

**Juggilal Vs. District Judge, Bahraich and Others**

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**Court :** Allahabad

**Decided On :** Apr-22-1998

**Reported in :** 1998(3)AWC1714

**Judge :** R.H. Zaidi, J.

**Acts :** Uttar Pradesh Panchayat Raj Act, 1947 - Sections 12C(1) and 12C(4); [Constitution of India](#) - Article 226; Uttar Pradesh Panchayat Raj Rules, 1947 - Rules 24 and 25; Tamil Nadu Panchayat Raj Act - Sections 178

**Appeal No. :** Writ Petition No. 265 (M/S) of 1996

**Appellant :** Juggilal

**Respondent :** District Judge, Bahraich and Others

**Advocate for Def. :** R.N. Trivedi, Adv.

**Advocate for Pet/Ap. :** L.P. Mishra, Adv.

**Judgement :**

**R.H. Zaidi, J.**

1. By means of this petition under Article 226 of the [Constitution of India](#), the petitioner prays for issuance of a writ, order or direction in the nature of certiorari quashing the orders dated 13.11.1995 passed by respondent No. 2 directing for

the inspection and recounting of votes and declaring respondent No. 3 as duly elected Pradhan of the village as well as order dated 23.1.1996 passed by the District Judge, Bahraich dismissing the revision filed by the petitioner against the order passed by the respondent No. 2 dated 13.11.1995.

2. Facts of the case as set out in the writ petition, in brief are that the petitioner contested the election for the post of Pradhan of village Thailiya, Pargana Phakharpur, Tahsil Mahsi, district Bahraich. Respondent Nos. 3 to 7 were also candidates for aforesaid post and in the said election. The election was held on 16.4.1995, and votes were counted on 19.4.1995. Petitioner having secured highest number of votes, i.e., 502 votes as against 402 secured by respondent No. 3, he was, therefore, immediately after counting of votes, declared to have been elected as Pradhan of the village. After declaration of the result, oath was also administered to the petitioner and he started functioning as the Pradhan of the village. Respondent No. 3, challenging the validity of the aforesaid election filed election petition before respondent No. 2. In the election petition, general and vague allegations, on the basis of which the said respondent was alleged to have been defeated, were made. On the receipt of the notice from the respondent No. 2, the petitioner filed his written statement denying the allegations made in the election petition. The respondent No. 2 without framing issues in the case summoned the record including the ballot papers. Thereafter an application dated 19.10.1995 was filed by respondent No. 3 for recounting of votes. Respondent No. 2 on 13.11.1995 directed for recounting of the votes. It has been alleged that neither the copy of the aforesaid application nor of the affidavit filed in support thereof were supplied to the petitioner. The order-sheet does not contain any order to bring the said application on the record. The application, of course, bears an endorsement of 'K.O.', which is undated. According to the petitioner, the said application has been inserted in the record on some subsequent date. It has been alleged that on the same date, i.e., on 13.11.1995 votes were counted and ultimately by another order of the same date, the respondent No. 3 was declared to have been elected as Pradhan of the village, as he is alleged to have secured 400 votes as against 340 votes secured by the petitioner. The petitioner aggrieved by the order dated 13.11.1995 filed a revision before respondent No. 1 on 14.11.1995. The petitioner also applied for grant of interim stay, but his application

was rejected by the respondent No. 1 by order dated 15.11.1995. Against the order rejecting the application filed by the petitioner, petitioner filed Juggt Lal v. District Judge, Bahraich and others, Writ Petition No. 3346 (M/S) of 1995, which was also dismissed by this Court by judgment and order dated 4.12.1995. The petitioner, thereafter, also approached the Apex Court, but the Special Leave Petition filed by the petitioner was rejected on 4.1.1996, aforesaid order of the Hon'ble Supreme Court is quoted below :

'This S.L.P. arises out of the interim order passed by the District Judge entertaining the revision in an Election Petition of the Gram Sabha. The District Judge by his order dated November 15, 1995 passed the interim injunction rejecting the interim application to restrain the operation of the order dated November 13, 1995. Against this order, the petitioner filed a writ petition in the High Court. The High Court declined to interfere with the discretion exercised by the District Judge in an elaborate order running into 13 pages. Ultimately, the High Court has said that it is made clear that any observation made by this Court shall not be read against the revisionist by the District Judge while expressing any opinion on merits. In view of the interim nature of the order passed by the High Court as well as by the District Judge, we are of the considered view that the interest of the petitioner on merits at the time of the final disposal is not in any way jeopardised. All the controversies are set at large. It would be open to the parties to take decision on merits according to law. The S.L.P. is accordingly dismissed. It is stated by the learned counsel for the respondents that the District Judge himself has posted the case on 15.1.1996. We hope that it would be disposed of on that date.'

3. After dismissal of Special Leave Petition by the Apex Court, the revision filed by the petitioner was heard and was ultimately dismissed on 23.1.1996 by the respondent No. 1. The petitioner thereafter filed the present petition challenging the validity of the orders dated 23.1.1996 and 13.11.1995 mainly on the ground that the respondent No. 2 exceeded his jurisdiction in directing for recounting of votes on the basis of vague and general allegations made in the election petition and the application filed by the respondent No. 3 that too without asking the respondent No. 3 to make out the case for recounting of votes. It has also been

asserted that neither the copy of the application dated 19.10.1995 was supplied to the petitioner nor he was afforded an opportunity to file objection against the said application and the said application was allowed wholly arbitrarily. The orders passed by the authorities below are stated to be in violation and contrary to law settled by the Apex Court of the country.

4. On behalf of contesting respondents, a counter-affidavit has been filed denying the allegations made in the writ petition. It has been asserted that respondent No. 2 had the jurisdiction to order to recount the votes and under the facts and circumstances of the present case, the orders to recount votes was rightly passed. It has also been asserted that the copy of the application dated 19.10.1995 was supplied to the petitioner before the same was filed before respondent No. 2 and that the orders passed by the authorities below were quite valid and legal.

5. I have heard learned counsel for the parties and also perused the record of the case.

6. Learned counsel appearing for the petitioner vehemently urged that the respondent No. 2 on the basis of general and vague allegations made in the election petition and application filed by respondent No. 3 had no jurisdiction to pass order for recounting of votes. It has been urged that parties should have been afforded an opportunity to substantiate their cases by producing relevant evidence, before passing the order for recounting of votes, the respondent No. 2 had no jurisdiction to recount the votes and to declare respondent No. 3 as elected Pradhan of the village on the basis of recounting of votes done by him.

7. On the other hand, learned counsel appearing for the contesting respondents supported the validity of the orders passed by the authorities below. It has also been urged that the claim of the petitioner to continue as Pradhan of the village having been rejected upto the stage of Supreme Court, therefore, the present petition is liable to be dismissed. It was also urged that respondent No. 3 having secured, according to the recounting done by the respondent No. 2 more votes than the petitioner. He was, therefore, rightly declared as the Pradhan of the village.

8. In the present case, it will have to be determined as to whether under the facts and circumstances of the case, the respondent No. 2 had the jurisdiction to pass an order to recount the votes. The effect of the orders passed by this Court and the Apex Court will also have to be seen.

9. Election petition was filed by the respondent No. 3 under sub-section (1) of Section 12C of U. P. Panchayat Raj Act, 1947, for short the Act, which is reproduced below :

'12C. Application for questioning the elections.--(1) The election of a person as Pradhan of a Gaon Sabha or as member of a Gaon 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-

(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.'

Sub-section (4) of Section 12C reads as under :

'(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, for such powers and authority as may be prescribed.'

10. Word 'Prescribed' has been defined under clause (p) of Section 2 of the Act as under :

'Section 2 (p) : 'Prescribed' means prescribed by this Act or Rules made thereunder.'

11. Rule 24 of the Rules framed under the Act, provides for the form and presentation of Election Petition, which is quoted below ;

'Form and presentation of application.--(1) An application under subsection (1) of Section 12C of the Act shall be presented before the Sub-Divisional Officer within whose jurisdiction the Sabha concerned lies within ninety days after the day on which the result of the election questioned is announced under the provisions of Chapter ID or IE as the case may be and shall specify the ground or grounds on which the selection of respondents is questioned and contain a summary of the circumstances alleged to justify the election being questioned on such grounds :

Provided that no such application shall be entertained unless it is accompanied by a treasury challan to show that the amount of Rs. 5 has been deposited in the Personal Ledger Account of the Sabha concerned as security.

(2) The person whose election is questioned and where the petition claims that the petitioner or any other candidates shall be declared elected in the room and place of such person, every unsuccessful candidate shall be made a respondent to the application.

(3) Every respondent may give evidence to prove that any person in respect of whom a claim is made that such person be declared elected, should not be declared so elected on the same ground on grounds on which his election could have been questioned if he had been elected.'

Rule 25 of the Rules makes it obligatory upon the S.D.O. to try and decide the election petition as a suit under Civil Procedure Code.

12. The question as to whether the Election Tribunal has got the jurisdiction to order for inspection and recounting of votes has been engaging attention of the

Apex Court as well as of this Court. In several cases, the Apex Court has laid down the conditions under which Election Tribunal could direct for inspection and recounting of votes. Said question also came to be considered before a Full Bench of this Court in the case of Rom Adhar Singh v. District Judge, Ghosipur, 1985 UPLBEC 317. The Full Bench after taking into consideration various decisions of the Supreme Court and of this Court was pleased to rule as under :

'Applying the principle with regard to inspection of ballot paper enunciated by the Supreme Court in cases arising under the Representation of People Act to an election petition dealt with under the provisions of the U. P. Panchayat Raj Act, there is no escape from the conclusion that before an authority hearing the election under the said Act can be permitted to look into or to direct inspection of the ballot papers, following two conditions must co-exist:

(1) That the petition for setting aside an election contains the grounds on which the election on the respondent is being questioned as also summary of the circumstances alleged to justify the election being questioned on such ground ; and

(2) The authority is prima facie satisfied on the basis of the materials produced before it that there is ground for believing the existence of such ground and that making of such an inspection is imperatively necessary for deciding the dispute for doing complete justice between the parties.

It, therefore, follows that in the absence of any specification with regard to the ground on which the election of the respondent is being questioned together with summary of the circumstances alleged to justify the election being questioned on such ground, it is not open to the authority dealing with an application under Section 12C of the U. P. Panchayat Raj Act, either to look into or direct inspection of ballot papers merely on the ground that it feels that it would be in the interest of justice to look into or permit inspection of the ballot papers. In the contest such satisfaction has necessarily to be based on specific averments made in and the materials indicated in the election petition, which could prima facie satisfy the authority about the existence of the ground of which the election is sought to be questioned.'

13. In the present case, it is evident from the election petition, a copy of which is contained in Annexure-2 to the writ petition that only general and vague allegations were made by the respondent No. 3 to the effect that the officers conducting the election have colluded with the petitioner. They have driven away the voters of respondent No. 3, farzi votes were polled, votes were wrongly counted, invalid votes were counted in favour of the petitioner and that the votes of respondent No. 3 were also counted in favour of the petitioner. Similar vague and general allegations were reiterated in the application dated 19.10.1995. There is no documentary evidence on the record to show that the notice of application dated 19.10.1995 was ever given to the petitioner or that he was afforded an opportunity to file an objection against the said application. Under the similar circumstances as of the present case, the Apex Court had the occasion to consider the validity of the order of recounting passed by the Election Tribunal in the case of P.K.K. Shamusuddeen v. K.A.M. MappillaiMohindeen and others, 1989 (1) SCC 526. In the said case, election petition was filed under Section 178 of Tamil Nadu Panchayat Raj Act which is analogous to Section 12C of the Act, challenging the validity of the election of respondent No. 1 K. A. M. Mappillai Mohindeen. Petitioner P.K.K. Shamsudeen filed his written statement. Thereafter evidence of the parties was recorded in the present case no evidence was at all recorded). The Election Tribunal accepted the plea of recounting of votes and votes were recounted, in which Shamsuddeen was alleged to have secured 568 votes and Mappillai Mohindeen secured only 528 votes. The Election Tribunal, therefore, declared Shamsuddeen as elected. Mohindeen filed revision challenging the validity of the order of Election Tribunal and revision filed by Mohindeen was ultimately allowed by the High Court holding that recounting of votes was illegally allowed by the Election Tribunal and that secrecy of ballot is sacrosanct unless a prima facie case is made out it cannot be broken. Matter was, thereafter, taken to the Apex Court and the Apex Court after taking into consideration its earlier decisions in cases of Sri Ram Sewak Yadav v. Hussain Kamil Kidwai, AIR 1964 SC 1249 and R. Narayanan v. S. Semmalai, 1980 (2) SCC, was pleased to rule as under:

'Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hindsight and by the

result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made. The reason for this salutary rule is that the preservation of the secrecy of the ballot is a sacrosanct principle which cannot be lightly or hastily broken unless there is prima facie genuine need for it. The right of a defeated candidate to assail the validity of an election result and seek recounting of votes has to be subject to the basic principle that the secrecy of the ballot is sacrosanct in a democracy and hence unless the affected candidate is able to allege and substantiate in acceptable measure by means of evidence that a prima facie case of a high degree of probability existed for the recount of votes being ordered by the Election Tribunal in the interest of justice, a Tribunal or Court should not order the recount of votes.'

'Viewed in the light of these well enunciated principles, we find that the petitioner has neither made such averments in the petition nor adduced evidence of such a compulsive nature as could have made the Tribunal reach a prima facie satisfaction that there was adequate justification for the secrecy of ballot being breached in the petitioner's case. Factors urged before us by Mr. Padamanabhan such as that respondent No. 1 had accepted the correctness of the recount, and that he had conceded his defeat and wanted a re-election to be held cannot constitute justifying materials in law for the initial order of recount of votes made by the Tribunal.'

'Mr. Padamanabhan also contended that the purpose and object of the election law is to ensure that only that person should represent the constituency who is chosen by the majority of the electors and that is the essence of democratic process, and this position has been observed by a Bench of this Court in their order of reference of the case of N. Gopal Reddy v. Bonala Krishnamurthy, and hence it would be a travesty of justice and opposed to all democratic canons to allow respondent No. 1 to continue to hold the post of the President of the Panchayat when the recount disclosed that he had secured 28 votes less than the petitioner. We are unable to sustain this contention because as we have stated earlier an order of recount of votes must stand or fall on the nature of the averments made and the evidence adduced before the order of recount is made

and not from the results emanating from the recount of votes.'

14. Thus, in view of the aforesaid decisions, in the present case where there were only general and vague allegations made by the respondent No. 3 in his election petition as well as in the application for recounting of votes unsupported by any evidence, oral or documentary, there was no justification for the Election Tribunal respondent No. 2 to direct recounting of votes. The order passed by respondent No. 2 was wholly illegal and without jurisdiction. The respondent No. 1 has also committed error, which is apparent on the face of the record in affirming the order passed by the respondent No. 2. So far as the effect of the orders passed by this Court in Writ Petition No. 2346 (M/S) of 1995 is concerned, no doubt, this Court in the judgment made same observation, on the merits of the case which go against the petitioner, but as the aforesaid petition arose out of interlocutory order, it was rightly observed that, 'however, it is made clear that any observation made by this Court shall not be read against the revisionist by the District Judge. Bahraich while disposing the revision on merits'.

Therefore, the observations, if any, made by this Court against the petitioner was of no consequence. Similarly, the Apex Court, as it is evident from its order dated 4.1.1996 quoted above that the District Judge was at liberty to decide the case in accordance with law ignoring the observations made by High Court, therefore, the submissions made by the learned counsel for the petitioner to the contrary cannot be accepted.

15. The writ petition succeeds and is allowed with costs. Orders dated 13.11.1995 contained in Annexures-7 and 8 to the writ petition and order dated 23.1.1996 (sic) are hereby quashed. The respondents are directed not to interfere in the functioning of the petitioner as Pradhan of village Thailiya Development Block Mehast, Tehsil Mehasi, District Bahraich.

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