

IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(SPECIAL ORIGINAL JURISDICTION)

***Present:***

***Mr. Justice Mustafa Zaman Islam***  
***And***  
***Mr. Justice Md. Atabullah***

**WRIT PETITION NO. 9185 OF 2023**

**IN THE MATTER OF:**

An application under Article 102 of the Constitution of the  
People's Republic of Bangladesh.

**AND**

**IN THE MATTER OF:**

Bishawjit Sinha

... Petitioner

-Versus-

The learned Senior Assistant Judge, Khulna Sadar and  
Election Tribunal, Khulna and others

... Respondents

Mr. Sabyasachi Mondal, Advocate

... For the petitioner.

Mr. Shaikh Forhadul Haque, Advocate

... For the respondent No. 2.

Mr. Tushar kanti Roy, Deputy Attorney General with

Ms. Anis-ul-Mawa, Assistant Attorney General and

Mr. Md. Salim Azad, Assistant Attorney General.

... For the respondents.

**Heard on 05.11.2023 and Judgment on 07.11.2023.**

**Md. Atabullah, J:**

This *Rule Nisi* was issued calling upon the respondents to show cause as to why the impugned order No. 36 dated 16.07.2023 passed by the Respondent No. 1, the Election Tribunal, Khulna in Election Case No. 7 of 2021 refusing to recount the ballot papers of U.P. Election 2021 relating to member candidate of Ward No. 02 under Union No. 01, Amadi Union Parishad, Koyra, Khulna should not be declared to have been made without

lawful authority and is of no legal effect and as to why the Respondent No. 1 should not be directed to recount the Ballot Papers of member candidate of Union Parishad Election held on 20.09.2021 of Ward No. 02 under Union No. 1, Amadi Union Parishad, Koyra, Khulna and/or such other or further order or orders passed as to this Court may deem fit and proper.

2. Short facts, relevant for the purpose of disposal of the Rule, are that the petitioner Bishwajit Sinha contested the Amadi Union Parishad Election held on 20.09.2021 as a member candidate of Ward No. 2. The election was held properly, but due to the influence of the Respondent No. 2, the presiding officer illegally and intentionally declared the Respondent No. 2 as winner shifting the ballot papers of the petitioner to Respondent No. 2 although the petitioner got 1045 votes with symbol of Lock and Key and the Respondent No. 2 Md. Aziz Sarder got 1025 votes in favour of his symbol. The petitioner made an application on 28.09.2021 to the Upazilla Nirbahi Officer, Koyra for cancelling the result declaring him winner, who did not response yet. Thereafter, the petitioner filed the Election Petition Case No. 7 of 2021 before the Election Tribunal, Khulna.

3. The respondent No. 2 contested the case by filing written statement denying all the material allegations made in the election petition stating inter alia that the allegation is false and recounting of vote is barred by law. That the counting of ballot papers was done correctly and properly and the presiding officer, respondent No. 2, rightly declared him as elected member of the Ward No. 2 of Union No. 1, Amadi Union Parishad, Koyra, Khulna.

4. During pendency of the election case, the petitioner filed a petition on 28.08.2021 in the Election Tribunal for recounting the ballot papers which was rejected by the Election Tribunal on 16.07.2023 on the ground that there is no substance in the application.

5. Being aggrieved by and dissatisfied with the rejection order passed by the Election Tribunal on 16.07.2023, the petitioner filed this writ petition and obtained the present Rule.

6. Mr. Sabyasachi Mondal, learned Advocate appearing for the petitioner submits that the Election Tribunal should have allowed the petition for recounting the ballot papers to arrive at correct decision in the election case. He also submits that no efficacious remedy is provided in the Local Government (Union Parishad) Ain 2009 and Local Government (Union Parishad) Election Rules, 2010 against the impugned order passed by the learned Judge of the Election Tribunal in the election case. He again submits that the petitioner did not file any civil revision since it is not maintainable in law. He further submits that there is no legal bar to pass an order to recount the ballot papers rather the Honøble Apex Court held in many cases that to arrive at correct decision in an election case, order of recounting ballot papers is justified. The learned Advocate for the petitioner relied upon the decisions passed in the cases of *SM Fazlul Haque Manik vs. Md. Habibullah Bahar and others reported in 61 DLR(AD) 2009, 66, Abdul Hye Akhand vs. Monsurur Rahman Khan and others reported in 16 BLD(1996) 403, Abul Kalam (Md) vs. Md. Habuluddin and others reported in 59 DLR(2007) 137, Md. Khalilur Rahman vs. Md. Alam Bepari and others reported in 2XP(AD) 20 and Rabiul Islam (Md) vs. Asadul Haque (Md) and others reported in 71 DLR(AD) (2019) 386 with regard to recounting of ballot papers and maintainability of the writ petition.*

7. On the other hand, Mr. Shaikh Forhadul Haque, learned Advocate appearing for the respondent No. 2 submits that the petitioner had the scope to file an appeal against the impugned order under Rule 63(3) of the Local Government (Union Parishad) Election Rules, 2010 or civil revision under

section 115(1) of the Code of Civil Procedure, 1908, but without doing so the petitioner filed this writ petition which is not maintainable at all. He again submits that the impugned order passed by the Election Tribunal is justified in law.

8. We have perused the provisions as to Union Parishad Election contained in the Local Government (Union Parishad) Ain 2009 and Local Government (Union Parishad) Election Rules 2010 in details. It is clear to us that there is no provision in the said Ain & Rules under which an appeal lies against the interlocutory order passed by Election Tribunal rather appeal lies only against the judgment and order passed by the Election Tribunal under Rule 63(3) after taking evidences of both the parties under Rule 63(2) of the Local Government (Union Parishad) Election Rules, 2010.

9. Moreover, the Honøble Appellate Division held in the case of Rabiul Islam vs. Asadul and others reported in 71DLR(AD) 386 that tribunal is an adjudicating authority other than a court vested with the judicial powers. It is also held that the High Court Division committed error of law in entering the revisional application exercising its revisional jurisdiction under section 115(1) of the Code of Civil Procedure related to order of the Election Tribunal.

10. Under such circumstances, we are of the view that the writ petition is maintainable against the impugned order passed by the Election Tribunal in the Election Petition Case No. 7 of 2021.

11. The petitioner claimed that he got 1045 votes and the respondent No. 2 got 1025 votes, inspite of that due to the influence of Respondent No. 2, the presiding officer illegally declared the Respondent No. 2 winner as an elected member of the ward No. 2, Amadi Union Parishad No. 1, Koyra, Khulna. On the other hand, the respondent No. 2 claimed that the ballot papers were

counted properly and recounting is barred by law. Considering the facts and circumstances of the election tribunal case and claims of both the parties, we are of the view that recounting of ballot papers is justified to determine the real question in controversy and for proper adjudication of the case. Moreover, in many cases it has been decided by the Honøble Apex Court that recounting of ballot papers is justified.

12. Relevant decisions:

- (i) *According to the decision passed in the case of SM Fazlul Haque Manik vs. Md. Habibullah Bahar and others reported in 61 DLR(AD) 2009, 66, the Election Tribunal is competent to pass an order for recounting of ballot papers for proper adjudication of the election case.*
- (ii). *It has been decided in the case of Abdul Hye Akhand vs. Monsurur Rahman Khan and others reported in 16 BLD(1996) 403 that the Election Tribunal has jurisdiction to pass an order for recounting of the ballot papers where exists a factual foundation for passing an order for recounting of the ballots.*
- (iii). *It has also been held in the case of Abul Kalam (Md) vs. Md. Habuluddin and others reported in 59 DLR(2007) 137 that no appeal is provided against an interlocutory order passed in Election Tribunal case.*
- (iv). *Decision passed in the case of Md. Khalilur Rahman vs. Md. Alam Bepari and others reported in 2XP(AD) 20 that the Election Tribunal allowing the application for recounting of ballot papers upon considering the evidence, committed no error of law, rather purely justified in law.*

13. Pursuant to the above decisions passed by the Honøble Apex Court and existing facts and circumstances of the case, recounting of ballot papers is justified in law. Hence, we are of the view that the recounting of ballot papers is not barred by any law rather it is convenient to arrive at correct decision in an Election Tribunal Case if the facts and circumstances so require.

14. In the light of the above discussion and decisions passed by the Honøble Apex Court we are of the view that justice would be the best served if the Election Tribunal is given direction to hear the petition for recounting the ballot papers afresh.

15. In the result, the Rule is disposed of in the light of the observations made in the body of the judgment.

The impugned order No. 36 dated 16.07.2023 passed by the Election Tribunal, Khulna in Election Case No. 7 of 2021 is hereby set aside.

The Tribunal is directed to hear the petition for recounting ballot papers concerned afresh and dispose of the Election Tribunal Case No. 7 of 2021 within two months from the date of receipt of the order of this writ petition.

However, there is no order as to costs.

Copy of this judgment be sent to the concerned tribunal at once.

**(Md. Atabullah, J.)**

**Mustafa Zaman Islam, J:**

I agree.

**(Mustafa Zaman Islam, J.)**