

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.264 of 2019**

Punita Vaishkiyar, Wife of Shri Amrish Kumar, Resident of Village- Kenar Paharpur Tola, Kenarchatty, Post-Kenar, P.S.- Wazirganj, District- Gaya, Bihar.

... .. Petitioner

Versus

1. The State of Bihar through District Collector, Gaya.
2. The District Election Officer-cum -District Magistrate, Gaya.
3. The Returning Officer-cum-Block Development Officer for Gram Panchayat Kenar Paharpur, P.S.-Wazirganj, presently posted as Block Development Officer of Dhobi Prakhand, P.O.- Dhobi, P.S.-Dhobi, District- Gaya.
4. The Assistant Returning Officer-cum-Welfare Officer, Block-Wazirganj, P.O. Wazirganj, P.S.- Wazirganj, District- Gaya.

..... Official Respondents

5. Khanjana Kumari, Wife of Dharendra Kumar Verma, Resident of Village- Kenar Paharpur Tola Kenardih, P.O.- Kenar, P.S.-Kenar, P.S.-Wazirganj, District- Gaya.

... .. Private Respondents

Appearance :

For the Petitioner	:	Mr. Kumar Ravish, Advocate Mr. Sanjay Kumar Sharma, Advocate Mr. Kashyap Kaushal, Advocate
For the Respondents-State:		Mr. Prashant Pratap, GP-2 Mr. Lala S.N. Rais, AC to GP-2

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT**

Date : 19-04-2019

Heard learned counsel for the petitioner and learned counsel for the State.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner for setting aside the judgment dated 24.11.2018 passed by the learned Munsif-II, Gaya



in Election Petition No.7 of 2016 whereby the election petition filed by the petitioner for recounting of ballot papers of the petitioner and the opposite party no.2, who is returned candidate in the election held for Mukhiya of Kenar Gram Panchayat Paharpur on 10.05.2016 has been dismissed.

3. Mr. Kumar Ravish, learned counsel appearing for the petitioner submitted that the learned Munsif dismissed the election petition filed by the petitioner ignoring relevant materials and evidences, which were sufficient to direct for recounting of votes. He submitted that the learned Munsif failed to appreciate the law relating to recounting and erred grossly while passing the impugned order. On the basis of the aforesaid submissions, he contended that it is a fit case where this Court in exercise of its supervisory jurisdiction under Article 227 of the Constitution of India should interfere with the order and the election result of the election held for the post of Mukhiya of Gram Panchayat Kaner Paharpur be declared as invalid.

4. The facts of the case, in brief, are that the petitioner along with twelve other candidates contested for the post of Mukhiya in Gram Panchayat Kenar Paharpur for which election was held on 10.05.2016. The counting of ballots was done on 07.06.2016 and the result was also declared on the same day. The



result showed the private respondent as the returned candidate securing 1072 votes and the petitioner lost the election with 12 votes after securing 1060 votes.

5. Being aggrieved by the declaration of the result of the election, the petitioner filed Election Petition No.7 of 2016 in the court of Munsif-II, Gaya seeking the following reliefs:-

- (i) Recounting of ballot papers of the petitioner and the official respondent no. 5 and if after recounting the petitioner obtains the highest votes than she be declared as mukhiya of Gram Panchayat Kenar, Paharpur;
- (ii) Setting aside of declaration made in favour of the official respondent no.5 as mukhiya of Kenar Gram Panchayat; and
- (iii) Restraining the official respondent no.5 from taking oath as mukhiya of Kenar Gram Panchayat.

6. The petitioner challenged the election result for the post of Mukhiya of Gram Panchayat Kenar on the ground of corrupt practices adopted in counting of ballot papers. The main ground on which the challenge was made was that at booth no.227 votes cast were 448, but total votes counted were 453. Thus, 5 votes got increased in counting. Similarly, at booth no. 223, total votes cast were 374, but in counting, 373 votes were counted. Thus, one vote got decreased in counting. At booth no.215, total votes cast were 271, but in counting, 270 votes were counted.



Thus, one vote got decreased in counting. It was further pleaded that total 20-25 votes were illegally rejected by the authorities with a motive to make a declaration in favour of the official respondent no.5.

7. The trial proceeded *ex parte* against the returned candidate (official respondent no.5). An objection was filed by the official respondents whereby they vehemently denied the fact that any corrupt practice was adopted in the counting of ballot in the election of Mukhia in Kenar Paharpur.

8. On the basis of the pleadings of the parties, the learned Munsif framed five issues for determination. They are:-

- (i) If the election petition is maintainable?
- (ii) Whether the petitioner has got cause of action for filing of election petition?
- (iii) Whether recounting of ballot papers may be ordered?
- (iv) Whether the declaration made in favour of the returned candidate may be set aside?
- (v) If the election petitioner is entitled to cost of election petition?

9. The petitioner examined altogether four witnesses in support of his case. Witness No.1 is the petitioner herself. In her deposition, she could not give the exact details of booth nos. in which 20-25 valid votes cast in her favour were rejected. The other three witnesses produced on behalf of the petitioner were all



counting agents. They admitted in cross-examination that they can not furnish any document to prove the illegalities alleged in the election petition.

10. Having recorded the evidences adduced on behalf of the parties, the learned Munsif dismissed the election petition vide impugned judgment dated 24.11.2018. The findings of the learned Munsif are as under:-

“The election petitioner has prayed for recounting of votes and if she secured highest number of votes than she be declared the mukhiya of Kenar Gram Panchayat. Issue no. 3 is the main issues to be decided in this case. Issue no. 3 is “Whether counting of ballot papers may be ordered?”

While dealing with this issue it is of great importance to discuss some legal points regarding the grounds of recounting. A recounting, as is well known, should not ordinarily be directed to be made. There exists certain limitation in this behalf.

This question was discussed in **M.Chinnasamy vs. K.C. Palanisamy & Ors. [(2004) 6 SCC 341]**, wherein the Court opined: “It is trite that an order of re-counting of votes can be passed when the following ingredients are satisfied: (1) if there is a prima facie case; (2) material facts therefor are pleaded; (3) the court shall not direct re-counting by way of roving or fishing inquiry; and (4) such an objection had been taken recourse to.



The court furthermore emphasized the requirements of pleadings containing material facts which are salutary in nature. In this case also it was found that no material had been brought on record to show that the factual findings of the Returning Officer were incorrect. This Court rejected the 'doctrine of prejudice', in such a matter, as being not a relevant factor, having regard to the constitutional and statutory scheme involving holding of election and the consequences emanating from the direction of recounting which could lead to identification of voters as the same would not be desirable. It was reiterated that pleadings of material fact would include disclosure of all such information which if not rebutted would result in allowing the petition. It was opined:

“Had the election petitioner in his pleadings, as noticed herein before, disclosed the details of the names of polling stations, counting centers, tables, particulars of round of the counting of votes in relation where to alleged irregularities had taken place under all the four categories and basis of material facts and particulars. The tribunal if finds that the election petitioner has made out a *prima facie* case for scrutiny of ballot papers and re-count, may direct re-count of ballot papers in respect of the said votes only and not the entire votes.

The petitioner Punita Vaishykiar in the para 5 clause (I) to (VI) has mentioned details of bungling of votes but that does not goes to support their



allegation against the authorities that around 25 to 30 votes were illegally rejected and counted in favour of O.P. No. 4 The petitioner failed to give details disclosed the details of the names of polling stations, counting center, tables, particulars of round of the counting of votes in relation whereto alleged irregularities had taken place.

A recount can not be ordered merely for the asking or merely because the court is inclined to hold a recount. In order to protect the secrecy of ballots the recount should be permitted only upon a clear case in this regard having made out.

This tribunal is of the view that unless an application for inspection of ballot papers makes out a proper case for such inspection, it would not be right to open the ballot boxes and allow a party to inspect the ballot papers and examine the validity or invalidity of the ballot papers contained in it. If such course is adopted it would inevitably lead to the opening of the ballot boxes almost in every case and that would be inconsistent with the scheme of statutory rules and with the object of keeping the ballot papers secret.

The exhibit 2 series is produced by the petitioner to prove that their was a difference in number of votes casted and those which were counted. The tribunal is of the view that the necessity of maintaining the secrecy of ballots should be kept in view before a recounting is directed to be made. A direction for recount shall not be issued only because



the margin of votes between the returned candidate and election petitioner is narrow.

Keeping all the above facts and circumstances in view it is ordered that

ORDER

The petition is dismissed, against the respondent no.1,2,3,5 on contest and ex parte against 4 and 6 to 13. No order as to cost is made.”

11. Having regard to the facts and circumstances of the case, I find no error in the impugned findings recorded by the learned Munsif while dismissing the election petition. He has rightly held that a recount can not be ordered merely for the asking or merely because the court is inclined to hold a recount.

12. In order to protect the secrecy of ballots, the court would permit a recount only upon a clear case in that regard having been made out, it is well settled position in law that the success of a returned candidate should not be lightly set aside and the secrecy of ballot must be zealously guarded.

13. In absence of any evidence disclosing the details of the names of polling stations, counting center, tables, particulars of round of the counting of votes in relation whereto the alleged irregularities had taken place, an order of recount of votes could not have been passed.



14. In that view of the matter, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

Sanjeet/-

AFR/NAFR	NAFR
CAV DATE	NA
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