

Ram Rati

Vs

Saroj Devi & Ors.

(K. Ramaswamy, D. P. Wadhwa JJ)

25.04.1997

O R D E R

1. Leave granted.
2. We have heard the counsel on both sides.
3. This appeal, by special leave, arises from the judgment of the High Court of Madhya Pradesh at Jabalpur Bench, passed on October 30, 1996, in W.P. No.632/95.
4. Elections to the post of Sarpanch of Gram Panchayat, Laua Kothar Block, Raipur Distt. Rewa were held on may 30, 1994. 223 votes were polled in favour of the appellatant while the respondent was polled 207 votes. In Form No.26-B, Ex.P2, the Returning Officer had declared that the elections to the office of Sarpanch of the Gram Panchayat were held and the appellatant, Smt. Ram Rati, R/o Village Loua Kothar, Raipur Kurchulian, Rewa Distt., M.P., who was a candidate in the said election, was duly elected. The said certificate of the Returning Officer is dated June 1, 1994. The respondent, feeling aggrieved filed an Election Petition. In the said petition, the respondent stated that the election was not properly conducted; an application for recounting was made but it was not done; evidence was adduced in support thereof. The Tribunal directed recounting, which has been affirmed by the High Court. Thus this appeal, by special leave.
5. The question is: whether the respondent has made any application for recounting? The order of the Tribunal indicates thus:

"According to the aforesaid, after discussing the election application and analysing the submissions of Applicant and Respondent No.1, the Vihit Adhikari at the first instance is satisfied with this that to decide the dispute properly and administering justice to the parties it is essential that recounting be got done. Therefore, Returning Officer (Panchayat), Development Division, Raipur Karchuliyian District Rewa is hereby directed that after obtaining all the documents connected with Gram Panchayat Laua Kothar Sarpanch Election 1994 from the strong room in the police custody, he should present himself in the Court on 1.3.95 at 10.30 A.M."

6. The question, therefore, is : whether the respondent has made any application to the Returning Officer and recounting was properly done? Rule 76 of the M.P. Panchayat Elections Rules, 1994 (for short, the 'Rules') postulates thus:

"76. Recount of Votes - (1) After the completion of the counting, the Returning Officer (Panchayat) or such other officer authorised by him shall record in the result sheet in Forms mentioned in Sub-rule (2) of Rule 73 the total number of votes polled

by each candidate and announce the same.

(2) After such announcement has been made a candidate or, in his absence, his election agent may apply in writing to the Returning Officer (Panchayat) or such other officer authorised by him, for a recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount.

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

(4) Every decision of the returning officer (Panchayat) or such other officers authorised by him, under the Sub-rule (3) shall be in writing and contain the reasons thereof."

7. By application of sub-rule (1) of Section 76, after the completion of the counting, the Returning Officer (Panchayat) or such other officers authorised by him, shall record in the result sheet, in Forms mentioned in sub-rule (2) of Rule 73 (Form 26-B), the total number of votes polled by each candidates and announce the same. Under sub-rule (2), after such announcement has been made, a candidate or in his absence, his election agent, may apply in writing to the Returning Officer (Panchayat) or such other officers authorised by him, for a recount of all or any of the ballot papers already counted, stated the grounds on which he demands such recount. Under sub-rule (3), on such application being made, the Returning Officer (Panchayat) or such other officers authorised by him, shall decide the matter any may allow the application in whole or in part or may reject it if it appears to him to be frivolous or unreasonable. Under sub-rule (4), every decision of the Returning Officer (Panchayat) or such other officers authorised by him, for a recount or all or any of the ballot papers already counted, stating the grounds on which he demands such recount. Under sub-rule (3), on such application being made, the Returning Officer (Panchayat) or such other officers authorised by him, shall decide the matter and may allow the application in whole or in part or may reject it if it appears to him to be frivolous or unreasonable. Under sub-rule (4), every decision of the Returning Officer (Panchayat) or such other officers authorised by him, under the sub-rule (3), shall be in writing and contain the reason thereof.

8. It is difficult to give acceptance to the contention that the respondent made an application to the Returning Officer and the Returning Officer had not recounted. In the light of the mandatory language of Rule 76 of the Rules, it is incumbent upon a candidate or an agent, if the candidate was not present, to make an application in writing and give reasons in support thereof, while seeking recounting. If it is not done, then the Tribunal or the court is not empowered to direct recounting even after abduction of evidence and consideration of the alleged irregularities in the counting. The essential condition-precedent is that an application in writing should be made and the Returning Officer should pass an order with reasons in support thereof either to recall the order or otherwise, in writing. The fact that the officer had not passed any order in writing would indicate that the respondent had not made any application. Obviously, some subsequent manipulation, as contended by the appellant, would have taken place, as a result of which the election petition was filed and the arguments were addressed for recounting. It is settled legal position that secrecy of ballot should not bebreached and as far as possible, the secrecy of ballot should be maintained. In rare cases, the Tribunal or the court is required to order recount, that too on giving satisfactory grounds for recounting. In view of the fact that the rule itself provides that, as soon as the result of the election

is announced, an application in writing must be made at the first instance and the fact that no such application has been placed before us does indicate that no such application had been made on the date of the declaration of the result. The allegation of an application having been made, would be an afterthought. The Tribunal, therefore, has committed manifest error in directing recount.

9. The appeal accordingly allowed and the orders of the Tribunal and the High Court stand set aside. No costs. We, however, make it clear that we have proceeded on the basis of plea of the respondent for recount under Rule 76 aforementioned which has been negatived and we have not examined the powers of the Tribunal to order recount and the circumstances under which it can be so ordered.