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SLP(C)No. 5136 OF 2003
ITEM No.202

Court No. 3

SECTION IVA
A/N MATTER

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.5136/2003

(From the judgement and order dated 07/10/2002 in LPA 604/2002
of The HIGH COURT OF M.P AT JABALPUR)

DUKKHU SINGH

Petitioner (s)

VERSUS

RAI SINGH & ORS.

Respondent (s)

(With Appln(s). for deletion of the name of respondent No. 8)
(With prayer for interim relief)(For Final Disposal)

Date : 23/04/2004 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE ASHOK BHAN

For Petitioner (s)
Mr. Prakash Shrivastava,Adv.

For Respondent (s)
Mr. P.D. Sharma,Adv. (NP)

UPON hearing counsel the Court made the following

O R D E R

I.A. No. 3 is dismissed as infructuous.

Leave granted.

The appeal is allowed in terms of the signed order.

Ritu Chawla
(Radha R. Bhatia)

Court Master

(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2655 OF 2004
(Arising out of SLP(C) No. 5136 of 2003)

Dukkhhu Singh

....
Appellant
Versus

Rai Singh & Ors.

....
Respondents

O R D E R

Leave granted.

The Election Petition under section 122 of the M. P. Gram Panchayat Act, 1993 filed before the Sub-Divisional Officer, Baihar was allowed, consequent upon a recount having been directed by a learned Sub-Divisional Officer and result of the recount having gone in favour of the election petitioner i.e. the appellant before us. The successful candidate, who was unseated conse

quent upon the decision of the SDO, filed a petition under Article 226 of the Constitution of India before the High Court. The writ petition was heard and decided by a learned Single Judge who relied on a two Judge Bench decision of this Court in Ram Rati Vs. Saroj Devi & Ors. 1997 (6) SCC 66 and held that inasmuch as an application for recount was not filed before the Returning Officer, a prayer for recount could not have been made much less allowed by the Sub-Divisional Officer hearing the election petition. The learned Single Judge directed that decision of the Sub-Divisional Officer to be quashed; with the result, the election petition filed by the appellant came to be dismissed. The appellant filed an intra-court appeal which also has been dismissed. Feeling aggrieved, this appeal has been filed by special leave.

A three Judge Bench of this Court in Sohan Lal Vs. Babu Gandhi & Ors. 2003 (1) SCC 108 has overruled the two Judge Bench decision of this Court in Ram Rati's case (supra). This Court has held that the court of Sub-Divisional Officer is bound to consider the plea for recount and direct the same depending upon the case in that regard having been made out on the evidence led by the parties. It is not correct to hold that in an election petition, after the declaration of the result, the Court or Tribunal cannot direct recounting of votes unless the parties had first applied in writing for recounting of votes. The power of the Election Tribunal to direct recount of the votes is not dependent on an application for recounting to the Returning Officer having preceded the filing of the election petition.

Inasmuch as the learned Single Judge and the Division Bench of the High Court have rested their decision solely on the Judgment of this Court in Ram Rati's case (supra) which has been overruled, both the decisions by the High Court cannot be sustained.

The appeal is allowed. The judgment of the learned Single Judge as also by the Division Bench of the High Court are set aside and instead the decision dated 13.5.2002 given by the SDO is restored.

.....J.
(R.C. LAHOTI)

.....J.
(ASHOK BHAN)

New Delhi
April 23, 2004