

Writ Appeal No. 97 of 2016

14.03.2016

Shri Manoj Sharma, learned counsel for the appellant.

Smt. Amrit Kaur Ruprah, learned counsel for the respondents.

Heard counsel for the parties.

In our opinion, arguable questions are raised, hence appeal deserves to be **admitted**.

Smt. Amrit Kaur Ruprah, learned counsel waives notice on behalf of respondents.

We are conscious of the fact that the learned Single Judge in the impugned order has merely remitted the matter back to the Election Tribunal for reconsideration. The learned Single Judge may also be justified in observing that the Election Tribunal has not analyzed the rival pleadings, evidence and submissions canvassed by the respective parties and more so to record independent opinion in that regard. This view is reinforced from the fact that the judgment of Election Tribunal reproduces the written submissions filed by the appellant before it and has in the concluding portion accepted the same as correct. This approach may not be correct. Ordinarily, in such a situation the learned Single Judge would be justified in relegating the parties before the Election Tribunal for fresh consideration by setting aside such order.

In the present case, it is noticed that after the order of recount was passed by the Election Tribunal, process of

recounting was completed and in which the appellant has been declared as elected candidate having secured 34 votes more than the votes secured by the respondent. The appellant has also taken charge of the office of Sarpanch since then. That, by itself, cannot be the basis to interfere with the correct decision of the learned Single Judge but that reasoning of the learned Single Judge will have to be analyzed contextually.

The learned Single Judge in the facts of the present case could have examined the entire matter itself and recorded opinion in particular, on the factual matrix as to whether there is averment in the election petition to justify an order of recount and secondly, whether that allegation has been substantiated by way of evidence. In our opinion, since the learned Single Judge has failed to do so, it would be appropriate for us in this intra Court appeal to examine those matters; and if the answer is in favour of the election-petitioner, no further remand would be necessary in which case, the appellant may not be required to hand over the charge of the office of Sarpanch. For that, *prima facie*, we find that on both the counts the appellant has made out a formidable case.

In paragraphs 7 and 8 of the Election Petition, relevant material facts to justify an order or recount of votes can be traced. The evidence of Agents of the candidate, PW-1 and PW-2, have also spoken about those facts in the examination-in-chief. The cross-examination does not shatter that factual

position. In that case, if after elaborate hearing, it is held that on both the counts, the appellant/election-petitioner has fulfilled the preconditions for an order of recount of votes, by way of averment as well as submissions justifying recount of votes, the parties need not be relegated for reconsideration of that aspect.

As a result, we stay the operation of the impugned order during the pendency of this appeal.

Considering the fact that the matter relates to election of Sarpanch, we direct the Registry to process the appeal under priority category “**Writ (Appeal) : Election Matters – Municipal Laws (12.ii)**” and also “**High Court Expedited Cases, Other Than Above (2.iii)**” as the matter cannot be concluded within 30 minutes. We say so because, for consideration of admission of appeal and grant of stay, arguments of both sides consumed more than one hour of the Court.

Cc as per rules.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge

AM.