

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR
Writ Appeal No. 254 of 2017

*{Arising out of order dated 19.05.2017 passed in Writ Petition (C) No. 437 of 2016 by
the learned Single Judge}*

Smt. Urmila Patel W/o Shri Brijlal Patel, aged about 42 years, Occupation House wife/Sarpanch Candidate, R/o village Barpali, Post Nawapara, Tahsil and District Raigarh, Chhattisgarh.

---- Appellant

Versus

1. Smt. Gouri Bai W/o Shri Kanhaiya Patel, Aged About 40 Years R/o Village Barpali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
2. State of Chhattisgarh, Through The Secretary, Panchayat And Welfare Department, Mahanadi Bhawan, New Raipur, District Raipur, Chhattisgarh,
3. The Collector, Raigarh, District Raigarh, Chhattisgarh
4. Sub Divisional Officer Revenue/ Specified Officer Panchayat, Raigarh, District Raigarh, Chhattisgarh
5. Smt. Jagmati Patel W/o Shri Babulal Patel, Aged About 42 Years Occupation House Wife/ Sarpanch Candidate, R/o Village Arasipali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
6. Smt. Tara Sidar W/o Shri Jageshwar Sidar, Aged About 38 Years Occupation House Wife/ Sarpanch Candidate, R/o village Mouhapali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
7. Smt. Dasmati Uranv W/o Shri Lachhi Uranv, Aged About 27 Years Occupation House Wife/ Sarpanch Candidate, R/o Village Arasipali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
8. Smt. Belmati Chouhan W/o Shri Kappor Chouhan, Aged About 45 Years Occupation House Wife/ Sarpanch Candidate, R/o Village Mouhapali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
9. Smt. Sunita Patel W/o Shri Deenanath Patel, Aged About 32 Years Occupation House Wife/ Sarpanch Candidate, R/o Village Barpali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
10. Presiding Officer, Polling Booth Centre Village Barpali, Post Nawapara, Tahsil And District Raigarh, Chhattisgarh
11. Returning-Cum-Election Officer, Gram Panchayat, Village Barpali, Post Nawapara, Tahsil and District Raigarh, Chhattisgarh

---- Respondents

For Appellant	: Shri Manoj Paranjpe and Shri Prasoon Agrawal, Advocates.
For Respondent/State	: Shri UNS Deo, Government Advocate.
For Respondent No. 1	: Shri B.P.Sharma and Shri Raza Ali, Advocates.

Hon'ble Shri Ajay Kumar Tripathi, Chief Justice
Hon'ble Shri Pritinker Diwaker, Judge

Judgment on Board

Per Ajay Kumar Tripathi, Chief Justice

18/07/2018

1. This writ appeal is directed against the order dated 19.05.2017 passed by the learned Single Judge in a writ application filed by Respondent No. 1. Initially, the private Respondent No. 1, who was the petitioner before the writ court, assailed the correctness and validity of the order dated 08.02.2016 passed by the Election Tribunal by which the said petitioner's application for recalling ex-parte order and summoning the Returning Officer and Presiding Officer with the evidence, had been rejected. It seems that subsequently, the Election Tribunal passed a final order dated 15.02.2016 directing recount. This order was also challenged by way of amendment in the writ application.

2. The reason for raising a dispute before the Election Tribunal was that on counting of votes for the post of Sarpanch of Gram Panchayat, Barpali, there was a tie between the present Appellant and the private Respondent No. 1. In terms of the Rules, there has to be a toss between the candidates and the winner is decided on the basis of outcome of the toss. On a draw of lots, the private Respondent No. 1 was declared as the returned candidate. The present Appellant, not being satisfied with the outcome of the result, moved the Election Tribunal looking for an order of recount in which objections were filed. The private Respondent tried to put up resistance but also made a request for summoning of the Returning Officer initially and then later on decided to also ask for a summoning for appearance of the Returning Officer with the necessary records which in turn was rejected.

3. When the writ application was taken up, it seems that the parties went on to argue the matter in entirety keeping in mind the order of recount passed by the Tribunal.

4. The learned Single Judge, on the basis of the arguments made on behalf of the parties went on to decide the issue whether the demand or the request made by the present Appellant for a recount was required to be entertained and adjudicated by the Tribunal, especially keeping in mind whether the necessary attributes and requirements which are laid down in the Rules had been followed by the Appellant while making a request before the Election Tribunal.

5. The learned Single Judge, taking note of the various provisions as well as law laid down in relation to recounting, some of which is the decisions rendered in the case of **Chandrika Prasad Yadav v. State of Bihar and Others**; (2004) 6 SCC 331, as well as the case of **Arikala Narasa Reddy v. Venkata Ram Reddy Reddygari & Another**; (2014) 5 SCC 312, had this to say in the following paragraphs:

"21. The aforesaid analysis of the legal position in the matter of trial of election petition seeking recount applied to the evidence, pleadings and governing rules discussed hereinabove leads to irresistible conclusion that the Tribunal, even though, no case for recount was made out as per the required standards degree and pleadings of proof, order of recount, presumably swayed by the fact on the ground that there was equality of votes, was passed.

22. In the case of **M. Chinnasamy vs. K. C. Palanisamy and others**; (2004) 6 SCC 341, it was held, as under:

23. "Despite the fact that in relation to the allegations made under Categories 1, 2, 3 and 5, similar general and vague allegations had been made, the High Court proceeded to accept the evidences of the said witnesses."

Necessity of maintaining secrecy of ballot papers should be kept in view before recounting is directed. A direction for recounting shall not be issued only because margin of votes between the returned candidate and the election petition is narrow. (emphasis mine)

23. The same principle was stated in the case of **Chandrika Prasad**

Yadav, (*supra*), as under:

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."

A recent authoritative judicial pronouncement of the Supreme Court in the case of **Arikala Narasa Reddy (*supra*)**, is that the counting should be confined only to the number of ballot papers, against which, illegality or irregularity is alleged in pleading. Therefore, the election petition is required to contain specific pleading with material facts to make out a case for recount of only specific votes and there cannot be an order of recount general in nature on pleadings like counting was made hurriedly and some valid votes were declared invalid, particularly, in a case where counting was done in the presence of the candidate or his agent and no application for recount was made in writing at the stage contemplated under the Rules and such failure is not satisfactorily explained."

6. Since the learned Single Judge allowed the writ application and quashed the order of recounting passed by the Tribunal on the principles of law culled out and reproduced in the earlier part of the order, the present appeal has come to be filed by the Appellant.

7. One of his submission made at the Bar is that the learned Single Judge ought not to have decided the matter in the entirety including the question whether a recount was required to be done or not since the initial issue was summoning of the Presiding Officer with the records and appearance before the Tribunal. The matter should have been decided on that issue and remanded back to the Tribunal for final adjudication on the basis of the rectification needed in relation to the initial order of rejection for summoning the Presiding Officer with records.

8. Such submission is not required to be entertained at the level of the appeal now because reading of the order impugned would show that the parties had made detailed argument on every facets and aspects of the dispute including the issue arising out of the order of recounting and therefore, the learned Single Judge had to decide even the issue whether the order of recounting was

necessitated in the given facts and circumstances or not keeping in mind the law laid down by the Hon'ble Apex Court.

9. The finding of the learned Single Judge that no appropriate application at the appropriate time was made by the Appellant before the Returning Officer for recounting is not disputed. A plea that an oral request was made for recounting may not satisfy the requirements of law.

10. In the above circumstances, we do not find any infirmity in the order of the learned Single Judge which is required to be rectified in appeal. The appeal has no merit. It is dismissed.

Sd/-
(Ajay Kumar Tripathi)
CHIEF JUSTICE

Sd/-
(Pritinker Diwaker)
JUDGE