **Santosh Kumar Nishad Vs. State of Chhattisgarh and others**[14].

22. In the light of the law laid down in the above-stated judgments, if the facts of the case in hand are examined, it is quite vivid that the petitioner was fully aware of the point in dispute, that is dispute with regard to casting of votes in polling booth No.182, he led evidence on the point and also filed his written statement before the Specified Officer and as such, he was fully aware of the case set up by the election petitioner and therefore, it cannot be held that non-framing of issues has caused prejudice to the petitioner/returned candidate.

23. Therefore, I am of the considered opinion that in exercise of jurisdiction under Article 227 of the Constitution of India no interference is called for. The writ petition deserves to be and is accordingly dismissed leaving the parties to bear their own cost(s).

Sd/-

(Sanjay K.Agrawal)
Judge

B/-

[14] AIR 2016 Chhattisgarh 164