Before H.S. Brar, K.S. Kumaran and Swatanter Kumar, JJ.

RADHA KISHAN,—*Petitioner*

versus

THE ELECTION TRIBUNAL-CUM-SUB JUDGE, HISSAR AND ANOTHER,—*Respondents*

C.W.P. No. 17321 of 1995

22nd July, 1999

Haryana Panchayati Raj Act, 1994—S. 176(4)(b)—Right of a candidate to demand recount or scrutiny and computation of votes while challenging the validity of an election—Extent of right indicated—Recount cannot be ordered on mere asking—Disclosure of prima facie case supported by definite averments verified and supported by documents, if any, is a condition precedent for ordering recount—A detailed inquiry based on evidence not necessary—Recount by consent of parties is valid and does not offend any law or public policy—Consenting parties cannot be permitted to challenge the validity of an order of recount—Estoppel.

Held, that it is a settled cannon of interpretation of statutes that no word or language used by the legislature should be understood to be unnecessary or a waste. Different terminologies appear to have been used by the Legislature and obviously with some purpose. In sub-section (1) of Section 176 the expression used is "the validity of an election is brought in question". In sub-section 4(a) the court has to hold an enquiry and then pass orders as postulated upon entertaining a petition in accordance with the provisions of Section 176(2) of the Act. While under sub-section (4)(b) it is stated "where the validity of election is in dispute between two or more candidates". To treat these expressions synonymous to each other or even alternative to each other would not be proper.

(Paras 18 and 19)

Further held, that the use of the word "shall" in Clause (b) of sub-section 4 of Section 176 of the Haryana Panchayati Raj Act, 1994, in our view is not without a purpose. The legislative purpose behind the provisions of sub section (4)(b) is to provide an expeditious disposal and relief to the candidate whose case falls within the limited scope of the grounds spelled out in the Section itself. To us it appears that the cases falling within the limited ambit and scope of section 176(4)(b) and not falling under sub clause (a) of the same sub section, it may not

be necessary for the Court to hold a regular inquiry as postulated under the provisions of sub section 4(a) of the Act. The validity of the election is to be in dispute but only between two or more candidates. Upon being *prima facie* satisfied, it may be somewhat obligatory upon the Court of competent jurisdiction to order scrutiny and computation of votes recorded in favour of each candidate upon passing such an order, the candidate who is found to have recorded the largest number of valid votes in his favour would be duly elected. The restricted and narrow scope of the cases falling under this category and application of these provisions thereto clearly indicated with definite clarity by the legislature in the language of these provisions.

(Para 24)

Further held, that the consent by the parties for recounting or scrutiny and computation of votes founded on the consent of the parties does not offend any law or public policy. Having taken a stand not only of stating no objection to the order as contemplated under section 4(b) of the act, but also having given specific consent, we feel that it will neither be fair nor proper for the consenting parties to challenge the validity of such order.

(Para 28)

Further held, 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 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.

(Para 29)

Further held, that where the legislative purpose appears to be to give finality to the result declared by the returning officer, there the Court cannot lose sight of the fact that the legislature in its wisdom has incorporated the provisions like 176(4)(b) of the Haryana Act. Absence of similar provisions in the other statute like the Representation of People Act suggests the significance of the obligation of provisions of section 176(4)(b) of the Haryana Act. The purpose is to vest definite power in the Court to deal with the cases covered under Section 176(4)(b) of the Act and not relating to corrupt practices, in an election petition expeditiously and to provide finality to such order. Section 183 of the

Haryana Act which deals with the maintenance of secrecy of votes and indicates the obligation on every officer, official, agent or other person who performs any duty in connection with recording or counting of votes shall maintain and aid in maintaining the secrecy of the voting and not to communicate the information received by him. The provisions of section 183 read in conjunction with section 66 and 69 of the Haryana Rules is primarily to maintain secrecy and respect for the election process. But a substantive power given to the court by the legislature itself cannot be diluted by these applied principles. If the legislature has opted to incorporate a specific provision as embodied in S. 176(4)(b) it has to be construed that legislature intended to give wide powers to the court to decide the objection under section 4(b) expeditiously and without getting into the detailed inquiry or evidence as postulated under section 176(4)(a) of the Act. Therefore, liberal application of the provisions of section 176(4)(b) of the Act is called for, though to the kind of limited cases covered under that provision and as held by the Full Bench of this Court in the case of *Anju* v. *The Additional Civil Judge* (Sr. Division) Pehowa, 1998(2) P.L.R. 393.

(Para 39)

Further held, that ambit and jurisdiction of section 176(4)(b) of the Haryana Act cannot be extended by the Court by holding that a regular inquiry is to be conducted by the Court for granting the relief under this limited provision. Acceptance of such submission would probably frustrate the object of the legislation.

(Para 43)

Further held, 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 case 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.

(Para 50)

R.S. Surjewala, Advocate, *for the petitioner.*

R.K. Jain, Advocate with A.K. Rampal, Advocate, *for the respondent.*

JUDGMENT

SWATANTER KUMAR, J.

(1) This Full Bench has been constituted to resolve the controversy arising from two divergent views expressed by different Division Benches of this Court on the interpretation and scope of Section 176(4)(b) of the Haryana Panchayati Raj Act, 1994, hereinafter referred to as the Act. The controversy falls within a narrow compass but involves question of public importance. What is the extent of the right of a candidate to demand recount or scrutiny and computation of votes while challenging the validity of an election on the grounds stated in the said provisions, is the precise question to be answered. In other words, upon discern dissection of these legislative provisions, whether such right of the candidate is absolute and to be granted for the mere asking or a candidate is obliged to make out at least a *prima facie* case, as condition precedent, before requesting the Court to direct recount.

(2) Civil Writ Petition No. 17321 of 1995 was admitted to hearing by a Division Bench of his Court,—*vide* order dated 5th December, 1995. When the matter came up for hearing before the learned Single Judge, conflict in the judgments of two different division benches of this Court was noticed by the learned Single Judge who considered it appropriate to refer the matter to a Full Bench. On 17th January, 1998 following order was passed by the court :—

Present :—R.S. Surjewala Advocate, *for the petitioner.*

S.S. Khetarpal, Advocate, *for the respondents.*

The learned counsel for the petitioner relies on a judgment of this Court in CWP No. 9671 of 1995 dated 6th October, 1995. Another Division Bench of this Court has taken a different view in CWP No. 6381 of 1995 dated 20th October, 1995. Thus, there is a conflict in regard to the interpretation of Clause (b) of sub-section (4) of Section 176 of the Haryana Panchayati Raj Act. I am of the opinion that this conflict has to be resolved by a larger bench. I, therefore, direct the office to place the matter before my Lord the Chief Justice for appropriate orders as to the posting of this matter either before a Division Bench or before a Full Bench.

(T.H.B. Chalapathi)
17th January, 1996. Judge.

(3) Another writ petition, being Civil Writ Petition No. 14990 of 1996, was admitted and was directed to be heard along with Civil Writ Petition No. 17321 of 1995. Resultantly, both these writ petitions have been listed for hearing before the Full Bench.

(4) It would be appropriate to refer to the necessary facts and relevant provisions of law regulating the controversy in issue at the very out-set. Mr. Radha Kishan had contested the election to the Panchayat Samiti, Barwala from Ward No. 22 and was declared elected as a member, in the elections held on 19th December, 1994. On 21st December, 1994 he was declared elected by securing 671 votes against his nearest opponent Mr. Risal Singh respondent No. 2 in the writ petition, who secured 668 votes. Mr. Risal Singh, dis-satisfied with the result of the election, filed an election petition on 1st June, 1995 averring that there were several persons who are servicemen and were not in villages namely Kumbakhera and Bobwa. They were not in the villages on the date of polling though their votes have been polled by the supporters of present petitioner. Challenge to the identity of the voters was also made. Certain mal-practices adopted by Radha Kishan were also referred in that petition. It was also stated that Radha Kishan was in unauthorised possession of land of Gram Panchayat and was in arrears for payment of lease money for that land in excess of one year and as such was not eligible to be declared as member of Panchayat Samiti. Paragraphs No. 9, 14, 15 and 16 are the other relevant paragraphs which have a bearing on issues in the present petition and they are reproduced hereinafter for the purpose of convenience :—

> "9. That there have been many irregularities and illegalities in the procedure and conduct of the officials on election duty including refusal of votes, reception of votes which were invalid and non-compliance with the provisions of Haryana Panchayati Raj Act and rules framed thereunder. The votes which were invalid and were that of respondent No. 1, and which were invalid were not rejected and votes which were valid and which had to go in favour of the petitioner were wrongly declared invalid. These irregularities and illegalities have been of such type by itself and in any case or more than one out of them taken together have materially affected the result in favour of respondent No. 1."

> "14. That after the counting of the votes, the petitoner requested the Returning Officer to count the votes as he was the winner of several votes and not only 3 votes but the Returning Officer declared the petitioner winner for three votes against respondent No.1, but later on changed the result in connivance

with the respondent with the *mala fide* intention. The petitoner has also come to know that the respondent No. 1, had paid Rs. 1 lac for changing this result in favour of respondent No. 1."

"15. That the tendered votes were not taken into consideration at the time of counting of the votes."

"16. That at the time of opening of the ballot boxes, the seals and signatures which were obtained at the time of sealing of the ballot boxes were not shown to the petitioner or his agents inspite of the demand raised by them. From the very beginning it appeared that the officials and officers had been joining hands with respondent No. 1, to defeat the petitoner."

On the above facts Mr. Radha Kishan had prayed that the petition be accepted and the petitoner may be ordered to be declared elected to the office of Member Panchayat Samiti in place of Mr. Risal Singh and in the alternative the election held on 19th December, 1994 be declared invalid and repolling of Ward No. 22 be ordered by the Election Tribunal.

(5) A written statement to this election petition was filed taking various preliminary objections and disputing the factual averments made by the petitioner in the election petition.

(6) *Vide* order dated 12th August, 1995, Sub Judge 1st Class, Hissar while exercising powers under the provisions of this Act had ordered recounting of votes by consent of the parties. The order reads as under :—

"*Present* : Counsel for the parties.

The respondent has stated that he has got no objection if the counting of the votes is conducted.

Therefore, the application for re-counting of the votes stands disposed of accordingly. Therefore, Shri Mahabir Singh, Government Pleader is hereby appointed as nominee of the Court. He is directed to recount the votes according to law in the presence of the Returning Officer, candidates and their counsel. It is made clear here that the candidate would be entitled to take one representative alongwith them where recounting will be conducted. The fee of the nominee is fixed at Rs. 1,000 to be paid by the petitioner/applicant and the petition shall stand disposed of according to the report of the nominee of the Court. The other grounds stand waived. A letter be written to the Deputy Commissioner, Treasury Officer,

Returning Officer to make available the record at the earliest. To come up for awaiting of report on 16th September, 1995."

(7) In furtherance to the above order recounting of votes was done and vide judgment dated 9th November, 1995 the learned Judge allowed the petition and declared Mr. Risal Singh elected in place of Mr. Radha Kishan. It is this order which has been impugned in the writ petition by Mr. Radha Kishan. The relevant part of the impugned order reads as under :—

"4. Re-counting of the votes was ordered to be conducted through the nominee of the court in the presence of the parties. The nominee of the court has submitted his report after conducting the re-counting of the votes in the presence of both the parties and their counsel as well as Returning Officer Shri Om Parkash, Tehsildar, Hathin. As per the report of re-counting the petitioner secured 667 votes whereas respondent No. 1 secured 664 votes and the four votes after due consideration were declared invalid as reported by the nominee. Therefore, in view of report of re-counting of votes it emerges that respondent No. 1 Radha Kishan who was declared elected had secured 664 votes whereas petitioner had secured 667 votes and thus, it is ordered that the petitioner was to be declared as elected candidate in the impugned election. Therefore, the petitioner is hereby declared elected in the impugned election held on 19th December, 1994 and the order,—*vide* which the respondent No. 1 was declared elected is hereby set-aside. The concerned authorities are directed to issue appropriate notification regarding the declaration of the petitioner as the elected candidate by a margin of three votes of Panchayat Samiti Barwala Ward No. 22. However, parties to the petition are left to bear their own costs. Decree sheet be prepared accordingly. File be consigned to the record room."

(8) The relief claimed in this writ petition by Mr. Radha Kishan is opposed by Mr. Risal Singh on various grounds including the maintainability of the writ petition. While the respondent relied upon the judgment of Division Bench of this Court in the case of *Sunehri Devi* v. *Narain Devi,* C.W.P. No. 6381 of 1995, decided on 20th October, 1995 for dismissing of the writ petition, the petitioners relied upon the judgment of another Division Bench of this Court in the case of *Bharat Singh* v. *Dalip Singh and others,* C.W.P. No. 9671 of 1995 decided on 6th October, 1995. The learned Single Judge found that the Division Benches afore stated have taken divergent views and, thus, preferred to refer the matter to a larger Bench.

(9) In Civil Writ Petition No. 14990 of 1996, Smt. Darshna was the defeated candidate in relation to election of Gram Panchayat, Madha, Tehsil Narnaul, held on 19th December, 1994, the result of which was declared on 22nd December, 1994. She had been defeated by Smt. Sujani who got 489 votes while Smt. Darshna got 486 valid votes and 45 were invalid votes.

(10) An application for recounting was filed which was decided by the Deputy Commissioner, Hissar, but the re-counting maintained the result in favour of Smt. Sujani though it was averred by Smt. Darshna that on 19th December, 1994 she had got 511 votes while respondent No. 1 got 509 valid votes. The re-counting was done on the orders of the Deputy Commissioner on written complaint on 22n December, 1994 when the above result was declared. Being dis-satisfied with this process Smt. Darshna filed an election petition before the Civil Judge (Junior Division) Hansi. The learned Judge while answering the query and following a Division Bench Judgment of this Court, allowed the application for re-counting,—*vide* order dated 14th August, 1996. The relevant extract of the order reads as under :—

> "In the present case the margin of votes between the petitioner and respondent No. 1 is narrow which by itself requires the recount. The petitioner has already given up the other grounds for challenging the present petition. Thus relying upon the judgment of Division Bench of 1996, I allow this application for recounting. The counting shall be done under the supervision of Tehsildar Hansi in the court in the presence of the parties alongwith their counsel. The officer appointed can take the documents which are helpful for recounting and also summoned election record. He can issue notice to the parties after fixing the date and time on or before 19th October, 1996. The Tehsildar shall submit his report after recounting and mentioning the vote procured by each candidates. Vote cancelled and held invalid, it is however, made clear that he shall not declare the result. He will only submit his report. His fee is fixed Rs. 500 which shall be paid by the applicant."

Consequently, the writ petition had been filed praying for quashing of Annexures P-1 and P-2.

(11) In C.W.P. No. 14990 of 1996, thus, challenge, basically is to the order dated 14th August, 1996 by which the learned Civil Judge (Junior Division), Hansi had directed the recounting of the votes for the reasons stated in the order. While in C.W.P. No. 17321 of 1995 the challenge is to the judgment dated 9th November, 1995 passed by Sub

Judge 1st Class, Hissar, where on the basis of the report on re-counting,—*vide* order dated 14th August, 1996 the election of the respondent therein was set aside. As such the case of Risal Singh covers a larger ground.

(12) Coming to the legislative provisions governing the controversy in issue reference has to be made, at the very out-set, to the provisions of Section 176 of the Haryana Panchayati Raj Act, 1994. The said section reads as under :—

"176. (1) Determination of validity of election enquiry by judge and procedure. If the validity of any election of a member of a Gram Panchayat, Panchayat Samiti or Zila Parishad or Up-Sarpanch, Sarpanch of Gram Panchayat, Chairman or Vice-Chairman, President or Vice-President of Panchayat Samiti or Zila Parishad respectively is brought in question by any person contesting the election or by any person qualified to vote at the election to which such question relates, such person may at any time within thirty days after the date of the declaration of results of the election, present an election petition to the Civil Court having ordinary jurisdiction in the area which the election has been or should have been held, for the determination of such question.

(2) A petitioner shall not join as respondent to his election petition except the following persons :—

(a) where the petitioner in addition to challenging the validity of the election of all or any of the returned candidates claims a further relief that he himself or any other candidate has been duly elected, all the contesting candidates other than the petitioner and where no such further relief is claimed, all the returned candidates;

(b) any other candidate against whom allegations of any corrupt practices are made in the election petition.

(3) All election petitions received under sub-section (1) in which the validity of the election of members to represent the same electoral division is in question, shall be heard by the same Civil Court.

(4)(a) If on the holding of 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 the judge in such manner as he may determine.

(5) person shall be deemed to have committed a corrupt practice—

(a) who with a view to induce a voter to give or to refrain from giving a vote in favour of any candidate, offers or gives any money or valuable consideration, or holds out any promise of individual profit, or holds out any threat of injury to any person; or

(b) who, with a view to induce any person to stand or not to stand or to withdraw or not to withdraw from being a candidate at an election, offers or gives any money or valuable consideration or holds out any promise or individual profit or holds out any threat of injury to any person; or

(c) who hires or procures whether on payment or otherwise, any vehicle or vessel for the conveyance of any voter (other than the person himself, the members of his family or his agent) to and from any polling station.'

Explanation 1.—A Corrupt practice shall be deemed to have been committed by a candidate, if it has been committed with his knowledge and consent by a person who is acting under the general or special authority of such candidate with reference to the elction.

Explanation 2.—The expression "vehicle means any vehicle used or capable of being used for the purpose of road

transport whether propelled by mechanical power or otherwise and whether used for drawing, other vehicles or otherwise."

(13) Section 209 of the Act empowers the Government to frame rules for carrying out the purposes of this Act. Clause (r) of sub-section (2) of Section 209 reads as under :—

"209. Power to Government to makes rules.

(1) The Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may be made

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(r) for all matters connected with elections;

(14) Another relevant provision which has been referred to by the learned counsel for the parties at different stages of the arguments is Section 183 of the Act which reads as under :—

"183. Maintenance of secrecy of voting.

(1) Where an election is held, every officer, official, agent or other person who performs any duty in connection with recording or counting of votes shall maintain and aid in maintaining the secrecy of the voting and shall not (except for some purpose authorised by or under any law) communicate to any person any information calculated to violate such secrecy.

(2) Any person who contravenes the provisions of sub-section (1) shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine of five hundred rupees or with both."

(15) A bare reading of Section 176 of the Act shows that it is by and large a complete Code in itself and relates to validity of an election being questioned on the specified grounds under different sub-sections of this Section.

(16) Sub-section (1) of Section 176 entitles a contesting candidate or any person who is qualified to vote at election to bring the question before the Court of competent jurisdiction the validity of any election of member of a Gram Panchayat, Panchayat Samiti or Zila Parishad etc. The petition so filed before the Court is to be adjudicated upon by the Court concerned in accordance with the provisions of sub-section (4) of Section 176 depending on the averments made and nature of the allegations. The Court is expected to conduct an enquiry under sub-section (4) (a) and where it finds that the candidate has committed corrupt practices as defined within the meaning of sub-section (5) of Section 176 of the Act. The consequences could be that the Court would set aside the election and declare the candidate disqualified for the purposes of election and fresh elections may be held, while under clause (b) of sub-section (4) of Section 176 has different ingredients and consequences. The following four basic ingredients undisputedly emerge in relation to the scope and application of the sub-section, clear from the language of the statute itself :—

(i) In any case to which clause (a) *does not apply;*

(ii) The validity of an election is in dispute *between two or more candidates;*

(iii) The Court *shall, after scrutiny and computation of votes* recorded in favour of each candidate;

(iv) Declare the candidate who is found to have *the largest number of valid votes* in his favour to be duly elected.

(17) Existence of (i) and (ii) is a *sine qua* non for application of (iii) by the Court and/or to pass an order thereupon under (iv) above. Exclusion of the cases which fall under clause (a) of sub-section (4) clearly indicates the legislative intent to provide an expeditious remedy to the cases of limited nature and squarely falling under clause (b) of sub-section (4). The language adopted by the legislature in enacting the law has always been the principle of great aid in interpretation of statute. The language of the statute must be construed on its plain reading and should be given its ordinarily understood meaning without adding or subtracting the words of the provision.

(18) It is a settled canon of interpretation of statutes that no word or language used by the legislature should be understood to be unnecesary or a waste. Different terminologies appear to have been used by the Legislature and obviously with some purpose. In sub-section (1) of Section 176 the expression used is "the validity of an election is brought in question." In sub-section (4)(a) the Court has to hold an enquiry and then pass orders as postulated upon entertaining

a petition in accordance with the provisions of Section 176(2) of the Act. While under sub-section (4)(b) it is stated "where the validity of election is in dispute between two or more candidates."

(19) To treat these expressions synonymous to each other or even alternative to each other would not be proper. The Court must be able to discernly apply the various provisions of this Section to different kinds of cases and at the appropriate stages. A Full Bench of this Court in the case of *Smt. Anju* v. *The Additional Civil Judge (Senior Division), Pehowa* (1) considered the distinction in the scope and applicablity of Section 176(4)(a) & (b) of the Act. The Full Bench held as under :—

> "A perusal of the aforesaid provision would show that the only two grounds on which an election can be challenged are : (a) that the returned candidate committed a corrupt practice within the meaning of sub-section (5); (b) that some irregularities or illegalities were committed during the course of counting on which plea the court may order scrutiny and recounting of votes and declare the candidate who is found to have largest number of valid votes in his favour to be duly elected. Sub-section (5) of Section 176 then defines what a corrupt practice means and when a person shall deemed to have committed the same. The ground regarding charge of symbols is not a ground mentioned in Section 176(4) on which the election of a returned candidate could be challenged."

(20) The obvious ancillary question that would arise for consideration is whether the petitioners who are challenging the validity of election, or questioning the correctness thereof, on grounds other than the grounds specified under sub-section (4)(a) and (b) are without any remedy in law. The above ancillary question was considered by another Full Bench of this Court in the case of *Lal Chand* v. *State of Haryana,* (2) where the Court followed the view taken in Smt. Anju's case (supra) and answered the question in detail as under :—

> "To sum up, our answer to the questions referred to the Full Bench are as follows :
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> 1. The question with regard to clause (a) of Article 243-O and clause (a) of Article 243-ZG of the Constitution stands answered in the judgment of the Supreme Court in the case of Pardhan Sangh Kshetra Samiti (supra).

(1) 1998 (2) P.L.R. 393
(2) 1998 (2) P.L.R. 640

2. With regard to clause (b) of Article 243-O and clause (b) of Article 243-ZG of the Constitution, we hold that the words "notwithstanding anything in this Constitution", appearing in the aforesaid two Articles will be read down as "notwithstanding anything in this Constitution" subject however to Article 226/227 of the Constitution. Accordingly, clause (b) of Article 243-O and clause (b) of Article 243-ZG would be read to mean as follows :

"No election any Panchayat/Municipality shall be called in question except an election petition presented to such an authority and in such manner as is provided for by or in any law made by the legislature of a State, but this will not oust the jurisdiction of the High Court under Article 226/227 of the Constitution"

3. The second question pertaining to grounds on which an election of a returned candidate to Gram Panchayat/Zila Parishad can be challenged under the Haryana Act and Haryana Rules, already stands answered in the Full Bench judgment of this Court in the case of *Smt. Anju* v. *Addl. Civil Judge (Sr. Division), Pehowa*, (1998-2) 119 P.L.R. 393 (F.B.)."

(21) We have referred to the above Full Bench decision of this Court, with an intention to provide answer to the questions involved in the present case with clarity and in unambiguous terms. Thus, with respect we will follow the view taken by the Full Bench of this Court in the cases of *Smt. Manju and Lal Chand* (supra).

(22) The learned counsel appearing for the petitioner contended that keeping in view the provisions of Section 176(4)(b) the expression 'shall' will have to be construed as 'may'. It was further contended that keeping in view the provisions of Section 183 of the Act and Rules 39 to 45, 48 to 51, 55 to 57, 62 to 69 and 72 to 74 of the Haryana Panchayati Raj Election Rules, 1994, the Legislature intended to maintain the scope of secrecy of votes. Thus, the re-counting orders passed in the cases are unsustainable in law as there was no evidence and formation of such an opinion was not possible on the basis of the record before the trial Court. In order to derive support for his argument he strongly relied upon the judgment of Division Bench of this Court in the case of *Bharat Singh* v. *Dalip Singh and others* (3).

(3) 1996 (1) P.L.R. 70

(23) On the other hand, the learned counsel for the respondents (beneficiaries of the impugned orders) contended that the Legislature has intentionally categorised the cases falling under clauses (a) and (b) of sub-section (4) of Section 176 of the Act. The use of the expression 'shall' in clause (b) makes it obligatory upon the Court to direct recount on the basis of scrutiny and computation of votes as and when the candidate demands. The learned counsel derived support from the clear conclusions arrived at by another Division Bench of this Court in the case of Sunehri Devi (supra) where it was held as under :—

> "The Court cannot ordinarily usurp the role of the Legislature by changing the language of enactment. The addition to these two principles, which in our opinion are applicable to the interpretation of Section 176, we do not find any reason or justification to ignore the fact that the Legislature has used the word "shall in Section 176(4)(b). The use of word "shall" raises a presumption that Section 176(4)(b) is mandatory.
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> Crawford on the construction of statutes has observed: "Ordinarily the words "shall" and "must" are mandatory and word "may" is directory, although they are often used interchangeably in legislation." It has further been observed by Crawford that construction of mandatory words as directory and directory words as mandatory should not be mutually adopted because there is a considerable danger that the legislative intent will be wholly or partially defeated.
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> If we consider the use of word "shall" in the light of the legislative intendment, there can be no manner of doubt that the Legislature has designedly made it obligatory for the Court to scrutinise and count votes polled by each candidate and declare that candidate as elected who secured largest number of valid votes. If the word "shall" was to be read as "may" or the provision was held to be directory, the provision contained in Section 176(4)(b) will itself become subject to arbitrariness and will confer unbridled discretion on the Court to scrutinise and count ballots in one case and not to do so in the other case. Such an interpretation is not warranted from the plain language of the statute and in any case it deserves to be avoided.
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> In view of the above, it is held that the order passed by the learned Senior Sub Judge does not suffer from any illegality warranting our interference.
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> For the reasons mentioned above, the writ petition is dismissed."

(24) The use of the word "shall" in our view is not without a purpose. The legislative purpose behind the provisions of sub-section (4)(b) is to provide an expeditious disposal and relief to the candidate whose case falls within the limited scope of the grounds spelled out in the Section itself. To us it appears that the cases falling within the limited ambit and scope of section 176(4)(b) and not falling under sub-clause (a) of the same sub-section, it may not be necessary for the Court to hold a regular inquiry as postulated under the provisions of sub-section 4(a) of the Act. The validity of the election is to be in dispute but only between two or more candidates. Upon being *prima facie* satisfied, it may be somewhat obligatory upon the court of competent jurisdiction to order scrutiny and computation of votes recorded in favour of each candidate upon passing such an order, the candidate who is found to have recorded the largest number of valid votes in his favour would be duly elected. The restricted and narrow scope of the cases falling under this category and application of these provisions thereto clearly indicate with definite clarity by the legislature in the language of these provisions.

(25) The opening words of the provisions of sub-section (4) (b) indicate the exclusion of cases falling under S. 4(a) and take within its ambit the cases of a very limited and only ground for computation and scrutiny of votes. If the complete procedure of holding an enquiry by filing of pleadings leading of onus based evidence, examination of number of witnesses and then hearing of lengthy arguments is to be adopted before appropriate orders are passed, it would frustrate the very object of this sub-section. Expeditious disposal of election matters so as to enable a successful candidate to utilise his complete tenure in terms of the statute would be the basic legislative object behind such provisions. This object alone can further the cause of the statute. Fine line of distinction between the expression 'shall' and where shall be termed as 'may' must be clearly understood to avoid un-necessary impediments in disposal of such election petitions. It also could not be contended that mere presentation of an application would compel the Court to pass an order of recounting founded on computation and scrutiny of votes polled in favour of one candidate or the other automatically.

(26) The essence of judicial pronouncements or judgments of the Court, is the reasons in support thereof. Reasons is the soul of the judgment. Reasons should be founded on material on record. The doctrine of reasonableness and application of mind are more stringently applicable to the judicial pronouncements than the administrative orders. The basic rule of law demands the Courts to pass orders based upon record and founded on some plausible reasoning. To satisfy this

dual concept presentation of some material before the Court to bring a case within the purview and scope of sub-section (4) (b) of the Act would be essential. The concept of automatic conversion of a petition into an order would be destructive of the basic rule of law.

(27) In other words the party filing an application and the party which is called upon to defend such an application must know the precise extent of the relief prayed for, and the case which has to meet, must be clearly pleaded. The situation would be entirely different where a party has consented to the recounting of votes and upon such recounting of votes an order has been passed in consonance with the provisions of sub-section (4) (b). It will be difficult for the Court to upset such a decision. Firstly a non-applicant is at liberty to give consent and once such consent is given and is acted upon, such non-applicant would be estopped from challenging the correctness of such order. He would be estopped in law by his conduct from taking a contrary stand. In the case of Radha Kishan petitioner, on 12th May, 1995 the respondent had specifically stated that he had no objection if the counting of votes is conducted. It is the result of those counting which was recorded by the Court.

(28) The consent by the parties for recounting or scrutiny and computation of votes founded on the consent of the parties does not offend any law or public policy. Having taken a stand not only of stating no objection to the order as contemplated under section 4 (b) of the Act, but also having given specific consent, we feel that it will neither be fair nor proper for the consenting parties to challenge the validity of such order. The parties are governed by their conduct before the Court of competent jurisdiction. Normally the parties would not be permitted to alter their conduct to the disadvantage and prejudice of the other and more particularly in the cases of the present kind. A Division Bench of this Court in the case of Bharat Singh (supra) following the principles enunciated by the Hon'ble Supreme Court of India in the case of Sukhchand Raj Singh held as under :—

> "Counsel appearing for the petitioner argued that no recount can be allowed on the basis of the statement of the parties. It was contended that where the election petition does not disclose any cause of action or where there was no evidence to support the allegations made in the election petition for a recount, no recount can be ordered because any statement made by the returned candidate, agreeing for a recount, will be against law and, therefore, cannot be acted upon. As against this the stand taken by the counsel appearing for the respondents is

that the compromise regarding recount is a valid agreement and binding between the parties.

Whether a recount can be ordered on the basis of an agreement between the parties, came up for consideration before the Supreme Court of India in *Sukhchand Raj Singh* v. *Ram Harsh Misra and others* A.I.R. 1977 S.C. 681, Supreme Court of India ordered recount on the basis of agreement between the parties. While considering such an agreement, it was held by their Lordship that (emphasis supplied) *"This agreement, we may add, does not violate any of the provisions of the Representation of People Act, 1951, including Section 97 thereof."*

(29) 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 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.

(30) As already noticed by us, great emphasis was placed by the learned counsel for the parties on the expression 'shall' used in section 4 (b) of the Act. It is settled rule of interpretation of statute that expression must be read and construed as used by the legislature. Addition, subtraction and substitution of words in a statute is not the normal rule but is an exception. The use of the word 'Shall' normally indicates that the provision is imperative. To rebut this impression, it has to be unequivocally shown that the object and the scope of the enactment and consequences flowing therefrom demand a different meaning to the expression used. Whether the expression 'shall' could be construed as imperative or directory thus has to be decided on the facts of each case. The different sections and rules of this enactment have not used the word 'shall' uniformly and the legislature in its own wisdom has even used different words in different sub sections of section 176 of the Act itself. The expression 'shall' in sub section 3 of section

176 of the Act certainly indicates an imperative direction of the legislature that the cases to be heard by the same court. It is contended on behalf of the petitioner that the expression 'shall' has to be construed as 'may' while according to the respondents 'shall' is mandatory and must be read as 'shall'.

(31) Having pondered over the scheme of the Act and its object, we see no need to read the word 'shall' either as 'may' or 'must' These are three different expressions of law having different meanings and connotations. We are unable to find any provision of this Act which would persuade us to take the rebuttal concept on the facts of the present case, for interpretation of the expression 'shall'. For 'shall' to be construed as 'must' we find that the Court has to exercise its judicial discretion for valid and plausible reasons. The foundation of judicial discretion is the reason. Reason and record are integral and indispensable ingredients for a judicial order. Must the Court be directed by the command of the legislature to pass a particular order. It would be opposed to the very basic rule of law and public interest. Thus, 'shall' has to be understood with its normal limitation in its plain language. Application of mind and the reasoning brings the things to light and render them clear so as to provide aggrieved party opportunity to impugne the said order, fairly.

(32) Normally, the expression 'shall' cannotes and leads to the conclusion of imposing an obligation, whereas the Court was provided the largest discretionary powers but it is not decisive factor. In the case of *Kartar Singh* versus *State of Punjab* (4), the Hon'ble Supreme Court enunciated the following principles.

> "124. Though normally the plain ordinary grammatical meaning of an enactment affords the best guide and the object of interpreting a statute is to ascertain the intention of the legislature enacting it, other methods of extracting the meaning can be resorted to if the language is contradictory, ambiguous or leads really to absurd results so as to keep at the real sense and meaning. See (1) Salmond : "Jurisprudence," 11th Edition, P. 152; (2) South Asia Industries (Pvt.) Ltd. v. S. Sarup Singh AIR 1966 SC 346, 348 and (3) S. Narayanaswami v. G. Panneerselvam AIR 1972 SC 2284, p. 2285.
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> 125. In a recent decision in Directorate of Enforecement v. Deepak Mahajan & Anr. 1994 (1) JT 290 at p. 302 a Bench of this Court to which one of us (S. Ratnavel Pandian, J) was a party has held that " ..... it is permissible for Courts to have

(4) J.T. 1994 (2) S.C. 423

functional approaches and look into the legislative intention and sometimes may be even necessary to go behind the words and enactment and take other factors into consideration to give effect to the legislative intention and to the purpose and spirit of the enactment so that no absurdity or practical inconvenience may result....."

(33) The very existence of the Court introduces a limitation of judical discretion guided by statutory and settled principle and we are unable to see any compelling reason for us to construe the word 'shall' different than what its plain reading in the statute means. The legislature intent behind these provisions appears to place greater emphasis on the necessity of the Court to deal with such applications quickly and effectively and in a different manner than it would deal with the election petition covering the corrupt practices pleaded against a candidate i.e. after holding elaborate and complete inquiry. To some extent the Court is obliged to entertain an application/objection under section 4 (b) of the Act more liberally and without insisting upon complete oral and documentary evidence in support thereof. But at the same time, the concept of automatic exercise of judicial discretion on presentation of a formal application is also not called for on the cumulative reading of the provisions and the scheme of the Act. The intention on the part of the legislature in bifurcating the cases relating to election under this Act under two different categories is manifestly clear from the language of the section. The person who could institute such a petition, method of its presentation, procedure for its inquiry, culminating into the final order and consequences thereof are distinct and different. They do not conflict with each other. They operate in two different fields and on two distinct grounds with divergent consequences.

(34) At this stage, it will be appropriate for us to advert to the respective discussion of the Hon'ble Division Benches on the interpretation of these provisions.

(35) A Division Bench of this court in the case of *Bharat Singh* (supra) placed heavy reliance on the fact that the rules framed under this Act were paramateria to the provisions and the rules framed under the Representation of People Act and held that the language of section 176 (4) of the Act does not suggest that recounting of votes should be ordered as a matter of course.

(36) On the other hand, the Division Bench in the case of *Sunehri Devi* (supra) had emphasised that the expression 'shall' cannot be

construed as 'may'. Rather the 'shall' must be understood as an imperative obligation to direct recount. The bench held that otherwise the Court concerned would be obviously vested with unbridled discretion in relation to direct scrutiny and recount The Court upheld the order passed by the learned Subordinate judge directing recount of votes.

(37) Mr. Surjewala contended that recount on mere asking would frustrate the objects of the Act and would also diminish the importance attached to secrecy of the ballot paper and a recognised concept in law relating to election. For this purpose, he relied upon, *Ram Sewak Yadav* versus *Hussain Kamil Kidwai and others, (5) Chanda Singh* versus *Chaudhary Shiv Ram Verma and others* (6) *Bhabhi* versus *Sheo Govind and others,* (7) *P.K.K. Shamsudeen* versus *K.A.M. Mappillai Mohindeen and others* (8) and *Shri Satyanarain Dudhani* versus *Uday Kumar Singh and others* (9).

(38) There can be no doubt as to the well established and settled position of law that secrecy of ballot paper has to be maintained and the recounting of votes could not be ordered lightly or on the mere asking. The judgment relied upon by the parties mainly relates to the provisions of the Representation of People Act and the rules framed therein. A fair process and election, has to be in a free and fair manner so as to attain to its protection of a sacrosanct process which normally would not be interfered by the Court. We have already held that the Courts are neither expected nor required to pass the order in a mechanical manner on mere asking an applicant. The Court has to satisfy itself that a *prima facie* case exists and required averments supported by an affidavit (in accordance with rule) and some documents have been placed on record in support thereof which would justify invoking of the powers of the Court under section 176 (4) of the Act. Definite averments supported by an affidavit in accordance with rules and preferably some doucuments in support thereof would be *sine quo* non to the passing of an order for scrutiny and computation/recounting of votes by the court considering the election petition.

(39) It has been conceded before us that no provisions adopting the language of section 176 (4) of the Haryana Act exists in the provisions of the Representation of People Act or the rules framed thereunder. Though some of the provisions in the Act in relation to

(5) A.I.R. 1964 S.C. 1249
(6) A.I.R. 1975 S.C. 403
(7) A.I.R. 1975 S.C. 2117
(8) A.I.R. 1989 S.C. 640
(9) A.I.R. 1993 S.C. 367

counting/re-counting and other steps to be followed for completion of the election process are some what similar to the provisions of the Representation of People Act. Under the Haryana Act, rule 69 deals with recount of votes. Where the legislative purpose appears to be to give finality to the result declared by the returning officer, there the Court cannot lose sight of the fact that the legislature in its wisdom has incorporated the provisions like 176 (4) (b) of the Haryana Act. Absence of similar provisions in the other statute like the Representation of People Act suggests the significance of the obligation of provisions of section 176 (4) (b) of the Haryana Act. The pupose is to vest definite power in the Court to deal with the cases covered under section 176 (4) (b) of the Act and not relating to corrupt practices, in an election petition expeditiously and to provide finality to such order. Section 183 of the Haryana Act which deals with the maintenance of secrecy of votes and indicates the obligation on every officer, official, agent or other person who performs any duty in connection with recording or counting of votes shall maintain and aid in maintaining the secrecy of the voting and not to communicate the information received by him. The provisions of section 183 read in conjunction with section 66 and 69 of the Haryana Rules is primarily to maintain secrecy and respect for the election process. But a substantive power given to the court by the legislature itself cannot be diluted by these applied principles. If the legislature has opted to incorporate a specific provision as embodied in 176 (4) (b) it has to be construed that legislature intended to give wide powers to the court to decide the objection under section 4 (b) expeditiously and without getting into the detailed inquiry or evidence as postulated under section 176 (4) (a) of the Act. Therefore, liberal application of the provisions of section 176 (4) (b) of the Act is called for, though to the kind of limited cases covered under that provision and as held by the Full Bench of this Court in the case of *Smt. Anju* (supra).

(40) The Hon'ble Supreme Court in the case of *Ram Sewak* (supra) while considering the scope of a direction for discovery and inspection of valid papers under the provisions of Order 11 of Code of Civil Procedure and while examining the relevant rules of the Representation of People Act, 1951 held as under :—

> "(7) An order for inspection may not be granted as a matter of course : having regard to the insistence upon the secrecy of the ballot papers, the Court would be justified in granting an order for inspection provided two conditions are fulfilled :
>
> (ii) the tribunal is *prima facie* satisfied that in order to decide the dispute and to do complete justice between the parties inspection of the ballot papers is necessary.

But an order for inspection of ballot papers cannot be granted to support vague pleas made in the petition not supported by material facts or to fish out evidence to support such pleas. The case of the petitioner must be set out with precision supported by averments of material facts. To establish a case so pleaded an order for inspection may undoubtedly, if the interests of justice require, be granted."

(41) Again in the case of *P.K.K. Shamsudeen* (supra), the Hon'ble Apex Court held as under :—

"13. Thus the settled position of law is that the justification for an order for examination of ballot papers and recount of votes is not to be derived from hind sight and by the result of the recount of votes. On the contrary, the justification for an order of recount of votes should be provided by the material placed by an election petitioner on the threshold before an order for recount of votes is actually made."

(42) In Bhabhi's case (supra) before directing the inspection of the ballot paper in an election petition the Hon'ble Apex Court spelt out the following conditions which needs to be specified before such order could be passed.

"(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 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. AIR 1964 SC 1249 ; AIR 1966 SC 773 ; AIR 1970 SC 276 ; AIR 1973 SC 215 ; AIR 1972 SC 1251 ; AIR 1975 SC 693 ; AIR 1975 SC 283 ; AIR 1975 SC 403 and AIR 1975 SC 502 Ref."

(43) The above observations were recorded by the Hon'ble Apex Court in the cases falling under the Representation of the People Act, 1951. Admittedly the provisions alike section 176 (4) (b) of the Haryana Act is not embodied in that statute. Rule 69 controls the manner of recount before the returning officer and is hardly of any consequence and does not deal with the procedure or the powers of the court while entertaining a petition or application under section 4 (b) of section 176 of the Act. The Court must take a view which would further the cause and the object of the statute rather than a view which would frustrate the very purpose of such enactment. The limited cases falling within the narrow scope of section (b) of the Act would require the Court, to pass an order in accordance with law, provided a petition presented to the Court with definite averments founded on actual facts verified or annexed with affidavit as required under the rules and with documents, if any, in support thereof. The expression 'shall' should be taken to its logical end and meaning. The legislature has certainly emphasised the need for entertaining and expeditious disposal of such application becasue they would help in resolving the controversy if founded on good material at the earliest possible stage and would help the candidate validly and rightfully elected to enjoy complete term prescribed under the law to the office to which he was elected. We would like to follow the mid path to the two judgments of Division Benches of this Court, referred to above. The court would not be obliged to pass an order of recount, the scrutiny and computation of votes on mere asking by the applicant in absence of any material as described above. On the other hand, the Court is not required to go into the detailed inquiry based on detailed oral and documentary evidence before passing such order. We have already noticed that scope of the section is very limited one and

the relief that can be granted finally on such application is only of recount with the object to scrutiny and computation of valid votes in favour of the candidates admit and jurisdiction of this section cannot be extended by the court by holding that a regular inquiry is to be conducted by the Court for granting the relief under this limited provision. Acceptance of such submission would probably frustrate the object of the legislation.

(44) We have already decided that in the case of Radha Kishan he would be estopped from challenging the correctness of the impugned order as no reason whatsoever has been brought on record of this court to interfere with the impugned order based on a consent of the parties which otherwise was permissible and legal. The order is well within the ambit and scope of section 176 (4) (b) of the Act and as such the objections deserve to be dismissed.

(45) In the case of Surjani, we have examined the original petition filed under section 176 of the Haryana Act. Various averments were made with definite instances in regard to inclusion and exclusion of valid votes. The averments were made in relation to change of result. According to the petitioner result was declared on 5th December, 1994 and the petitioner was declared winner by three votes. But on the very next date it was averred that respondent No. 1 was declared successful by a margin of two votes.

(46) In the petition detailed circumstances were stated and the petition was duly verified. The petitioner Smt. Darshana on 18th May, 1996, had given up all the grounds of corrupt practices or otherwise and had confined her relief and claim to the recount and scrutiny and computation of the valid votes. The learned Judge *vide* order dated 14th August, 1996 had come to the conclusion that in order to do justice between the parties and on the basis of the averments made in the petition supported by documents, it would be imperative to direct recount/ scrutiny and computation of valid votes. The order dated 14th August, 1996 is a well reasoned order and we are of the considered view that it fully satisfies the basis and underlying requirements of section 176 (4) (b) of the Act.

(47) Consequently, we also see no reason to interfere in the order dated 14th August, 1996 challenged by Smt. Surjani.

(48) The cumulative 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 :—

(49) With respect and for the reasons recorded above, we are not quite in agreement with either of the extreme views taken by the Hon'ble Division Benches of this Court in the cases of *Sunehri Devi* versus *Narain Devi,* C.W.P. No. 6381 of 1995, decided on 20th October, 1995 and *Bharat Singh* versus *Dalip Singh and others* C.W.P No. 9671 of 1995 decided on 6th October, 1995. We would prefer to adopt the middle path and practical oriented 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 expenditious 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.

(50) 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 unambigous details, in acoordance 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 case 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.

(51) Resultantly both the writ petitions are dismissed without any order as to costs.

R.N.R.