

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CR No.2005 of 2013
Reserved on:10.02.2015
Date of decision:25.02.2015

Raj Kumar

....Petitioner

Versus

State of Haryana & others

.....Respondents

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Surinder Gandhi, for the petitioner.

Mr.Deepak Manchanda, Addl.A.G., Haryana.

Mr.Arinder Arora, Advocate, for respondent No.4.

Mr.Gaurav Sethi, Advocate, for respondents No.5 to 7.

G.S.Sandhawalia J.

Challenge in the present revision petition, filed under Section 115 CPC, is to the order dated 26.10.2012 (Annexure P3) whereby the Civil Judge (Jr.Divn.) Naraingarh, has dismissed his challenge to the election of respondent No.4 as a Member of the Panchayat Samiti, Shehjadpur, Tehsil Naraingarh District Ambala.

The election was held on 06.06.2010 and the counting of votes was held on 26.06.2010. The petitioner has alleged to have received 881 votes whereas the elected candidate got 903 votes. The election petition was filed for declaration that the petitioner should have been elected as he had secured the maximum number of votes and the election of the elected respondent should be annulled and relief of recounting of the votes was sought on the ground that recounting had been requested to the Returning Officer but only recounting had taken place in booths No.92 & 93 and more than 20 invalid votes had been taken

into account of the elected respondent by the election staff.

The defence of the State was that counting had been done in a proper and legal manner and request had been made of recounting of booths No.92 & 93 only and the same was done and the petitioner was fully satisfied with the same. He never raised any dispute or objection to the Presiding Officer or the Returning Officer. The said factum was never controverted by filing any replication. The petitioner only examined himself as PW1 whereas as many as 3 witnesses were examined by the respondents. The Trial Court noticed that as per the cross-examination of the petitioner, he had admitted that he had only asked for recounting in booths No.92 & 93 and 3 votes from both the booths were deleted from the account of the elected candidate. Accordingly, keeping in view the observations of the Full Bench of this Court in **Radha Krishan Vs. Election Tribunal-cum-Sub-Judge, Hissar 1999 (4) RCR (Civil) 79**, it was held that recounting cannot be ordered on the asking and a specific case has to be made out. Accordingly, the election petition was dismissed by the Trial Court. The said view has been upheld by the Lower Appellate Court in the appeal filed by the petitioner on 01.03.2013 (Annexure P4), which is also subject matter of challenge.

A Division Bench of this Court in **Lillu Ram Vs. Civil Judge (Jr.Divn.) & others 2007 (1) PLR 480** has held that the application for recounting cannot be allowed on the mere asking and only on account of less difference between the votes polled. Reference has been made to Section 176 (4) the Haryana Panchayati Raj Act, 1994 (for short, the 'Act') to hold that the conditions mentioned in the provisions have to be satisfied and sufficient material has to be there on record by adducing evidence to allow recounting and the corrupt practices allegedly committed have to be made out. In the present case,

made any such request for recounting of all the booths and in the absence of any such request being made and any independent evidence except the sole interested statement of the petitioner, the Courts below were well justified in dismissing the election petition. A *prima facie* case having not been projected before the Courts below, no fault can be found, as such, in the orders which are now sought to be challenged.

The Apex Court in *Udey Chand Vs. Surat Singh & another 2009 (10) SCC 170* has gone on to hold that merely a narrow margin between the candidates is no ground to order recounting of votes and it does not give any presumption that there has been any irregularity or illegality in the counting of votes. The secrecy of the ballot papers is not to be lightly interfered with. In the said case, the difference was of 4 votes only and accordingly, the view laid down by the Full Bench was upheld. Relevant observations read as under:

“9. Before advertng to the merits of the issue raised by the parties with reference to the statutory provisions, it would be appropriate to bear in mind the salutary principle laid down in the election law that since an order for inspection and re-count of the ballot papers affects the secrecy of ballot, such an order cannot be made as a matter of course. Undoubtedly, in the entire election process, the secrecy of ballot is sacrosanct and inviolable except where strong *prima facie* circumstances to suspect the purity, propriety and legality in the counting are made out. The importance of maintenance of secrecy of ballot papers and the circumstances under which that secrecy can be breached, has been considered by this Court in several cases. It would be trite to state that before an Election Tribunal can permit scrutiny of ballot papers and order re-count, two basic requirements viz. (i) the election petition seeking re-count of the ballot papers must contain an adequate statement of all the 8 material facts on which the allegations of irregularity or illegality in counting are founded, and (ii) on the basis of evidence adduced in support of the allegations, the Tribunal must be *prima facie* satisfied that in order to decide the dispute and to do complete and effectual justice between the parties, making of such an order is imperatively necessary, are satisfied.”

Accordingly, this Court, keeping in view the fact that the petitioner is unable to point out as to why recount should be done, as per the provisions of the Act and the observations of the Apex Court and this Court, is, thus, of the opinion that merely because the margin of votes was less, as he had secured 881 votes against 903 votes, would not entitle him for the benefit of recounting, as has been projected.

Consequently, the present revision petition is dismissed.

25.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE