

## Guddi Adiwasi Vs State of M.P. and Others

**Court:** Madhya Pradesh High Court (Gwalior Bench)

**Date of Decision:** April 3, 2012

**Acts Referred:** Constitution of India, 1950 " Article 226

Madhya Pradesh Panchayat Raj Avam Gram Swaraj Adhiniyam, 1993 " Section 122

**Hon'ble Judges:** Sujoy Paul, J

**Bench:** Single Bench

**Advocate:** Dharmendra Shrivastava, for the Appellant; Pravin Newaskar, Government Advocate, for State and Shri Yogesh Chaturvedi, Advocate, for the Respondent

### Judgement

@JUDGMENTTAG-ORDER

Hon. Shri Justice Sujoy Paul

1. In this petition filed under Article 226 of the Constitution, challenge is made to the order dated 6.2.2012, whereby the Sub-Divisional Officer

(hereinafter called as "Election Tribunal") while considering the election petition filed u/s 122 of the Madhya Pradesh Panchayat Raj Avam Gram

Swaraj Adhiniyam, 1993 (hereinafter called as "Adhiniyam"), has directed for recount of votes. The petitioner is an elected Sarpanch. The said

election was called in question by filing an election petition u/s 122 of the Adhiniyam by respondent No.9. In the said election petition certain

statements of witnesses were recorded and thereafter by impugned order dated 6.2.2012 the Election Tribunal directed for recount of the votes.

The following portion of the impugned order reads as under:

A bare perusal of this order shows that a singular reason assigned for recount is that in booth No.189 the election petitioner has received zero vote

whereas in booth No.190 she has received 231 votes. It is further mentioned that the present petitioner/elected candidate has received 311 and 2

votes respectively. The finding of the Tribunal is that in one booth the election petitioner has obtained zero vote whereas in the other she has

received 231 votes whereas the elected candidate has received 311 votes in one booth whereas in another booth she has received only 2 votes,

which appears to be impracticable and improbable. Further finding is given that on the basis of evidence and argument of villagers it appears that

the election petitioner was the candidate for the post of Sarpanch and on the basis of these findings he has directed for recounting of votes.

Learned counsel for the petitioner submits that recounting cannot be directed in a routine, mechanical and stereo type manner. Learned counsel

submits that the secrecy of votes cannot be tinkered lightly and in the manner the Election Tribunal has done is not permissible in law.

2. Per Contra, Shri Yogesh Chaturvedi, learned counsel appearing for respondent No.9 supported the order and submits that there was ample

material before the Tribunal, on the strength of which such a finding can be given. He wants to support the order by assigning various other reasons

and demonstrate other piece of evidence which was filed along with his return before this Court.

3. This is settled in law that the order of a statutory authority has to be examined on the grounds and reasons mentioned therein. Those reasons

cannot be supported at subsequent stage by filing counter affidavit/reply. This is settled by Supreme Court way back in Mohinder Singh Gill and

Another Vs. The Chief Election Commissioner, New Delhi and Others, The Apex Court has consistently followed this view in various judgments

reported in (2003) 5 SCC 106 (Union of India and another vs. GTC Industries Ltd., Bombay) and Chandra Singh Vs. State of Rajasthan and

Another,

4. Thus, in the light of aforesaid legal position, the validity of the order of Election Tribunal is to be examined on the basis of reasons/grounds

mentioned in the impugned order. The respondent No.9 cannot be permitted to travel and take this Court beyond the reasons which are not the

foundation for issuance of Annexure P/1.

Thus, the singular question to be decided by this Court is whether the reasons assigned for recount is legally sustainable ?

5. In Satyanarain Dudhiani Vs. Uday Kumar Singh and Others, it has been held that secrecy of ballot cannot be lightly tinkered. In a democratic set

up secrecy of ballot is of utmost importance and in absence of very specific pleading of material facts and particulars supported by

contemporaneous evidence, neither election can be quashed nor recount can be ordered. In Mahender Pratap Vs. Krishan Pal and Others, it was

held that the onus of proof on the basis of proper pleading is on the election petitioner. It is further held that the degree of proof must be of very

high standard to annul an election or for direction for recounting. Evidence beyond pleading is held to be impermissible in M. Chinnasamy Vs.

K.C. Palanisamy and Others, . This view is taken by Apex Court in Jeet Mohinder Singh Vs. Harinder Singh Jassi,

6. This Court (Principal Seat) in its recent judgment, reported in 2011 (2) MPHT 336 (Neki Bai vs. Mithlesh and others) has taken the same view.

This Court in a recent judgment passed in Writ Petition No. 1632/2012 (Hanumant Singh vs. State of MP and others) has taken the same view

and followed the ration decidendi of the aforesaid judgment of Supreme Court.

7. In the light of aforesaid legal position, the following situation emerges:

In the election petition there is no pleading that the election petitioner was a common candidate of all villagers/other candidates. In absence of any

specific pleading in this regard, no amount of evidence can cure this defect. Apart from this, even the evidence of present petitioner is not of that

nature which may be treated to be of a conclusive nature to establish that it was a common understanding between the villagers whereby the

election petitioner was treated to be the common candidate. This is also settled in law that burden to prove the allegation is always on the shoulder

of the election petitioner. Any weakness in the evidence cannot be a ground to prove the case of the petitioner. Thus, in absence of any specific

pleading in the petition supported by any specific evidence of contemporaneous in nature, I am unable to hold that the reason assigned in Annexure

P/1 for recount is justiciable.

8. Second reason assigned for directing recount is improbability and impracticability of situation by taking into account the number of votes

obtained by the candidates in various booths. In the considered opinion of this Court, merely because the figure of votes appears to be anomalous

or peculiar will not lead to an inevitable conclusion that there was bungling in the counting and, therefore, it cannot be a ground for directing

recount. Surmises and conjectures have no role to play in adjudication of election petition or in the matter of directing recount of votes. Thus, both

the reasons assigned for recounting of votes are legally impermissible and are based on surmises and conjectures. The reasons are not based on

material on record and on the basis of those reasons the conclusion arrived at cannot be permitted to stand. In the result, petition is allowed. The

order, Annexure P/1, is set aside and matter is remitted back to the Election Tribunal to proceed from the stage before the order dated 6.2.2012

was passed. The Election Tribunal will be at liberty to consider the entire material available before it and then proceed and pass the order in

accordance with law. No costs.