Before J.S. Narang, J

DEVENDER,—*Petitioner*

versus

ELECTION TRIBUNAL-CUM-CIVIL JUDGE (J.D.), BAHADURGARH & OTHERS,—*Respondents*

C.R. NO. 5639 OF 2001

The 25th July, 2003

Haryana Panchayati Raj Act, 1994—S. 176(4)(b)–Haryana Panchayati Raj Rules, 1994—Rls. 66, 69 & 70—Election to Panchayat Samiti—Petitioner declared unsuccessful—After declaration of result petitioner making an application seeking recount of votes—Returning Officer rejecting application only on the ground that everybody had left the counting venue—Rl. 69 provides that an application for recount of votes would be maintainable after announcement of result—After declaration of result but before notifying the same an opportunity is required to be given to the candidates—No opportunity has been granted by the Returning Officer—Trial Court also failing to examine Rl. 69 & wrongly declining prayer of petitioner—Order of Returning Officer rejecting the request for recounting not sustainable—Petition allowed directing the Returning Officer to carry out the exercise of recount of votes.

Held, that the petitioner has categorically claimed that after the declaration of the result, the application had been filed by him for seeking recount. But from the facts averred by both the sides, it is not descernible as to at what time the result was declared. Dehors of that the application had been filed after the declaration of the result,—*vide* which the recount has been asked for on the premises that some irregularities have been committed. Thus, by virtue of Rule 69, the Returning Officer was under obligation to decide this application after giving opportunity to the successful candidate. The plea that every body has left is of no consequence. The principle enunciated is that after declaration of result but before notifying the same, the opportunity as envisaged under Sub Rule 2 has to be given to the candidates. The right has been emphasised in the proviso provided to Rule 69. Admittedly, the appropriate opportunity has not been granted by the Returning Officer This fact has not been examined

nor this provision i.e. the aforestated rule has been discussed or mentioned by the trial Court. Thus, the order of the Returning Officer in rejecting the request for recount made by the petitioner is not sustainable. Thus, in view of the right of recount envisaged under section 176(4)(b) of the Act read with Rule 69 of the Rules is available to the petitioner keeping in view the totality of the facts and the evidence brought on record, I am of the considered view that the election petition deserves to be accepted.

(Para 16)

R.K. Gupta, Advocate, *for the petitioner.*

Kulbir Narwal, Advocate, *for respondent No. 2*

JUDGMENT

J.S. Narang, J

(1) The election of Panchayat Samiti, Bahadurgarh had been notified and was scheduled to be held on 12th March, 2000. The petitioner and respondent Nos. 2 to 7 contested the election from Ward No. 1, Bahadurgarh. The counting was held on 18th March, 2000 at Aggarwal Dharamshala, Bahadurgarh. The detail of the votes polled and that the invalid votes found therefrom and the valid votes is as under :—

Total Votes Polled	:	3570
Votes found invalid	:	73
Valid Votes	:	3497

(2) The petitioner was declared unsuccessful and resultantly he filed an Election Petition under Section 176(4)(b) of the Haryana Panchayati Raj Act, 1994 (hereinafter referred to as "the Act") with a specific prayer of seeking recount of the votes. It has been pleaded by the petitioner that in the first instance, he had been declared elected by one vote. However, lateron, the counting staff in collusion with Chander Singh, son of Mange Ram, respondent No. 2 manipulated the counting affairs and by addition of some invalid votes, the respondent No. 2 was declared elected. In the petition, the only prayer made is that the petition be accepted and by ordering recount of the

votes, the appropriate result be declared and that upon the basis of the pleas taken by the petitioner, respondent No. 2 would have to be unseated and the petitioner would be entitled to be elected. It is the admitted case that the election has not been challenged on any other ground. Upon notice, the respondent No. 2 filed written statement,—*vide* which the alleged averments made by the petitioner have been emphatically denied. The other respondents did not file any written statement meaning thereby, they have conceded to the pleas taken by the petitioner and infact no objection has been raised in writing or orally objecting to the plea of recount.

(3) Upon the pleadings of the parties, the issues have been framed and both the parties led oral as well as documentary evidence. The petitioner examined four witnesses and on the other hand, the contesting respondent examined three witnesses. It has been alleged that the petitioner secured 794 votes, whereas the respondent No. 2 secured 793 votes, as such, he was successful and had won the election accordingly. It is further alleged that subsequently, upon collusion between respondent No. 2 and the officials, the respondent No. 2 stood declared elected by a margin of 28 votes and the votes polled in his favour have been shown as 821 as against 793. It has been averred that the petitioner had appeared before the Returning Officer and that a request in writing had been made for seeking recount of the votes but the said request was declined by the Returning Officer. The applicatioin has been rejected primarily on the ground that it has been filed after the declaration of the result and that in the absence of the affected parties, no such order can be passed. The application for seeking recount of the votes had been received on 18th March, 2000, result sheet has been exhibited as Ex. P-1. The order of rejectioin has been exhibited as Ex. P-2. A letter addressed to the Election Commissioner has been exhibited as Ex. P-3 and the postal receipt for establishing the same having been sent through the postal agency has been exhibited as Ex. P-4. On the other hand, the contesting respondent has produced on record certain documents i.e., Death Certificate of Ramdei, Chandro, Lajo Devi, Murti and Mewa Dévi which have been exhibited as Ex. R-1 to R-5 respectively.

(4) The trial Court dismissed the Election Petition,—*vide* judgment dated 23rd August, 2001. Primarily, the rule, i.e., preservation of secrecy of the Ballot is sacrosanct principle which should not be lightly

or hastily broken unless a *prima facie* genuine case is made out has been relied upon. It has been observed by the tiral Court that the petitioner has not been able to divulge as to how many votes polled in his favour have been declared invalid, but as per the declaration of the result only 73 votes have been declared invalid. It has been admitted that he himself and his agents were present at the time of counting and they were also present at the time when the polling took place at three places. However, they did not affix their signatures upon the result sheet. On the other hand, the contesting respondent appeared as his own witness and has deposed that the counting took place in a lawful and rightful manner and that the allegations levelled by the petitioner are baseless. It has been observed that the only plea taken up by the petitioner is that infact he had been declared elected by one vote and subsequently, respondent No. 2 stood declared elected by a margin of 28 votes and that obviously the manipulations have been carried out after the result had been declared. It has been held that the petitioner has not been able to show as to what kind/type of irregularities or illegalities have been committed by the officials in connivance with respondent No. 2. It has been held that the allegations and the pleas are absolutely vague and upon the basis of such vague pleas the indulgence of recount cannot be granted. It has also been observed that while filing an application before the Returning Officer, no pleas have been taken but simplicitor request has been made for recount, which has been correctly rejected as the same had been filed after the result had been declared. Resultantly, the plea of recount has been declined.

(5) Dissatisfied with the aforestated judgment, the present petition has been filed. Notice of Motion had been issued and on 1st May, 2002, an order had been passed by H.S. Bedi, J which reads as under :—

> "After hearing the learned councel for the parties, it is clear that a *prima facie* case for recounting of votes had been made out by the petitioner. Even on the day of counting, he had made an application before the Returning Officer for recounting of votes but the same had been declined by him on the ground that the result had been declared and the parties to the election had, in the meanwhile,

left the premises. Moreover, it has come in the pleadings in the election petition and the evidence recorded by the Tribunal that allegations of serious irregularities in the course of the election and counting of votes had been made.

In this view of the matter, it would be appropriate that the votes be recounted. The parties are directed to appear before the Election Tribunal, who shall after associating all concerned, recount the votes and submit the result to this Court within two months from today.

Adjourned to 12th September, 2002.

Order Dasti.

(Sd.) . . .,

The 1st May, 2002. (H.S. BEDI)
Judge.

(6) This order was made the subject matter of challenge before the Apex Court. The leave had been granted and the aforestated order has been set aside and the present revision has been directed to be disposed of within three months. The order reads as under :—

"Leave granted.

This appeal is directed against the interim order of the Punjab and Haryana High Court in Civil Revision No. 5639/2001.

The revision itself was filed against an order directing recount. That revision which has been entertained is pending. During the pendency of the revision, the High Court directed for continuance of the recounting. The petitioner has appraoched this Court.

Learned counsel for the petitioner states that the revision itself would be infructuous if during the pendency of the revision the direction for recounting is complied with. We find sufficient force in the same. We set aside the impugned order of the High Court. The appeal is allowed.

The High Court of Punjab and Haryana is requested to dispose of the pending revision early, preferably in three months from today.

(Sd.) . . ., CJI

(Sd.) . . .,

(K.G. BALAKRISHNAN),
Judge.

New Delhi,
The 22nd November, 2002.

(Sd.) . . .,
(S.B. SINHA),
Judge."

(7) Learned counsel for the petitioner has argued that this Court was convinced that the recount of the votes should have been ordered and infact, such order had been passed, as noticed above, but the apex Court has set aside the order on the premises that if in pursuant to the aforesaid order of this Court, the recounting is complied with, the revision would be rendered infructuous. The thrust of the argument has been that by ordering recount by an interim order, the election petition would be deemed to have been allowed as this is the only prayer which has been made by way of the Election Petition, which has been primarily filed under Section 176(4)(b) of the Act. Thus, the petition should be disposed of finally by accepting the prayer of the petitioner.

(8) It has been further argued that the perusal of the order passed by the Returning Officer shows that the same has not been passed honestly and deligently. It is further argued that the perusal of the exhibits shows that there are two orders which have been passed by the Returning Officer, it is not understandable that when the application was being disposed of at 6.30 P.M., where was the necessity to pass the second order. This act on the part of the Rturning Officer creates the doubt in the authenticity of the order and conversely corroborates the plea of the petitioner. It is further argued that the plea set up by the petitioner in the Election Petition is sufficient to order the recount as the perusal of the provision, i.e., Section 176(4(a) and4)(b) would show that in the first situation, i.e., under Clause (a),

the Tribunal is obligated to hold an enquiry, whereas, under Clause (b), no such word has been used, meaning thereby if on the face of it upon the pleadings of the parties, recount is made out, the petition should be allowed and the recount should be ordered. It shall be apposite to notice both the aforestated provisions which read as under :—

"176. Determination of validity of election enquiry by judge and procedure.

(1) ** ** ** ** **

(2) ** ** ** ** **

(3) ** ** ** ** **

(4) (a) If on the holding such inquiry the Civil Court finds that a candidate has, for the purpose of election committed a corrupt practice within the meaning of sub-section (5), he shall set aside the election and declare the candidate disqualified for the purpose of election and fresh election may be held.

(b) If, in any case to which clause (a) does not apply, the validity of an election is in dispute between two or more candidates, the Court shall after a scrutiny and computation of the votes recorded in favour of each candidate, declare the candidate who is found to have the largest number of valid votes in his favour, to have been duly elected.

Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in the favour of such candidate or candidates, as the case may be, elected by lot drawn in the presence of judge in such manner as he may determine."

(9) In support of his argument, reliance has been placed upon dictum of Full Bench of this Court rendered in re: **Radha Kishan** versus **The Election Tribunal-cum-Sub Judge, Hissar and another (1)**—*vide* which the aforesaid clauses have been interpretted with specific emphasis in respect of Section 176(4)(b). It has been observed that if a party given consent for recounting of votes, then the said party would be estopped from challenging the correctness of that order on the ground that the consented order is improper under law or otherwise. The legal controversy in relation to the nature and scope of Section 176(4)(b) of the Act stands settled and it has been categorically observed that the court would not be justified in declining the aforestated relief for the reasons that the applicant must lead evidence through detailed enquiry because such enquiry is not postulated nor would be necessary within the purview of the aforestated provision. It shall be apposite to notice the observation and the dicta of the Full Bench (supra) which reads as under :—

> "24. In view of the law enunciated by the Hon'ble Supreme Court, referred to above, we are of the considered view that a party giving consent for recounting of votes would be estopped from challenging the correctness of that order on the ground that the consented order is impermissible in law or otherwise. The validity of such consent order would hardly be open to attack keeping in view the limited scope of sub-section 4(b) and more particularly when such an order could otherwise be passed by the Court on merits of the case. The power otherwise vested in the Court of competent jurisdiction can always be exercised on the consent of the parties, unless the Court has any valid reason to decline the relief prayed for. In the case of Radha Kishan, we would not permit the petitioner to assail the order as he had agreed to it and a definite consent was given by him for such scrutiny and computation. The impugned order is nothing but consequences of such recounting of valid votes.
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(1) 1999 (2) PLJ 78

38. The comulative effect of the above discussion persuades us to settle the legal controversy in relation to the nature and scope of section 176(4)(b) of the Act as under :

With respect and for the reasons recorded above, we are not quite in agreement with either of the extreme view taken by the Hon'ble Division Benches of this Court in the cases of *Sunehri Devi* versus *Narain Devi,* CWP 6381 of 1995, decided on 20th October, 1995 and *Bharat Singh* v. *Dalip Singh and others,* CWP 9671 of 1995 decided on 6th October, 1995 (1995PLJ 583). We would prefer to adopt the middle path and practical orientd approach so as to achieve the purpose of the Act. The scrutiny and computation by recount of votes arises in such election more than often. Such request dehors of the corrupt practices or other allegations *prima facie* may justify passing of an order within the scope of Section 176(4)(b) of the Act. The legislative intent requiring expeditious disposal of a petition and passing of an order of scrutiny and computation without detailed inquiry is explicit in the language of these provisions. Without placing unnecessary emphasis on the language of the section and to make the law susceptible to the situations likely to arise in the cases to which such provisions are applicable and with intention to ostracise the possibility of confusion we would interpret the section on its cumulative reading and in synthesis with the scheme of the Act.

Ergo, we hold that recounting of votes in such an election cannot be directed on mere asking and in a routine manner. The applicant, if makes definite averments on verification supported by unambiguous details, in accordance with law, supported by documents, if any, and where the applicant makes out a *prima Facie* case to the satisfaction of the Court, nothing prevents the Court from ordering scrutiny and computation of votes on recount in the cases falling within restricted scope of Section 176(4)(b) of the Act. In other words, the

Court would not be justified in declining such a relief for the reason that the applicant, irrespective of above, must lead evidence through detailed enquiry. Such detailed enquiry is neither postulated nor would be necessary within the purview of said provisions in the limited cases afore-referred."

(10) It is contended by learned counsel for the petitioner that in view of the dicta of this Court and the provisions having been interpretted in a lucid manner, the petitioner was not required to produce evidence in support of the plea. The perusal of the pleas, spelt out in the Election Petition, go a long way to show that *prima facie* the case for recount stood made out. However, the evidence having been permitted to be brought on record by the Election Tribunal, corroborates the plea of recount. It is absolutely clear that the Returning Officer has not acted in a diligent and honest manner as two orders are shown to have been passed on the application filed by the petitioner, there was no reason to pass two orders. A perusal of the same would spell out the doubt for seeking the recount. It shall be apposite to notice the said two orders which read as under :—

"Received at 6.30 P.M. after declaration of result. The detailed order is on the reverse/below.

(Sd.) . . .,

18th March, 2000
6.30 P.M.
R.O. (P.S.)"

"The applicant approached with the request of recounting at 6.30 P.M. when the counting for whole of the Panchayat Samiti and Zila Parishad was over. The counting was started exactly at 8.00 A.M. in the morning on 18th March, 2000. Ward No. 1 of P.S. was taken up at first followed by other wards. At this stage, when the other interested parties i.e., all contesting candidates, have left the counting hall after noting down their respective results, it is not appropriate to go for recounting in absence of affected parties, in particular

the winner. The applicant is loser and stood at No. 2. This is not the stage to accept the request. Hence rejected.

(Sd.) . . .,

18th March, 2000
6.45 P.M.
(SDO/C B.Garh)-
cum-R.O.P.S.B. Garh."

(11) The aforesaid second order has been exhibited as Ex. P.2.

(12) On the other hand, learned counsel for the respondent has argued that the petitioner has not been able to make out a case for recount. It is the settled law that for seeking recount under section 176(4)(b), the petitioiner must make out a *prima facie* case for seeking the recount. In the case at hand, the trial court was not satisfied with the pleadings but in the interest of justice and equity, the issues had been framed and the parties had been allowed to lead evidence. Despite this opportunity having been granted to the petitioner, no cogent piece of evidence has been brought on record to substantiate and corroborate the plea of recount. The result had been declared and the said document has been exhibited as Ex. P1 whereby it stands corroborated that the total votes polled were 3570, whereas, the votes polled by the contesting respondent, i.e., Chander Singh were 821 and that the petitioenr polled 793 votes. It is the admitted case that 73 votes had been declared invalid. It is no where the case of the petitioner that a particular number of votes had been iincorrectly declared invalid and which infact could have been and should have been counted in favour of the petitioner. The plea has been held to be vague and not sustainable under law. The petitioner has not been able to give a categoric answer in the cross examination as to what was the number of votes which had been incorrectly rejected, which infact, had been casted in favour of the petitioner. Thus, no *prima facie* case can be said to be made out for seeking recount. The electoral mandate has to be respected, honoured and should not be viewed with a doubt on the asking of a defeated candidate. It is the settled law that the petitioner has to make out a case for seeking the recount. A Full Bench of this Court has categorically observed that recount of votes cannot

be directed on mere asking and in a routine manner. The person who asks for such recount is expected to make definite averment on verification, supported by unambiguous details, in accordance with law, supported by documents, if any, and makes out a *prima facie* case to the satisfaction of court. However, nothing prevents the court in ordering scrutiny and computation of votes on recount, in case pleas raised fall within the restricted scope of Sectioin 176(4)(b) of the Act. The perusal of the pleadings shows that no *prima facie* case can be said to have been made out. Thus, the trial court correctly declined the indulgence, by categorically holding that the petition is vague and is devoid of any merit for seeking the recount.

(13) After perusal of the pleas and the record containing the evidence and also hearing the respective arguments of learned counsel for the parties and giving my thoughtful consideration, I am of the view that the petitioner has succeeded in spelling out *prima facie* case for seeking recount.

(14) It is the admitted case that the total votes polled were 3570 and that the valid votes have been spelt out as 3497 and that the votes found invalid have been stated as 73. It is further the admitted case of both sides that they did not keep the count of the invalid votes having been declared by the Returning Officer but the same have been declared only on the result sheet. If either of the parties had kept the track of the invalid votes declared infront of them or their agents, the factum of invalid votes noted in the result sheet could have been different. The plea of the petitioner that he had won the election by one vote would also be affected positively or negatively in case the number of the invalid votes is categorically ascertained. The perusal of the result sheet Ex. P1 shows that it does not bear the signatures of the petitioner and also the contesting candidate and or their agents. The application filed by the petitioner for seeking the recount shows that two endorsements have been made by the Returning Officer. It is reported that the application had been received at 6.30 P.M. after declaration of result and further the endorsement is that the detailed order is on the reverse/below. The second order is written down and the reasoning has been spelt out, the only plea set up is that all the other interested parties i.e. contesting candidates have left the counting hall after noting down the respective results, therefore, it would not be appropriate to go for recounting in the absence of

affected parties, in particular the winner. Thus, the application has been rejected. The endorsement Ex. P2 is shown to have been made at 6.45 P.M. No reason is forthcoming as to why two orders have been passed, if the application had been received at 6.30 P.M., the orders of rejection could have been passed there and then. The need to make two endorsements is not explainable nor has been explained by any mode. It looks that the Returning Officer was not too sure of himself and the perusal of the second order shows that there are number of interpolations and interleniations. Thus, the act is not beyond doubt, the result sheet does not bear signatures of any of the candidates nor any other document has been placed on record to show that the result was declared and the same was noted and countersigned by any of the persons. The counting of the votes and seeking recount of votes is governed under Haryana Panchayati Raj Rules, 1994 (hereinafter referred to as "the Rules") and a specific reference can be made to Rules 66,69 and 70 of the Rules, which read as under :—

> "66. Counting of Votes.-(1) Every ballot paper which is not rejected under rule 65 shall be counted :
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> Provided that no cover containing tender ballot papers shall be opened and no such paper shall be counted.
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> (2) After the counting of all ballot papers contained in all the ballot boxes has been completed, the Returning Officer (Panchayat) or the Officer authorised by him, shall make the entries in a result sheet in form 14, 15, 16 and 17 for a Panch, Sarpanch, members of Panchayat Samiti and Zila Parishad respectively and announce the particulars.
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> (3) The valid ballot papers shall thereafter be bundled togther and kept alongwith the bundle of rejected ballot papers in a separate packet which shall be sealed and on which shall be recorded the following particulars, namely :
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> (a) the number of the ward and name of village in case of election of Panch of Gram Panchayat, the name of village in case of election of Sarpanch or the number of ward of Panchayat Samiti or Zila Parishad as the case may be, in case of elections of members of Panchayat Samiti or Zila Parishad ;

(b) the particulars of the polling station where the ballot papers have been used ; and

(c) the date of counting."

(15) The right of recount has been dealt with under Rule 69 which reads as under :—

"69. Recount of votes. (1) After the completion of the counting the Returning Officer (Panchayat) or such other officer authorised by him shall record in the result sheet in Forms mentioned in sub-rule(2) of rule 66 the total number of votes polled for each candidate and announce the same ;

(2) After such announcement has been made a candidate or, in his absence (counting) agent may apply in writing to the Returning Officer (Panchayat) or the other officer authorised by him, for recount of all or any of the ballot papers already counted stating the grounds on which he demands such recount ;

(3) On such an application being made the Returing Officer (Panchayat) or the 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 ;

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

(5) If the Returing Officer (Panchayat) or the officer authorised by him, decides under sub-rule (3) 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.

(6) After the total number of votes polled for each candidate has been announced under sub-rule(1) or sub-rule(5) the Returning Officer (Panchayat) or the 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 (counting) agents present at the completion thereof have been given a reasonable opportunity to exercise the right conferred by sub-rule (2)."

"70. Declaration of results.-(1) The Returning Officer (Panchayat) or the Assistant Returning Officer (Panchayat) or the Assistant Returning Officer (Panchayat), shall—

(a) declare to be elected the candidate for the office of Panch who has secured the largest number of valid votes and certify the return of election in Form 18. Similarly the result of Sarpanch shall also be declared forthwith but if there are more than one polling stations in the sabha area the result sheets for the office of Sarpanch shall be sent to the Polling Station presided over by the Presiding Officer nominated by the District Election Officer (Panchayat) for the purpose, on the same day who shall, after compiling the result sheets in Form 19 declare forthwith the candidate who received the largest number of valid votes elected as Sarpanch. For the purpose of declaration of result for the office of Panch and Sarpanch, the Presiding Officer shall be deemed to be Returning Officer and in case of more than one polling stations in the sabha area, nominated Presiding Officer shall be deemed to be the Returning Officer for declaration of result for the office of Sarpanch :

(b) send from the place specified in clause (e) of rule 24 the result sheet for the offices of members of Panchayat Samiti and Zila Parishad to the concerned Returing Officer for Panchayat Samiti and block level and to the Deputy Commissioner respectively ;

(c) for the election of member of Panchayat Samiti, compile all the result sheets in Form 16 and prepare Form 20 and declare the candidate who received the largest number of valid votes elected and shall certify the return of election in Form 20 ; and

(d) for the election of member of Zila Parishad, compile the result sheets in Form 17 and prepare Form 21 and declare the candidate, who received the largest number of valid votes, elected and shall certify the return of election in Form 21.

(2) The Returning Officer (Panchayat) or the officer authorised by him shall send the signed copy of the returns under this rule to the District Election Officer (Panchayat) and to the State Election Commissioner."

(16) The perusal of the rule shows that an applicatioin would be maintainable before the Returning Officer after the announcement has been made and it is thereafter, the candidate or in his absence counting agent may apply in writing to the Returing Officer. It is also provided that no steps shall be taken on the completion of the counting until the candidates and counting agents present have been apprised of the result. Before notifying the result, reasonable opportunity to exercise the right conferred under sub rule 2 of Rule 69 has been duly accorded to the candidates concerned. The petitioner has categorically claimed that after the declaration of the result the application had been filed by him for seeking recount. But from the facts averred by both the sides, it is not descernible as to at what time the result was declared. Dehors of that the application had been filed after the

declaration of the result,—*vide* which the recount has been asked for on the premises that some irregularities have been committed. Thus, by virtue of Rule 69, the Returning Officer was under obligation to decide this application after giving opportunity to the successful candidate. The plea that every body has left is of no consequence. The principle enunciated is that after declaration of result but before notifying the same, the opportunity as envisaged under Sub Rule 2 has to be given to the candidates. The right has been emphasised in the proviso provided to Rule 69. Admittedly, the appropriate opportunity has not been granted by the Returning Officer. This fact has not been examined nor this provision, i.e., the aforestated rule has been discussed or mentioned by the trial Court. Thus, the order of the Returning Officer in rejecting the request for recount made by the petitioner is not sustainable. Thus, in view of the right of recount envisaged under Section 176(4)(b) of the Act read with Rule 69 of the Rules is available to the petitioner. Keeping in view the totality of the facts and the evidence brought on record, I am of the considered view that the election petition deserves to be accepted.

(17) In view of the above, the petition is accepted, the order dated 23rd August, 2001 passed by the trial Court is set aside, the Election Petition is allowed accordingly. The Returning Officer is directed to carry out the exercise of recount of the votes polled in respect of the election of Panchayat Samiti (Ward No. 1) held at Bahadurgarh. The recount be carried out by the Returning Officer after notice to both the parties and the result be declared accordingly. The parties are directed to appear before the Returning Officer on 18th August, 2003 and the Returning Officer may fix the date accordingly for recount and declaration of result. It shall be appreciated if the entire exercise is carried out within one month from the date of appearance of the parties, i.e. 18th August, 2003 and the result is declared within the aforestated period in accordance with law.

R.N.R.