

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5666 of 2015 (O&M)
Date of decision: 4.9.2015

Kuldeep Kaur

..... 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 votes were in her favour which were wrongly cancelled without showing her**”, is not the correct narration of the case set out by respondent No2, as what she had pleaded was “**respondents No.2 and 3 wrongly cancelled seven votes which were valid one and may change the future of the petitioner**”. He asserts that respondent No.2 never claimed that seven votes that were

cancelled were indeed polled in her favour. Further, he submits that the observation **“she apprehends that she has got more votes than the respondent No.1 because some votes casted in her 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 583 votes were were polled, of which 7 votes were cancelled. Respondent No.2-Surinder Kaur had secured 284 votes, whereas, petitioner was polled 292 votes, as per election record. Respondents No.3 and 4 had wrongly cancelled 7 votes which were valid and if that is so, there is a margin of only one vote between the petitioner and respondent No.2. 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**