

District-Gopalganj.

**IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION,
(CIVIL REVISIONAL JURISDICTION)**

Present:

Mr. Justice Md. Toufiq Inam

Civil Revision No. 3186 of 2024.

Md. Imam Hossain

..... Applicant- Opposite Party- Petitioner.

-Versus-

Habibullah Shikder and others

.....Opposite Parties-Petitioner-Opposite Parties.

Mr. Md. Raihan Kawser, Advocate

.....For the Applicant- Opposite Party- Petitioner.

Mr. Md. Ozi Ullah, Senior Advocate with

Mr. Md. Moniruzzaman

.....For the Opposite Party No.1-Petitioner-
Opposite Party No.1.

Mr. Md. Yusuf Ali, Deputy Attorney General

.....For the Opposite Party Nos. 3 and 4.

Heard On: 25.06.2025 and 01.07.2025.

And

Date of Judgment: 2nd Day of July 2025.

Md. Toufiq Inam, J.

This Rule was issued calling upon the opposite party to show cause as to why the judgment and order dated 20.03.2024 passed by the learned District Judge, Gopalganj, in Civil Revision No. 16 of 2022, setting aside the order dated 08.11.2022 passed by the learned Senior Assistant Judge and Election Tribunal, Gopalganj, in Election Case No. 11 of 2022 ordering to recount votes, should not be set aside and/or pass such other or further order or orders as to this Court may seem fit and proper.

The petitioner, being a contesting candidate for the post of Member (General Seat) of Ward No. 4 of No. 6 Kushla Union Parishad, Gopalganj, filed Election Case No. 11 of 2022 challenging the result of the election held on 05.01.2022, inter alia, seeking a declaration that Opposite Party No. 1 is the defeated candidate and that the petitioner is the duly elected (returned) candidate for the said post.

The Petitioner's Election Case is as under:

- (a) Following the announcement of the election schedule for No. 6 Kushla Union Parishad in 2021, both the petitioner and Opposite Party No. 1 submitted valid nomination papers for the post of Member (General Seat) of Ward No. 4. The election was peacefully held on 05.01.2022, with 1750 out of 2061 registered voters casting their votes. The petitioner secured 898 votes, while Opposite Party No. 1 received 818 votes, and 24 votes were declared invalid. Accordingly, the petitioner was declared elected by the Presiding Officer.
- (b) Shortly after the declaration of results, while the petitioner had gone out to meet his supporters, Opposite Party No. 1 allegedly exerted undue influence on Opposite Party No. 2 to unlawfully initiate a recount. When the petitioner objected to this irregularity, he was reportedly detained at the direction of Opposite Party No. 2. During this period of detention, the result sheet was allegedly tampered with, reducing the petitioner's vote count to 810, showing that Opposite Party No. 1 had secured 818 votes, and reflecting a total of 1652 votes cast, thereby declaring Opposite Party No. 1 as the elected candidate.
- (c) Later, the Officer-in-Charge of Kotalipara Police Station arrived and released the petitioner. Despite written applications submitted by the petitioner on 05.01.2022 and 06.01.2022 requesting a recount, no action was taken. Subsequently, a

gazette notification was issued on 01.02.2022 declaring Opposite Party No. 1 as the elected member, which led the petitioner to file the present election case.

In the petition a prayer for recounting of votes was also made to reach the decision. However, both parties adduced evidence. Applicant-petitioner adduced 2 witnesses in support of his claim; while the Opposite party No.1 examined one witness. Witnesses from both sides were cross-examined in due course. After taking evidence and prior to commence arguments, the learned Election Tribunal, upon appreciation of the oral and documentary evidence, direct a recount of votes and passed an order to that effect on 08.11.2022.

Being aggrieved, the returned candidate (opposite party No.1 herein) preferred Civil Revision No. 16 of 2022 before the learned District Judge, Gopalganj, for setting aside the order to recount votes. The learned District Judge, Gopalganj by the impugned judgment and order dated 20.03.2024, set aside the order of recount passed by the Election Tribunal, holding that there was no legal impediment for the Tribunal to decide the case on the basis of oral and documentary evidence instead of recount of votes; Despite the Tribunal ordered recounting of votes suo motu and thus the Tribunal committed 'legal error' in the decision.

As there was no other efficacious remedy available, the petitioner invoked the revisional jurisdiction of this Court under Section 115(4) of the Code of Civil Procedure and obtained the present Rule after leave was granted.

The core question for consideration in this revision is- whether the Election Tribunal acted illegally or without jurisdiction in directing recounting suo- motu based on the evidence adduced, and whether the Appellate Tribunal was justified in interfering with that discretion.

Mr. Md. Raihan Kawser, learned counsel for the petitioner, referring to Rule 62 of the Union Parishad Election Rules, 2010 ('the Rules, 2010'), submits that the Election Tribunal is vested with both statutory and inherent powers to order a recount of votes to ensure a just and fair adjudication of the electoral dispute. He contends that, upon a careful evaluation of the depositions of the witnesses, particularly in light of the nature and seriousness of the allegations, the Tribunal rightly exercised its judicial discretion in directing a recount, with a view to unveiling the truth and securing justice between the parties.

Mr. Kawser further contends that the revisional court, in the impugned judgment, held that the Tribunal committed a 'legal error' by ordering a recount of votes suo motu, yet it failed to specify which provision of substantive or procedural law was allegedly violated. Consequently, the impugned judgment is a non-speaking one and liable to be set aside. In support of his contention, he cites the cases reported in 23 BLC (2018) HC, page 837.

In response, Mr. Md. Ozi Ullah, learned Senior Advocate appearing with Mr. Md. Moniruzzaman, argues for opposite party No. 1 that the petitioner failed to establish any foundational basis for seeking a recount.

He submits that Rule 62 of the Rules, 2010, provides a specific procedural safeguard whereby the Tribunal may inspect the ballot boxes, and only if, upon such inspection, it is satisfied that irregularities exist, may it proceed to order a recount. In the present case, he contends, the Tribunal bypassed this mandatory initial step and directly ordered a recount, thereby committing a fundamental breach of the procedural requirements under Rule 62.

Citing the case reported in *51 DLR(AD)229* and *38 DLR(AD)275*, he further argues that the superior courts have repeatedly cautioned against and disapproved of indiscriminate or premature recount orders. He emphasizes that the lower revisional court, in setting aside the recount order, rightly concluded that the dispute could have been resolved on the basis of the evidence already on record, without resorting to a recount.

On other hand, supporting the original order, Mr. Md. Yusuf Ali, learned Deputy Attorney General appearing for opposite party Nos. 3 and 4 (Election Commission officials), submits that the Tribunal's decision was neither arbitrary nor procedurally flawed. Referring to the deposition of PW1 (the petitioner) and the reasoning contained in the Tribunal's order, he argues that the direction for recounting was based on a sufficient and credible factual foundation. He maintains that the Election Tribunal, being the primary forum to adjudicate such electoral disputes, acted within its lawful authority in ordering a recount after recording evidence and being satisfied that the dispute could be conclusively resolved through such a measure. Therefore, according to him, the original order to recount was both legally sound and justified by the circumstances of the case.

Having heard the learned counsels for both sides and upon perusal of the judgments and orders of the courts below, as well as the evidence on record, this Court proceeds to render its decision.

It is now a well-settled principle of election jurisprudence that an Election Tribunal, as the primary fact-finding forum, is empowered to direct a recount of votes when the facts and circumstances of a case so warrant. The authority to order a recount is derived not only from Rule 62 of the Rules, 2010 but also from the Tribunal's inherent jurisdiction to ensure that the true mandate of the electorate is not frustrated by procedural irregularities or counting errors. This

discretion, however, must be exercised judiciously, upon consideration of the pleadings, the evidence adduced, and the overall circumstances of the case.

Where sufficient pleading exists and is supported by evidence, the Tribunal may direct a recount even in the absence of a formal prayer, provided such action is necessary to serve the ends of justice. Judicial pronouncements have clarified that a formal application for inspection or recounting is not an indispensable precondition if the Tribunal is satisfied, on the basis of materials on record, that the integrity of the election result is in doubt. An Election Tribunal is not precluded from directing a suo motu recount of votes when justified by the evidence before it. In such instances, the Tribunal may adopt any procedure necessary to ascertain the truth, including a recount, provided its decision is based on reasoned satisfaction supported by the record.

In the present case, it is undisputed that the petitioner had explicitly prayed for a recount in the election petition. Both parties were afforded full opportunity to adduce evidence and cross-examine each other's witnesses. The Election Tribunal, after a thorough consideration of the depositions, documentary evidence, and the nature of the allegations regarding irregularities in the vote counting process, arrived at a reasoned conclusion that the dispute could not be resolved conclusively without a recount. Accordingly, the Tribunal, in the exercise of its judicial discretion, directed a suo motu recount of votes. Although this was not preceded by a formal inspection under Rule 62, the action was well within its lawful competence, as it stemmed from the Tribunal's satisfaction based on the materials presented during trial.

The contention that the Tribunal violated Rule 62 by not conducting a prior inspection of the ballot boxes before ordering a recount is both misconceived and untenable. Rule 62 does not mandate that an

inspection must invariably precede a recount, nor does it curtail the Tribunal's authority to act suo motu where sufficient basis exists in the pleadings and the evidence. On the contrary, the Tribunal is empowered to direct a recount, even absent a formal application or prior inspection, if such a step is necessary to ensure a just resolution of the dispute. In the present case, the recount order was not arbitrary but was based on specific depositions and allegations of material irregularities that arose during the hearing and were evaluated firsthand by the Tribunal.

The revisional court below, in setting aside the recount order, failed to consider the Election Tribunal's authority to act on its own motion and did not identify any legal impediment to such action. Its observation that "there was no legal bar for the Tribunal to decide the case on the basis of oral and documentary evidence instead of recounting the votes" is both insufficient and misplaced. The impugned judgment characterizes the recount order as a 'legal error' but fails to identify any provision of substantive or procedural law that was contravened. As such, the judgment is non-speaking in nature. It overlooks that the recount was not a discretionary indulgence but a necessary evidentiary measure to clarify material disputes. The revisional court's approach unduly narrows the discretion conferred upon the Election Tribunal and introduces a procedural rigidity unsupported by either the governing Rules or judicial precedent.

For the reasons stated above, this Court finds that the Election Tribunal acted within its lawful authority, exercised its discretion judiciously, and committed no jurisdictional error in directing a suo motu recount of votes based on the evidence adduced by both sides. The interference by the revisional court below with that discretion, absent any procedural irregularity or identifiable legal error, was both misconceived and without legal foundation.

Accordingly, this Court holds that the recount order passed by the Election Tribunal was lawful and proper. The interference by the revisional court below is unsustainable in law.

Accordingly, **the Rule is made absolute.**

The **judgment and order dated 20.03.2024** passed by the learned District Judge, Gopalganj, in Civil Revision No.16 of 2022, **is hereby set aside.**

The **order dated 08.11.2022** passed by the learned Senior Assistant Judge and Election Tribunal, Gopalganj, in Election Case No. 11 of 2022 ordering to recount votes, **stands restored** and shall be given effect to forthwith.

There shall be no order as to costs.

Justice Md. Toufiq Inam

Ashraf /ABO.