

## R. Narayanan vs S. Semmalai And Ors on 6 September, 1979

**Equivalent citations:** 1980 AIR 206, 1980 SCR (1) 571, AIR 1980 SUPREME COURT 206, (1980) 1 SCR 571 (SC), 1980 (1) SCR 571, (1980) 2 MAD LJ 1, 1980 (2) SCC 537, (1980) 1 SCJ 437

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**Bench:** Syed Murtaza Fazalali, P.S. Kailasam, A.P. Sen

PETITIONER:

R. NARAYANAN

Vs.

RESPONDENT:

S. SEMMALAI AND ORS.

DATE OF JUDGMENT 06/09/1979

BENCH:

FAZALALI, SYED MURTAZA

BENCH:

FAZALALI, SYED MURTAZA

KAILASAM, P.S.

SEN, A.P. (J)

CITATION:

1980 AIR 206                      1980 SCR (1) 571

1980 SCC (2) 537

CITATOR INFO :

RF                      1980 SC1362 (33)

R                      1989 SC 640 (12)

ACT:

Representation of the People Act, 1951      -Recount-When  
could be ordered by the Court.

HEADNOTE:

The appellant and the respondent, among a few others, were candidates in the elections to the State Assembly in which the appellant was declared elected. The respondent, in his election petition in the High Court, alleged that the appellant's election was void under s. 100(1)(d)(iii) and (iv) of the Representation of the People Act, 1951 on the ground that there were numerous errors in the counting of votes as a result of which number of votes were wrongly

rejected or wrongly accepted and prayed for ordering of recounting because the margin by which the appellant succeeded was extremely narrow, coming to about nine votes. He also prayed that he might be declared elected under s. 101 of the Act.

The High Court ordered recount of votes and after recount held the respondent to be duly elected under s. 101 of the Act.

Allowing the appeal

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HELD: This is not a case in which a recount should have been ordered by the High Court. [586C]

1. The relief of recounting cannot be accepted merely on the possibility of there being an error. The allegations in the election petition must not only be clearly made out but should also be proved by cogent evidence. The High Court has held that the respondent has not established any specific instance of erroneous sorting and that the allegations made in the pleadings and the evidence were general. Even so it accepted the respondent's case on such insufficient and infirm evidence. [578F-G]

2. The narrow margin by which a candidate has been declared elected, though an important factor, would not by itself vitiate the counting of votes or justify an order of recount by the Court. [579E]

In the instant case the grounds taken by the respondent impugning the election were vague. No case for recount had been made out by him. [580B]

3. It is well settled that a 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 of 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. [585H]

572

Bhabhi v. Sheo Govind & Ors., [1975] Supp. SCR 202; followed.

Ram Sewak Jadav v. Hussain Kamil Kidwai & Ors., [1964] 6 SCR 238; Dr. Jagjit Singh v. Giani Kartar Singh, AIR 1966 SC 723; Jitendra Bahadur Singh v. Krishna Behari & Ors., [1970] 1 SCR 852; Baldev Singh v. Teja Singh Swatantar & Ors., [1975] 3 SCR 381; Ram Autar Singh Bhadauria v. Ram Gopal Singh & Ors., [1976] 1 SCR 191; Beliram Bhalaik v. Jai Beharilal Khachi & Anr., [1975] 4 SCR 417; Chanda Singh v. Choudhary Shiv Ram Verma, (C. A. No.1185 of 1973 decided on 20-12-1974); referred to.

JUDGMENT :

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 524 of 1978.

Appeal under Article 116-A of the R.P. Act, 1951 from the Judgment and Order dated 27-2-1978 of the Madras High Court in Election Petition No. 7/77.

AND Civil Appeal No. 588 of 1978.

Appeal by Special Leave from the Judgment and Order dated 15-2-78 of the Madras High Court in Recrimination Petition Unnumbered but with D. No. 12962/77.

A. K. Sen, K. Parasaran, P. N. Ramalingam, R. Srinivasan and A. T. M. Sampath for the Appellant.

Y. S. Chitale, T. N. C. Srinivasa Vardacharya, K. Jayaram and K. Ram Kumar, for Respondent 1 in CA 524/78.

The Judgment of the Court was delivered by FAZAL ALI, J. Civil Appeal No. 524 of 1978 has been filed by the appellant R. Narayanan who was the respondent before the High Court and in short would be referred to as the appellant. Civil Appeal No. 588 of 1978 has been filed by the appellant after obtaining special leave from this Court and is directed against that part of the order of the High Court which refused to entertain the recrimination petition filed by the appellant. The election petitioner before the High Court for the purpose of brevity will hereafter be referred to as the respondent.

Both the appellant and the respondent contested the election held on 11-5-1977. The appellant who was a Congress candidate with the symbol of calf and cow whereas the respondent was put forward as a candidate of the All India Anna Dravida Munnetra Kazhagam and contested with the symbol of "Two Leaves". There were 14 candidates in all whose nominations were found valid but out of them 7 withdrew. The appellant and respondents No. 1 to 6 before the High Court remained in the field as contesting candidates. The res-

pondent filed an election petition in the High Court under sections 81 and 84 of the Representation of the People Act, 1951 (hereinafter referred to as the Act) for a declaration that the election of the appellant to the 85 Taramangalam Assembly Constituency of the Tamil Nadu Legislative Assembly was void under section 100(1) (d)(iii) and (iv) of the Act and further prayed that he may be duly declared to be elected under section 101 of the Act. The other candidates who were in the field lost the election and could not be elected.

The sheet anchor of the case of the respondent was that there were number of errors in the counting of votes as a result of which number of votes were wrongly rejected or wrongly accepted. It was also alleged that the electoral roll was inaccurate as it contained the names of number of persons who were already dead who had supposed to have cast their votes. The main relief sought by the

respondent was that a re-count should be ordered particularly because the margin by which the appellant succeeded was extremely narrow being only 19 votes and if the postal ballots are included then the difference would be only 9 votes. A number of allegations were made regarding the errors in the counting of votes. The appellant denied all the allegations made by the respondent in his election petition and after filing his written statement sought a petition for recrimination on the ground that a number of persons had impersonated as the appellant as a result of which the respondent got a number of wrong votes; otherwise the margin would have become larger. The High Court however found that the petition for recrimination was time barred, and, therefore, could not be entertained. The learned Judge who heard the election petition rejected the recrimination petition which is the subject matter of Civil Appeal No. 588 of 1978. In the view that we take in this case, it is not necessary for us to give any pronouncement regarding the validity of the order of the Judge rejecting the recrimination petition.

The counting of votes took place at St. Mary's Girls High School, Mettur on 14-6-1977. The initial counting commenced at 11 a.m. and ended at 3 a.m. on the 15th June, 1977. The counting is alleged to have been done in three rounds. After the counting was over the respondent filed an application before the Returning Officer for a re-count on the ground that there were a number of counting errors due to the shortage of staff and the tables on which votes were counted, paucity of light and the fact that the counting staff became absolutely exhausted and tired. The Returning Officer rejected the prayer of the respondent for re-count and went ahead with the declaration of the results.

The appellant's case was that there was sufficient space in the hall in which the counting took place and the polling agents of all the candidates were present when the counting was done and none of them raised any objection when the counting was actually done. It was also alleged that there were sufficient number of tube lights in the hall and that there was no question of there being any opportunity of committing mistakes in counting. All the ballot papers were opened in the presence of the counting agents including the counting agent of the respondent and kept in the box which contained the ballot papers of the candidates concerned. The allegation of the respondent that some outsiders including one Perumal were also allowed to enter the hall when the counting was going on was also denied by the appellant.

The learned Judge after taking evidence of both the parties rejected most of the allegations made by the respondent but accepted the allegation that there were some counting errors at two tables, that there was paucity of light and that the counting staff was completely tired and exhausted, during the third round.

We would, therefore, briefly summarise the allegations made by the respondent in his election petition in order to show whether the allegations were clear and specific.

In para 7 of the election petition the respondent alleged that the counting of votes was not done properly or with due care and diligence, but was often hurried through amidst much noise and interruption and disturbance. It was also alleged that the lighting in the hall was poor and insufficient and there was much scope for error and there were numerous errors in the counting

throughout and specially in the third round. It was also complained that there were only 24 tables and counting was done in three rounds and the third round took place near about the mid- night and lasted till 3 a.m. It was also said that as the margin of votes secured by the respondent and the appellant was only 19 this was the result of grave irregularities and illegalities and errors in the counting. A perusal of para 7 of the election petition clearly shows that all the allegations made by the respondent were extremely vague, no particulars were given either of the segments in which the voting was counted or number of tables which contained the errors by the counting officers, no complaint was made to the Counting Officers by the agents of the respondent when the counting was being done and which according to the respondent was defective or faulty. The narrow margin was attributed to grave irregularities and illegalities. The statement of the respondent in para 7 on this point may be quoted thus :-

"The result announced was neither true nor correct. It was the result of grave irregularities and illegalities and errors in the counting. In the circumstances the Returning Officer ought to have allowed and carried out a re-count of the votes under Rule 63(3) of the Conduct of Election Rules, 1961".

In para 8 it was alleged that the appellant was a Councillor and a former Chairman of the Mecheri Panchayat Union and the counting staff consisted largely of the members of the staff of the aforesaid union who owed their employment to the appellant. It was also alleged that the counting staff did not remain seated but was moving about. The appellant's brother who was the central agent was moving about among all the tables all the time talking and disturbing. Despite these serious allegations no complaint was made to the counting staff at the spot by the respondent or his agent. It was further alleged that several outsiders particularly one Perumal who was a contractor for the Salem Steel Plant and treasurer of the Taluk Congress Committee, Mettur constantly remained in the hall and were talking to the Returning Officer. Thus, though not expressly but by implication, the respondent seemed to suggest that the Returning Officer was influenced by Perumal.

Para 9 of the election petition is also frightfully vague the relevant portion of which runs thus:-

"The counting was particularly faulty and unsatisfactory and defective during the 3rd round and at tables No. 8 to 10, 13".

It was also alleged that Srinivasan was consistently talking to Selvaraj during the counting. Several allegations appear to have been made in paragraph 9 also regarding the influence exercised by the appellant's brother Srinivasan but no complaint regarding this matter was made to anybody and we shall presently show that even in the application which the respondent filed before the Returning Officer most of the allegations made by the respondent in the election petition are conspicuously absent.

In para 11 it was also stated that there was no proper supervision of the counting staff nor a proper check up at all. There was no test check or re-check of the votes by the Returning Officer.

Similarly, a number of vague allegations regarding the manner and the time of counting were made in the petition. The learned Judge after taking evidence and hearing counsel for the parties dis-

believed the case of the respondent almost in its entirety but accepted just a fragmentary portion of the case of the respondent. So far as the fact that the counting staff was sleepy or was physically exhausted, this matter was not even mentioned in the petition. The High Court after examining the contention of the parties, framed the following preliminary issues in the case :

"(1) Should there be a scrutiny and re-count of the ballot papers as claimed by the election petitioner ?

(2) Is the election of the returned candidate, the first respondent, liable to be declared to be void ?

(3) Is the election petitioner entitled to a declaration that he himself has been duly elected ? and (4) To what relief ?"

As already indicated, the Court after framing the issues rejected the recrimination petition filed by the appellant. On the important allegation made by the respondent at the time of counting Perumal was present and disturbing the counting staff, it was disbelieved and the learned Judge observed as follows :

"After analysing the evidence of these witnesses in this regard, I am inclined to take the view that Perumal's presence inside the counting hall has not been established."

Similarly, the allegation that outsiders were allowed to enter the hall was also disbelieved thus :-

"Even in the petition for recount there is no allegation that unauthorised persons were allowed entry into the counting hall and that it has affected the result of the counting. I have to therefore hold that there is no violation of Rule 53 of the Conduct of Election Rules, 1961 as alleged by the petitioner".

The ground that there was no test check or proper scrutiny of doubtful votes was also rejected by the learned Judge and he held that these allegations were not established. Regarding the allegation that the appellant was going round the hall openly announcing that a few votes were required for winning the election was not proved. The learned Judge observed thus :

"I am, therefore, of the view that there is no truth in the allegation made against R. W. 1 that he was going round the hall by openly announcing that only a few votes were required by the first respondent for winning the election".

Regarding the paucity of light the Judge found that there were 7 tube lights and the complaint of the respondent that there was no sufficient light to enable the counting staff to do their work was clearly an after-thought. In this connection, the learned Judge observed as follows :-

"After analysing the evidence adduced on this aspect, I am of the view that this complaint is purely an afterthought. If really the lighting was poor, not only the petitioner but all the other candidates would have complained even at the first instance to the Returning Officer".

Similarly, the allegation regarding the noise and disorder alleged to have prevailed in the counting hall, the Judge held that there was no acceptable evidence to prove these allegations.

Another serious allegation of partiality was made by the respondent that most of the counting staff was directly connected with the appellant was also disbelieved and the Judge observed thus :

"Even if the facts alleged by the petitioner that some of the counting staff owed their appointment to the first respondent and that they were working in the Panchayat Union Council in which the first respondent was the Chairman are true, it will not automatically amount to proof of the allegation of partiality. It has been pointed out time and again by the Supreme Court that to tarnish the counting staff with bias or partiality is easy for any party who challenges the election of a returned candidate and that the Court should be reluctant to lend quick credence to the mud of partiality slung at counting officials by desperate and defeated candidates."

The only ground which appears to have been accepted by the learned Judge was that although there was no clear evidence of any irregularity having been committed in the first two rounds there was a possibility that the staff was completely exhausted and this may have led to erroneous sorting and counting of votes. This was because, according to the learned Judge, the staff started its work at 11 a.m. on 14-6-77 and continued to work without rest till about 3 a.m. on 15-6-77. They were provided with lunch in the afternoon of 14-6-77. It was also found by the judge that the counting staff was not supplied with food in the night but was provided with tea at only 7 p.m. In this connection, the learned Judge observed as follows :-

"The next ground urged by the petitioner is that the counting staff were sleepy, exhausted and not alert during the third round which was started after mid-night and completed at 3 A.M. the next day and that as such there is definite possibility of erroneous sorting and counting of votes during that round. Almost all the petitioner's witnesses have deposed that the counting staff who began their work of preliminary counting at 11 A.M. on 14-6-1977 continued to work without any rest upto 3 A.M. the next day, that they were provided with lunch only on the afternoon of 14-6-1977, that the counting staff were not supplied with food during the night that they were provided with only tea at 7 p.m. and therefore the counting staff were completely exhausted and sleepy especially after midnight and that they were not as vigilant and alert as they were during the first and second rounds of counting. All the first respondent's witnesses also admitted that the counting staff were not provided with food in the night but they were merely supplied with tea at 7 P.M. and that they carried on the counting without any break till 3 A.M. the next day. Though the petitioner has not established any specific instance of erroneous sorting and counting

of votes during the third round, general allegations have been made in the pleadings as well as in the evidence adduced on behalf of the petitioner. There appears to be considerable force in the submission of the petitioner in this regard".

In the first place the finding itself is based purely on speculation. It is obvious that election being a technical matter the authorities choose experienced persons to do the counting and take every possible care to see that the members of the staff do not commit any error. Moreover, the relief of re-counting cannot be accepted merely on the possibility of their being an error. It is well-settled that such allegations must not only be clearly made but also proved by cogent evidence. The Judge himself holds that the respondent has not established any specific instance of erroneous sorting and that the allegations made in the pleadings as well as in the evidence are general yet he accepts the case of the respondent on such insufficient and infirm evidence. Moreover, it would appear from the evidence of P.W. 23 the witness for the respondent that the first round started at 5 p.m. and ended at about 8.30 p.m., the second round started at 9 p.m. and ended at 11.30 p.m. and the third round started at 12 mid-night and ended at 2 a.m. The witness was asked in cross-examination whether he had complained to the counting staff at the spot and the witness admitted that when he pointed out the mistake it was rectified by the counting staff. From the timings of the rounds it appears that there were sufficient intervals between the three rounds, and, therefore, the question of the staff being tired and exhausted did not arise. This finding of the learned Judge, therefore, is against the weight of evidence and cannot be legally supported. Moreover, as we have already pointed out that re-count should be ordered not on possibility of errors but when the matter is proved with absolute certainty. Similarly, the learned Judge speculates that there must have been lot of physical exertion and observed thus :-

"It is not possible to exclude the possibility of physical exertion on the part of the counting staff especially after midnight when the third round of counting took place. Having regard to the minimal difference in votes it has become necessary to find out whether the third round of counting was carried on by the counting staff properly. In the nature of things it is not possible to assume that all the 72 persons were alert and attended to the process of counting with such keenness as it deserved".

This finding is also based on pure speculation and cannot be maintained.

Lastly, the learned Judge was greatly influenced by the fact that the margin by which the appellant succeeded was very narrow. This was undoubtedly an important factor to be considered but would not by itself vitiate the counting of votes or justify re-counting by the Court.

We would like to mention here that in fact the respondent had made an application before the Returning Officer for re-count but the actual application filed by the respondent has not been produced for the reasons best known to the respondent. It appears from Annexure II which is a certified copy of the order of the Returning Officer that three grounds were taken before the Returning Officer by the, respondent. In the first place, he expressed his suspicion that the votes would have been mixed relating to Narayanan (Congress) and other candidates; (ii) that many votes polled in his favour had been rejected, (iii) Postal ballots have been rejected without sufficient



reasons. It may thus be pertinent to note that Dr. Chitale, learned counsel for the appellant's main plank of argument was that there was overwhelming evidence to show that there were several counting errors at Tables 2, 3, 7, 9, 12, 15, 17, 8, 10, 13 particularly stress was laid on Tables 2, 4, 6, 8, 9, 10 and 13.

It was also said that despite protests being made by the respondent's agents to the polling staff no action was taken at all. Indeed, if this was so then we should have accepted such an allegation being made prominently in the application given by the respondent to the Returning Officer. The absence of any such allegation in the application of the respondent before the Returning Officer clearly shows that this allegation was clearly an after-thought and, therefore, no implicit reliance can be placed on the oral evidence by the respondent before the court. It would thus be seen that all the three grounds taken by the respondent before the Returning Officer were absolutely vague and could not make out a case for re-counting by the Returning Officer much less by the court. It may be relevant to note that in the application filed by the respondent the question that the appellant succeeded by a narrow margin was also not mentioned. On this application the Returning Officer passed the following order:-

"Under the above circumstances he requested that a recount may be ordered and justice rendered. The candidate, his election and counting agents were watching the process of counting and no objection or complaint was raised by any of them during the course of counting regarding any mistakes. The suspicion expressed by him that many of the votes relating to him would have been included in the votes relating to Narayanan and other candidates, is without basis and hence not correct. All the doubtful votes were scrutinised by me in the presence of candidates and their agents and orders passed. His version that many of the votes in his favour were rejected is not correct since the scrutiny was done in their presence. He has not made any specific mention about the round or table to be recounted. The petitioner has requested recount in general of all the votes polled for all candidates under the presumption that his ballot papers would have been mixed up in other bundles.

His petition is frivolous and unreasonable. This part of his request is therefore rejected."

The law on the subject is absolutely clear and while the learned Judge had relied on some of the decisions of this Court he has failed to apply them correctly to the facts and circumstances of this case. On the question of re- count as far back as in the case of Ram Sewak Jadav v. Hussain Kamil Kidwai & Ors.(1) this Court pointed out as follows :-

"But the Election Tribunal is not on that account without authority in respect of the ballot papers. In a proper case where the interests of justice demand it, the Tribunal may call upon the Returning Officer to produce the ballot papers and may permit inspection by the parties before it of the ballot papers."

"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 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".

"Therefore a candidate who seeks to challenge an election on the ground that there has been improper reception refusal or rejection of votes at the time of counting, has ample opportunity of acquainting himself with the manner in which the ballot boxes were scrutinized and opened, and the votes were counted. He has also opportunity of inspecting rejected ballot papers, and of demanding a re-count. It is in the light of the provisions of s. 83(1) which require a concise statement of material facts on which the petitioner relies and to the opportunity which is defeated candidate had at the time of counting, of watching and of claiming a recount that the application for inspection must be considered".

To the same effect is a later decision of this Court in the case of Dr. Jagjit Singh v. Giani Kartar Singh.(1) In the case of Jitendra Bahadur Singh v. Krishna Behari & Ors.(2) this Court observed as follows:-

"In the instant case apart from giving certain figures whether true or imaginary, the petitioner has not disclosed in the petition the basis on which he arrived at those figures. His bald assertion that he got those figures from the counting agents of the congress nominee cannot afford the necessary basis. He did not say in the petition who those workers were and what is the basis of their information ? It is not his case that they maintained any notes or that he examined their notes, if there were any. The material facts required to be stated are those facts which can be considered as materials supporting the allegations made. In other words they must be such facts as to afford a basis for the allegations made in the petition".

"The trial court correctly came to the conclusion that before an order of inspection of the ballot papers can be made it must be 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. It did say that it was so satisfied but it gave no reasons whatsoever as to how it came to be satisfied. A judge can be satisfied only on the basis of proof and not on the basis of mere allegations".

In Halsbury's Laws of England (Vol. 14 at page 310 paragraph 599), it is observed:

"A recount is not granted as of right, but on evidence of good grounds for believing that there has been a mistake on the part of the Returning Officer".

Similarly, Fraser in his Law of Parliamentary Elections and Election Petitions at p. 222 observed thus:-

"A strong case must be made on affidavit before an order can be obtained for inspection of ballot papers or counterfoils".

In the case of Baldev Singh v. Teja Singh Swatantar (Dead) & Ors.(1) Krishna Iyer, J. speaking for the Court observed as follows:-

"Disingenuous averments do not promote prospects of judicial recount and will be dismissed as devices to comply with requirements suggested in some ruling or other".

"Where the margin of difference is minimal, the claim for a fresh count cannot be summarily brushed aside as futile or trumpery".

"If formal defects had been misconstrued at some table as substantial infirmities, or vice versa, resulting in wrongful reception or rejection, the sooner it was set right the better, especially when a plea for a second inspection had been made on the spot. Many practical circumstances or legal misconceptions might honestly affect the legal or arithmetical accuracy of the result and prestige or fatigue should not inhibit a fresh, may be partial, check. Of course, baseless or concocted claims for recount or fabricated grounds for inspection or specious complaints of mistakes in counting when the gap is huge are obvious cases of frivolous and unreasonable demands for recount. Malafide aspersions on counting staff or false and untenable objections regarding validity of votes also fall under the same category. We mean to be illustrative, not exhaustive, but underline the need, in appropriate case, to be reasonably liberal in re- check and re-count by Returning Officers. After all, fairness at the polls must not only be manifest but misgiving about the process must be erased at the earliest. Indeed, the Instructions to Officers are fairly clear and lay down sound guidelines".

Reliance was placed by the High Court on an observation of Krishna Iyer, J. in this case that where the margin of difference is minimal the claim for the fresh poll cannot be summarily brushed aside. In the first place, this observation was really meant for the Returning Officer because at the time

when request for re-count to the Returning Officer is made the electoral process is still continuing and if there are any counting errors they can be rectified before the election process is complete. This however cannot apply to the Court while dealing with an election petition because if a re-count is ordered at that stage then the electoral process has to be restarted afresh. In our country the election is an extremely expensive process and unless very clear case for recount is made out the candidates should not be put to unnecessary trouble and expense. Moreover, in the case of Ram Autar Singh Bhadauria v. Ram Gopal Singh & Ors.(1) this Court to which Krishna Iyer, J. himself was a party observed:

"The above being the law on the point, it is clear that the learned Judge was in error in ordering general inspection and recount of the total votes polled at the election, merely because in these Additional Pleas the returned candidate also had by way of recrimination, complained of wrong reception and rejection of votes and wrong counting of votes. The pleas at this stage could not be investigated even in the recriminatory petition filed by the returned candidate. They were beyond the scope of the enquiry into the petitioner's case which (as set up in Para 11 of the Petition) fell under s.100(1) (d) (iii) of the Act".

Similarly in the case of Chanda Singh v. Choudhary Shiv Ram Verma(2) this Court observed as follows:-

"A democracy runs smooth on the wheels of periodic and pure elections. The verdict at the polls announced by the Returning Officers lead to the formation of Governments. A certain amount of stability in the electoral process is essential. If the counting of the ballots are interfered with by too frequent and flippant recounts by courts a new system is introduced through the judicial instrument. Moreover, the secrecy of the ballot which is sacrosanct becomes exposed to deleterious prying, if recount of votes is made easy. The general reaction, if there is judicial relaxation on this issue, may well be a fresh pressure on luckless candidates, particularly when the winning margin is only of a few hundred votes as here, to ask for a recount. Micawberishly looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots. This may tend to a dangerous disorientation which invades the democratic order by injecting widespread scope for reopening of declared returns, unless the Court restricts recourse to recount to cases of genuine apprehension of miscount or illegality or other compulsions of justice necessitating such a drastic step".

In the case of Beliram Bhalaik v. Jai Beharilal Khachi and Anr.(1) this Court again reiterated the same principles in the following words:-

"A whimsical and bald statement of the candidate that he is not satisfied with the counting is not tantamount to a statement of the "grounds" within the contemplation of Rule 63(2). The application was thus not a proper application in the eye of law. It was not supplemented even by an antecedent or contemporaneous oral statement of

the author or any of his agents with regard to any irregularities in the counting. It was liable to be rejected summarily under sub-rule (3) of Rule 63 also".

"Although no cast-iron rule of universal application can be or has been laid down, yet from a breadroll of the decisions of this court two broad guidelines are discernible; that the court would be justified in ordering a recount or permitting inspection of the ballot papers only where (i) all the material facts on which the allegations of irregularity or illegality in counting are founded, are pleaded adequately in the election petition, and (ii) 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".

Finally, the entire case law on the subject regarding the circumstances under which re-count could be ordered was fully summarised and catalogued by this Court in the case of Bhabhi v. Sheo Govind & Ors. (2) to which one of us (Fazal Ali, J.) was a party and which may be extracted thus:-

"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."

Thus, on a consideration of the principles deduced from the authorities mentioned above and the evidence led in this case by the parties, we are satisfied that this was not a case in which a re-count should have been ordered by the learned Judge.

For these reasons, Civil Appeal No. 524 of 1978 is allowed with costs throughout and the order passed by the High Court setting aside the election of the appellant and declaring the respondent to be elected is hereby quashed. In this view of the matter no order need be passed in Civil Appeal No. 588 of 1978 in view of the order passed by us in Civil Appeal No. 524 of 1978.

P. B. R.

Appeal allowed.