

**Vijay Bahadur
v.
Sunil Kumar & Ors.**

(Civil Appeal No. 14311 of 2024)

06 March 2025

[Sanjay Karol* and Nongmeikapam Kotiswar Singh, JJ.]

Issue for Consideration

Allegation of disparity in the counting of votes in the election for position of 'Gram Pradhan'. Whether the Sub-Divisional Magistrate, was justified in ordering a recount of the votes cast.

Headnotes[†]

U.P. Panchayat Raj Act, 1947 – Election for 'Gram Pradhan' –
The genesis of the appellant's discontent was the inconsistency between the Presiding Officer's statement to him that in polling booths 43, 44 and 45 a total of 1194 votes were cast, and the final tally given under 'Form 46' which showed a total of 1213 votes cast in the said booths – Election Petition – The Sub-Divisional Magistrate ordered a recount of the votes casted – Correctness:

Held: The allegation made is that there is a disparity in the count of votes informed to the appellant and that finally disclosed in the official form – It relates to 19 votes, i.e., the difference between 1193 and 1213 – The margin of victory of the respondent was 37 votes, and so, in a sense, victory of position would remain yet elusive of the appellant – However, the concern lies is in how one got to power – This process has to be in accordance with constitutional principles and established norms-If not, then such a person has to be deprived of the power, and the decision-making by the people must begin once more – When the officer was present there and he informed the candidate, appellant herein, of the number of votes cast, then why there was any difference in number – Four persons contested for the post of 'Pradhan' – Three of the four persons submitted by way of affidavit that they had doubts regarding the propriety of the election, and they would support a recount of votes – There was also use of police force

* Author

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to remove the appellant from the vicinity of the polling area – The diary of the Presiding Officer of the polling booths, which is an essential document recording the casting of votes, could not be found despite a concerted effort – If the Presiding Officers' records are missing and cannot be verified, it can be found that the final conclusion is within the realm of questionability – Each and every document pertaining to an election is important and all efforts should be made to preserve the same – The manner in which election was conducted, and that important documents pertaining to the election are missing and such absence is unexplained, the recount in the present facts would be justified. [Paras 14, 15, 16, 17, 18]

Case Law Cited

Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors. [1964] 6 SCR 238 : AIR 1964 SC 1249 – followed.

Vadivelu v. Sundaram [2000] Supp. 3 SCR 642 : (2000) 8 SCC 355; Suresh Prasad Yadav v. Jai Prakash Mishra [1975] 3 SCR 21 : (1975) 4 SCC 822; Beli Ram Bhalaike v. Behari Lal Khachi (1975) 4 SCC 417; Satyanarain Dudhani v. Uday Kumar Singh (1993) Supp. 2 SCC 82; Udey Chand v. Surat Singh [2009] 15 SCR 147 : (2009) 10 SCC 170 – relied on.

T.N Seshan v. Union of India [1995] Supp. 2 SCR 106 : (1995) 4 SCC 611; Anoop Baranwal v. Union of India [2023] 9 SCR 1 : (2023) 6 SCC 161; Ram Adhar Singh v. District Judge, Ghazipur 1985 SCC OnLine All 246; Bhabhi v. Sheo Govind [1975] Supp. 1 SCR 202 : (1976) 1 SCC 687 – referred to.

List of Websites

Abraham Lincoln Presidential Library and Museum <https://presidentlincoln.illinois.gov/gettysburg>

List of Acts

U.P. Panchayat Raj Act, 1947; Right to Information Act, 2005; Representation of the People Act, 1951; Constitution of India.

List of Keywords

Election; Election for 'Gram Pradhan'; Recount of votes; Democracy; Free and fair elections; Constitutional governance; Fundamental rights.

Vijay Bahadur v. Sunil Kumar & Ors.**Case Arising From**

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 14311 of 2024

From the Judgment and Order dated 27.01.2023 of the High Court of Judicature at Allahabad in WRITC No. 35734 of 2022

Appearances for Parties

Advs. for the Appellant:

S.R. Singh, Sr. Adv., Sushant Kumar Yadav, Prateek Yadav, Mangal Prasad, Ajay Yadav, Anurag Singh, Prithvi Yadav, Ms. Radha Rajput, Mitr Rao, Ankur Yadav.

Adv. for the Respondents:

Ms. Sweta Rani, Shaurya Sahay, Aditya Kumar.

Judgment / Order of the Supreme Court**Judgment**

Sanjay Karol, J.

PRELUDE

“At the bottom of all the tributes paid to democracy is the little man, walking into the little booth, with a little pencil, making a little cross on a little bit of paper—no amount of rhetoric or voluminous discussion can possibly diminish the overwhelming importance of that point.”

- Winston Churchill
- House of Commons,
31 October 1944

1. In the famous Gettysburg Address¹ delivered on 19th November, 1863, President Abraham Lincoln uttered possibly the best description of democracy there ever would be –

“government of the people, by the people, for the people”

People, unquestionably, are at the center of this conception. The Indian Constitutional vision exemplifies this position. Right from the

¹ Abraham Lincoln Presidential Library and Museum- <https://presidentlincoln.illinois.gov/gettysburg>

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inception of democratic rule, universal adult franchise has found its place in our system of governance. Each election upholding these cherished values of public participation, equality and integrity of the vote is a testament to the vision of the founders. Each and every citizen, when it comes to choosing representatives in the parliamentary system, is indeed equal, when in other scenarios they may not be so, for a variety of reasons - class and caste divisions that are still deeply entrenched, gender inequality, lack of awareness and opportunities for disabled persons, etc.

This momentary equality assumes further importance as it signifies the achievability of the aspiration of equality for all through constitutional mechanisms. Granted that equality in other spheres cannot only be a product of constitutional action, and have to be accompanied by social change, but nonetheless, the strength of constitutional action is manifested thereby.

A.M Ahmadi, CJI, writing for a Constitution Bench in ***T.N Seshan v. Union of India***,² while concerned with an Ordinance promulgated by the President of India being Ordinance (No. 32 of 1993) entitled “The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Amendment Ordinance, 1993” to amend “The Chief Election Commissioner and other Commissioners (Conditions of Service) Act, 1991” challenged by the then incumbent Chief Election Commissioner, observed :

“10. The Preamble of our Constitution proclaims that we are a Democratic Republic. Democracy being the basic feature of our constitutional set-up, there can be no two opinions that free and fair elections to our legislative bodies alone would guarantee the growth of a healthy democracy in the country...”

More recently, this Court in ***Anoop Baranwal v. Union of India***,³ the majority speaking through K.M Joseph J., observed :

“124. Unlike demands of a formal democracy, the hallmark of a substantive democracy and if we may say so, a liberal democracy must be borne in mind. Democracy

2 (1995) 4 SCC 611

3 (2023) 6 SCC 161

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is inextricably intertwined with power to the people. The ballot, is more potent than the most powerful gun. Democracy facilitates a peaceful revolution at the hands of the common man if elections are held in a free and fair manner. Elections can be conflated with a non-violent coup capable of unseating the most seemingly powerful governing parties, if they do not perform to fulfil the aspirations of the governed. Democracy is meaningful only if the sublime goals enshrined in the Preamble to the Constitution receive the undivided attention of the rulers, namely, social, political and economic justice. The concepts of liberty, equality and fraternity must not be strange bedfellows to the ruling class. Secularism, a basic feature of the Constitution must inform all actions of the State, and therefore, cannot be spurned but must be observed in letter and spirit. Democracy can be achieved only when the governing dispensation sincerely endeavours to observe the fundamental rights in letter and spirit. Democracy also, needless to say, would become fragile and may collapse, if only lip service is paid to the rule of law."

(Emphasis supplied)

2. Although there exists copious amounts of literature on a few of the topics touched upon in the preceding paragraph, i.e., democracy, free and fair elections, constitutional governance, fundamental rights, etc., this brief forerunner became important given the context in which this appeal arises.

THE APPEAL

3. Before us are, primarily, two persons, opponents in the electoral process, the appellant, the vanquished and the respondent, the victor. Challenged herein is the judgment and order dated 27th January 2023 passed by the High Court of Judicature at Allahabad in Writ-C No.35734 of 2022, under Article 226 of the Constitution of India.
4. By way of background, it shall suffice to record that the Government of the State of Uttar Pradesh declared election for the position of '*Gram Pradhan*' for the village Chaka @ Chak, Saidabad, Tehsil Handia, in the District of Prayagraj, *vide* notification dated 17th March 2021. Voting therefor was to take place on 2nd and 3rd of May 2021. The

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genesis of the appellant's discontent was the inconsistency between the Presiding Officer's statement to him that in polling booths 43, 44 and 45 a total of 1194 votes were cast, and the final tally given under 'Form 46' which showed a total of 1213 votes cast in the said booths.

PROCEEDINGS LEADING UPTO THIS APPEAL

5. Aggrieved by this difference of votes, and, obviously, the end result, wherein Pradhan's seat remained 37 votes too far out of his reach, suspecting there to be a foul play, the appellant wrote to the Election Officer, alleging that votes in his favour were cancelled by the persons deputed at table Nos.13, 14 and 15 at Nyay Panchayat Utarav, in connivance with respondent No.1. It was, thus, requested of the Election Officer that he may affect a recount of the votes of booth Nos.43, 44 and 45. This application was not entertained by the Officer.
 - 5.1 The appellant then preferred Election Petition No. 0210 of 2021 titled analogously to this appeal. The substance of the allegations made/grievance agitated before the Sub-Divisional Magistrate in an application under Section 12-C(1) of the U.P. Panchayat Raj Act, 1947⁴ was captured in paragraphs 7 to 10 thereof. The same is reproduced hereunder : -

"7. That presiding officer/election officer, after voting was completed; prior to seal of ballot box, orally informed the petitioner that for the post of Pradhan at polling booth 43, 44 and 45, total 1194 votes have been casted. Although as per form 46, total 1213 votes were casted. It is clear from the above said counting that 19 (Nineteen) ballot papers were prepared and have been inserted in ballot box bringing it from outside. Hence this 19 (Nineteen) votes are illegal and liable to be cancelled. Ballot box was not sealed before the agent of petitioner.

8. That as per the form 46, at polling booth no 43, total 21 votes, at polling booth no 44, total 20 votes and at polling booth no. 45, total 20 votes, have been cancelled. Correct fact is this that Election officer intentionally in

4 Hereinafter, 'the Act'

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order to extend benefit to defendant Sunil, has cancelled the votes casted in favor of petitioner. As to why election officer did so, he is the best person to reply the same.

9. That during counting, counting officer declared that at polling booth no 43, petitioner Vijay Bahadur got 233 votes, defendant Sunil Kumar got 231 votes, defendant Santosh 9, and defendant Vinod got 8 votes and 20 ballot papers were declared invalid. At polling booth no 44, petitioner Vijay Bahadur got 148 votes, defendant Sunil Kumar got 184, defendant Santosh 23, and defendant Vinod got 2 votes and 20 ballot papers were declared invalid. At polling booth no 45, petitioner Vijay Bahadur got 133 votes, defendant Sunil Kumar got 136, defendant Santosh 43, and defendant Vinod got 12 votes and 10 ballot papers were declared invalid. Although as per form 46, at polling booth no 43, total 21 votes have been declared invalid and in polling booth no 45, defendant Sunil Kumar shown have got 136 votes. From above statement, this finding is clear that election officer who have shown number of votes in form no 46, they are different from the number of votes declared.”

- 5.2 By way of evidence, the testimonies of the appellant, one Nitesh Kumar and Vinod Kumar (one of the contestants in the Election) were recorded along with that of respondent No.1 herein, either by way of oral testimony or statement given.
- 5.3 The appellant sought information under the Right to Information Act, 2005, seeking the ‘Matpatra Lekha’ and Diary of the Presiding Officer. The competent authority directed the Assistant Election Officer *vide* order dated 11th August, 2022 to provide him the documents as sought. However, in his reply dated 30th August, 2022, the Assistant Election Officer said that the documents could not be located despite their best efforts and, therefore, could not be provided.
- 5.4 The Learned Sub-Divisional Magistrate, having considered the evidence on record passed order dated 31st October 2022, acceding to the appellant’s prayer and directing a recount of the votes cast at Booth Nos.43, 44 and 45. Relevant extract thereof is as below :

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“On the basis of the written arguments submitted by the petitioner and the oral arguments advanced by the defendant, I am in conclusion that there are sufficient grounds to get the recounting done by allowing the present petition. I find it fit in law to get the recounting done on the post of Gram Pradhan of Gram Panchayat Chaka @ Chakpurandare for maintaining the belief of the petitioner on the judicial system and the counting process. Thus, on the basis of affording opportunity of sufficient hearing to the petitioner and defendant No.1 and statement and the evidence submitted by the parties, the arguments of the learned counsel for the parties, the arguments of the learned counsel for the parties (S/Sh.Vishnu Pandey and Ashok Kumar Mishra learned counsel for the petitioner) and the judgment produced and the arguments of S/Sh. K.K. Shukla and O.P. Mishra, learned counsel for defendant No.1 advanced intellectually on Issue Nos. 1 to 5, and the submissions and evidence submitted by defendant No.1 on Issue Nos.6, 7, 8, and on the basis of observations made on the issues in totality, I find the petition filed by the petitioner, the arguments advanced by the learned counsel for the petitioner, and the judgments liable to be allowed in this election petition. I find sufficient grounds to get the recounting done by allowing the election petition. As after uploading the proceeding/ order of disposing of the petition finally at the Revenue Court Management System, it would not be possible to upload the recounting result, in such a circumstance this interlocutory order is being uploaded.

Hence, it is ordered that while allowing the election petition filed against Election Result dated 02.05.2021 (Proforma-46) of Gram Pradhan (Gram Panchayat) of Gram Panchayat Chaka @ Chakpurandar of Vikas Khand Saidabad under the Third Phase Panchayat Election – 2021, the order of recounting passed...”

- 5.5 Aggrieved by this order, respondent No.1 herein filed a revision bearing particulars of Election Revision No.146 of 2022. The same was dismissed by order dated 5th November 2022.

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- 5.6 It is, at this stage, that the writ petition, in which the judgment impugned herein was passed, came to be filed.
6. In the writ petition, respondent No.1 herein, argued *inter alia*:
- (a) The challenge on the part of respondent No.1, (appellant herein) to Form 46 is unfounded for there is no irregularity in the functions carried out by the election officer.
 - (b) The petitioner (respondent herein) has, in support of his position of the actions of the Election Officer being correct and well-founded, has produced affidavits of certain persons declaring that there indeed had been no irregularity to taint the sanctity of the election.
 - (c) The 51 votes declared illegal by the Election Officer has been so done after due inspection. The Sub-Divisional Magistrate who was arrayed as respondent No.7 had, despite the Election Officer having done so, in accordance with law, ordered a recount.
 - (d) No documentary evidence had been placed on record by the respondent or those who submitted affidavits in support of their position and neither did the Magistrate consider the content of the affidavit produced by those in support of the petitioner while passing the order of recounting of votes.
 - (e) The order passed by the Sub-Divisional Magistrate is based on vague and indefinite allegations, and is further, non-speaking as it does not record any independent finding.
 - (f) The principle of the '*secrecy of the ballot*' stood compromised by the order of recount.
- It was, thus, prayed for that a writ of certiorari be issued, quashing the order of recount and the further order dated 7th November 2022, fixing 29th November 2022 as the date for the recount. Further, it was prayed that a writ in the nature of mandamus be issued to the respondent No.1, directing him not to interfere in the work of the petitioner as 'Gram Pradhan'.
7. The writ petition making the arguments as above came to be heard by a learned Single Judge of the High Court. It is this judgment and order which is challenged in this appeal. The relevant extract of the impugned judgment is as under :

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“15. The above material finding is based on without inspection of Proforma-46 as the Election Tribunal despite power has not called the documents for verification in regard to verify allegations of difference between the number of votes cast and the number of vote counted. The above finding is completely based on an oral assertion as mentioned in the election petition as well as the impugned order that the Election Officer orally communicated a different number of total votes cast. The petitioner has not submitted any document I support of their assertion made in the election petition though the assertion made in election petition appears to be sufficient but in absence of any supporting documents are not sufficient to pass any order of recounting as observed above ...”

THE CASE OF THE PARTIES

8. Aggrieved by the judgment and order, as aforesaid, the appellant has approached this Court under Article 136 of the Constitution of India. By way of this special leave petition, it is urged that -
 - (a) The decision of the Sub-Divisional Magistrate was in accordance with the judgment of this Court in ***Ram Sewak Yadav v. Hussain Kamil Kidwai & Ors.***⁵ That apart, such an order is justified in view of the averment made in paras 7, 8, 9, 10 and 12 in the Election Petition as also supported by oral evidence.
 - (b) The principle of secrecy of the ballot is not compromised by the order of the Sub-Divisional Magistrate and as such, the order of the High Court is erroneous.
9. It is further submitted that :-
 - (a) An order passed under Section 12-C of the Act is final and not open to challenge under Article 226 of the Constitution of India. This is in view of Article 243-O of the Constitution, which postulates a bar in respect of interference by the Courts in electoral matters.

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- (b) The above-named Act provides for a remedy against an order passed therein, i.e., Section 12-C (6) of the Act by way of revision.
 - (c) As to when an order for inspection/recounting of ballot papers can be passed stands clarified by the Full Bench of the High Court in **Ram Adhar Singh v. District Judge, Ghazipur**⁶ which followed the judgments of this Court in **Hussain Kamil Kidwai** (*supra*) and **Bhabhi v. Sheo Govind**⁷ which were passed interpreting the provisions of the Representation of the People Act, 1951⁸. In view of the above, it is submitted that the High Court erred in entertaining a writ petition against an order, which was interlocutory in nature, aimed at doing complete justice *inter se* the parties.
 - (d) The Act does not provide directly for the power of recount but the same is implicit, having regard to the powers contained in Section 12-C and the same is to be exercised as per the principles laid down in various decisions of this Court.
 - (e) The averments made in the election petition, more specifically paragraphs 7 to 10 are *prima facie* correct, and the High Court erred in setting aside the order of recount without adverting to findings of improper acceptance and rejection of ballot papers, returned by the Sub-Divisional Magistrate.
10. The case of the respondent, as can be understood from the record is as follows:
- (a) The appellant has not produced any document whatsoever to support his claims/assertions and, therefore, the order of recount is on insufficient basis;
- The secrecy of ballots should not be violated on flimsy grounds that are frivolous, vague and indefinite.
- (b) The respondent, in favour of the stand taken by the Election Officer has filed affidavits of certain persons attesting to the absence of irregularity in the process adopted. Vinod Kumar, who has submitted an affidavit in favour of the recount supporting

6 1985 SCC OnLine All 246

7 (1976) 1 SCC 687

8 Hereafter "RPA"

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the case of the petitioner herein was, in fact, not present at the polling booth since he was scheduled to enter into matrimony on that date. One Ajay Kumar, who was the agent of the above-said Vinod Kumar at the polling booth, has on oath, stated that no irregularity had been committed by the Election Officer;

- (c) Given the above, Vinod Kumar's affidavit, was therefore, ostensibly false which in itself is a punishable offence. The High Court, hence, in the absence of any documentary evidence to support the oral submissions made by the appellant herein, rightly set aside the order of recount.
- 11. The question that flows from having heard the learned counsel for the parties apropos the submissions recorded supra, for the consideration of this Court is whether the Sub-Divisional Magistrate, was justified in ordering a recount of the votes cast.

ANALYSIS AND FINDINGS

- 12. The U.P. Panchayat Raj Act, 1947, under Section 12 provides for the constitution of Gram Panchayats, the manner of election thereto, allowances of the elected members, superintendence of the elections, taking of vehicles and premises for the purpose of elections, procedure to question the elections, etc. We are concerned here with Section 12-C which concerns the filing of applications questioning the elections, since it is this provision of law, to which the appellant herein took recourse. It reads:

“12-C. Application for questioning the elections – (1) The election of a person as Pradhan 2 [* * *] or as member of a Gram Panchayat including the election of a person appointed as the Panch of the Nyaya Panchayat under Section 43 shall not be called in question except by an application presented to such authority within such time and in such manner as may be prescribed on the ground that –

- (a) the election has not been a free election by reason that the corrupt practice of bribery or undue influence has extensively prevailed at the election, or
- (b) that the result of the election has been materially affected –

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- i- by the improper acceptance or rejection of any nomination or;
- ii- by gross failure to comply with the provisions of this Act or the rules framed thereunder.

(2) The following shall be deemed to be corrupt practices of bribery or undue influence for the purposes of this Act.

(A) Bribery, that is to say, any gift, offer or promise by a candidate or by any other person with the connivance of a candidate of any gratification of any person whomsoever, with the object, directly, or indirectly of including –

(a) a person to stand or not to stand as, or withdraw from being, a candidate at any election; or (b) an elector to vote or refrain from voting at an election; or as a reward to –

- i- a person for having so stood or not stood or having withdrawn his candidature; or

- ii- an elector for having voted or refrained from voting.

(B) Undue influence, that is to say, any direct or indirect interference or attempt to interfere on the part of a candidate or of any other person with the connivance of the candidate with the free exercise of any electoral right; Provided that without prejudice to the generality of the provisions of this clause any such person as is referred to therein who –

- i- threatens any candidate, or any elector, or any person in whom a candidate or any elector is interested, with injury of any kind including social ostracism and ex-communication or expulsion from any caste or community; or

- ii- induces or attempts to induce a candidate or an elector to believe that he or any person in whom he is interested will become or will be rendered an object of divine displeasure or spiritual censure, shall be deemed to interfere with the free exercise of the electoral right of such candidate or elector within the meaning of this clause.

(3) This application under sub-section (1) may be presented by any candidate at the election or any elector and shall contain such particulars as may be prescribed.

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Explanation – Any person who filed a nomination paper at the election whether such nomination paper was accepted or rejected, shall be deemed to be a candidate at the election.

(4) The authority to whom the application under sub-section (1) is made shall in the matter of –

i- hearing of the application and the procedure to be followed at such hearing;

ii- setting aside the election, or declaring the election to be void or declaring the applicant to be duly elected or any other relief that may be granted to the petitioner, have such powers and authority as may be prescribed.

(5) Without prejudice to generality of the powers to be prescribed under subsection (4) the rules may provide for summary hearing and disposal of an application under sub-section (1).

[(6) Any party aggrieved by an order of the prescribed authority upon an application under sub-section (1) may, within thirty days from the date of the order, apply to the District Judge for revision of such order on any one or more the following grounds, namely –

(a) that the prescribed authority has exercised a jurisdiction not vested in it by law;

(b) that the prescribed authority has failed to exercise a jurisdiction so vested;

(c) that the prescribed authority has acted in the exercise of its jurisdiction illegally or with material irregularity.

(7) The District Judge may dispose of the application for revision himself or may assign it for disposal to any Additional District Judge, Civil Judge or Additional Civil Judge under his administrative control and may recall it from any such officer or transfer it to any other such officer.

(8) The revising authority mentioned in sub-section (7) shall follow such procedure as may be prescribed, and may confirm, vary or rescind the order of the prescribed

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authority or remand the case to the prescribed authority for re-hearing and pending its decision pass such interim orders as may appear to it to be just and convenient.

(9) The decision of the prescribed authority, subject to any order passed by the revising authority under this section, and every decision of the revising authority passed under this section, shall be final.]”

13. Since the question involved in this appeal appertains to recount of votes, let us consider the law on this aspect - as has been laid down through various pronouncements of this Court, in the context of various legislations.

13.1 A Constitution Bench of this Court in ***Hussain Kamil Kidwai*** (supra), in the context of the 1962 Lok Sabha elections to the Barabanki Constituency, wherein the appellant before this Court had been declared elected, and the respondent who was one of the contestants in the election, was aggrieved and his grievance was heard and eventually allowed by the High Court, observed that an order for inspection of ballot papers is not to be made as a matter of course and it is only upon the fulfillment of certain conditions that the same can be permitted. The relevant extract is :-

“6. An order for inspection may not be granted as a matter of course : having regard to the insistence upon the secrecy of the ballot papers, the court would be justified in granting an order for inspection provided two conditions are fulfilled:

(i) that the petition for setting aside an election contains an adequate statement of the material facts on which the petitioner relies in support of his case; and

(ii) the Tribunal is prima facie satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the

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petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted. But a mere allegation that the petitioner suspects or believes that there has been an improper reception, refusal or rejection of votes will not be sufficient to support an order for inspection.”

- 13.2 In **Vadivelu v. Sundaram**,⁹ a three-Judge Bench of this Court while concerned with a dispute regarding the election for the post of President of Vannavalkudi Village Panchayat, Pudukkottai District in Tamil Nadu, which was governed by the Tamil Nadu Panchayats (Elections) Rules 1995, held :

“16. ...this Court has consistently taken the view that re-count of votes could be ordered very rarely and on specific allegation in the pleadings in the election petition that illegality or irregularity was committed while counting. The petitioner who seeks re-count should allege and prove that there was improper acceptance of invalid votes or improper rejection of valid votes. If only the court is satisfied about the truthfulness of the above allegation, it can order re-count of votes. Secrecy of ballot has always been considered sacrosanct in a democratic process of election and it cannot be disturbed lightly by bare allegations of illegality or irregularity in counting. But if it is proved that purity of elections has been tarnished and it has materially affected the result of the election whereby the defeated candidate is seriously prejudiced, the court can resort to re-count of votes under such circumstances to do justice between the parties.”

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- 13.3 Sarkaria J., writing for the Court in ***Suresh Prasad Yadav v. Jai Prakash Mishra***,¹⁰ recorded three scenarios when recount would be justified. The relevant extract of the judgment is as under:

“6. The Court would be justified in ordering a recount of the ballot papers only where:

(1) the election-petition contains an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded;

(2) on the basis of evidence adduced such allegations are prima facie established, affording a good ground for believing that there has been a mistake in counting; and

(3) the court trying the petition is prima facie satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties.”

- 13.4 In ***Beli Ram Bhalaik v. Behari Lal Khachi***,¹¹ wherein the subject matter of dispute was the election of the respondent therein from the ‘6-Kumarsain Assembly Constituency’ of the State of Himachal Pradesh, and so, was obviously governed by the RPA, considered a number of precedents including ***Hussain Kamil Kidwai*** (supra), the Court observed :

“45. ... Since an order for a re-count touches upon the secrecy of the ballot papers, it should not be made lightly or as a matter of course. Although no cast-iron rule of universal application can be or has been laid down, yet from a beadroll of the decisions of this Court, two broad guidelines are discernible: that the court would be justified in ordering a re-count or permitting inspection of the ballot papers only where (i) all the material facts on which the

10 (1975) 4 SCC 822

11 (1975) 4 SCC 417

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allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (*i*) the Court/Tribunal trying the petition is *prima facie* satisfied that the making of such an order is imperatively necessary to decide the dispute and to do complete and effectual justice between the parties... “

- 13.5 The law mandates that secrecy of the ballot should be maintained. In ***Satyendar Dudhani v. Uday Kumar Singh***,¹² the Court held:

“10. It is thus obvious that 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. We are of the view when there was no contemporaneous evidence to show any irregularity or illegality in the counting ordinarily, it would not be proper to order recount on the basis of bare allegations in the election petition. We have been taken through the pleadings in the election petition. We are satisfied that the grounds urged in the election petition do not justify for ordering recount and allowing inspection of the ballot papers. It is settled proposition of law that the secrecy of the ballot papers cannot be permitted to be tinkered lightly. An order of recount cannot be granted as a matter of course. The secrecy of the ballot papers has to be maintained and only when the High Court is satisfied on the basis of material facts pleaded in the petition and supported by the contemporaneous evidence that the recount can be ordered.”

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- 13.6 In ***Udey Chand v. Surat Singh***,¹³ this Court while entertaining an appeal by special leave, from a judgment and order of the High Court of Punjab and Haryana wherein the order of the Election Tribunal directing recount of the votes cast in the election for the post of Sarpanch, Gram Panchayat, Village Badshahpur, in a petition filed under Section 176 of the Haryana Panchayat Raj Act, 1994, observed:-

“12. The importance of maintenance of secrecy of ballot papers and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases. It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz.:-

(i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the material facts on which the allegations of irregularity or illegality in counting are founded, and

(ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be *prima facie* satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary, are satisfied.”

14. Having considered the law as aforesaid, let us now consider, in light thereof, the prayer for recount which has been allowed by the Sub-Divisional Magistrate, but the said direction, set aside by the High Court in view of the impugned judgment. The allegation made is that there is a disparity in the count of votes informed to the appellant and that finally disclosed in the official form. It relates to 19 votes, i.e., the difference between 1193 and 1213. The margin of victory of the respondent was 37 votes, and so, in a sense, victory of position would remain yet elusive of the appellant. However, this Court’s concern lies away from who is in power, and instead is in how one got to power. This process has to be in accordance with

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constitutional principles and established norms - if not, then such a person has to be deprived of the power, and the decision-making by the people must begin once more.

15. When the officer was present there and he informed the candidate, appellant herein, of the number of votes cast, why should there be any difference? We have already observed that each vote has its own value irrespective of its effect in the final outcome of the election. Its sanctity has to be protected. It was a four-sided election, i.e., four persons were contesting for the post of 'Pradhan'. Three of the four persons submitted by way of affidavit that they had doubts regarding the propriety of the election, and they would support a recount of votes.
16. It has also come on record that deliberate attempts have been made to benefit the ultimate victor such as the use of police force to remove the appellant from the vicinity of the polling area. The diary of the Presiding Officer of the polling booths, which is an essential document recording the casting of votes, could not be found despite a concerted effort.
17. The candidates in the election wanting to keep an eye on voting during the day and inspect records of the same is something which cannot be denied to them. If the Presiding Officers' records are missing and cannot be verified, it can be found that the final conclusion is within the realm of questionability. Each and every document pertaining to an election is important and all efforts should be made to preserve the same.
18. The election in question took place in the year 2021 and the process of law has culminated by way of this judgment, four years later. For the reasons aforesaid, that three of the four candidates question the veracity of the election and the manner in which it was conducted, and that important documents pertaining to the election are missing and such absence is unexplained, we are of the view in the present facts that a recount would be justified.
19. The judgment of the High Court passed in Writ-C No.35734 of 2022 titled Sunil Kumar v. State of U.P. And Ors. dated 27th January 2023 is, therefore, set aside and order dated 31st October 2022 passed by the Sub-Divisional Magistrate in Election Petition No.02010/2021, is restored. The appeal is allowed.

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20. Registry is directed to communicate a copy of this judgment to the Registrar General, High Court of Judicature at Allahabad, who shall ensure passage of the same to the concerned Magistrate, enabling them to set a date for recount of the result after hearing the parties.

Pending application(s), if any, shall stand disposed of.

Result of the case: Appeal allowed.

[†]*Headnotes prepared by:* Ankit Gyan