HIGH COURT OF MADHYA PRADESH : JABALPUR
(Division Bench)

W.A. No.1814/2018

Purushottam Sahu
-Versus-
Devkinandan Dubey & others

Shri Bhupendra Kumar Shukla, Advocate for the appellant.
Shri Sanjay Kumar Patel, Advocate for the respondent No.1.
Shri Prabhakar Singh, Advocate for the respondent No.2.

CORAM :

Hon'ble Shri Justice Sanjay Yadav, Acting Chief Justice.
Hon'ble Shri Justice Vijay Kumar Shukla, Judge.

J U D G M E N T
(Jabalpur, dtd.21.10.2019)

Per : Vijay Kumar Shukla, J.-

The present intra-court appeal preferred under Section 2(1) of the Madhya Pradesh Uchch Nyayalaya (Khand Nyaypeeth ko Appeal) Adhiniyam 2005, is directed against the order dated 14-12-2018 passed by the learned Single Bench in W.P. No.15383/2016 filed by the respondent No.1 (writ petitioner).

2. The factual expose' adumbrated in a nutshell, are that the writ petitioner preferred a writ petition under Article 226 of the Constitution of India assailing the order dated 14-9-2016 passed by the Election Tribunal directing for recount of votes in an election

petition filed under Section 122 of the Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 [hereinafter referred to as `the Adhiniyam'] read with the Madhya Pradesh Panchayats (Election Petitions, Corrupt Practices and Disqualification for Membership) Rules, 1995 [for brevity `Rules 1995'].

3. The writ petitioner as well as the present appellant and other candidates contested the election for the post of Sarpanch, Gram Panchayat, Nayagaon, District Damoh, held on 22-02-2015. Counting of votes was conducted on 26-02-2015. The writ petitioner secured 311 votes as against 310 votes secured by the present appellant and he was declared elected. The appellant filed an election petition under the provisions of the Adhiniyam read with the 1995 Rules. It was asserted by the appellant that grave illegalities were committed in counting of votes. It was also alleged that as per Form-21 total polled votes were 909 out of which valid votes were 843 and invalid votes were 66. In the Form-17 as regards Booth No.50 there was manipulation. It was stated that there were 4 valid votes of the appellant which were not considered to be valid because of some spot of ink. It is alleged that despite his repeated request to count those votes in his favour, the Returning Officer did not consider the same and no recounting was done.

4. The Tribunal framed as many as 12 issues for trial. In respect of allegations of tampering with ballot boxes and irregularity in counting of votes, Issue No.4 was framed; and as regards allegations of the appellant that his valid votes were illegally declared invalid and, therefore, he is entitled for an order of recount, Issue No.6 was framed. The Issue No.4 was found partly proved. The allegation that the seals of the ballot papers were broken, was not found to be proved. The Tribunal has noted that in respect of polling at Booth No.49 in the Form-17, his votes in respect of NOTA have not been indicated. In respect of Polling Booth No.50 against NOTA it has been mentioned '0', whereas NOTA votes have been found shown as invalid votes. On the basis of the aforesaid, the Tribunal held that the appellant is entitled for an order of recount.

5. In the election petition the petitioner averred that ballot boxes brought for counting were not intact and their seals were broken. The counting agent of the election petitioner raised an objection about the said ballot boxes but his objection was disallowed and the ballot boxes were opened and ballot papers were taken out. This pleading could not be proved by the appellant. The appellant also could not prove the allegation that there was an overwriting or manipulation.

6. Upon perusal of records, we find that the petitioner's application (Annexure-P/2) seeking recounting is an ambiguous application which does not contain specific allegation, factual details and nature of irregularity. The statement of the petitioner before the Tribunal clearly shows that he did not state that his votes were added in favour of the petitioner. Annexure-P/2 shows that there is no assertion in the documents that valid votes of the election petitioner were added in favour of the petitioner. A bald statement was made that the election petitioner's votes were added in the votes of other candidates and his votes were rejected. The Tribunal has ordered for recount on the basis of alleged irregularity in not showing the correct number/portion of "NOTA" votes. This alleged irregularity was neither pleaded nor proved by the election petitioner. In view of the aforesaid judgements, the principle of law is clear that election Tribunal is not required to conduct a roving inquiry to ascertain irregularities in the matter of counting. Interference can be made on the basis of strong pleading supported by solid evidence. The Tribunal has travelled beyond the scope of pleadings and evidence and directed for recounting on the basis of roving inquiry which is impressible.

7. The learned Single Judge has tested the legality and validity of the order of recount passed by the Tribunal on the anvil of pleadings, issues, evidence and the law laid down by the Apex Court to pass an order of recounting in an election petition. The Apex Court in catena of decisions has held that an order of recount cannot be passed as a matter of courts. It is to be resorted to only upon satisfaction of material facts and pleadings in the petition and duly supported by contemporaneous evidence justifying such order. The Supreme Court in the case of **Bhabhi vs. Sheo Govind, (1976) 1 SCC 687** opined that the election petition must contain the adequate statement of all the material facts on which the allegations of irregularity and illegality in counting are founded. On the basis of evidence adduced, such illegality must be established. The Court trying the petition must be satisfied that making of such an order of recount is imperatively necessary to decide the dispute and to do complete justice between the parties. As the Apex Court in **Ram Autar Singh Bhadauria vs. Ram Gopal Singh, (1976) 1 SCC 43** followed the said principle. In **Chanda Singh vs. Choudhary Shiv Ram Verma, (1975) 4 SCC 393**, the Apex Court held that the democracy runs on the smooth wheels of periodic and pure elections. A certain amount of stability in the electoral process is essential. Recount of ballot cannot be interfered too frequently and on flippant accounts. The secrecy of the ballot is sacrosanct in

democratic process. In **Beliram Bhalaik vs. Jain Beharilal Kachi, (1975) 4 SCC 417**, the Apex Court held that a whimsical and bald statement of the candidate that he is not satisfied with the counting will not tantamount to a statement of the "grounds" within the meaning of relevant rules. A Division Bench of this Court in **Ganesh Ram Gayari vs. Baddiram and others, 2013 (2) MPLJ 447** followed the said principle. In **Hamnumant Singh vs. State of M.P., 2012 (3) MPLJ 191**, this Court considered the judgment of the Supreme Court reported in **AIR 1993 SC 367 (Shri Satyanarain Dudhani vs. Uday Kumar Singh and others)** and opined that secrecy of ballot cannot be lightly tinkered. In a democratic set up, secrecy of ballot is of utmost importance and in absence of very specific pleadings of material facts and particular supported by contemporaneous evidence, neither election can be quashed nor recount can be ordered. This Court considered the judgment of **Mahendra Pratap Singh vs. Kishan Pal and others, (2003) 1 SCC 390** in which it was held that the onus of proof on the basis of proper pleading is on the election petitioner. It is further held that the degree of proof is of very high standard for the purpose of annulling an election or for issuing direction for recounting.

8. In the case of **P.K.K. Shamsudeen vs. K.A.M. Mappillai Mohindeen and others, AIR 1989 SC 640** the Apex Court ruled thus:

> "11.. 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.
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> Xx xx
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> 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 hindsight 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 subjected 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."

9. It seems that the Tribunal was persuaded to pass an order of recount on consideration of margin of one vote, however, this cannot be a ground to order for recounting. In the case of **R. Narayanan vs. S. Sammalai and others, (1980) 2 SCC 357** it was

held that a small majority of votes cannot be a ground for ordering recounting.

10. A Division Bench of this Court in the case of **Ganesh Ram Gayatri vs. Bagdiram and others, ILR 2013 (MP) 1793** and also in **Rani Maraskole vs. State of M.P., 2016 (2) MPLJ 457** reiterated that a small margin of votes alone cannot be a ground for passing an order of recounting of votes in absence of specific pleadings regarding irregularity and for lack of adequate evidence an order of recounting cannot withstand judicial scrutiny.

11. In view of the aforesaid, it is luminescent that the election petitioner has failed to establish a ground for recounting by specific pleadings of material evidence and particulars supported by contemporaneous evidence. The learned Single Judge has rightly set aside the order of recount and also the consequential order electing the present appellant.

12. In the case of **Baddula Lakshmaiah and others vs. Sri Anjaneya Swami Temple and others, (1996) 3 SCC 52**, the Apex Court ruled that in an intra-court appeal the appellate Court is a Court of Correction which corrects its own orders, in exercise of the same jurisdiction as was vested in the Single Bench. Such is not an

appeal against an order of subordinate court. In such appellate jurisdiction the High Court exercises the powers of a Court of Error.

13. We do not find any illegality in the impugned order passed by the learned Single Judge warranting any interference in this intra-court appeal. Accordingly, **the writ appeal deserves to and is hereby dismissed.** No order as to costs.

(Sanjay Yadav)
Acting Chief Justice

(Vijay Kumar Shukla)
Judge

ac.