

**Court No.37**

**Case :-** WRIT - C No. - 41390 of 2018

**Petitioner :-** Sushil Kumar

**Respondent :-** State Of U.P. And 15 Others

**Counsel for Petitioner :-** Amrendra Nath Singh

**Counsel for Respondent :-** C.S.C.,Alok Kumar Yadav,Rateesh Singh

**Hon'ble Siddhartha Varma, J.**

After an election took place with regard to the post of Pradhan of Gram Panchayat Dehlikhurd, Block Sidhpura, District Kasganj, the result was declared on 13.12.2015. The respondent no.3-Om Kar challenged the election of the petitioner through Election Petition No.1037 of 2016 which was filed under section 12-C of the U.P. Panchayat Raj Act, 1947.

Issues were framed and the issue nos.1 and 2 when were decided, the Court came to a conclusion that the recounting of ballot papers was essential. The order for recounting was passed on 16.11.2018. The petitioner thereafter filed a Revision which was dismissed on 29.11.2018. Aggrieved thereof, the petitioner has filed the instant writ petition.

Learned counsel for the petitioner has submitted that if the relevant paragraphs being paragraph nos.13 and 14 of the Election Petition were perused, it would become evident that the election petitioner was aggrieved by the fact that one Amar Pal Singh, son of Raj Pal was present at the time of counting on table nos.7, 8 and 9 without any authority. The further allegation was

that Amar Pal had influenced the counting of votes. In paragraph 13 of the election petition itself, it was averred that one Devendra Singh son of Sovaran Singh who was a Constable in PAC was also present at the time of counting. Still further it has been averred in paragraph 13 itself that Ram Kumar son of Avneesh Kumar was also present and was unauthorisedly influencing the counting of votes. In paragraph 14 of the election petition, it had been stated that these three persons namely Amar Pal, Devendra Singh and Ram Kumar after using their influence had got the counting of the ballot papers done in such a manner that the election petitioner was declared defeated by Sushil Kumar by one vote.

Learned counsel for the petitioner submits that there was no allegation in paragraph nos.13 and 14 of the election which would lead one to understand that a recounting was essential. He submits that if the three individuals namely Amar Pal, Devendra Singh and Ram Kumar were present during the counting of the ballot papers, then it could not be said that the ballot papers had to be recounted. At the most it can be said, learned counsel for the petitioner submits, that the election could be declared bad on account of presence of the unauthorised individuals but no case could be made out for the recounting of ballot papers. The illegal influence of the three individuals could, at the most, be taken to be a ground for setting aside the elections and, therefore, learned counsel for the petitioner submits that the recount would be an

absolute exercise in futility. Learned counsel for the petitioner relying upon a Full Bench decision of this Court reported in **1985 AWC 246 : Ran Adhar Singh Vs. The District Judge, Ghazipur & Ors.**, submitted that unless the petition contained an adequate statement of material facts and evidence in support thereof that a recount was essential, the recount should not take place. Relying upon the very same judgment, learned counsel for the petitioner also submitted that the Tribunal had to be prima-facie satisfied that to decide the dispute and to do complete justice between the parties, inspection of ballot papers was absolutely necessary. Still further, learned counsel for the petitioner relying upon a judgment of the Supreme Court reported in **(2005) 12 SCC 121 : Ram Bhual Vs. Ambika Singh**, submitted that unless pleadings are there to the effect that how the ballot papers were managed by the winning party, no recounting should be ordered. He further submitted that in view of the judgment of the Supreme Court reported in **(2014) 5 SCC 312 : Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari**, a Tribunal could not go beyond the pleadings and allow recounting just to enable an election petitioner to indulge in a fishing and roving inquiry. Learned counsel further submitted that the only ground which was available to the election petitioner for a recount was that there could have been a video recording that the three individuals who were allegedly present without any authority had managed the ballot papers in such a manner that

votes in favour of the winning candidate had increased. Learned counsel for the petitioner submitted that in view of section 45-A of the Indian Evidence Act, if the video recording had to be taken into consideration then the opinion of the examiner of the electronic evidence ought to have been led and considered and in the absence of evidence of any consideration of the expert, no reliance on even a video recording could be made.

In reply, learned counsel appearing for the election petitioner submitted that the allegations made in the election petition were sufficient for ordering a recount. He submitted that when Rule 103(1) of the Uttar Pradesh Panchayat Raj Election of Members, Pradhans and Up-Pradhans Rules, 1994 mandated that unauthorised persons shall not be present in the place of counting then the election would be held to be bad in the eyes of law in view of the fact that three unauthorized persons were present.

Learned Standing Counsel adopted the arguments made by the learned counsel for the election petitioner.

Having heard learned counsel for the parties and after having gone through the records of the case, this Court is of the view that a recounting could be done of the ballot papers only if the election petition contained adequate statement of material facts and evidence in support of the fact that ballot papers had been managed in such a way that the winning candidate had got counted in his favour such ballot papers which were in fact not cast in his favour and further the Tribunal had prima-facie

satisfied itself that recounting was essential so as to decide the dispute and to do complete justice between the parties.

In the instant case, I find that simply because certain individuals were present, which presence according to the Election Petitioner was unauthorised, the recounting had been ordered. Another ground appears to have weighed on the mind of the Tribunal was that the winning candidate had won the election only by one vote and, therefore, the ballot papers were ordered to be recounted.

The two reasons which have been given by the Tribunal do not appear to be sufficient reasons for getting a recount done. The reasons which have been made a basis for the recount of the ballot papers could be a good ground for setting aside the election if they were proved to be correct but they cannot be a ground for ordering of the recounting of the ballot papers.

Under such circumstances, the order dated 16.11.2018 passed by the Sub-Divisional Magistrate, Patiyali, District Kasganj and the order dated 28.11.2018 passed by the Additional District Judge, Court No.2, Kasganj cannot be sustained. They are, accordingly, quashed. It is directed that the election petition may now be decided within a period of two months from the date of presentation of a certified copy of this order.

The writ petition is, accordingly, allowed.

**Order Date :- 18.4.2019**  
**GS**

(Siddhartha Varma, J.)