

Representation of the People Act, 1951, S .80, 81, 100(1)(d)(ii) & (iv) - Election petition - Pleadings - Not permissible for the court to permit a party to seek a roving enquiry - Facts must be pleaded and supporting evidence be lead. Civil P.C. (1908), O. 14, R.1.

Held.

During the trial of an election petition, it is not permissible for the court to permit a party to seek a roving enquiry. The party must plead the material fact and adduce evidence to substantiate the same so that the court may proceed to adjudicate upon that issue. Before the court permits the recounting, the following conditions must be satisfied :

- (i) The Court must be satisfied that a prima facie case is established;
- (ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;
- (iii) A roving and fishing inquiry should not be directed by way of an order to recount the votes;
- (iv) An opportunity should be given to file objection; and
- (v) Secrecy of the ballot requires to be guarded. Therefore, in the case at hand, the election petitioner/respondent has claimed only that there has been irregularity/illegality in counting of 6 tendered votes and the case squarely falls within the ambit of Section 100(1)(d)(iii) of the Act, 1951. Election petitioner has further pleaded that the result of the election stood materially affected because of improperly receiving the six tendered votes and in absence of any Recrimination Petition in the case the appellant cannot be permitted to lead evidence on the fact which is not in issue. In the instant case, an application had been filed to summon the other 4 tendered votes, also making a submission that those documents were required by the parties to resolve the controversy without giving any reason or justification for the same. Admittedly, there is no reference to these 4 tendered votes either in the election petition or in the written statement. The said 4 tendered votes neither had been relied upon in the reply by the appellant nor had been entered in the list of documents. Thus, the judgment in this case is quite distinguishable from the case at hand.

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