



**IN THE HIGH COURT OF KARNATAKA AT BENGALURU**

**DATED THIS THE 26<sup>TH</sup> DAY OF MARCH, 2026**

**PRESENT**

**THE HON'BLE MR. JUSTICE D K SINGH**

**AND**

**THE HON'BLE MR. JUSTICE T.M.NADAF**

**WRIT APPEAL NO. 1013 OF 2024 (LB-ELE)**

**BETWEEN:**

1. SMT. SUSHEELA,  
W/O B C KRISHNAMURTHY,  
AGED ABOUT 29 YEARS,  
R/AT BHAKTHARAHALLI VILLAGE,  
SINDIGERE POST, LAKYA HOBLI,  
CHIKKAMAGALURU TALUK-577168

...APPELLANT

(BY SRI. SACHIN B S., ADVOCATE)

**AND:**

1. THE RETURNING OFFICER  
BELAVADI GRAMA PANCHAYATHI,  
ELECTION OFFICER  
ATTACHED TO TAHSILDAR OFFICER,  
CHIKKAMAGALURU-577168
2. THE TALUK ELECTION OFFICER  
TAHSILDAR, CHIKKAMAGALURU TALUK,  
CHIKKAMAGALURU -577168
3. SMT RENUKA  
W/O LAKKA BOVI,  
AGED ABOUT 38 YEARS,  
R/AT BHAKTHARAHALLI VILLAGE,  
SINDIGERE POST, LAKYA HOBLI,  
CHIKKAMAGALURU TALUK-577168





4. SHASHI @ DHANKUMAR  
S/O BASAVARAJU,  
AGED ABOUT 60 YEARS,  
R/AT BHAKTHARAHALLI VILLAGE,  
SINDIGERE POST, LAKYA HOBLI,  
CHIKKAMAGALURU TALUK-577168

...RESPONDENTS

(BY SRI. M.N.SUDEV HEGDE, AGA R1 AND R2;  
R3 & R4 SERVED AND UNREPRESENTED)

THIS WRIT APPEAL IS FILED U/S 4 OF THE KARNATAKA HIGH COURT ACT PRAYING TO SET ASIDE THE IMPUGNED ORDER, DATED 10.04.2024 PASSED BY LEARNED SINGLE JUDGE IN WRIT PETITION No. 2083 OF 2023 AND CONSEQUENTLY ALLOW THE WRIT PETITION FILED BY THE APPELLANTS IN WP No. 2083 OF 2023 AS PRAYED FOR, IN THE INTEREST OF JUSTICE AND EQUITY.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH  
and  
HON'BLE MR. JUSTICE T.M.NADAF

**ORAL JUDGMENT**

(PER: HON'BLE MR. JUSTICE D K SINGH)

The present intra Court appeal has been filed impugning the judgment and order dated 10.04.2024 passed in W.P.No.2083/2023 by the learned Single Judge instituted by the appellant/petitioner against the order dated 14.11.2022 in E.P.No.7/2021 on the file of the Principal Senior Civil Judge and CJM, Chikkamagaluru.



2. Despite the service of notice, the third respondent returned candidate, has not chosen to appear in the appeal and therefore, she has been set *ex parte*.

3. The parties are referred to as per their ranking before the writ Court, for the sake of convenience.

4. The petitioner had contested the election for the post of Member of Belavadi Grama Panchayath of Belavadi which was held on 29.03.2021. The third respondent was declared elected. The petitioner filed an election petition under Section 15 of the Karnataka Gram Swaraj and Panchayat Raj Act, 1993 (hereinafter referred to as 'the Panchayat Raj Act'). By the order dated 14.11.2022, the election petition filed by the petitioner in E.P.No.7/2021 was rejected.

5. The Returning Officer declared the third respondent elected as, in the counting of votes she had secured 298 votes as against the petitioner's 297 votes. During the course of hearing of the election petition, the Election Tribunal had directed for recounting of the votes. In pursuance of the direction issued by the Election Tribunal, recounting took place



and the result was reversed inasmuch as in the recounting, the petitioner was found to have secured 298 votes as against 297 votes of the third respondent.

6. Despite the order of recounting in the election proceedings, the Election Tribunal, vide order dated 14.11.2022, held that as the petitioner did not make an application in writing for recounting before the Returning Officer has completed the process and signed the result sheet in Form-31, the petitioner was not entitled to seek recounting in view of the provisions of Rule 71 of the Karnataka Panchayat Raj (Conduct of Election) Rules, 1993 (hereinafter referred to as 'the Panchayat Raj Rules'). The said order of the Election Tribunal came to be challenged by the petitioner in W.P.No.2083/2022.

7. The learned Single Judge vide impugned judgment and order, has held that in view of the proviso to sub-rule (6) of Rule 71 of the Panchayat Raj Rules, as the application was not filed before the Returning Officer has completed the process and signed the result sheet, the petitioner was not entitled to seek recounting of the votes. Thus, the learned Single Judge



has confirmed the order dated 14.11.2022 passed by the Election Tribunal and rejected the writ petition.

8. Rule 71 of the Panchayat Raj Rules which provides for 'recount of votes' is extracted hereunder.

"71. **Recount of votes:**

(1) After the completion of the counting, the Returning Officer shall record in the result sheet in Form 31 the total number of votes polled by each candidate and announce the same.

(2) After such announcement has been made, a candidate or in his absence his Election Agent or any of his Counting Agents may apply in writing to the Returning Officer to recount the votes either wholly or in part stating the grounds on which he demands such recount.

(3) On such an application being made the Returning Officer shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.

(4) Every decision of the Returning Officer under sub-rule (3) shall be in writing and contain the reasons therefor.

(5) If the Returning Officer decides under sub-rule (3) to allow a recount of the votes either wholly or in part he shall,

(a) do the recounting in accordance with the rules applicable for counting;



*(b) amend the result sheet in Form 31 to the extent necessary after such recount; and*

*(c) announce the amendments so made by him*

*(6) After the total number of votes polled by each candidate has been announced under sub-rule (1) or sub-rule (5), the Returning Officer shall complete and sign the result sheet in Form 31 and no application for recount shall be entertained thereafter:*

*Provided that no step under this sub-rule shall be taken on the completion of counting until the candidate and Election Agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2)."*

9. The proviso to sub-rule (6) of Rule 71 is in respect of the power of the Returning Officer and not of the Election Tribunal. After the result is announced and the result sheet is signed by the Returning Officer, the Returning Officer becomes the *functus officio* and he cannot entertain an application for recounting. However, this provision does not bar the Election Tribunal to order for recounting, if the Election Tribunal is of the opinion that the circumstances would warrant an order for recount.

10. In the present case, it is not the Returning Officer who has ordered for the recounting of the votes, but it is the



Election Tribunal who ordered for the recounting of the votes and on recounting, it was found that the petitioner secured 298 votes whereas, the returned candidate i.e., the third respondent secured 297 votes. The Election Tribunal as well as the learned Single Judge have missed this distinction of the exercise of the power and the scope of provision to sub-rule (6) of Rule 71 of the Panchayat Raj Rules.

11. The Supreme Court in **SOHANLAL vs, BABU GANDHI AND OTHERS [(2003) 1 SCC 108]** while dealing with the similar provision almost *pari materia* to the Panchayat Raj Rules, has observed that if the defeated candidate did not ask for recounting of the votes after the election result is signed by the Returning Officer, the only remedy for such a prayer would be the election petition. Paragraphs 9 to 13 of the said judgment are extracted hereunder:

**"9.** Rule 80 reads as follows:

*"80. Recount of votes.—(1) After an announcement has been made by the Returning Officer or such other officer authorised by him, of the total number of votes polled by each candidate under sub-rule (2) of Rule 77, a candidate or, in his absence, his election agent or*



*his counting agent may apply in writing to the Returning Officer or such officer authorised by him, for a recount of all or any of the votes already counted, stating the grounds on which he demands such recount.*

*(2) On such an application being made, the Returning Officer or such other officer authorised by him shall decide the matter and may allow the application in whole or in part or may reject it in toto if it appears to him to be frivolous or unreasonable.*

*(3) Every decision of the Returning Officer or such other officer authorised by him, under sub-rule (2) shall be in writing and contain the reasons therefor.*

*(4) If the Returning Officer or such other officer authorised by him, decides under sub-rule (2) to allow an application either in whole or in part, he shall—*

*(a) count the ballot papers again in accordance with his decision;*

*(b) amend the result sheet to the extent necessary after such recount; and*

*(c) announce the amendment so made by him.*

*(5) After the total number of votes polled by each candidate has been announced under sub-rule (2) of Rule 77 or sub-rule (4) the Returning Officer or such other officer authorised by him*



*shall complete and sign the result sheet and no application for a recount shall be entertained thereafter:*

*Provided that no step under this sub-rule shall be taken on the completion of the counting until the candidates and election agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (1).*

*6. The counted ballot papers shall be bundled and kept in the manner mentioned in sub-rule (3) of Rule 77.*

*7. Result sheets in Forms 16, 17, 18 and 19 for Panch, Sarpanch, member of Janpad Panchayat and member of Zila Panchayat respectively, prepared by such other officers as are authorised by the Returning Officer, shall be submitted by them, in separate envelopes to the Returning Officer for compilation and tabulation of votes polled by each candidate.*

*8. The Returning Officer on receipt of result sheets under sub-rule (7) shall enter or cause to be entered the total number of votes polled by each candidate contesting for a seat of Sarpanch, member of Janpad Panchayat or member of Zila Panchayat at each polling station of the constituency concerned in subsequent part or parts of Forms 17, 18 and 19 respectively and complete and sign the result sheet."*



**10.** *Thus under sub-rule (5) once the result sheet is completed and signed, no application for re-count can be entertained.*

**11.** *Rule 81 also provides that after the counting of the votes, the Returning Officer shall prepare a return and declare the candidate who has the largest number of votes to have been elected. Under Rule 83, a certificate is to be granted to the returned candidate who has been declared elected. Under Rule 84, after the certificate has been granted, the election officer or the Returning Officer can only correct clerical or arithmetical mistakes.*

**12.** *Thus after declaration of results, the Returning Officer has no power either to direct re-count or to change the results of the election. Once the result is declared, the only remedy of an aggrieved party is an election petition under Section 122.*

**13.** *In this case, as stated above, the appellant had been orally told that he had won. He only came to know that Respondent 1 had been declared elected after the result was declared. At this stage, he could not have approached the Returning Officer for re-count. The only remedy, therefore, available to the appellant was to file an election petition."*

12. Even otherwise, on the plain reading of the proviso to sub-rule (6) of Rule 71, it can be seen that the Rule is not



for the Election Tribunal, but only for the Returning Officer inasmuch as the Returning Officer becomes *functus officio* to entertain application for recounting after he has signed the result sheet.

13. Therefore, we are of the considered opinion that the view taken by the Election Tribunal and the learned Single Judge are unsustainable. Thus, we set aside the order passed by the Election Tribunal as well as the impugned order passed by the learned Single Judge and direct the Returning Officer to issue the certificate in favour of the petitioner as elected candidate in place of the third respondent.

14. With the aforesaid direction, the writ appeal is **allowed.**

**Sd/-  
(D K SINGH)  
JUDGE**

**Sd/-  
(T.M.NADAF)  
JUDGE**

RKA  
List No.: 2 Sl No.: 5