

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 3786 of 2015 (O&M)
Date of Decision: 01.07.2015.

Sabjinder Singh

.....Petitioner

Versus

Jaspal Singh and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. S.S.Salar, Advocate
for the petitioner.

Mr. P.K.Dwivedi, Advocate and
Mr. Parminder Singh Kanwar, Advocate
for respondent No. 1.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 18.5.2015 (Annexure P-8) whereby recounting of the votes had been ordered by the Election Tribunal.

Learned counsel for the petitioner has submitted that the Tribunal had erred in ordering the recounting of the votes as there were no justifiable reason for doing so. In support of his argument learned counsel has placed reliance on '**Preet Mohinder Singh versus Kirpal Singh, 2001(2) R.C.R. (Civil) 647**' wherein it was held as under:-

“5. A bare reading of the above averments shows that these paragraphs contain nothing but bald allegations. No facts, muchless material facts and particulars have been furnished. The averments to the effect that the Presiding

Officer had illegally rejected 57 votes whereas infact these were only 37 votes of such nature, is a hopelessly vague and bald allegation. Leaving aside the question whether the figure as mentioned above is true or imaginary, the basis on which this figure had been arrived at, has not been disclosed in the election petition. No particulars at all have been furnished of allegedly wrongfully rejected votes as mentioned in paragraphs 11 and 13. Same is the position with regard to the allegations contained in other paragraphs (supra). The pleadings on this aspect are hopelessly vague. Neither material facts nor material particulars have been furnished. In the absence of material facts and particulars which are sine quo non for letting an election petition proceed to trial, the Tribunal was not justified in ordering a recount in a rather mechanical manner. The Courts have always opined that mere allegations not supported by material facts do not give rise to a triable issue particularly where the allegations are made to seek recounting of votes. Secrecy of ballot cannot be lightly impinged upon.

6. In **V.S. Achuthanandan v. P.J. Francis and another, (1993) 3 SCC 737 : 2001(1) RCR (Civil) 753 (SC)**, this Court reiterated the settled propositions of law in the matter of inspection and recount of ballot papers. Some of the guidelines and conditions reiterated in that judgment are:

(1) That it is important to maintain the secrecy of the

ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection, it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to land further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.”

7. On the touchstone of those guidelines, the pleadings in the present case being hopelessly deficient the Tribunal fell in error in ordering recount. There was no material before it on the basis of which it could arrive at a conclusion to order recount. The High Court was, under

the circumstances, justified in setting aside the order of the Tribunal. We are not persuaded to take a view contrary to the one taken by the High Court either. This appeal, therefore, fails and is dismissed but with no order as to costs.”

Learned counsel for the petitioner has next placed reliance on '**Pardaman Singh versus State of Punjab, 1996(3) R.C.R. (Civil) 35**', wherein it was held as under:-

“6. It has been repeatedly held by the Supreme Court of India as well as this Court that an order of recount cannot be passed on the mere asking of a party. There have to be proper pleadings making out the case for recount, framing of an issue and contemporaneous evidence to substantiate the plea of recount.”

Learned counsel for respondent No. 1, on the other hand, has submitted that the impugned order was liable to be upheld as real picture would emerge before the Tribunal and recounting of the votes would not harm the interest of any party. In support of his arguments, learned counsel has placed reliance on the decisions given by this Court in '**Gurtej Singh versus Darbara Singh, 2000(2) R.C.R. Civil 525**' and **2006(2) L.A.R. 282** titled **Roop Singh versus The Deputy Commissioner and others**.

Elections of Mirpur Gram Panchayat were held on 3.7.2013. Petitioner had contested the elections for the post of Panch from Ward No. 3 against respondent No. 1. Petitioner was declared as an elected candidate as he had secured 27 votes

whereas respondent No. 1 had secured 24 votes. Respondent No. 1 has filed election petition challenging the election of the petitioner. During the pendency of the election petition, respondent No. 1 moved an application for recounting of votes. The said application was allowed by the Tribunal vide order dated 21.11.2014. The said order was challenged by the petitioner by filing Civil Revision No. 8093 of 2014. The said petition was allowed by this Court vide order dated 1.12.2014 and the Tribunal was directed to pass a fresh order in accordance with law. Thereafter, the Tribunal passed the impugned order dated 18.5.2015 (Annexure P-8) whereby the application filed by respondent No. 1 for recounting of votes, was allowed. Hence, the present petition by the petitioner.

Application moved by respondent No. 1 seeking recounting of votes has been placed on record as Annexure P-2. Para 3 of the said application reads as under:-

“That the petitioner was not allowed to see the ballot papers at the time of counting of votes, even he and his polling agent were not allowed to enter into the polling station. The respondent No. 2 had also conducted the counting of votes in the absence of the petitioner and his polling agent, while the respondent no. 1 was allowed to thoroughly visit the polling station, during the counting of the votes. Thus, the counting of the votes was conducted in partial, illegal and in valid manner by violating the prescribed rules and regulations. The petitioner has also come to know that the polling staff had also tempered with the votes, which were polled in favour of the petitioner illegally and have also cancelled some votes,

which were polled in favour of the petitioner in arbitrary manner. Even, the respondent No. 2 has not issued the Form IX i.e. statement of total numbers of votes to the petitioner and had flatly refused to listen any genuine requests of the petitioner.”

A perusal of the impugned order reveals that the Tribunal has failed to give any meaningful discussion before passing the impugned order. The Tribunal has based reliance on the decision of this Court in *Gurtej Singh's* case (supra). However, the said decision is not applicable to the facts of the present case. In *Gurtej Singh's* case (supra), the election petitioner had led oral as well as documentary evidence in support of his case. On the basis of the evidence led by the election petitioner, it was established on record that recounting of the votes was essential. It has transpired during the course of arguments that in the present case, at this stage only the election petitioner has tendered his affidavit in support of his pleas. Thus, the parties are yet to lead their evidence in support of their respective pleas. At this stage, the averments made by the election petitioner are bald allegations which are yet to be proved by him by leading his evidence. The Tribunal by ordering recounting of the votes, at this stage, has virtually allowed the election petition filed by the election petitioner-respondent No. 1 without their being evidence on record in respect of the pleas raised by the election petitioner. In the facts and circumstances of the present case, the judgments relied upon by the learned counsel for respondent No. 1 fail to advance the case of respondent No. 1. Rather, the judgments relied upon by learned counsel for the petitioners are applicable to the facts of the

present case.

Accordingly, this petition is allowed. Impugned order dated 18.5.2015 (Annexure P-8) is set aside.

**(SABINA)
JUDGE**

**July 01, 2015
Gurpreet**