

IN THE HIGH COURT OF HIMACHAL PRADESH SHIMLA

CWP No. 656 of 2021

Date of decision: 24.03.2021

Rekha Thakur

...Petitioner

Versus

State of H.P. & others

...Respondents

Coram:

The Hon'ble Mr. Justice L. Narayana Swamy, Chief Justice

The Hon'ble Ms. Justice Jyotsna Rewal Dua, Judge.

Whether approved for reporting?¹

For the petitioner : Mr. Vinay Sharma, Advocate.

For the respondents: Mr. Ashok Sharma, Advocate General
with Mr. Adarsh Sharma & Ms. Ritta
Goswami, Additional Advocates General,
for respondents No. 1, 3 & 4.

Mr. Ajeet Singh Saklani, Advocate, for
respondent No. 2.

L. Narayana Swamy, Chief Justice (Oral)

Petitioner submits that she had contested election for the post of Member, Zila Prishad, Ward No. 16, Sanghnei, District Una, H.P. The result of the said election was declared on 23.01.2021 and one Sangeeta Devi was declared winner for the said post. She further submits that during the counting process, the proper procedure was ignored by the polling party just to give undue advantage to the counter part of the petitioner, i.e. aforesaid

¹ *Whether the reporters of Local Papers may be allowed to see the judgment?*

Sangeeta Devi. She also submits that at about 12.45 a.m. on the same day, she had made written request to respondents No. 3 & 4 for recounting of the votes vide Annexures P-5 & P-4, respectively, but the respondents did not take any steps for recounting the votes. Hence, the petitioner has preferred this writ petition seeking a writ of mandamus directing the respondent-Authorities to recount the polled votes for the post of Member of Zila Prishad, Ward No. 16, Sanghnei, District Una, H.P.

2. Learned Counsel for the petitioner submits that result of the election for the post of Member, Zila Prishad, Ward No. 16, Sanghnei, District Una, H.P. was declared on 23.01.2021. He draws our attention to Section 79 of the H.P. Panchayati Raj (Election) Rules, 1994, which provides for recounting of votes, if a request for the same is made within a reasonable time. He further submits that in the present case since the petitioner had made request for recounting of votes within a reasonable time, the District Election Officer (Panchayat) or Returning Officer, as the case may be, or any other Officer authorized, is duty bound to recount all or any of the ballot papers already counted. In the present case, respondents No. 3 & 4, i.e. Deputy Commissioner and Returning Officer, failed to discharge their duties, as a result of

which, the petitioner was deprived of her right of being elected to the post of the Member of the Zila Parishad.

3. On the other hand, learned Advocate General representing respondents No.1, 3 & 4, submits that the writ petition is not maintainable as an election petition was required to be filed instead of the writ petition. He further submits that if a prayer is made with regard to election, the same is required to be made by way of filing an election petition before the appropriate Authority under the appropriate provisions of law. He draws our attention to Sections 162 & 175, Chapter-XI of the H.P. Panchayati Raj Act, 1994 (for short 'the Act') which provides that if a person is not satisfied with the result of the election and intends to pray for recounting of votes, an election petition is required to be presented before the appropriate Authority under the aforesaid provisions of law. He also draws our attention to Section 175(iii) of the Act, which provides that for non-compliance with the provisions of the Act or any Rule made under the Act, the authorized Officer shall declare the election of the elected person to be void. He, therefore, prays that the writ petition be dismissed.

4. Learned Counsel representing respondent No. 2 submits that the writ petition be dismissed as the same is not

maintainable. He further submits that when a Rule or a set of Rules specifically permits or enables a person to approach an appropriate Authority to redress his or her grievances, he or she should avail that remedy under the appropriate provisions of law and it is not open for him or her to approach a Court of law. He further submits that when a particular work is required to be done in a particular manner, the same should be done in that particular manner only and not by any other method or way.

5. We have heard learned Counsel for the parties and perused the entire file carefully.

6. In the present writ petition, the petitioner has made a prayer to issue a writ of mandamus directing the respondent Authorities to recount the polled votes for the post of Member, Zila Prishad, Ward No. 16, Sanghnei, District Una, H.P. Except this, the petitioner has not made any other prayer.

7. From the perusal of Sections 162 & 175 of the Act, it is evident that if a prayer is made with regard to election, the same is required to be made by way of filing an election petition before the appropriate Authority under the appropriate provisions of law. Thus, we are satisfied with the submission of the learned Advocate General that the petitioner should have approached the appropriate

Authority by filing an election petition instead of approaching this Court, for the redressal of her grievances.

8. Even if we accept the prayer of the petitioner made in the writ petition, no decision can be made against a person, who is not a party to the writ petition. If a person is affected by an order of the Court, he should have been made party to the lis. The nature of the prayer made in the writ petition, requires consideration by the Statutory Authorities. The same also requires recording of evidence and marking of documents etc., which is not permissible before this Court.

9. For the aforesaid reasons, the writ petition deserves to be dismissed.

10. From the perusal of Annexures P-4 & P-5, it appears that the petitioner has not mentioned specific grounds which could influence the Authorities concerned to recount votes. Thus, it is made clear that if a representation for recounting the votes is made by the petitioner to the respondent-Authorities concerned, within a reasonable time, the specific grounds for recounting votes alongwith supporting documents should be mentioned therein. In the event of the petitioner approaching the respondents-Authorities

concerned, the respondents are directed to consider the case of the petitioner and pass appropriate orders, in accordance with law.

11. Accordingly, the writ petition is dismissed alongwith pending application(s), if any.

(L. Narayana Swamy)
Chief Justice.

March 24, 2021
(hemlata)

(Jyotsna Rewal Dua)
Judge.

High Court of H.P.