

SOHAN LAL
v.
BABU GANDHI AND ORS.

NOVEMBER 22, 2002

[M.B. SHAH, S.N. VARIAVA AND D.M. DHARMADHIKARI, JJ.]

M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993—Sections 80 and 122—Election to the post of Sarpanch of Gram Panchayat—Recounting of votes—Held: After the declaration of the result, Court or Tribunal can direct recounting of votes and the Returning Officer has no power either to direct recount or to change the results of the election—Once the result is declared, the only remedy of an aggrieved party is to file an Election Petition under Section 122—Hence order of High Court setting aside order of Sub Divisional Court directing recount of votes on the ground that the aggrieved party had not applied to the returning officer for recount of votes, is set aside—Election Laws.

Election was held for the post of Sarpanch of a Gram Panchayat. Appellant was orally informed that he had won the election after counting of the votes. However, when the result was officially declared, respondent No.1 won the election. Aggrieved appellant filed an election petition before the Sub-Divisional Officer (SDO). SDO directed recounting of votes and it was found that appellant had won. Respondent No.1 filed a writ petition. On remand of the matter to SDO, it was again found that appellant had won. Respondent again filed a writ petition. High Court following the decision in *Smt. Ram Rati v. Saroj Devi and Ors* case that unless a party first applies to the Returning Officer for recounting of votes it is not open to Tribunal or Court to direct recounting, allowed the appeal. However, it did not decide any other points raised in the petition. In appeals before this Court the two Judge Bench had reservation about the principle laid down in *Ram Rati's* case and referred the matter to three Judge Bench.

Disposing of the appeals, the Court

HELD: 1.1. After declaration of results, the Returning Officer has no power either to direct recount or to change the results of the election. In view of Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 the holding that, in an election petition, after the

A declaration of the result, Court or Tribunal cannot direct recounting of votes unless the aggrieved party has first applied in writing for recounting of votes is incorrect. There is no prohibition in the Act or under the rules prohibiting Court or Tribunal to direct recounting of votes. Even otherwise a party may not know that recounting is necessary till after result is declared. At this stage, it would not be possible for him to apply for recounting to the Returning Officer. His only remedy would be to file an Election Petition under Section 122. In such a case, Court or Tribunal is bound to consider the plea and where case is made out, it may direct recount depending upon the evidence led by the parties. [338-C-E]

C 1.2. In the instant case, there was obvious error in declaring the result: Appellant had been orally told that he had won. He only came to know that Respondent No.1 had been declared elected after the result was declared. At this stage, he could not have approached the Returning Officer for recount. The only remedy, therefore, available to appellant was to file an Election Petition. Therefore the decision of High Court is set aside. As the writ petition was disposed off only on the basis of *Ram Rati's* case and High Court did not deal with other points raised in the writ petition, it is restored to the file of High Court which it shall decide on merits. [338-B, D, F]

Smt. Ram Rati v. Saroj Devi and Ors., AIR (1997) SC 3072, overruled.

E CIVIL APPELLATE JURISDICTION : Civil Appeal No. 7623-7624 of 2002.

From the Judgment and Order dated 27.3.2001 of the Madhya Pradesh High Court in W.P. No. 914/2000 and M.C.C. No. 128 of 2001..

F Sushil Kumar Jain, Ms. Anjali Doshi and A.P. Dhamija, for the Appellant.

Niraj Sharma, Adv. for the Respondent No. 1.

G B.S. Banthia and W.A. Nomani, for the Respondent No. 5.

The Judgment of the Court was delivered by

S. N. VARIAVA, J. Leave granted.

H These Appeals are against the judgment dated 27th March, 2001. Briefly

stated the facts are as follows:-

On 20th January, 2000 the election for the post of Sarpanch, Gram Panchayat, Ringnodiya, Indore was held. After the counting of the votes, the Appellant was orally informed that he had won the elections. However when the result was officially declared, Respondent No. 1 was shown to have won. The Returning Officer then issued a certificate showing that Respondent no. 1 had won.

The Appellant, therefore, filed an election petition before the Sub-Divisional Officer. Respondent no. 1 evaded services. By an ex-parte Order the Sub-Divisional Officer directed recounting of ballot papers. On such recounting it was found that in respect of booth no. 151 the votes polled in favour of the Appellant had been erroneously shown as having been polled in favour of Respondent No. 4. On a recounting of the votes it was found that the Appellant had won. The Sub-Divisional Officer, therefore, corrected the mistake by Order dated 3rd February, 2000 and declared the Appellant to have won the election.

Against the order of the Sub-Divisional Officer, Respondent No. 1 filed a Writ Petition in the High Court. On 23rd February, 2000 the High Court disposed of the Writ Petition by remanding the matter back to Sub-Divisional Officer. The Sub-Divisional Officer thereafter heard all parties and again passed an order to recount. On a second recount it was again found that the votes polled in favour of the Appellant had been erroneously shown as having been polled in favour of Respondent No. 4. Thus the Sub-Divisional Officer again corrected the results and declared the Appellant as having won the elections.

The 1st Respondent again filed a Writ Petition before the High Court. This Writ Petition has been allowed by the Impugned Judgment. In the Impugned Judgment, the High Court has followed a decision of this Court in the case of *Smt. Ram Rati v. Saroj Devi and Ors.* reported in AIR (1997) Supreme Court 3072. In this decision it has been held that unless a party first applies to the Returning Officer for recounting of votes it is not open to the Tribunal or the Court to direct recounting. It was held that an application for recounting in writing to the Returning Officer was an essential pre-condition.

Based on this authority, the High Court set aside the order of the Sub-Divisional Officer solely on the ground that the Appellant had not applied to the Returning Officer for recounting. The High Court did not decide any

A other points raised in the Writ Petition.

When these Appeals came up before a bench of two Judges of this Court they had reservation about the principle laid down in Ram Rati's case. This matter was, therefore, directed to be placed before a three Judge Bench. It has accordingly been placed before us.

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In order to consider the correctness of the ratio laid down in Ram Rati's case it is necessary to see the provisions of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 (hereinafter called the said 'Act'). Section 43 of the said Act empowers the State Government in consultation with the State Election Commission to make rules for preparation of electoral rolls and conduct of all elections. Section 95 further empowers the State Government to make rules for carrying out the purposes of the said Act. Section 122 provides that an election can be called in question only by a petition presented, in case of a Gram Panchayat, to the Sub-Divisional Officer. Rule 80 reads as follows:-

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"80. Recount of votes.- (1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of rule 77, a candidate or, in his absence, his election agent or his counting agent may apply in writing to the Returning Officer or such officer authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.

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(2) On such an application being made the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

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(3) Every decision of the Returning Officer or such other officer authorised by him, under sub-rule (2) shall be in writing and contain the reasons therefor.

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(4) If the Returning Officer or such other officer authorised by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall-

(a) count the ballot papers again in accordance with his decision;

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(b) amend the result sheet to the extent necessary after such recount;

and

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(c) announce the amendment so made by him.

(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of rule 77 or sub-rule (4) the Returning Officer or such other officer authorised by him shall complete and sign the result sheet and no application for a recount shall be entertained thereafter;

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Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).

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6. The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of rule 77.

7. Result sheets in Form 16, 17, 18 and 19 for Panch, Sarpanch, Member of Janpad Panchayat and Member of Zila Panchayat respectively, prepared by such other officers as are authorised by the Returning Officer, shall be submitted by them, in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.

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8. The Returning Officer on receipt of result sheets under sub-rule (7) shall enter of cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, Member of Janpad Panchayat or Member of Zila Panchayat at each polling station of the concerned constituency in subsequent part or parts of Form 17, 18 and 19 respectively and complete and sign the result sheet."

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Thus under sub-rule (5) once the result sheet is completed and signed, no application for recount can be entertained.

Rule 81 also provides that after the counting of the votes, the Returning Officer shall prepare a return and declare the candidate who has the largest number of votes to have been elected. Under Rule 83, a certificate is to be granted to the returned candidate who has been declared elected. Under Rule 84 after the certificate has been granted, the election officer or the Returning Officer can only correct clerical or arithmetical mistakes.

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Thus after declaration of results, the Returning Officer has no power

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A either to direct recount or to change the results of the election. Once the result is declared, the only remedy of an aggrieved party is an Election Petition under Section 122.

B In this case, as stated above, the Appellant had been orally told that he had won. He only came to know that Respondent No. 1 had been declared elected after the result was declared. At this stage, he could not have approached the Returning Officer for recount. The only remedy, therefore, available to the Appellant was to file an Election Petition.

C In view of Section 122 and the rules, we are unable to agree with the ratio laid down in Ram Rati's case. It is not correct to hold that, in an election petition, after the declaration of the result, the Court or Tribunal cannot direct recounting of votes unless the party has first applied in writing for recounting of votes. There is no prohibition in the Act or under the rules prohibiting the Court or Tribunal to direct a recounting of the votes. Even otherwise a party may not know that the recounting is necessary till after result is declared. At this stage, it would not be possible for him to apply for recounting to the Returning Officer. His only remedy would be to file an Election Petition under Section 122. In such a case, the Court or the Tribunal is bound to consider the plea and where case is made out, it may direct recount depending upon the evidence led by the parties. In the present case, there was obvious error in declaring the result. We, therefore, hold that the ratio laid down in Ram Rati's case is not correct.

F In this view of the matter, the decision of the High Court cannot be sustained and is, therefore, set aside. As the Writ Petition was disposed off only on the basis of Ram Rati's case, the High Court has not dealt with other points raised in the Writ Petition. We therefore restore the Writ Petition to the file of the High Court. The High Court shall decide the same on merits.

The Appeals stand disposed of accordingly. There shall be no order as to costs.

G N.J.

Appeals disposed of.