

**W.P.NO.1567/2010****31.07/2013**

Shri Abhishek Arjaria, learned counsel for the petitioner.

Shri S.S.Bisen, learned Government Advocate for the respondents No.1 and 3.

Shri P.Dubey, learned counsel for respondent No.2.

Present petition is directed against non-decision on an application under Rules 63, 77 and 80 of the M.P.Panchayat Nirvachan Niyam, 1995.

Election for member of ward No.12 of Zila Panchayat, Satna on 21.01.2010. Petitioner contested the election counting whereof was also scheduled for 21.01.2010.

Case of the petitioner is that the procedure as is required to be followed as per Rules 63 and 77 of 1995 Rules were not adhered to and though a protest vide representation was lodged with the Returning officer. No decision was taken under Rule 80 of the Rules 1995.

Aggrieved whereof and without waiting for the final outcome which was to be on 06.02.2010,

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petitioner filed this petition on 04.02.2010. That during the pendency of the petition results were declared on 06.02.2010 whereby the respondent No.16 was declared elected. The petitioner instead of filing an election petition under Section 122 of the M.P. Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 had pursued this petition seeking direction for recounting of votes.

Rule 63 and 77 of 1995 Rules on the basis whereof the petitioner had lodged the protest and seeks recounting provides for:

**“63.** Spoiled and returned ballot papers and ballot papers found out side ballot boxes.(1) A voter who has inadvertently dealt with his ballot paper in such manner that it cannot be conveniently used as a ballot paper may, on returning it to the Presiding Officer and on satisfying him of the inadvertence be given another ballot paper and the ballot paper so returned and the Counterfoil of such ballot paper shall be marked “spoiled cancelled” by the Presiding Officer.

(2)If a voter after obtaining a ballot paper decides not to use it he shall return it to the Presiding Officer and the ballot paper so returned shall be

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marked as “returned cancelled” by the Presiding Officer.

(3) All ballot papers concerning election in different wards and constituencies cancelled under sub rule (1) or sub rule (2) shall be kept in separate packets.

(4) If any ballot paper, which has been issued to the voter not been inserted by him into any ballot box, but is found anywhere in or near the Polling Station whether within or outside the voting compartment it shall be deemed to have been returned to the Presiding Officer under sub-rule (2) and dealt with accordingly.

**77.** Counting of votes. (1) Every ballot paper which is not rejected under rule 76 shall be counted.

Provided that no cover containing tender ballot papers shall be opened and no such ballot paper shall be counted.

(2) After the counting of votes in respect of a polling station has been completed, the Returning Officer or such other officer authorized by him shall make the entries in result sheet in Form 16 for Panchas and in part one of the result sheet in Form 17, 18 and 19 for sarpanch, members of Janpad Panchayat and Zila Panchayat respectively and announce the total number of votes polled by each candidate.

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(3) All valid ballot papers shall be bundled together and kept along with the bundle of rejected ballot papers in a separate packet which shall be sealed and on which be recorded the following particulars namely:-

(a) the number of the ward and name of Gram Panchayat in case of election of Panch the name of Gram Panchayat in case of election of Sarpanch the number of constituency of Janpad Panchayat or Zila Panchayat as the case may be in case of election of member of Janpad Panchayat or Zila Panchayat;

(b) the number and name of the polling station where the ballot papers have been used and

(c) the date of counting.

(4) The Returning Officer or the Officer authorized by him shall furnish to every candidate or his counting agent present at the close of the counting a true copy of the relevant result sheet prepared under sub rule (2) after obtaining a receipt there for and shall also attest it as a true copy.”

Apparently, Rule 63 falls under Chapter IX; Poll and voting for election. There has to be a cogent material evidence on record to establish the fact that

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printed and returned ballot papers has been counted.

In the case at hand as evident from the representation preferred by the petitioner that on the information by his polling agent the petitioner could gather that the printed and returned ballot papers and blank ballot papers has been counted. Hearsay evidence in absence of direct evidence cannot be considered as proof of allegation.

Rule 77 falls under Chapter-X; counting of votes to prove that the counting of votes has not been in accordance with the provisions a direct evidence is required. There is no such material on record to bring home the charge that the counting was de hors, the procedure prescribed under Rule 77. For charge under Rule 77 to be established, it is required to be proved by material evidence that rejected ballot paper were counted and that there is non-entry in Form 19 and non-announcement of total number of votes polled by each members, that, all valid ballot papers were not bundled and kept separately from rejected ballot paper, that, the copy of result sheet has not been

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furnished. In absence of direct evidence to prove these happenings presumption cannot be drawn that the procedure under Rule 77 is not adhered, merely because the petitioner alleges vide his representation. Every losing candidate harbour a grievance that the procedure has not been followed but the same will not lead for a direction for recounting in absence of direct evidence on record.

Recounting of votes has its own consequences and can be ordered only when direct evidence is available in respect of allegation of malafides and arbitrariness.

Trite it is that the election tribunals or the specified officer as in the case under Adhinyam, 1993, must be slow in directing recounting of votes, the reasons being well delineated in catena of cases decided by the Supreme Court; to note few- Chandrika Prasad Yadav v. State of Bihar and others (2004) 6 SCC 331, M. Chinnasamy v. K.C. Palanisamy and others (2004) 6 SCC 341, Chadat Singh v. Bahadur Ram and

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others (2004) 6 SCC 359, Bhabhi v. Sheo Govind and others (AIR 1957 SC 2117), Ku. Shradha Devi v. Krishna Chandra Pant and others (AIR 1982 SC 1569), A. Younus Kanju v. R.S. Unni and others (AIR 1984 SC 960), P.K.K. Shamsudeen v. K.A.M. Mappillai Mohindeen and others (AIR 1989 SC 640), Satyanarain Dudhani v. Aduay Kumar Singh (AIR 1993 SC 367), Bahoran Lal v. Ganesh Prasad and others (AIR 1999 MP 7), Vadivelu v. Sundaram and others (2008) 8 SCC 355, Jitendra Bahadur Singh v. Shri Krishna Behari (1969) 2 SCC 433, D.P. Sharma v. Commissioner and Returning Officer, 1984 Supp. SCC 157, Ram Sewak Yadav v Hussain Kamil Kidwai (AIR 1964 SC 1249), S. Raghbir Singh Gill v. S. Rurcharan Singh Tohra (1980) Supp. SCC 53, R. Narayan v. S. Semmalai (1980) 2 SCC 537), M.R. Gopalkrishnan v. Tachady Prabhakaran (1995) Supp (2) SCC 101) and Chandrika Yadav v. State of Bihar (2004) 6 SCC 331 = AIR 2004 SC 2036).

A Division Bench of this Court in Vidyawati Lilhare v. Sub Divisional Officer-cum-Prescribed Officer, Lanji Balaghat and others : 2010 (4) MPHT 92 wherein their

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Lordships were please to hold-

“20- ..... It is alleged that there was power cut during the recounting of votes and bundle presented after restoring the power supply were disarranged and he suspected that ballot papers were tampered. The Tribunal as is evincible recorded that the election petitioner made an application seeking recount but the recounting was not done. Because of the said facet, the has recorded a conclusion that the election petitioner is entitled to clear his doubt and, therefore, direction for recounting has to be given. In our considered view the appreciation of the evidence by the Prescribed Authority does not remotely meet the requisite parameters of recounting. The whole thing has been done in a most routine and most perfunctory manner. Secrecy of votes should not tinkered in a lighter manner. Secrecy of votes has its own sacrosanctity. The evidence brought on record shows vagueness of allegation and does not specifically show how there is irregularity in counting of invalid votes and rejection of valid votes. The witness has stated that the ballot papers were tampered. The Prescribed Authority feels that the demand for recount is to be made to clear the doubt of the election petitioner. Suspicion is not a ground and clearance of doubt is not a reason. In out



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considered opinion, this is not a fit case where recount should have been directed to be done. ”

In light of above analysis and in absence of any material evidence on record which could have materially affected the results, no relief can be granted to the petitioner.

In the result, petition fails and is dismissed. No costs.

**(SANJAY YADAV)**  
**JUDGE**

*anand*