

In the High Court of Punjab and Haryana at Chandigarh

**CWP No. 1995 of 2020
Reserved on 09.2.2023
Date of Decision: 14.2.2023**

Jagdish Singh

.....Petitioner

Versus

Election Tribunal-cum-Sub Divisional Magistrate,
Budhlada and others

....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE KULDEEP TIWARI**

Argued by: Mr. L.S.Sidhu, Advocate
for the petitioner.

Mr. Maninder Singh, DAG, Punjab.

Mr. J.P.S.Sindu, Advocate
for respondent No. 6.

SURESHWAR THAKUR, J.

1. The petitioner herein, and, co-respondent No. 6 one Amarjit Singh contested elections to the post of Sarpanch of Gram Panchayat Village Kulana, Tehsil Budhlada, District Mansa. The outcome of the elections to the said post, was that, 939 votes were polled in favour of the petitioner, whereas, 908 votes were polled in favour of co-respondent No. 6. Co-respondent No. 6 filed an Election Petition under Section 76 of the Punjab State Election Commission Act, 1994, before the Punjab State Election Commission. Through the said election petition, co-respondent No. 6 challenged the outcome of the elections, as were held for voting to the office of the Sarpanch of Gram Panchayat village Kulana, Tehsil Budhlada, District Mansa. After completion of pleadings, and, upon subsequently thereto rather evidence becoming adduced by the contesting litigants, the

Election Tribunal concerned, ordered for the re-counting of the votes, as

were polled for elections to the post of Sarpanch of Gram Panchayat Kulana.

2. An affirmative order, as becomes carried in Annexure P-1, hence became drawn on the election petition, as became cast by respondent No. 6, before the Election Tribunal concerned. Annexure P-1 has been challenged, before this Court, by the aggrieved therefrom, one Jagdish Singh. The said Jagdish Singh was, prior to the making of the impugned order, hence declared to bag the highest votes, as, were cast in the apposite elections, as became conducted for electing the Sarpanch of the Panchayat concerned.

3. Before proceeding to draw any conclusion whether the verdict, challenged before this Court, is to be either validated or invalidated, it is deemed appropriate to refer to the pleadings, as became cast by one Amarjit Singh, in his election petition. The pleadings, as became cast by one Amarjit Singh in his election petition, are embodied in paras 5, 6, 7 and 8, paras whereof stand extracted hereinafter.

5. That at the time of counting of the votes the petitioner was made to sit at a distance from counting table and the counting staff made Jagdish Singh, respondent no. 1 to sit by their side and no information was given to the petitioner regarding the votes which were rejected, about the reasons for rejection of votes. Meaning thereby that some votes of the petitioner were rejected without any reason and some votes were tied with the bundle of votes of Jagdish Singh. The entire village is in the know of this fact.

6. That the petitioner requested the Presiding Officer and other staff that the votes may be recounted in the presence of petitioner. But respondents no. 2 to 5 did not hear to the petitioner and they refused the recounting

without any justified reason. As such, the votes are liable to be recounted.

7. *That out of total 2018 votes for Gram Panchayat Village Kulana, 1877 votes have been alleged to have been polled. Respondent no. 1 was acting in connivance with respondent no. 2 to 5. Respondent no. 1, in connivance with the election staff, impersonated other persons in place of deceased voters and polled such votes in his favour and at the time of polling the petitioner had raised objection that respondent no. 1 is polling fake votes in his favour. The election staff did not hear to the petitioner. The same has a material effect on the election process.*

8. *That respondent no. 1 was in connivance with respondents no. 4 and 5. Respondents no. 2 to 4 committed irregularities and omissions which had a material effect upon the election result and the same has been the reason for the defeat of the petitioner. As such, the election of respondent no. 1 for the post of Sarpanch is liable to be set aside.”*

4. A reading of the hereinabove extracted paras reveals, that the said Amarjit Singh, made averment therein, that he was made to sit at a distance from the counting table, whereas, Jagdish Singh was made to sit by the side of the counting staff made. Moreover, he also averred therein, that he remained unapprised qua the reason, for the causing of rejections of the ballot papers. In addition, he further averred, that despite his making a protest before the Presiding Officer, to make a recount, of the ballot papers, but in his presence, yet his request remained unheeded. Furthermore, he has also averred, that the present petitioner, in connivance with the election staff, had permitted impersonation of the deceased voters, and, that the result of such impersonation, when rather became permitted by the polling

staff concerned, was that, the said impersonated votes of deceased voters, becoming ensured to be polled in favour of the present petitioner. Therefore, co-respondent No. 6 averred in Annexure P-5, that resultantly, the fate of the elections became materially affected. Therefore, he prayed that the apposite recount being ordered to be made of the entire ballot papers.

5. Through the making of the impugned order, the above made address was accepted by the Election Tribunal concerned.

6. A reading of the discussions, as made in the impugned order, reveals, that only for ensuring that co-respondent No. 6, is completely satisfied, about the accurate counting of the ballot papers, rather being made by the counting staff concerned, that the Election Tribunal concerned, became led to order for recount of the ballot papers concerned.

7. The reason for this Court becoming constrained to invalidate Annexure P-1, is comprised in the factum, that though there is a detailed discussion about the evidence, which became adduced by the contesting litigants, before the Election Tribunal concerned, but it appears, that no valid reason has been meted therein for either accepting or rejecting the worth of the evidence, as became adduced respectively by the present petitioner or by co-respondent No. 6.

8. Moreover, importantly, in respect of the above pleaded facts, the co-respondent No. 6 was to adduce cogent evidence. However, a reading of the statement, carried in the cross-examination of co-respondent No. 6, and, which becomes appended as Annexure P-9 to the petition, does reveal, that (a) qua his admitting his remaining present inside the polling booth for the whole day, and, further reveals, qua his also admitting, that he

was present inside the polling booth at the time of counting. Further he also admits that the senior officer from the election staff, kept visiting the polling booth during the process of elections. However, he yet admits, that at the polling booth concerned, he did not inform the senior officer concerned, regarding the polling of fake ballots qua impersonation being made of dead voters, at the behest or at the instance of the present petitioner, and, in connivance with the election staff, rather for ensuring that such purported impersonated votes of deceased persons, are polled in favour of the present petitioner. In addition, he makes speakings in his cross-examination, that even after the polling being over, and, upto the filing of the election petition, he did not make any application or complaint to any senior officer, rather regarding the polling of fake votes. He also admits in his cross-examination, that he has signed the result sheet, whereons, the present petitioner was declared as Sarpanch, and, that the result sheet was also signed by the Presiding Officer concerned. However, he has stated that he appended his signatures thereons, as it became represented to him, that he was filling up the forms for the recounting of votes. Nonetheless, the above submission, is not acceptable, as prior thereto he has admitted that he had signed the form rather declaring Jagdish Singh, as a winner in the elections, besides also has prior thereto admitted, that the said declaration of result in favour of one Jagdish Singh, was also signed by the Presiding Officer concerned.

9. The above made admissions by co-respondent No. 6, in his cross-examination, do completely bely the averments (supra), as, made by him in his election petition. Therefore, when the above made averments, became disproven, thus, there was no occasion for the learned Election

Tribunal concerned, to yet proceed to order for the recount of the votes. Additionally also, when a reading of the impugned order, does not at all detail, that the Election Tribunal concerned, had alluded to the above testifications, as, made by co-respondent No. 6 rather in his cross-examination. Therefore, the simplistic reason assigned by the Election Tribunal, to yet order for the recount being done qua only for ensuring that co-respondent No. 6 is satisfied, is but a flimsily assigned reason, and, but is lacking in objectivity, but obviously is ridden with a pervasive vice of lack of keenest objective application of mind, to the above echoings occurring in the cross-examination of PW-6, which, as above stated, completely erode, and, disprove the averments (supra), carried in the election petition, and, which but were hence baldly contended to materially affect the result of the elections.

10. Even otherwise, the recount of votes, is to be ordered only in the face of evident satisfaction being meted qua the principles underlying the orderings for the recount of the votes. The said principles become expostulated in a judgment rendered by the Hon'ble Apex Court in case titled, as ***M.Chinnasamy versus K.C.Palanisamy and others, reported in 2004 (1) RCR (Civil) 303 (SC)***, principles whereof are extracted hereinafter.

"The question as to what would constitute material facts would, however, depend upon the facts and circumstances of each case. It is trite that an order of re- counting of votes can be passed when the following ingredients are satisfied: (1) if there is a prima facie case; (2) material facts therefor are pleaded; (3) the court shall not direct re-counting by way of roving or fishing inquiry; and (4) such an objection had been taken recourse to.

The necessity of "maintaining the secrecy of ballot papers" should be kept in view before a re-counting is directed

to be made. A direction for re-counting shall not be issued only because the margin of votes between the returned candidate and the election petitioner is narrow."

11. Only when the abovesaid extracted principles are satisfactorily proven, qua thereupon alone the order for recount, would become validated. However, on applying the said principle(s) to the facts at hand, it appears, that the order for recount, when is made in complete derogation of the above said principles, inasmuch as, even when there is no prima facie case, in favour of the respondent concerned, given the pleaded facts (supra) relating to the result of the elections becoming purportedly materially affected, rather becoming completely denied in the cross-examination of PW-6, thereupon, there was no occasion for yet ordering for a recount, and, but merely on bald assertions unsupported by any cogent evidence.

7. In the face of the above, this Court finds merit in the instant petition, and, is constrained to allow it.

8. Accordingly, the petition is allowed. The impugned order (Annexure P-1), is quashed and set aside.

9. The pending application(s), if any, is/are also disposed of.

(SURESHWAR THAKUR)
JUDGE

(KULDEEP TIWARI)
JUDGE

February 14, 2023
Gurpreet

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No