2020 INSC 95

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 780 OF 2020
(arising out of SLP(C) No. 22715/2019)

Chandeshwar Saw ... Appellant(s)

Versus

Brij Bhushan Prasad & Ors. ...Respondent(s)

J U D G M E N T

A. M. KHANWILKAR, J.

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 27.8.2019 passed by the High Court of Judicature at Patna (for short, 'the High Court'), thereby setting aside the order of the learned single Judge, dated 6.3.2019 and orders passed by the Court of Civil Judge (Junior Division)-cum-Election Tribunal, Danapur, District Patna, Bihar (for short, 'the Election Tribunal'), dated 11.10.2018 and 11.4.2019 in Election Case No. 08/2016. Consequently, the above numbered election case filed by the appellant challenging the election of respondent No. 1 as returned candidate for the post of Mukhia,

Artyapur Gram Panchayat No. 8 under Naubatpur Block, came to be dismissed.

3. Briefly stated, the election for the post of Mukhia, Artyapur Gram Panchayat No. 8 under Naubatpur Block was held on 6.5.2016, in which the appellant and respondent No. 1 alongwith 11 others had contested as candidates and after counting of votes on 4.6.2016, the respondent No. 1 was declared elected. During the counting, however, the appellant had noticed that number of valid votes cast in his favour were being rejected, while even invalid votes in favour of respondent No. 1 were being accepted and counted. The respondent No. 1 was declared elected by a margin of 154 votes. In this backdrop, the appellant filed an election case before the Election Tribunal, seeking recounting of votes, setting aside election of respondent no. 1 and declaring him (appellant) elected. The appellant specifically alleged about the irregularities committed during the counting process including the one that swastika symbol pressed light ink was not being counted in favour of the appellant and despite grievance being made in that behalf, no heed was paid by the Returning Officer. At the same time, it was also noticed that some invalid votes cast in favour of respondent No. 1 were accepted and counted as valid disregarding the objection taken in that behalf. The

election case proceeded for trial and after recording of evidence of the witnesses produced by the concerned parties, the Election Tribunal after due evaluation of the evidence, accepted the grievance of the appellant that the result sheet prepared by the election officer was not proper as the counting of votes was not done by the officials as per rules. The Election Tribunal proceeded to record finding of fact in favour of the appellant and answered the issue in the following words: -

> "……
>
> By perusal documentary evidences as well as plaint on record its appear that applicant has tried his level best to brought all material facts in his plaint and supported by his evidences, it is also appeared that as soon as plaintiff got knowledge that some irregularities is going on while counting votes and he came to know that his 216 valid votes has been rejected due light ink on the ballot but same type of has been counted in favour of returned candidate then immediately he has made an application to concerned officers for recounting which is marked Ex.-1, same has been made in his plaint as well as supported by oral as well as documentary evidences. Plaint of this case make out a prima facie case with regard to the valid votes of the plaintiff rejected. In this case all the aforesaid conditions are fulfilled by the petitioner which are discussed above. Thus, in the light of the discussions made above this tribunal finds that there were irregularities in the counting of votes in the present case, the result sheet prepared was irregular, not proper and counting of votes by the officials not done as per rule. Thus, there issue goes in favour of the petitioner."

Finally, the Election Tribunal proceeded to pass the following order: -

> "**ORDER**
>
> In the light of the aforesaid issues it is clear that in the counting the Rule 79 of the Bihar Panchayat Election Rules were not followed by the counting authorities and hence on this sole issue the election petition is fit to be allowed, but as per the discussion in issue No.3, 4 and 5 this tribunal found that there

were irregularities in the counting of votes in the present case and the result sheet prepared was irregular and not proper. However, in the issue No.6 it is found by this tribunal that:

i) The O.P. no.1 was not properly declared Mukhiya.

ii) It is not proved by the petitioner that she has got more votes than the votes of the O.P. No.1.

Thus, from the discussion made above it is clear that the petitioner has is not entitled to the relief of setting aside election of returned candidate. However, from the discussions and findings of the above issues it is also clear that the petitioner has been able to prove that the final result for the post of Mukhiya of Gram Panchaayt Raj. Dariyapur is not proper and the O.P. No.1 was not properly declared as Mukhiya but the final result can be ascertained by the proper and minute recounting only. Hence, the petitioner is entitled to the relief as discussed above only.

Hence, in the light of findings of the all the issues in this case. It is hereby ordered that the final result for the post of Mukhiya of Dariyapur Panchayat, Block Naubatpur, District Patna is declared as null and void. The certificate in favour of the O.P. No.1 as return candidate is declared void. It is ordered to the O.P. No.15 i.e. the District Magistrate, Patna cum District Election Officer, Patna to get the ballots of each booth for the post of Mukhiya Dariyapur Panchayat recounted under his supervision within one month from the date of receipt of this order. It is also ordered the District Magistrate, Patna Cum Election Officer Patna to take over the election material which is laying in safe custody of this court for recounting purpose and thereafter keep it as per law/rules. It is also ordered that the final result shall be prepared for each candidate after recounting and the certificate shall be issued in favour of the return candidate. Let a copy of this judgment be sent to District Magistrate Cum District Election Officer, Patna and Election Commission. All the petitions pending in this case are disposed of as not pressed. Accordingly, the case is allowed on contest against those who have appeared in this case and Ex-parte against who has not appeared.

Judgment pronounced and delivered by me in open court.

Typed and corrected by me."

This order was assailed by respondent no. 1 by way of Civil Writ Jurisdiction Case (CWJC) No. 21476/2018 before the High Court. The learned single Judge, after due consideration of the evidence on

record, as considered by the Election Tribunal was pleased to uphold the finding of fact recorded by the Election Tribunal in the following words:-

> "…….
>
> Keeping in mind the aforesaid judicial pronouncements on the subject when this Court proceeds to consider as to whether the learned Election Tribunal has considered the materials available on the record and whether based on such materials a prima facie satisfaction regarding the truth of allegation for recounting of votes has been taken? This Court finds that the learned Election Tribunal has discussed the case of the election petitioner which specifically pointed out that the ballot papers containing Swastik symbol pressed with light ink was not being counted in favour of the election petitioner whereas those were being counted in favour of the returned candidate (petitioner). The case of the election petitioner was supported by AW 2, AW 3, AW 4 and AW 5. The learned Election Tribunal has discussed the evidences of the witnesses who have stated that they were present at the time of counting and had supported the case of the election petitioner. In fact, one Akhileshwar Kumar who has deposed as O.P.W.1 has supported the case of the applicant in his examination-in-chief. The learned Election Tribunal has discussed his evidence also in the impugned judgment. On going through the discussions made by the Election Tribunal in the judgment, this Court finds that he has dealt with the deposition of the witnesses produced on behalf of the returned candidate as well. It has been found that the returned candidate and his witnesses has either deposed that they were not present at the time of counting or they have no knowledge regarding valid or invalid votes. The Tribunal held that the returned candidate has made contradictory statements regarding valid and invalid votes when compared with other witnesses of his side.
>
> After a careful perusal of the entire materials available on the record, this Court is of the considered opinion that in the plaint the election petitioner has made a categorical and positive allegation and he has supported his allegations by bringing witnesses who were present at the time of counting. In these conditions if the Election Tribunal has found itself prima-facie satisfied and has come to a conclusion that a recounting of vote is required, this Court finds no reason to take any other view.
>
> In the opinion of this Court, learned Tribunal has rightly taken the view as under:
>
> > "in this case all the aforesaid conditions are fulfilled by the petitioner which are discussed above. Thus, in the light of

> the discussions made above this Tribunal finds that there were irregularities in the counting of votes in the present case, the result sheet prepared was irregular not proper and counting of votes by the official was not done as per Rule. Thus, this issue goes in favour of the petitioner."
>
> By virtue of the aforesaid discussions, this Court finds that the direction for recounting of votes cannot be faulted with, there is no illegality much less any material illegality and this Court sitting in its supervisory writ jurisdiction does not find any reason to interfere with the aforesaid direction."

The learned single Judge of the High Court, however, reversed the order passed by the Election Tribunal of setting aside the election before the recounting of votes. The learned single Judge instead relegated the parties before the Election Tribunal for the limited purpose of passing appropriate orders only after the recount results become available. In fact, the recounting process was completed during the pendency of the said writ and the result was kept in sealed envelope. Resultantly, the learned single Judge thought it proper to relegate the parties before the Election Tribunal for passing consequential orders after perusal of the recount results kept in sealed envelope.

4. The respondent no. 1 assailed the decision of the learned single Judge by way of Letters Patent Appeal (LPA) No. 382/2019. During the pendency of the said appeal, in terms of the directions given by the learned single Judge, the Election Tribunal proceeded to pass an order on 11.4.2019. The Election Tribunal in reference to Rule 81 of

the Bihar Election Rules, 2006 (for short, 'the 2006 Rules'), directed to place the report kept in sealed envelope before the District Election Officer-cum-District Magistrate, Patna for declaration of the election result. The respondent no. 1, therefore, challenged the said order dated 11.4.2019 passed by the Election Tribunal by way of CWJC No. 9655/2019. The Division Bench of the High Court proceeded to dispose of the LPA, as well as, the writ petition (CWJC No. 9655/2019) together by a common judgment, which is subject matter of challenge in the present appeal.

5. According to the appellant, the Division Bench of the High Court committed manifest error in reversing the well-considered decision of the Election Tribunal as rightly upheld by the learned single Judge regarding necessity to direct recounting of votes in the fact situation of the present case. The Division Bench did not even bother to deal with the factual aspects of the matter as analysed by the Election Tribunal and also by the learned single Judge of the High Court, before setting aside the direction regarding recount of votes. It merely referred to the decision of this Court in ***Bhabhi vs. Sheo Govind & Ors.***[1] and ***Mahender Pratap vs. Krishan Pal & Ors.***[2]. As a matter of fact, the Division Bench did not make any enquiry, much less

1 (1976) 1 SCC 687
2 (2003) 1 SCC 390

analysis of the pleadings and the evidence, but went on to observe that the Election Tribunal without even inspecting the ballots or forming the *prima facie* opinion on the basis of material produced by the appellant/election petitioner, committed error in directing recount of votes. The impugned judgment reproduces the interim order passed by the Division Bench on 24.7.2019 recording its *prima facie* view and proceeded to adopt the view expressed therein to reverse the well-considered decision of the Election Tribunal as upheld by the learned single Judge. Concededly, it is urged that the interim order passed on 24.7.2019 has not analysed the pleadings and evidence produced on behalf of the appellant/election petitioner, which had commended to the Election Tribunal and the learned single Judge of the High Court. All that is mentioned in the said order is that the Election Tribunal proceeded to pass order of recount of votes in complete ignorance of law on the subject, whereas the Election Tribunal, as well as, the learned single Judge had duly analysed the pleadings as well as the evidence produced by the appellant/election petitioner to conclude that there was enough evidence to substantiate the case made out by the appellant/election petitioner that the officials committed serious irregularities during the counting of votes and failed to adhere to the applicable rules in that regard. The

appellant would submit that the decisions adverted to by the Division Bench can be of no avail and cannot be the basis to overturn the well-considered decisions of the Election Tribunal and the learned single Judge, directing the recount of votes in the peculiar facts of the present case.

6. The respondent no. 1 who had filed the LPA challenging the orders passed by the Election Tribunal, however, has supported the decision of the Division Bench and would contend that no case for recount was made out by the appellant/election petitioner either in the election petition or by way of any evidence produced to substantiate that relief. Relying on the decisions of this Court referred to in the impugned judgment, it is contended that neither the Election Tribunal nor the learned single Judge took note of the settled legal principles before directing recount of votes. The appellant/election petitioner did not apply for recount before the declaration of the results and that without even inspecting the ballots, the Election Tribunal proceeded to direct recount of votes, which was impermissible. It is further submitted that no interference with the impugned judgment is warranted.

7. We have heard Mr. Amit Pawan, learned counsel appearing for the appellant and Mr. Abhay Kumar, learned counsel for the respondents.

8. After considering the rival submissions, we have no hesitation in accepting the argument of the appellant that the Division Bench vide impugned judgment (dated 27.8.2019) has reversed the well-considered decision of the Election Tribunal, which has justly been upheld by the learned single Judge (vide order dated 6.3.2019), without analysing the pleadings and the evidence adduced by the appellant/election petitioner during the trial of the election case. The impugned judgment merely adverts to the interim orders passed during the pendency of the writ (CWJC No. 9655/2019) and the LPA and goes on to observe that for the (*prima facie*) opinion recorded therein, the matter in issue deserves to be answered against the appellant/election petitioner and in favour of respondent No. 1. That is evident from the following extract of the judgment under appeal: -

> ""…….
>
> From a perusal of the orders extracted hereinabove, the moot question that has to be determined by this Court is as to whether the Tribunal had proceeded in accordance with law to order a recount of the votes on the allegations made. **Without reiterating the facts and even the position of law which stands extracted in our order dated 24th July, 2019, we find that the learned counsel for the respondent election-petitioner could not successfully convince us to take a different view from what was expressed by us in the interim order quoted hereinabove. Keeping in view the law laid**

down by the Apex Court in the case of Bhabhi Vs. Sheo Gobind and others, reported in (1976) 1 SCC 687, we find that the order of recount as upheld by the learned Single Judge in the impugned judgment, therefore, is unsustainable as it is not in conformity with law. The Tribunal without even inspecting the ballots or forming a *prima facie* opinion on the basis of such material that was necessary to be gone into, proceeded to pass an order of recount that cannot be sustained in law. The learned Single Judge, therefore, could not have upheld the same.

From the narration of facts hereinabove, it appears that even after the judgment dated 6th march, 2019, the Tribunal appears to have acted in ample haste and in our opinion, any action in proceeding to pass the order on 11th April, 1999 was in the nature of an overreach so as to virtually circumvent the orders passed by this Court. This fact has been noticed by the learned Single Judge while passing the interim order dated 18th June, 2019 extracted hereinabove in C.W.J.C. No.9655 of 2019 with which we find ourselves in full agreement with.

The Tribunal, therefore, not only committed an error, but the action of the Tribunal can be clearly described as one to be malice in law. The Tribunal, therefore, ought not to have proceeded for issuing any direction for declaration of results without even complying with the observations made in the judgment dated 6th of March, 2019. This manner of dealing with the matter by the Tribunal, therefore, cannot be appreciated in the background of the case, more particularly, in the light of the arguments that have been advanced on the legal issue about the procedure to be adopted by a Tribunal before ordering a recount.

Shri Manglam, learned counsel for the appellant, however, insisted that the matter should not be remitted even if the appeal is allowed and the order dated 11th April, 2019 is quashed. His submission is that the election petition itself was not maintainable keeping in view the nature of the pleadings on record which do not make out any case for either a recount or even for trying the allegations levelled in the election petition. Pointing out to the framing of Issue No.1 by the Tribunal and the answer given to it on the strength of the findings arrived at, he contends that election petition has been found to be maintainable on the ground that there was a case made out for recount. This, he submits was a converse procedure to record a finding, inasmuch as, once there was evidence on record to the effect that no application for recount had been filed, which is evident from the deposition of the Returning Officer, then in that event Issue No.1 has been wrongly decided. He further submits that the incident relating to the transfer of the records

from the strong room to the Court under the private custody of the sons of the election petitioner was also an additional ground apart from the fact that the Court itself had entertained a Miscellaneous Application for undertaking proceedings under Section 340 Cr.P.C. his submission is that an intentional false plea, therefore, clearly disentitled the election petitioner to maintain the election petition and for which reliance has been placed by the learned counsel on the judgment in the case of Mahender Pratap Vs. Krishna Pal & Ors. reported in (2003) 1 SCC 390.

The contention, therefore, in short is that, this Court itself should hold that the election petition was not maintainable and consequently, there is no occasion for remitting the matter back to the Tribunal concerned.

Responding to the aforesaid submissions, Shri P.K. Shahi, learned Senior Counsel appearing for the election petitioner submits that even assuming for the sake of argument that the Tribunal committed error in proceeding to order a recount without recording appropriate findings, even though not admitting the same, yet the matter has to go back to the Tribunal, inasmuch as, the issue of maintainability was not the main issue, and it was the issue of recount which formed the basis of the entire litigation. In order to determine as to whether a recount would be permissible or not on the basis of the evidence adduced will be a matter of enquiry by the Tribunal itself and not by this Court in the exercise of jurisdiction under Article 226 of the Constitution of India. He, therefore, submits that the matter will have to be looked into keeping in view the evidence on record and also the pleadings which do indicate that there was sufficient material in order to attempt a recount on the allegations made.

Learned counsel for the State of Bihar has also advanced his submissions contending that the law as laid down by the Apex Court in the case of Bhabhi Vs. Sheo Gobind and others (supra) deserves to be followed.

Having heard learned counsel for the parties and having perused the records and in view of what has been recorded by us hereinabove, we find that the order of recount cannot be sustained as the Tribunal acted in hot haste and the action of the Tribunal even in subsequently passing an order dated 11th April, 2019 clearly indicates that it is not an order which can either be sustained in law or can be described to be in conformity with the legal principles as laid down in the case of Bhabhi Vs. Sheo Gobind and others (supra).

> The manner in which the proceedings have been conducted by the Presiding Officer, therefore, cannot be appreciated and in this background and having perused the material on record, we find that upon the matter being remitted, the said Presiding Officer who has passed the orders impugned, should not act as the Presiding Officer to decide the present dispute.
>
> Accordingly, the present appeal (L.P.A. No.382 of 2019) is allowed. The impugned judgment dated of the learned Single Judge dated 6th of March, 2019 is set aside.
>
> The order of recount passed by the Tribunal dated 11.10.2018 is also quashed. The order passed by the Tribunal on 11th April, 2019, therefore, also cannot be sustained and is accordingly set aside. C.W.J.C. No.9655 of 2019 is also accordingly allowed.
>
> The matter shall now stand remitted to the Tribunal with a direction to the learned District Judge, Patna, to nominate the said election petition to an officer of the rank empowered to try the election petition other than the officer who had dealt with the matter earlier.
>
> With the aforesaid directions, the appeal (L.P.A. No.382 of 2019) and the writ petition (C.W.J.C. No.9655 of 2019 are accordingly allowed."
>
> (emphasis supplied)

Assuming that we were to take notice of the elaborate interim orders dated 24.7.2019 and 18.6.2019, there is nothing to indicate that even at that stage of the proceedings, the Division Bench has had occasion to analyse the pleadings and evidence adverted to by the Election Tribunal as commended to the learned single Judge. Without reversing the finding of facts so recorded by the Election Tribunal, merely by referring to decisions of this Court in ***Bhabhi*** (supra) and ***Mahender Pratap*** (supra), the Division Bench could not have disturbed the order of recount as directed by the Election Tribunal in the peculiar facts of the present case. Inasmuch as, the

appellant/election petitioner had not only pleaded about the serious irregularities committed by the officials during the counting of valid votes cast in his favour and invalid votes taken into account in favour of respondent No. 1, but had also examined witnesses to substantiate that fact, as noted by the Election Tribunal and the learned single Judge of the High Court.

9. Indeed, in the case of ***Bhabhi*** (supra), this Court has delineated the contours for issuing direction of inspection or recount of votes in the following words: -

> "15. Thus on a close and careful consideration of the various authorities of this Court from time to time it is manifest that the following conditions are imperative before a court can grant inspection, or for that matter sample inspection, of the ballot papers:
>
> (1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;
>
> (2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;
>
> (3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;
>
> (4) That the Court must come to the conclusion that in order to grant prayer for inspection it is necessary and imperative to do full justice between the parties;
>
> (5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and
>
> (6) That on the special facts of a given case sample inspection may be ordered to lend further assurance to the prima facie satisfaction of the Court regarding the truth of

> the allegations made for a recount, and not for the purpose of fishing out materials."
>
> If all these circumstances enter into the mind of the Judge and he is satisfied that these conditions are fulfilled in a given case, the exercise of the discretion would undoubtedly be proper."

The question is: whether material facts to justify an order of recount of votes has been clearly pleaded and the same have been proved by the appellant/election petitioner in the present case? That issue has been analysed by the Election Tribunal extensively, as is evident from the analysis made by it, which commended to the learned single Judge. Since the appellant had substantiated the allegation made in the election petition and the Election Tribunal being convinced about the said claim proceeded to issue order of recount. No fault can be found with that approach of the Election Tribunal nor it is possible to suggest that the Election Tribunal or the learned single Judge was not conscious about the necessity to substantiate the allegation about the serious irregularities committed by the officials during the counting.

10. Similarly, in the case of ***Mahender Pratap*** (supra), the Court went on to reject the election petition in the facts of that case, having noted that incorrect statements were made in the pleadings, affidavits or depositions being an attempt to mislead the Court and more so, the recount application was made by the candidate (election

petitioner) to the Returning Officer after the results were declared, which could not have been entertained by the Returning Officer. In the case of ***Sohan Lal vs. Babu Gandhi & Ors.***[3], the three-Judge Bench of this Court has opined that the fact that recount request was not made by the candidate during the counting, does not preclude filing of election petition or to direct recount in the election petition questioning the election after results of the election are announced. The decision in ***Ram Rati (Smt) vs. Saroj Devi & Ors.***[4] came to be overruled and instead the Court held that in an election petition, after the declaration of result, the Court or Tribunal can direct recount of votes even if the party had not applied in writing for recounting of votes to the Returning Officer. There is no provision in the Act or in the Rules prohibiting the Court or the Tribunal to direct recounting of votes. The Court in paragraph 14 observed thus: -

> "14. In view of Section 122 and the Rules, we are unable to agree with the ratio laid down in Ram Rati case (1997) 6 SCC 66. It is not correct to hold that, in an election petition, after the declaration of the result, the court or tribunal cannot direct re-counting of votes unless the party has first applied in writing for re-counting of votes. There is no prohibition in the Act or under the Rules prohibiting the court or tribunal to direct a re-counting of the votes. Even otherwise, a party may not know that the re-counting is necessary till after the result is declared. At this stage, it would not be possible for him to apply for re-counting to the Returning Officer. His only remedy would be to file an election petition under Section 122. In such a case, the court or the tribunal is bound to consider the plea and where a case is made out, it may direct re-count depending upon the

3 (2003) 1 SCC 108
4 (1997) 6 SCC 66

> evidence led by the parties. In the present case, there was obvious error in declaring the result. We, therefore, hold that the ratio laid down in Ram Rati case (1997) 6 SCC 66 is not correct."

11. *A priori*, we have no hesitation in concluding that the Division Bench has interfered with the well-reasoned judgment and order passed by the Election Tribunal, which was justly upheld by the learned single Judge, directing recount of votes. It appears that after the recount, the appellant/election petitioner has secured 95 excess valid votes, more than the valid votes secured by respondent No. 1. That has reinforced the challenge set up by the appellant that the officials had committed serious irregularities bordering on intentional manipulation of the valid votes secured by the appellant. As a result, we have no hesitation in upholding the order of recount of votes, as passed by the Election Tribunal (dated 11.10.2018) and justly upheld by the learned single Judge (vide order dated 6.3.2019), in the facts of the present case.

12. The next question is about the correctness of the direction issued by the Election Tribunal vide order dated 11.4.2019 to place the report contained in sealed envelope before the District Election Officer-cum-District Magistrate, Patna for declaration of result. That direction even if inappropriate, would not affect the order of recount of votes. It was open to the High Court to mould the direction issued

by the Election Tribunal and instead issue declaration as envisaged under Section 140 of the Bihar Panchayat Raj Act, 2006, which reads thus: -

> "**140. Grounds on which a candidate other than the returned candidate may be declared to have been elected** - (1) If any person who has filed an election petition has, in addition to calling in question the election of the returned candidate, claims a declaration that he himself or any other candidate has been duly elected and the Prescribed Authority is of opinion-
>
> (a) that in fact the petitioner or such other candidate received a majority of the valid votes; or
>
> (b) that but for the votes obtained by the returned candidate by corrupt practices the petitioner or such other candidate would have 142 obtained a majority of the valid votes, the Prescribed Authority shall after declaring the election of the returned candidate to be void declare the petitioner or such other candidate, as the case may be, to have been duly elected.
>
> (2) The decision of the Prescribed Authority shall be final."

In other words, the High Court ought to have moulded or modified the operative order passed by the Election Tribunal, dated 11.4.2019 to the effect that the election of the returned candidate (respondent No. 1) be and is set aside as invalid and the appellant (election petitioner) is declared as having been duly elected having secured more valid votes after recount. Resultantly, in this appeal, we proceed to issue that declaration.

13. The order passed by the Election Tribunal, dated 11.4.2019, which was subject matter of CWJC No. 9655/2019 also dealt with the application filed before it alleging forgery of record/documents of the

Tribunal. The Tribunal has rightly observed that that is a separate matter and would require independent enquiry, for which the petition has been treated as a petition under Section 340 of the Criminal Procedure Code (Cr.P.C.) to be dealt with as per law. As regards that direction issued by the Election Tribunal vide order dated 11.4.2019, the same is not the subject matter of this appeal. In other words, we have only dealt with the issues emanating from the stated direction issued by the Election Tribunal regarding recounting of votes and to issue appropriate declaration in terms of Section 140 of the Bihar Panchayat Raj Act, 2006. The respondent No. 1 by way of written submissions filed after the matter was reserved for judgment, has adverted to certain factual matters, so as to question the result of recount of votes. Presumably, the alleged acts of commission or omission are already subject matter of proceedings initiated under Section 340 of the Cr.P.C. That need not detain us from disposing of this matter having noticed that the respondent No. 1 had succeeded before the Division Bench on grounds which we have already adverted to hitherto and rejected. The new factual matters do not find mention in the impugned judgment. It would be open to the respondent No. 1 to pursue proceedings under Section 340 of the Cr.P.C., which will have to be decided on its own merits in accordance with law.

14. Accordingly, this appeal succeeds. The impugned judgment and order is set aside. Instead, the election case being E.C. No. 08/2016 filed by the appellant before the Election Tribunal is allowed. A declaration is issued under Section 140 of the Act that the election of respondent No. 1 as returned candidate is set aside being invalid, and instead we declare the appellant/election petitioner as having been duly elected having secured highest votes amongst the contesting candidates and 95 more valid votes than that of respondent No. 1 in the subject election.

15. The appeal is disposed of in the above terms with no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

....., J
(A.M. Khanwilkar)

....., J
(Dinesh Maheshwari)

New Delhi;
January 28, 2020.