

(2001) 01 MP CK 0026
In the Madhya Pradesh High Court
Case No : Writ Petition No. 56 of 2001

Smt. Sushila Dixit

APPELLANT

Vs

Shri Ram Prakash and others

RESPONDENT

Date of Decision : 16-01-2001

Acts Referred:

Madhya Pradesh Panchayat Election Rules, 1994 — Rule 76
Madhya Pradesh Panchayat Raj Adhiniyam, 1993 — Section 122
Madhya Pradesh Panchayat Raj Nirvachan Niyam, 1994 — Rule 77(1), 77(2), 77(3), 77(4), 80

Citation : (2002) ILR (MP) 41 : (2001) 4 MPHT 155 : (2001) 2 MPLJ 622

Hon'ble Judges : Mr. Dipak Misra, J

Bench : Single Bench

Advocate : Shri Prashant Singh, for the Appellant; Shri Sujoy Paul, for the Respondent

Final Decision : Allowed

Judgement

Dipak Misra, J.

Invoking the extraordinary jurisdiction of this Court the petitioner has prayed for issue of writ of certiorari for quashment of order dated 27-12-2000 contained in Annexure P-I passed in case No. 20/C-144/99-2000.

The facts as have been exposited are that respondent No. 1 filed an application u/s 122 of M.P. Panchayat Raj Adhiniyam, 1993 for setting aside the election of the petitioner to the post of Sarpanch of Gram Panchayat, Chhidari. It was set forth in the election petition that though a prayer was made for recounting of votes before the Competent Authority the same was not acceded to and, therefore, there should be recounting. Apart from the aforesaid assertion the election was challenged on other grounds. A written statement was filed by the contesting respondent No. 1 contending inter alia that no application was filed before the Returning Officer for recounting of votes. The other assertions were also disputed. The Specified Officer framed as many as four issues. The issue No. 4

relates to recount of votes. The respondent No. 1 before the Specified Officer submitted that he would not press other issues and only address on issue No. 4. On the basis of the aforesaid submission the Specified Officer took up the matter and came to hold that an application was filed before the Presiding Officer on 30-1 -2000 but the Presiding Officer did not ask the Returning Officer to adjudicate the same. On the basis of the aforesaid finding he directed for recounting of votes. The said order is the cause of grievance of the present petitioner.

Assailing the aforesaid order it is submitted by Mr. Prashant Singh, learned counsel for the petitioner that no application was filed before the Returning Officer and the finding recorded by the Specified Officer that it was submitted before the Presiding Officer is unsustainable in as much as there is no evidence that the Presiding Officer was authorised by the Returning Officer to receive the application. It is further put forth by Mr. Singh that even assuming for the sake of argument that the application was filed before the Competent Authority that would not ipso facto authorise the Presiding Officer to pass an order of recounting in absence of other material on record for making out a case for recounting.

Mr. Sujoy Paul, learned counsel appearing for respondent No. 1, per contra, has contended that the Presiding Officer had filed a reply before the Election Tribunal admitting that he had received the application submitted by the petitioner. It is also put forth by him that the Presiding Officer has stated that the application was devoid of substance and the same has been rejected. It is further canvassed by him that the order passed by the Specified Officer is based on adequate reasons and does not warrant interference.

To appreciate the rival submissions raised at the Bar, it is apposite to refer to Rule 80 of M.P. Panchayat Nirvachan Niyam, 1995. It reads as under:--

"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.

(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.

(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.

(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.

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

(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:

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).

(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 Forms 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.

(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 Forms 17, 18 and 19 respectively and complete and sign the result sheet."

On a fair reading of the aforesaid provision it is graphically clear that an application has to be filed before the Returning Officer or such other officer authorised by the Returning Officer. There is no positive evidence on record that the application was filed before the Returning Officer and he advised the petitioner to file it before the Presiding Officer. In fact the case which has been revealed from the return of the Presiding Officer that he had accepted the application filed by the petitioner. There is no material on record that the Presiding Officer was authorised by the Returning Officer to receive the application. The Specified Officer has proceeded as if the application was filed before the Returning Officer and no order was passed. It is well settled in law that unless an application is filed before the Competent Authority the subsequent application for recounting before the Specified Officer is not tenable. In this context, I may profitably refer to a decision rendered in the case of Smt. Ram Rati Vs. Saroj Devi and others, . In the aforesaid decision their Lordships were considering Rule 76 of the M.P. Panchayat Election Rules, 1994 which is similar to

that of Rule 80 of M.P. Panchayat Nirvachan Niyam, 1995.

In view of the aforesaid law it became incumbent to arrive at a conclusion that a proper application was filed before the Competent Authority but no order was passed thereon. In the case at hand the Returning Officer has not been examined to show that he had authorised the Presiding Officer to accept the application or to deal with the application. In absence of such evidence I am of the considered opinion that the order passed by the Specified Officer is vulnerable. That apart mere filing of an application would not entitle the petitioner for getting an order of recounting in his favour. Mr. Prashant Singh, learned counsel for the petitioner has drawn the attention of this Court to the decision rendered in the case of Satyanarain Dudhani Vs. Uday Kumar Singh and Others, , wherein their Lordships while dealing with the concept of recounting under the Representation of Peoples Act, 1951 have held as under :--

"In the present case neither during the counting nor on the completion of the counting there was any valid ground available for the recount of the ballot papers. A cryptic application claiming recount was made by the petitioner-respondent before the Returning Officer. No details of any kind were given in the said application. Not even a single instance showing any irregularity or illegality in the counting was brought to the notice of the Returning Officer. Even the material in the election petition had been pleaded with the object of having a fishing enquiry and does not inspire confidence. The grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. The Returning Officer, therefore, rightly rejected the prayer for recounting. The High Court was not justified in ordering recount and allowing inspection of ballot papers."

(Quoted from the plactium)

In view of the aforesaid, adequate and cogent evidence has to be adduced to make out a case for recounting. Admittedly in the present case evidence was not adduced. On that ground also the order passed by the Specified Officer is susceptible.

In the result the writ petition is allowed, the order passed by the Specified Officer vide Annexure P-3 is set aside and the matter is remitted to him to reconsider the application for recounting afresh keeping in view the provisions enshrined under Rule 80 of the M.P. Panchayat Nirvachan Niyam, 1995 and the law laid down in the case of Ram Rati (supra). The Specified Officer shall also keep himself alive to the basic requirement for recounting as laid down in the case of Satyanarain Dudhani (supra). Needless to emphasise it would be open to the parties to adduce evidence in support of their respective cases. In the facts and circumstances of the case there shall be no order as to costs.

Writ Petition allowed.