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**(2011) 07 AHC CK 0054**  
**In the Allahabad High Court**  
**Case No : C.M.W.P. No. 3908 of 2011 (M/S)**

Rajneesh

APPELLANT

Vs

State of U.P. and others

RESPONDENT

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**Date of Decision :** 12-07-2011

**Acts Referred:**

**Citation :** (2012) 115 RD 67

**Hon'ble Judges :** Shabihul Hasnain, J

**Bench :** Single Bench

**Final Decision :** Dismissed

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## Judgement

Shabihul Hasnain, J.—Heard Sri Sanjay Tripathi learned Counsel for the petitioner as well as Sri Manoj Kumar Dwivedi for opposite party No. 3 and the learned Standing Counsel for opposite party Nos. 1 and 2.

2. The petitioner has challenged an order dated 6.7.2011 passed by the Sub-Divisional Magistrate, Sadar, Sultanpur. By this order the Sub-Divisional Magistrate, Sultanpur has directed for recounting of the votes in the election of "Pradhan" held on 28.10.2010. The petitioner who is an elected "Pradhan" is aggrieved by this order. He says that the order has been passed by the Sub-Divisional Magistrate in very cursory and casual manner. There was not sufficient material for him to proceed and to come to a conclusion that recounting is necessary. He also says that perhaps the order has been passed under the influence of the High Court's order which had directed him to pass appropriate orders and further that it was an election matter and roving and fishing inquiry should not be encouraged in the election matters.

3. He has placed reliance on a number of Supreme Court judgments and one Single Judge judgment of this Hon'ble Court. It has been held in these judgments that in a democracy there should be stability and frequent interference in the process of the election by ordering recounting will vitiate the solemn objective for which the elections are held. Learned Counsel has argued

that elections in a democratic process are held to govern and if the elected member is not given the stability of mind then he will not be able to perform his duties for which the statutes have envisaged a tenure / term. Instability leads to nonperformance and non-governance. Mr. Tripathi says that in the present case all these elements were not considered. It is his case, that in an election petition more caution should be applied. The rules should be interpreted and adhered to in a strict manner of interpretation. He emphasizes that literal interpretation should be applied in the case of elections and by these standards the order of Sub-Divisional Magistrate is bad. Following judgments have been relied by the petitioner in this regard :--

R. Narayanan Vs. S. Semmalai and Others, . Mahendra v. Shri Ram Dass Malinger and others, 2002 (20) LCD 993. Dhamsadin v. Sheo Bahadur Singh and others 2002 (93) RD 564 (HC-LB).? Sohan Lal v. Babu Gandhi 2002 DGLS (Soft) 945. Jibontara Chatowar v. Sarbananda Sonowal 2003 DGLS (Soft.) 462. Sadhu Singh v. Darshan Singh and another. 2006 DGLS (Soft.) 1185. Kattinokkula Murali Krishna v. Veeramalla Koteswara Rao and others. 2010 (28) LCD 216.

4. A counter affidavit has been filed by Sri Manoj Kumar Dwivedi which has been served on the Counsel for the petitioner. The petitioner submits that he does not propose to file any rejoinder affidavit, hence, the matter is being decided today itself.

5. In his counter affidavit and in arguments Sri Manoj Kumar Dwivedi has stated that specific allegations were made in the application. The order of Sub-Divisional Magistrate clearly states that four allegations were levelled. It has been stated in the counter affidavit that the candidate himself was present in the counting. When the votes were being counted he saw that bundles were being changed from his box to another. He raised objection but was not heeded to. Further he objected that 43 votes were counted as 23 and this resulted in favour of the petitioner. Specific instance of malpractice has, thus, been quoted. It has also been stated that the opposite party made complaints to the officer present. Complaints were sent to the Chief Election Officer also.

6. The petitioner was given an opportunity to file his reply which he did vide his letter dated 27.5.2011. The objections of the petitioner have also been recorded by the Sub-Divisional Magistrate. It has been stated in the order that the opposite party had not raised any objection while the counting was being made which was completed in four stages. It was also objected by the petitioner that if recounting is allowed then secrecy will be violated which should not be allowed in democracy.

7. The Sub-Divisional Magistrate has considered all the arguments and given his reasons for reaching his conclusion that recounting is necessary. He has also ordered that the recounting will be done in presence of cameras and there will be a videography of the recounting. If there is a recounting through videography naturally the elements, of doubt and chances of corruption are lessened to a

large extent. The order further says that the secrecy which was maintained in the earlier election will also be maintained and it will not be allowed to be disclosed in any manner.

8. The sole question which has to be decided and has been very strongly argued by Sri Tripathi is whether recounting will amount to bringing instability in election system. I have respectfully gone through the judgments placed by Sri Tripathi. Of course the Hon"ble Supreme Court has constantly held that the elections are sacrosanct. They should not be easily touched and interfered with because stability is the pillar of any elected Government and the objective of a democratic setup. At the same time it was never meant by the Hon"ble Apex Court that justice should be crucified at the altar of stability. Moral values have gone down in our country in every sphere. The rampant corruption amongst the officers and their lack of integrity is obvious. Courts can not close its eyes towards the glaring facts of life. No doubt recounting should be a last resort but in the present case specific allegations were levelled and complainant was present on the spot. He made all efforts to make a complaint against the elected member but no heed was paid by the Election Officer. He sent a fax to the Chief Election Commissioner. Under the circumstances, it will be better that recounting be resorted to than to brush aside the allegations in the name of stability. Stability may be an important objective of democracy but justice is supreme. No society will remain stable, if the stability is pillared and supported by injustice. Such a stability will amount to tyranny and not democracy. No prejudice will be caused to the petitioner, if recounting is allowed under cameras and secrecy is maintained. In-fact this will strengthen the faith of the public in democracy and impartiality of the earlier election.

9. I do not find any illegality in the order passed by the Sub-Divisional Magistrate. The writ petition being devoid of merit is dismissed.