

2024:PHHC:059411

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
127**

CR-1482-2024

Date of decision: April 30, 2024

MOHAMMAD ISLAM

.....PETITIONER

Versus

AAS MOHAMMAD AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MRS. JUSTICE RITU TAGORE

Present: Mr. Vikram Singh, Advocate,
for the petitioner.

Mr. Munfaid Khan, Advocate,
for respondent No. 1.

RITU TAGORE, J.

1. By way of present revision petition, challenge is to the order dated 26.02.2024 (Annexure P-7) passed by Additional Civil Judge (Sr. Divn.), Hathin, acting as Election Tribunal (hereinafter referred to as 'the Tribunal'), vide which an application (Annexure P-3) moved by respondent No. 1, in an Election Petition under Section 176 (b), the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as 'the Act'), has been allowed and learned Tribunal has been pleased to order the recounting/computation of votes.

2. The petitioner, herein, is the elected Sarpanch of Village Chhainsa, Tehsil Hathin, District Palwal, having won by 1167 votes in the elections held on 25.11.2022. In Election Petition, filed under Section 176 (b) of the Act, his election has been challenged by respondent No. 1 (Annexure P-1), which is reproduced hereunder:-

“Aas Mohammad age 61 years son of Sh. Abdul, resident of village Chhainsa Tehsil Hathin, Distt. Palwal, Pin Code no. 121103, Mob.

No. Nil.

...Petitioner

Versus

1- Mohammad Islam son of Sh. Akhey Singh, resident of village Chhainsa, Tehsil Hathin, Distt. Palwal.

2- Sandeep Singh son of Sh. Rameshwar, resident of village Chhainsa, Tehsil Hathin, Distt. Palwal.

3- S.D.M. Hathin/Returning officer Hathin, Tehsil Hathin, Distt. Palwal.

4- Deputy Commissioner/Distt. Election Officer Panchayat, Palwal Hathin. Distt. Palwal.

5- B.D.P.O. Hathin, Tehsil Hathin, Distt. Palwal.

...Respondents.

Election Petition under section 176 (b) of the Haryana Panchyati Raj Act 1994.

R/Sir

The petitioner submits as under-

1- That the petitioner is an electorate in the Electoral Roll for the Gram panchayat of village Chhainsa, Block and Tehsil Hathin, and the petitioner also contested the election for the post of Sarpanch of Gram Panchayat village Chhainsa held on 25-11-2022. The result of the election of the Gram Panchyat was declared on the same day. The copy of result sheet is appended herewith.

2- That after the notification, the petitioner as well as the respondent no. 1 and 2 file the nomination for the post of Sarpanch of village Chainsa and election was held on 25-11-2022 and the final result as declared by the respondents no. 3 to 5 in collusion with the respondent no. 1 is as follows:-

Sr. No.	Name of the candidate	Total votes shown to be received by the respective candidate
1.	Aash Mohammad	1110
2.	Mohammad Islam	1167
3.	Sandeep Singh	165
4.	Nota	2

That the total vote 2444 were polled in the election and the bifurcation of the same as per the result sheet declared by the respondents no. 3 to 5 is mentioned above.

3- That the voting for the post of Sarpanch of village Chhainsa was started under the supervision of respondents no. 3 to 5 on dated 25-11-2022, however unfortunately the grandson of the petitioner in the family namely Rihaan son of Sh. Arshad was died in the intervening night of the 24/25-11-2022 and due to the death of grandson of the petitioner in the family, the petitioner or his agent remain unable to look after the entire process on that very day on the polling booths in the village and the respondent no. 1 in collusion with the administration i.e. respondents no. 3 to 5 take advantage of the same and the same resulted into irregularities committed on the booths and ultimately and illegally, the respondent no. 1 was declared as winner in the election.

4- That on dated 25-11-2022, in the evening time the other people of the village gathered on the polling booth where counting was shown to be carried out under the supervision of respondent no. 3 to 5 by polling parties and requested returning/presiding officer to check the record and to conduct the recount of votes but instead to heed the genuine requests of that people, the concerned returning/presiding officer declare the respondent no. 1 as winner on the post of Sarpanch with the margin of few votes and the declaration of that result is certainly illegal, null and void and is not binding on the rights of the petitioner and is liable to be set aside.

5- That the petitioner being aggrieved with such declaration of illegal

result in favour of the respondent no. 1 moved application to the respondent no. 5 for conducting the recount of votes in all the booths i.e. booths no. 46 to 48 on the fact that the declaration of result of the post of Sarpanch was also outcome to corrupt practice carried out by the local officials conducting the election as well as counting and they facilitated the respondent no. 1 by way of declaring him as Sarpanch, however the respondent no. 5 neither considered the said application nor passed any order for recount of votes.

6- That the petitioner also submitted another application before the respondent no. 3 with the same subject matter but the respondent no. 3 also did not carried out of recount of votes and result remain the same.

7- That being aggrieved with the such act and conduct of the respondent, the petitioner moved an application under R.T.I. Act and obtained the copy of booth wise result for the post of Sarpanch of village Chhainsa and surprise to know that the respondent no. 1 was illegally shown to be winner with margin of 57 votes and there is an ambiguity in the booth wise result as well as in the final result in the shape of performa no. 19 and the same also shows that the result sheets were prepared by the concerned officials in a hurried manner and in collusion with the respondent no. 1 without counting the votes in a legal and valid manner and it also shows that the respondent no. 1 has been declared as winner illegally by way of taking advantage of the absence of petitioner at that time due to mishappening in his family and in this manner the result is liable to be set aside.

8- That the petitioner being aggrieved with the illegal action of the concerned presiding officer and the illegal declaration of the result for the post of Sarpanch in favour of the respondent no. 1 moved application to the respondent no. 3 and 4 as mentioned above and prayed to them for conducting recount of the votes in presence of the petitioner but the respondent no. 3 to 5 in collusion with the respondent no. 1 did not take any action on the application of the petitioner and the petitioner still has

firm belief that the respondents no. 3 to 5 did not conduct the election of the post of Sarpanch in a fair and freed manner and the declaration of result in favour of the respondent no. 1 is invalid and in the present circumstances the scrutiny of the entire record of the votes polled in the election of Sarpanch of village Chhainsa on 25-11-2022 alongwith the recount/computation of votes recorded in favour of each candidate i.e. petitioner and respondent no. 1 & 2 is necessary and the petitioner is liable to be declared as elected after the same and the aforesaid declaration of result is illegal, null and void and is liable to be set aside, hence this petition.

9- That aforesaid illegal act of the respondents no. 1 and 3 to 5 has prejudiced the result of the election and caused it diverted in favour of the respondent no. 1 and it is deliberate mischief with malafides in order to influence the result of election in favour of the respondent no. 1, which was designed by these persons before hand to procure the desired result in favour of respondent no. 1. Had this mischief not committed the result would have been otherwise and respondent no. 1 would not be declared elected.

10- That the cause of action has arose in the territorial jurisdiction of this hon'ble court and the village Panchayat is situated and voting has taken place in Chhainsa, within the limits of this hon'ble court, hence this hon'ble court has got jurisdiction to try the decide the present petition.

11- That the prescribed fee of petition of Rs. 30/- is being paid on the petition.

12-It is, therefore, prayed that this petition may please be accepted with costs and the election result dated 25-11-2022 declaring the respondent no. 1 as elected for Sarpanch of Village Chhainsa is illegal, void and be set aside and the petitioner being highest votes scorer be declared as Sarpanch of village Chhainsa. Or any other relief which this hon'ble court deems fit and proper may also be awarded, in the interest of justice.”

3.

During the pendency of the petition, respondent No. 1

(petitioner before the learned trial Court), moved an application (Annexure P-2), for giving direction to respondents No. 3 to 5 to preserve the complete record including EVM pertaining to the election for the post of Sarpanch and another application (Annexure P-3), for recounting/computation of votes in order to scrutinize the validity of the declaration of the result by way of interim mandatory injunction. The present petitioner filed the replies (Annexures P-5 and P-6) to both the applications, resisting the same on various grounds outlined therein. Upon hearing of the parties, learned Tribunal passed the impugned order dated 26.02.2024 (Annexure P-7).

4. Learned counsel for the petitioner has assailed this order (Annexure P-7) *inter alia*, that learned Tribunal ordered recount of the votes, without arriving at a *prima facie* satisfaction in this regard. Learned counsel stated that it has been consistently observed by the Courts that recount of votes cannot be ordered mechanically without adverting to the allegations in the Election Petition and being satisfied that the allegations *prima facie* make out a case for ordering a recount. In support of his submissions, counsel referred to the judgments **Udey Chand vs. Surat Singh and another**, 2009 (10) SCC 170; **Mahender Pratap vs. Krishan Pal**, 2003 (1) SCC 390 ; **Krishan Kumar vs. Civil Judge (Jr. Divn.)**, **Hansi and others**, 2008 (1) RCR (Civil) 651; **Sadhu Singh vs. Sub Divisional Magistrate-cum-Presiding Officer and others**, 2023 (1) PLR 80 and **Balwinder Singh vs. Dilbag Singh and others**, CR No. 162 of 2021, decided on 06.12.2022.

5. Learned counsel urged that before ordering recounting of votes, the learned Tribunal should have made some limited enquiry, based on some evidence. It is stated that recount of the votes cannot be ordered on mere asking of respondent No. 1, but the learned Tribunal without following

the dictum, as laid in judicial pronouncements, passed a very vague and cryptic order which does not assign any ground or reasons for such an order of recounting of votes.

6. Learned counsel submits that learned Tribunal fell in error in relying upon bald and baseless allegations of respondent No. 1 with no material facts pleaded to support the allegations of corrupt practice in elections and irregularities in counting of votes. It is submitted that respondent No. 1 did not apply for recount of votes in terms of Rule 69 (2) of the Haryana Panchayati Raj Election Rules, 1994 (hereinafter referred to as 'the Rules') after the announcement of the result by Returning Officer and signed the result sheet accepting the result. Now, he is estopped from raising any objections with respect to the counting of votes at later stage. It is stated that impugned order does not record any satisfaction about there being *prima facie* case for recounting of the votes. Thus, a prayer has been made to set aside the impugned order (Annexure P-7) being wholly without jurisdiction and lacks material reasons on which recounting of votes has been ordered.

7. Per contra, learned counsel for respondent No. 1 defended the order stating that it has been passed after hearing the parties, making out a *prima facie* case for recounting of the votes. It is a detailed and speaking order explaining the reasons for passing such as order. The learned counsel stated that respondent No. 1 has pleaded in his petition in detail the manner in which illegalities, corrupt practice and various irregularities were committed in the election, with material and specific instances to support the same. It is stated that petition contains adequate statements of all the material facts in accordance with provisions of law, making out the case of recount of votes and setting aside the election's result in question, declaring

petitioner as an elected Sarpanch. In support of his submissions, counsel referred to the judgments in the cases of **Devender vs. Election Tribunal-cum-Civil Judge (J.D.), Bahadurgarh and others**, C.R. No. 5639 of 2001, dated 25.07.2003 and a judgment of this Court in the case of **Badlu Ram vs. Ram Niwas and others**, 1997 (2) RCR (Civil), 439. On the above submissions, a prayer has been made to dismiss the revision petition, being without merits.

8. I have considered the submissions made by the learned counsel for the parties and have gone through the paper-book with their able assistance.

9. Before advertng to the merits of issue raised, it is apposite herein, to reproduce the impugned order, which reads as under:-

“ By this order this court shall decide application for recounting of votes in order to scrutinize the validity of the declaration of the result of election for the post of sarpanch village Chhainsa held on 25.11.2022 by way of interim mandatory injunction be passed in favour of the applicant/petitioner and against the respondents interest of justice, till final decision of the suit.

2. It has been further maintained in the instant injunction application that the basic dispute in the present case is about the valid computation of the votes polled in favour of the petitioner and other respondents no. 1 & 2 and the same could be effectively scrutinized by way of computation of the votes secured by each candidate in the EVM machine in the election held on 25.11.2022 by way of interim relief as he has reason to believe that the election was invalid; hence, this application.

3. By way of filling contesting reply the respondent submitted that the allegations leveled upon the respondents regarding computation of votes are wrong illegal and unavoidable, the petitioner is liable to be dismissed. It is further submitted that there was a strong control of police and officers

during the entire election time and all the observers were taking care of the election with following all the rules and regulations. It is further submitted that the election was peaceful and without any illegality and there was no complaint of any illegality on the date of election. All the candidates as well as their agents were remained resent during counting of votes and no objections were raised by anyone at that time. The election is valid and legal and binding upon all the candidates and prayed for dismissal of application with exemplary cost.

4. I have heard learned Counsel for both parties at length and have gone through case file carefully and thoroughly.

5. Having heard the arguments and perusal of the case file shows that present election petition filed by the petitioner praying that this petition be accepted with costs and the election result dated 25.11.2022 declaring the respondent no. 1 as elected for sarpanch of village chahhisa is illegal void and be set aside and the petitioner being highest votes scorer be declared as sarpanch of village chhaisha. The petitioner has pleaded by way of the application that the basic dispute in the present case is about the valid computation of votes polled in favour of the petitioner and other respondent no. 1 & 2 where as respondent said that the election is valid and legal and binding upon all the candidate. In the case law Lila Ram vs The Additional Civil Judge, (2007) 147 PLR 652, Hon'ble High Court ruled that:-

" In view of the matter and in order to maintain the purity of election, which must prevail over secrecy of ballot, it is held that the present case is fully covered under the restricted scope of the provisions of section 176(4)(b) of the act.

In the result, the impugned order, annexure P/6 ordering scrutiny and recounting of valid votes, is maintained and consequently this writ petition is dismissed".

6. Hence, this court is of view that for proper and effective adjudication of the matter in dispute, scrutinizing by way of computation

of votes secured by each candidates in EVM machine in election held on 25.11.2022 seems to be appropriate and necessary.

7. Accordingly, instant application for recounting/computation of votes filed by petitioner ordered to be allowed. Election officer/Returning officer of Panchayat election Hathin, is directed to produce preserved election record including EVM pertaining to the election for post of Sarpanch Village Chhainsa for recounting/computating of votes on **11.03.2024**.

8. Anything expressed herein above shall not be misconstrued as expression of my opinion to the merits of the case.”

10. In **Udey Chand (supra)**, Hon'ble the Supreme Court observed that in the election law, since an order for inspection and recount of the ballot papers affects the secrecy of ballot, such an order cannot be made as a matter of course. It was observed in Para-9, which is reproduced hereunder:-

“9. Before advertng to the merits of the issue raised by the parties with reference to the statutory provisions, it would be appropriate to bear in mind the salutary principle 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 are made out. The importance of maintenance of secrecy of ballot papers and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases. 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.”

11. In aforesaid judgment, reference was made to **Suresh Prasad Yadav v. Jai Prakash Mishra and Ors.**, (1975) 4 SCC 822, wherein Hon'ble the Supreme Court while summarizing the principles laid down from time to time in granting prayer for inspection of ballot papers and/or re-counting observed as follows:-

"...this Court has repeatedly said, that an order for inspection and recount of the ballot papers cannot be made as a matter of the course. The reason is two-fold. Firstly such an order affects the secrecy of the ballot which under the law is not to be lightly disturbed. Secondly, the Rules provide an elaborate procedure for counting of ballot papers. This procedure contains so many statutory checks and effective safeguards against mistakes and fraud in counting, that it can be called almost trickery foolproof. Although no hard and fast rule can be laid down, yet the broad guidelines, as discernible from the decisions of this Court, may be indicated thus.

The Court would be justified in ordering a recount of the ballot papers only where:

(1) the election-petition contains an adequate statement of all the material facts on 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."

12. In **Vadivelu v. Sundaram & Ors.**, (2000) 8 SCC 355, Election

Petition was filed by a losing candidate and same was allowed by Election Tribunal and recount was ordered, that was challenged before the Hon'ble High Court, which was allowed, observing that recount ought not have been ordered in absence of material facts and recounting of *prima facie* satisfaction for recounting. Hon'ble the Supreme Court affirming the decision, expounded as under:-

"...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."

13. Here, it is expedient to refer to Section 176 of the Act, which reads as under:-

"176. Determination of validity of election enquiry by judge and procedure.-(1) If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time, within thirty days after the date of the declaration of results of the election, present an election petition to the Civil Court having ordinary jurisdiction

in the area within which the election has been or should have been held, for the determination of such question.

(2) xxx xxx xxx

(3) xxx xxx xxx

(4) (a) If on the holding of such enquiry the Civil Court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

(aa) If on holding such enquiry the Civil Court finds that -

(i) on the date of his election a returned candidate was not qualified to be elected;

(ii) any nomination has been improperly rejected; or

(iii) the result of the election, in so far as it concerns a returned candidate, has been materially affected by improper acceptance of any nomination or by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent or by the improper reception, refusal or rejection of any vote or the reception of any vote which is void or by any non-compliance with or Violation of the provisions of the Constitution of India or of this Act, or any rules or orders made under this Act, election of such returned candidate shall be set aside and fresh election may be held.

(b) If, in any case to which clause (a) or clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the Court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected :

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been

received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of the judge in such manner as he may determine.

(5) A person shall be deemed to have committed a corrupt practice-

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.

Explanation 1.— A corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the election.

Explanation 2.— The expression "vehicle" means any vehicle used or capable of being used for the purpose of road transport whether propelled by mechanical power or otherwise, and whether used for drawing other vehicles or otherwise.”

14. Now arises the question as to what is the scope of inquiry, as contemplated in sub-section 4 (a) of Section 176 of the Act. Hon'ble the Supreme Court in **Udey Chand (*supra*)** in para-17 observed as under:-

“17. It is no doubt true that the legislature in its wisdom has not incorporated in clause (b) the expression "on the holding of such inquiry", as it appears in clause (a), but bearing in mind the importance and the

sanctity of the secrecy of a ballot, in our considered opinion, it cannot be the intention of the legislature that a bald allegation of irregularity in the counting process would ipso facto warrant a re-count. Such an interpretation of the provision, in our view, would not only tantamount to automatic conversion of a petition under Section 176 (1) of the Act into an order for recounting, it would be destructive of the settled principle of secrecy of poll, as also violative of letter and spirit of Section 183 of the Act, which mandates every officer, agent etc.; who performs duty in connection with the recording or counting of votes, to maintain the secrecy of votes. In our judgment, the sole object of the Legislature in giving wide powers to the Election Tribunal is to decide the objections under clause (b) of sub-section (4) of Section 176 of the Act expeditiously without holding a full-fledged regular enquiry, as postulated in clause (a) of the said provision, so that the actual mandate of the electorate is given effect to without any delay; the successful candidate is able to utilise his complete tenure for the purpose he has been elected and above all the purity of election process is safeguarded. Nonetheless, the secrecy of the ballot being sacrosanct, it cannot be permitted to be tinkered with lightly and an order of re-count cannot be granted just for the asking. We have no hesitation in holding that a petition for re-count as contemplated under clause (b) of Section 176(4) of the Act must contain adequate statement of material facts on which the election petitioner relies in support of his allegation(s) and it must also be supported by some contemporaneous evidence to show irregularity or illegality in the counting. On this basic material, which affords the basis for the allegations in the petition and the response of the opposite party thereon, the Tribunal is required to record its *prima facie* satisfaction 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 candidate is necessary. The need to record reasons in support of the satisfaction can hardly be over-emphasized because reasons are the soul of

the orders/judgment. Therefore, *we hold* that though in an election petition seeking an order under Section 176(4)(b) of the Act, it may not be necessary for the *Court to hold* a regular enquiry as postulated under clause (a) of Section 176 (4) of the Act but the Court is obliged to apply its mind to the material facts, disclosed in the petition, on which the allegations of irregularity or illegality are founded, along with some contemporaneous evidence, which would depend on the facts and circumstances of each case. An order for re-count on the basis of bare allegations in the election petition would not be a proper exercise of jurisdiction under the provision.”

15. Perusal of the petition shows that respondent No. 1 challenged the election of the Sarpanch of Village Chhanisa, Tehsil Hathin, District Palwal, by raising the pleas of corrupt practice carried out by the officials conducting election, collusion between respondent No. 1/agents and administration (respondents No. 3 to 5) and commission of other several irregularities and illegalities on rolls and counting, to declare respondent No. 1 as winner.

16. Having viewed the impugned order in the light of statement of material facts on which petition has been based and the principles enumerated in the judicial precedents, it is held that learned Tribunal lost sight of the parameters to be applied, while ordering for recounting of the votes. Perusal of the impugned order would show that same was passed on the basis of the pleadings of the parties. The impugned order even does not indicate that any material much less the affidavits of the parties by way of their evidence were taken into account, before ordering recounting of votes. The impugned order does not indicate any *prima facie* satisfaction was recorded by the learned Tribunal, before ordering the recount of votes. It does not provide that learned Tribunal made any limited inquiry based on

any material before passing the order. It is settled position of law that justification for an order of recount of votes cannot be derived from the hindsight and by result of recount of votes but from the material placed by an election-petitioner on the threshold for recount of the votes. The right of a defeated candidate to assail the validity of an election result and seeking recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy. Unless the affected candidate is able to substantiate by means of some evidence that a *prima facie* case of recounting of votes is made out, the learned Tribunal, in the interest of justice, should not order recount of votes.

17. Keeping in view aforesaid facts and legal position, order dated 26.02.2024 (Annexure P-7) does not withstand judicial scrutiny, and, is hereby, set aside, with the liberty to the Election Tribunal to pass a fresh order, after the parties present their evidence. The case law **Devender** (*supra*) and **Badlu Ram** (*supra*) submitted by counsel for respondent No. 1 also follow the view of *prima facie* recording of satisfaction by the learned Tribunal before recount of votes is ordered.

18. Further, learned Tribunal is expected to expedite the trial of petition and decide the same within four months from the receipt of certified copy of this order, with no unnecessary delays.

19. Needless to mention, parties to the petition shall assist the Court in expeditious decision of the case.

20. Anything expressed herein above shall not be misconstrued as expression of opinion of this Court on the merits of the matter.

21. Revision Petition stands allowed accordingly.

22. Pending miscellaneous applications, if any, stand disposed of.

April 30, 2024
pj

(RITU TAGORE)
JUDGE

Whether speaking/reasoned: *Yes/No*
Whether reportable: *Yes/No*