

HONOURABLE SRI JUSTICE SANJAY KUMAR
WRIT PETITION No.3181 of 2019

ORDER:

The prayer of the petitioner in this case reads as under:

For the reasons stated in the accompanying affidavit, it is hereby prayed that this Hon'ble Court may be pleased to issue an appropriate Writ, Order or Direction, more particularly one in the nature of Writ of Mandamus declaring the action of respondents in not conducting recounting of the votes in view of the malpractices done at the time of polling and counting of votes in the Grampanchayat elections held on 25.01.2019 to the post of Sarpanch of Ghanpur Grampanchayat, Boath Mandal, Adilabad District, in spite of submitting representation by the petitioner as illegal, arbitrary, abuse of process of law, violation of principles of natural justice and contrary to Rules and consequently direct the respondents to conduct recounting of the votes in the elections conducted on 25.01.2019 for the post of Sarpanch of Ghanpur, Grampanchayat, Boath Mandal, Adilabad District, by considering the representation submitted by the petitioner in the interest of justice and to pass such other order or orders as this Honourable Court may deem fit and proper in the facts and circumstances of the case."

Admittedly, the petitioner is a defeated candidate in the election held to the post of Sarpanch of Ghanpur Gram Panchayat, Boath Mandal, Adilabad District, on 25.01.2019. Respondent No.8 was elected to the said post with a margin of one vote.

However, the record reflects that the petitioner's written representation seeking recount of the votes was dated 26.01.2019, *i.e.*, a day after the polling date.

Rules 59 and 60 of the Telangana Panchayat Raj (Conduct of Elections) Rules, 2018, deal with the issue.

Rule 59 provides that after counting of all ballot papers contained in all the ballot boxes, the Returning Officer shall make the entries in a result sheet in Form XXVI and announce the particulars.

Rule 60(1) states to the effect that after such announcement has been made under Rule 59, a candidate may apply in writing to the Returning Officer for recounting of the votes either wholly or in part.

On such application, the Returning Officer is required to decide the matter and is given the discretion to either allow the application in whole or in part or to reject it wholly if it appears to him to be frivolous or unreasonable, as per Rule 60(2).

Rule 60(3) mandates that every decision of the Returning Officer shall be in writing and contain the reasons therefor.

Though Sri S.Surender Reddy, learned counsel for the petitioner, would contend that the Returning Officer failed to take action on the date of the poll despite the petitioner submitting his written representation seeking recount on the very same day, this question of fact cannot be decided by this Court in exercise of writ jurisdiction.

Further, in the light of the law laid down by the Supreme Court in N.P. Ponnuswami Vs. Returning Officer, Nammakkal Constituency, Nammakkal, Salem District¹ and later decisions, this Court would not ordinarily entertain a Writ Petition in relation to electoral disputes.

The statute provides effective alternative remedies to the petitioner. Leaving it open to the petitioner to avail the same as per the due procedure before the competent forum, the Writ Petition is dismissed.

Pending Miscellaneous Petitions, if any, shall also stand dismissed. No order as to costs.

JUSTICE SANJAY KUMAR

18th February, 2019
dr

¹ AIR 1952 SC 64