

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5665 of 2015 (O&M)
Date of decision: 4.9.2015

Tehal Singh

..... Petitioner

Versus

**Presiding Officer, Election Tribunal, Deputy Commissioner, Patiala
and others**

..... Respondents

CORAM : HON'BLE MR.JUSTICE ARUN PALLI

Present : Mr. Gurpartap Singh Gill, Advocate for the petitioner.

Mr. H.S.Dhandi, Advocate for respondent No.2.

ARUN PALLI, J. (Oral)

Learned counsel for the petitioner contends that the order being assailed dated 12.08.2015, passed by the Election Tribunal-cum-Deputy Commissioner, Patiala is not only cryptic but contrary to the position on record. He asserts that the observation recorded by the Tribunal in support of its order **“the petitioner claims that the cancelled vote was in his favour which was wrongly cancelled without showing him”**, is not the correct narration of the case set out by respondent No.2, as what he had pleaded was **“respondents No.2 and 3 wrongly cancelled one vote which was valid and may change the future of the petitioner”**. He asserts that respondent No.2 never claimed that one vote that was cancelled was indeed

polled in his favour. Further, he submits that the observation “**he apprehends that he has got more votes than the respondent No.1 because some votes casted in his favour were counted in the favour of the respondent**”, is wholly vague, speculative and conjectural. *Ex facie*, the order passed by the Tribunal is a non-speaking order as before a re-count could be ordered, the Tribunal, on an analysis of the pleadings and the evidence on record, was required to record whether there indeed exists a prima facie case, that warrants a re-count.

Per contra, learned counsel for respondent No.2 submits that concededly respondent-Lakhwinder Singh had secured 54 votes and the petitioner was polled 55 votes and, thus, there was a difference of only one vote, which was wrongly cancelled and declared invalid. So much so, he submits that the positive case set out by respondent No.2 is that petitioner in connivance with respondent No.3 had cast vote No.78 of Gurjant Singh. Likewise, Malkiat Singh, who is employed in the Army and was residing away from the village, even his vote was cast. Further, Hardeep Singh, vote No.112, Ward No.4, who is residing in a foreign country, even his vote was polled. However, he fairly submits that this position is not analyzed by the Tribunal while assigning reasons in support of the order under challenge.

That being so, during the course of hearing, a consensus emerged between the counsel for the parties that let the order dated 12.08.2015 (Annexure P-1) be set aside and the matter be remitted to the Election Tribunal for re-consideration and for passing an order afresh, if warranted, in accordance with law.

In the wake of the position as set out above, the revision

petition is accepted. The order dated 12.08.2015 is set aside and the matter is remitted to the Election Tribunal-cum-Deputy Commissioner, Patiala with a direction to re-consider the matter in issue, strictly in accordance with law, and pass a fresh order, if warranted.

Needless to assert, a comprehensive order shall be passed assigning reasons in support of the decision arrived at. By way of abundant caution, it is made clear that this order shall not constitute any expression of opinion on merits of the case of either party.

September 04, 2015

Manoj Bhutani

**(ARUN PALLI)
JUDGE**