



CR-6772-2025 (O&M)

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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CR-6772-2025 (O&M)
Decided on :- 24.09.2025**

Amrik Singh

....Petitioner

VERSUS

Election Tribunal-cum-Sub Divisional
Magistrate and Others

....Respondents

CORAM : HON'BLE MS. JUSTICE MANDEEP PANNU

Present: Mr. C.S.Jattana, Advocate for the petitioner.

Mr. Akhil Kamra, AAG Punjab,
for respondent No.1

Mr. Sangram Singh Saron, Advocate and
Ms. Shubreet Kaur, Advocate
For respondent No.2/Caveator.

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MANDEEP PANNU J.

1. That the present petition under Article 227 of the Constitution of India has been filed by the petitioner Amrik Singh seeking setting aside of the election petition filed by respondent No. 2 Hardev Singh son of Mohinder Singh, resident of village Phullo Mithi, District Bathinda, as also the impugned order dated 12.09.2025 passed by the Election Tribunal, Bathinda, on the ground that the same is wholly illegal, erroneous, contrary to the mandatory provisions of the Punjab State Election Commission Act, 1994 and the Punjab Panchayat Election Rules, 1994, and against the settled law laid down by the Hon'ble Supreme Court and High Courts.

**Brief Facts**

2. Background of the case is that the election in question was held on 15.10.2024 for the office of Sarpanch of village Phullo Mithi, Tehsil and District Bathinda, in which the petitioner, respondent No. 2 Hardev Singh and respondent No. 3 Gurtej Singh contested. The total valid polled votes were 2715, out of which the petitioner secured 1044 votes and was declared elected, respondent No. 2 secured 1033 votes, respondent No. 3 secured 572 votes, one vote went to NOTA and 65 votes were cancelled though wrongly mentioned as 63. The result of the election was prepared on Form 9 dated 15.10.2024 which was duly signed by all parties including respondent No. 2 without any protest.

3. Thereafter, respondent No. 2 Hardev Singh filed an election petition dated 'nil' before respondent No. 1 on 22.11.2024 which was registered on 02.12.2024 as case No. 31/EP.

4. The petitioner filed reply to the said petition.

5. During the pendency of the proceedings, following issues were framed by the Election Tribunal, Bathinda on 09.05.2025, as follows:

1. *Was the vote counting conducted incorrectly and was there manipulation during the counting? O.P.*

2. *Were the votes of voters who had shifted out of the village also cast by other individuals? O.P.*

3. *Is a recount of votes warranted? O.P.*

4. *Is the petition not maintainable in its current form? O.R.-1*

5. *Does the petitioner not have the right to file the petition? O.R.-*

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6. *Was the petition filed in violation of Section 77(2) of the Punjab State Election Commission Act, 1994? O.R.-1*

7.. *Relief.*

6. On 09.06.2025 respondent No. 2 himself appeared and sought time to file reply and to cross-examine the witnesses. Respondent No. 2 then examined himself as PW1/A, Darshan Singh as PW2/A and Gurmail Singh as PW3/A, whose cross-examination was completed on 10.07.2025. Thereafter, respondent No. 2 closed his evidence on 01.08.2025. Respondent No. 3 Gurtej Singh appeared in evidence and filed his affidavit as DW1/A whose cross-examination was completed on 13.08.2025. It is an admitted position on record that none of the PWs produced any cogent evidence of irregularities in the counting of votes, nor was any complaint filed at the time of counting before the Returning Officer or Election Commission, though respondent No. 2 and his election agent were present throughout the counting on 15.10.2024 and signed the result sheet without objection. Despite this, the learned Election Tribunal vide impugned order dated 12.09.2025 ordered recounting of the votes which has been assailed in the present petition.

Submissions of learned counsel for the Petitioner

7. The counsel for the petitioner has challenged the impugned order asserting that the election petition presented by respondent No. 2 was not maintainable from the very inception as it was filed without compliance of the mandatory provisions of Section 103 of the Punjab State Election Commission Act, 1994 and Rule 52 of the Punjab Panchayat Election Rules, 1994, inasmuch as the deposit of security for costs and deposit of court fee is required to be made at the time of presentation of election petition, and Rule 53 mandates that the election

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Tribunal shall dismiss the election petition for such non-compliance. In the present case, no such deposit was made along with the presentation of the election petition on 22.11.2024, and instead, the tribunal vide order dated 02.12.2024 illegally allowed respondent No. 2 an opportunity to deposit the court fee at a later date, whereafter the challan was placed on record only on 09.01.2025. Such later deposit does not cure the defect. Reliance is placed upon judgment of Hon'ble Supreme Court in *Lachhman Das versus Jagat Ram [(2007) 10 SCC 448]* where it has been categorically held that deposit of court fee or security at the time of presentation is mandatory and failure renders the election petition incompetent.

8. It has been further asserted by counsel for the petitioner that the election petition was hopelessly barred by limitation under Section 76 of the Punjab State Election Commission Act, 1994 which provides that an election petition must be filed within forty-five days of the date of election of the returned candidate. The election in the present case was held on 15.10.2024 and the period of forty-five days expired on 29.11.2024, whereas the election petition was taken up by the Tribunal on 02.12.2024, which was beyond the prescribed limitation. It is noted in the record itself that no notification had even been issued by the Government authorising the Tribunal to hear petitions by that date, and therefore the petition was delayed by 47 days. The limitation in election matters is strict and rigid and cannot be condoned, as the election law is a special law where statutory requirements are mandatory, unlike in ordinary civil suits where curable defects may be condoned.

9. It has also been asserted by learned counsel for the petitioner that there were no proper pleadings in the election petition with respect to any material irregularity or illegality in the counting of votes, and even otherwise no cogent



evidence was led to establish the same. Recounting of votes cannot be ordered merely for the asking of a party but only upon specific pleadings supported by convincing evidence showing prima facie irregularity. In the present case neither pleadings disclose any material irregularity nor the witnesses examined by respondent No. 2 have been able to prove anything in that regard, yet the tribunal proceeded to order recounting, which is wholly unsustainable.

10. Further assertion has been made that the learned Election Tribunal committed procedural irregularities in proceeding with the trial inasmuch as it failed to decide the issue of maintainability for non-compliance with Section 103 and Rule 52 as a preliminary issue before going into the merits of the case. Instead, it recorded evidence without even deciding this fundamental objection and thereafter passed the impugned order dated 12.09.2025 for recounting of votes, which is contrary to the procedure envisaged by the Act and Rules.

11. It is also submitted that on the date of counting of votes i.e. 15.10.2024, the election agent of respondent No. 2 was present throughout and raised no objection, nor did respondent No. 2 himself raise any protest. On the contrary, he signed beneath the result sheet voluntarily acknowledging the correctness of the result. No complaint whatsoever was lodged before the Returning Officer or before the Chief Election Commissioner of Punjab on the said day. In these circumstances, no subsequent allegations of irregularity can be entertained at a belated stage, and recounting of votes on such vague allegations is contrary to law.

12. Lastly, it is the assertion of the petitioner that the findings recorded by the Tribunal on issues No. 1 to 7 are totally erroneous and perverse, being contrary to the evidence on record and in fact unsupported by any material whatsoever. The



Tribunal has failed to give a categorical finding on the maintainability of the election petition in light of Section 103 of the Act and Rules 52 and 53 of the Rules, 1994, and without treating the same as a preliminary issue, has proceeded to order recounting of votes. This is wholly illegal and without jurisdiction and, therefore, the impugned order dated 12.09.2025 is not sustainable in law.

13. In support of his contentions, learned counsel for the petitioner has relied upon a catena of judgments of the Hon'ble Supreme Court and the High Courts to assert that recounting of votes cannot be ordered in the absence of specific pleadings and cogent evidence, and that election petitions filed without compliance of mandatory provisions relating to deposit of court fee and security are not maintainable.

14. Reliance is placed upon the judgment of the Hon'ble Supreme Court in ***Preet Mohinder Singh v. Kirpal Singh, 2001(2) RCR(Civil) 657***, wherein it was held that mere vague allegations regarding rejection or acceptance of votes, without furnishing material facts and particulars, cannot be the basis for ordering recounting. The Court categorically held that in the absence of cogent evidence, recounting is not justified and election tribunal cannot proceed merely on bald allegations.

15. Learned counsel has also relied upon ***Satyanarain Dudhani v. Uday Kumar Singh, 1993 AIR SC 367***, where the Hon'ble Supreme Court held that the secrecy of ballot papers cannot be permitted to be tinkered lightly, and recounting of votes can be ordered only when irregularity in counting is specifically pleaded and proved. In that case, since no objection was raised during counting and no evidence of illegality was produced, the order directing recount was set aside.



16. Further reliance is placed upon *M. Omkar v. Revuri Prakash Reddy & Ors., 1999 AIR SC 2167*, where the Hon'ble Supreme Court reiterated that recounting of votes cannot be justified solely by a candidate's allegations of irregularities without substantial evidence showing that such irregularities have materially impacted the election results.

17. Learned counsel for the petitioner has further placed reliance upon the judgment of the *Hon'ble Punjab and Haryana High Court in Mithu Singh v. Ranjit Singh & Ors., FAO No. 1008 of 1995, decided on 10.10.1995*, wherein it was categorically held that recounting of votes cannot be ordered as a matter of course and in the absence of sufficient material or evidence, an election petition filed only to make a fishing inquiry into the counting process must be dismissed. It was further observed that unless evidence of illegality or irregularity is produced, the Tribunal cannot sustain an order of recount.

18. On the strength of the above judicial precedents, counsel for the petitioner has contended that the present case stands on an even weaker footing, as neither there are proper pleadings nor any evidence of irregularity in the counting of votes. The agent of respondent No. 2 was present on 15.10.2024 throughout the counting and signed the result sheet without protest, and no complaint was lodged on the said date. Hence, the impugned order dated 12.09.2025 directing recounting of votes is against the settled principles of law and cannot be sustained.

Submissions of learned counsel for Respondent No.2 / Caveator

19. Learned counsel for respondent No. 2 has supported the impugned order dated 12.09.2025 and has argued that the same is perfectly justified in the facts and circumstances of the case. It is submitted that the election for the post of Sarpanch of village Phullo Mithi, Tehsil and District Bathinda was held on



15.10.2024, and the petitioner was declared elected by a margin of merely 11 votes, as he secured 1044 votes while respondent No. 2 secured 1033 votes and respondent No. 3 secured 572 votes. It is submitted that in the course of the election and particularly at the stage of counting, several illegalities and irregularities occurred, which materially affected the result of the election and rendered it liable to be set aside.

20. It is contended that the election was conducted in a wholly wrong and illegal manner in connivance with the petitioner and the election staff. The ballot boxes were not properly sealed in the presence of respondent No. 2 or his polling agent, nor were the seals opened in their presence at the time of counting. Respondent No. 2 and his agent were not even allowed to come near the counting table, while the petitioner and his supporters were permitted to sit near the counting process. This deliberate exclusion vitiated the fairness of the counting.

21. It is further urged that a large number of votes which were rejected had in fact been wrongly counted in favour of the petitioner. The presiding officer did not inform respondent No. 2 or his agent about the serial numbers of the rejected votes, nor did he give any opportunity to them to verify the same. This conduct created grave suspicion of manipulation. Moreover, some voters who had already left the village had their votes fraudulently cast by others in connivance with the petitioner. The voting staff openly helped the petitioner during the process of counting and preparation of result. It is also submitted that no videography of the counting was carried out, thereby concealing the true state of affairs.

22. On the strength of these allegations, it has been argued that the election process was vitiated by serious irregularities and fraud, and the only way to ascertain the true will of the electorate is to order a recount of the votes. Since



the margin of votes was only 11, any small irregularity would materially affect the result, and therefore the Tribunal rightly exercised its jurisdiction to order recount.

23. Respondent No. 2 has further argued that the objections raised by the petitioner with respect to maintainability of the election petition are misconceived. The petition was presented within time and was entertained by the competent Tribunal. The technical objections regarding deposit of fee or security cannot defeat the substantial right of a candidate to challenge an illegal election where prima facie irregularities in counting are shown. It is settled law that in election matters, procedural lapses should not be allowed to defeat substantial justice, particularly where the margin of votes is narrow and fairness of the election is under serious doubt.

24. It has also been urged that the replies filed by the petitioner and other respondents are evasive and fail to meet the specific allegations levelled in the election petition. It is contended that the petitioner has not approached the Tribunal with clean hands and has concealed material facts. The election petition of respondent No. 2 was based on clear, specific and detailed pleadings, and therefore the Tribunal, after due consideration of the pleadings and evidence, rightly ordered recount.

25. Thus, it is the stand of respondent No. 2 that the impugned order dated 12.09.2025 is fully justified and legal, having been passed to protect the sanctity of the democratic process. The order requires no interference by this Court.

26. In support of his submissions, learned counsel for respondent No. 2 has placed reliance on several authorities. He has relied upon the judgment of a co-ordinate Bench of this Court in *Smt. Bhajan Kaur v. Gurmej Kaur, FAO No.*

4595 of 2009 decided on 12.01.2011, wherein it was held that compliance with



provisions relating to deposit of security and court fee is mandatory, the Tribunal has the discretion to allow the election petitioner to remove the defect and make good the deficiency, and that non-compliance at the initial stage would not automatically result in dismissal if the defect is subsequently cured. The Court emphasised that the provisions of Section 103 of the Punjab State Election Commission Act, 1994 and Rule 52 of the Punjab Panchayat Election Rules are not to be construed so rigidly as to defeat the ends of justice, and opportunity ought to be given to the petitioner to supply the requisite deposit.

27. Reliance has also been placed on the judgment of the Hon'ble Supreme Court in *Sadhu Singh v. Darshan Singh & Anr.* 2006(4) RCR (civil) 55 , wherein it was observed that recount of votes may be ordered when a narrow margin exists between the returned candidate and the defeated candidate, provided that the election petitioner has made out a prima facie case by placing necessary pleadings and evidence on record. The Court held that while secrecy of ballot is important, where allegations of improper rejection or counting of votes are supported by specific pleadings, recount can be directed to uphold the sanctity of the election process.

28. Learned counsel for respondent No. 2 has further relied upon *Zile Singh v. State of Haryana, AIR 1975 P&H 115*, and *Mahan Singh and Rattan Singh v. Executive Magistrate first class, Jagraon & ors, 1981 All India Land Laws Reporter 135*, to contend that the provisions of the Code of Civil Procedure can be applied to election petitions in a flexible manner, and that procedural technicalities ought not to be allowed to override substantive justice in election matters.



29. Additionally, reliance is placed on a judgment of Hon'ble Supreme Court in *Gursewak Singh v. Avtar Singh, 2006 (2) RCR (Civil) 463*, wherein the Hon'ble Supreme Court reiterated that if a candidate can establish through pleadings and prima facie evidence that certain votes have been wrongly counted or rejected, recount may be ordered despite the secrecy of ballot, particularly when the margin of votes is narrow.

30. Reliance is also placed upon *Chandrika Prasad Yadav v. State of Bihar, 2004 (2) RCR (Civil) 568*, in which it was held that recount can be directed where the material facts pleaded disclose a serious irregularity and where the number of disputed votes exceeds or is likely to affect the margin of victory.

31. On the strength of these authorities, learned counsel for respondent No. 2 has argued that the present case is a fit one for recount, as the margin between the petitioner and respondent No. 2 was only 11 votes, and the allegations of illegal rejection and fraudulent counting have been specifically pleaded in the election petition and deposed to by the witnesses. Thus, the Tribunal committed no illegality in ordering recount vide impugned order dated 12.09.2025.

Relief Granted By The Tribunal

32. By the impugned order dated 12.09.2025, the Election Tribunal concluded that there were deficiencies in the counting process and ordered recounting of votes of the election to the office of Sarpanch of village Phullo Mithi, to be held on 29.09.2025 at 10:00 AM under videography, in the presence of designated officials and with police security arrangements.

Findings

33. Having considered the pleadings of the parties, the statutory provisions, the evidence adduced, and the rival contentions supported by judicial



precedents, this Court is of the opinion that the impugned order dated 12.09.2025 passed by the Election Tribunal is not legally sustainable.

34. At the very threshold, the objection raised by the petitioner regarding limitation and non-deposit of the mandatory court fee and security cannot be brushed aside as a mere technicality. Section 76 of the Punjab State Election Commission Act, 1994 fixes a strict period of 45 days for presentation of an election petition. The election was held on 15.10.2024 and the limitation expired on 29.11.2024. Although the petition is dated 22.11.2024, it was in fact entertained by the Tribunal only on 02.12.2024, by which date the limitation had already expired. Election law does not provide for condonation of delay and unlike ordinary civil suits, the provisions are mandatory and rigid. Therefore, the election petition was *ex facie* barred by limitation.

35. Coupled with this, Section 103 of the Act and Rule 52 of the Rules mandate deposit of security and court fee at the time of presentation. Admittedly, the challan evidencing such deposit was placed on record only on 09.01.2025. The Hon'ble Supreme Court in *Lacchman Das v. Jagat Ram (2007) 10 SCC 448* has clearly held that non-deposit of mandatory security at the time of filing renders an election petition incompetent, and belated deposit does not cure the defect. Rule 53 of the Rules also obliges the Tribunal to dismiss such a petition. Thus, the very maintainability of the election petition was in doubt and the Tribunal erred in not treating this as a preliminary issue.

36. Coming to the objection raised by respondent No. 2, that the margin of 11 votes itself warranted a recount, this submission is not acceptable. The Hon'ble Supreme Court in *Preet Mohinder Singh v. Kirpal Singh (supra)* and *Satyanarain Dudhani v. Uday Kumar Singh (supra)* has categorically held that



secrecy of ballot is sacrosanct and recount cannot be ordered merely because of a narrow margin or bald allegations. A recount is permissible only when there are specific pleadings of irregularity supported by cogent evidence. In the present case, respondent No. 2 and his agent were present throughout the counting process and signed Form 9 without any protest. No contemporaneous complaint was lodged with the Returning Officer or before the Election Commission. These facts themselves belie the subsequent allegations of manipulation.

37. As regards the Tribunal's reasoning that manipulation occurred in the counting, the evidence led does not support such a finding. Respondent No. 2, Hardev Singh himself appeared as PW1, and produced Darshan Singh (PW2) and Gurmail Singh (PW3). However, from the cross-examination of witnesses, particularly the testimony of Hardev Singh who has filed election petition, it emerges that the allegations are vague and unsupported. No contemporaneous objection was raised before the Returning Officer on the date of counting. He stated in his cross- examination that:

"It is also correct that my second witness, Gurmel Singh, is my real cousin, and he also came to testify at my request. It is also correct that all the candidates' agents and candidates were present at the start of the voting. After the votes were counted only once, the result was announced to us. We asked the presiding officer to recount. I did not give any objection in writing. He himself said that he had said it verbally. It is also correct that after the election, I have not submitted any written application to any senior official of the election commission. It is false that any videography was done during the counting. It is also false that the counting was done two or three



times. It is also correct that before this petition, I have not filed any online complaint regarding this matter. It is correct that I identify my signatures on exhibit D.01, which is mentioned no.09 at point A, and I identify my signatures on exhibit D.02, the sarpanch election result, at point B, and I identify my signatures on form election result sarpanch exhibit D.03 at point C, and I identify my signatures on form election result sarpanch exhibit D.04 at point D. I have not included any list as evidence in my petition. We do not have any photograph or video attached to the election petition regarding the allegations of providing alcohol and money to the polling staff. It is correct that Gurtej Singh has not filed any petition regarding the sarpanch election.”

38. The record (Form-9) bears signatures of respondent No. 2 without protest. The Hon’ble Supreme Court in ***Preet Mohinder Singh v. Kirpal Singh (2001 (2) PLR 214)*** and ***Satyanarain Dudhani v. Uday Kumar Singh 1993 AIR SC 367*** has categorically held that recounting cannot be ordered on bald allegations without material facts or cogent evidence. In the present case, the contradictions in the number of rejected votes are too minor to constitute a ground for recount, especially when not backed by proof of irregularity.

39. It was next urged by respondent No. 2 that ballot boxes were not sealed in his presence and that he and his agent were not allowed to remain near the counting table. However, no reliable material has been produced to substantiate such allegations. The witnesses examined by respondent No. 2 made vague statements, which do not inspire confidence. The testimony of PW1, PW2, and PW3, when subjected to cross-examination, revealed contradictions and failed to prove any specific illegality. In contrast, the record, including the duly signed



Form 9, carries more weight and establishes that the result was prepared in accordance with the Rules.

40. The Tribunal failed to appreciate that election law is a self-contained code. The mandatory requirements under Sections 76, 77, and 103 of the Act and Rules 52 and 53 of the Rules cannot be diluted on the ground of doing substantial justice. The reliance placed by respondent No. 2 on ***Bhajan Kaur v. Gurmej Kaur 2011(2) RCR (civil) 816*** to argue that deficiency in deposit can be cured is misplaced, as that judgment itself emphasises that where statutory provisions are couched in mandatory terms, failure to comply at the time of filing renders the petition incompetent.

41. The judgments cited by learned counsel for the petitioner are fully applicable to the facts of the present case. In ***Preet Mohinder Singh (supra)*** and ***Satyanarain Dudhani (supra)***, the Hon'ble Supreme Court quashed orders of recount where pleadings were vague and no contemporaneous objections were made. In ***Lachhman Das (supra)***, the Supreme Court made it clear that election petitions must strictly comply with statutory mandates relating to limitation and deposit, failing which they are incompetent. These principles squarely apply here and compel the conclusion that the election petition filed by respondent No. 2 could not have been entertained.

42. Therefore, when examined in the totality of circumstances, this Court finds that:

- (i) the election petition was barred by limitation;
- (ii) the mandatory provisions regarding deposit of court fee and security were not complied with;

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- (iii) no contemporaneous objection was raised at the time of counting and respondent No. 2 signed the result sheet without protest;
- (iv) the evidence led was vague and unreliable and did not substantiate allegations of irregularity;
- (v) a narrow margin of 11 votes, is not sufficient to order recount.

43. For these reasons, the impugned order dated 12.09.2025 directing recount of votes suffers from patent illegality and jurisdictional error. It is accordingly set aside, and the election petition filed by respondent No. 2 is dismissed.

44. The petition is allowed.

45. Pending application(s), if any, also stand disposed of.

September 24, 2025
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(MANDEEP PANNU)
JUDGE

Whether speaking/non-speaking : Speaking
Whether reportable : Yes/No