

Petitioner Vs. Respondent

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SooperKanoon Citation : sooperkanoon.com/1191892

Court : Chennai

Decided On : Mar-22-2016

Judge : The Honourable Dr.(Mrs.) Justice S. Vimala

Appeal No. : CRP(NPD)No. 3849 of 2014 & M.P. No. 1 of 2014

Appellant : Petitioner

Respondent : Respondent

Judgement :

1. Heard both sides.
2. The learned counsel appearing for the revision petitioner has relied upon a decision reported in CDJ 1997 SC 1294 (Smt.Ram Rati vs. Saroj Devi and others).
3. It is pertinent to reproduce the reasoning given in para 8 of the Judgment.
8. It is difficult to give acceptance to the contention that the respondent made an application to the Returning Officer and the Returning officer had not recounted. In the light of the mandatory language of Rule 76 of the Rules, it is incumbent upon a candidate or an agent, if the candidate was not present, to make an application in writing and give reasons in support thereof, while seeking recounting. If it is not done, then the Tribunal or the court is not empowered to direct recounting even after adduction of evidence and consideration of the alleged irregularities in the counting. The essential condition-precedent is that an application in writing should

be made and the Returning Officer should pass an order with reasons in support thereof either to recall the order or otherwise, in writing. The fact that the officer had not passed any order in writing would indicate that the respondent had not made any application. Obviously, some subsequent manipulation, as contended by the appellant, would have taken place, as a result of which the election petition was filed and the arguments were addressed for recounting. It is settled legal position that secrecy of ballot should not be breached and as far as possible, the secrecy of ballot should be maintained. In rare cases, the Tribunal or the court is required to order recount, that too on giving satisfactory grounds for recounting. In view of the fact that the rule itself provides that, as soon as the result of the election is announced, an application in writing must be made at the first instance and the fact that no such application has been placed before us does indicate that no such application had been made on the date of the declaration of the result. The allegation of an application having been made, would be an afterthought. The Tribunal, therefore, has committed manifest error in directing recount.

4. There is no material placed before this Court to show that request for recounting was made before the Returning Officer.
5. Under such circumstances, there shall be an order of interim stay until further orders.