

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR 5556 of 2014

Date of Decision: July 27, 2015

Harbans Kaur

.....Petitioner

Vs.

Jasvir Kaur and ors.

.....Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.Sandeep Kumar, Advocate
for the petitioner.

Mr. S.S. Gill, Advocate, for respondent No.1.

Mr. Karamjit Verma, Advocate, for respondent No.2.

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M.M.S. BEDI, J.

Against an order dated July 15, 2014, passed by the Election Tribunal, Ludhiana, issuing a direction for recounting of the votes in election petition which is stated to be barred by time, the present petition has been preferred under Article 227 of the Constitution of India.

Briefly stated the facts relevant for the decision of the present petition are that panchayat elections of Village Chankoian Khurd, Tehsil Payal, District Ludhiana was held on July 3, 2013. The petitioner and

respondent No.1 contested for the post of Panch of Gram Panchayat Ward No.3, Village Chankoian Khurd. The petitioner was declared winning candidate on the post of Panch on July 3, 2013. The petitioner allegedly took oath vide declaration form annexure P-1. A notification annexure P-2 was issued on July 12, 2013, as per provisions of Section 71 of the Punjab State Election Commission Act. After 60 days of declaration of the result, respondent No.1 filed Election Petition before the Election Tribunal, Ludhiana, alongwith application for condonation of delay. The application for condonation of delay is being contested and no reply has been filed to the main election petition. Respondent No.1 approached this Court by filing a CWP No. 10269 of 2014 for a direction that Tribunal should decide the election petition expeditiously. Said petition was disposed of in limine with a direction to the Tribunal to make earnest endeavour to decide the election petition expeditiously vide order dated May 26, 2014, annexure P-6. The Election Tribunal vide order annexure P-7 has issued directions to the Returning Officer and Presiding Officer for recounting of the votes in election petition. The impugned order reads as follows:-

“Date: 15.7.2014

File presented. Called the parties, counsel for both the parties came present. Perused the order passed by Hon’ble High Court of Punjab and Haryana. Counsel for the petitioner prayed for re-counting. Perusing the record available on the file and the order passed by Hon’ble

High Court of Punjab and Haryana at Chandigarh, the Returning Officer Rajinder Singh, Presiding Officer Dharminder Singh may appear in the court alongwith the relevant records for re-counting on 24.7.2014 in the election petition in the presence of Executive Magistrate, Ludhiana, District Revenue Officer, Ludhiana.

Sd/-District Collector, Ludhiana”

The case could not be taken up on July 24, 2014 and August 5, 2014 on account of Presiding Officer being busy in other administrative work.

The petitioner has questioned the legality and propriety of the order passed by District Collector, Ludhiana, dated July 15, 2014 issuing directions for re-counting of the votes of both the candidates.

Claim of respondent No.1 Jasvir Kaur in her CWP No. 10269 of 2014 was that she had secured 77 votes and the present petitioner Harbans Kaur-respondent therein had secured 59 votes and she was declared elected Panch of the Gram Panchayat after counting had been conducted. Respondent No.1 Jasvir Kaur claims that it was she who had been elected Panch and had taken oath as Panch of Gram Panchayat from Ward No.3. The grievance of respondent No.1 is that she was not issued identity card on the ground that her name did not figure in the elected list of notification dated July 12, 2013. The claim of respondent No.1 is that despite her having secured 77 votes against 59 secured by the petitioner, respondent No.1 was

also declared Panch and she was also administered oath. She had to file an election petition having not been notified as elected Panch. The Presiding Officer-Dharminder Singh has submitted an affidavit dated November 12, 2013 to the effect that he had counted the votes and declared Jasvir Singh-respondent No.1 to be winner as the petitioner had got only 59 votes, against her 77 votes.

The short question which is required to be determined in the election petition pending before the Election Tribunal is, whether in view of the counting and declaration issued by the Presiding Officer in the absence of notification having not been issued, the election of respondent No.1 before it could be declared null and void. The petitioner who had allegedly scored less votes is aggrieved by the counting. The crucial point which is required to be considered by the Election Tribunal is whether in view of the record available and the delay in filing of the election petition on the basis of the counting already conducted by the Presiding Officer, the election of the petitioner could be set aside in the election petition which is pending before the Election Tribunal. A coordinate Bench of this Court has already issued directions for expeditious disposal of the election petition.

In the present revision petition petitioner claims that she was declared a winning candidate and she had taken oath as Panch and that as per notification No. 760 dated July 12, 2013 (annexure P-2) she was notified as elected Panch of wara No.3 of Gram Panchayat, Chankaian Khurd.

Counsel for the petitioner in view of the judgment of the Supreme Court in **V.S. Achuthanandan Vs. P.J. Francis**, 2001 (1) RCR (Civil) 753 and of this Court in **Pardaman Singh Vs. State of Punjab**, 1996 (3) RCR (Civil) 35, **Deepak Sharma Vs. Hardeep Kaur and others**, 2014 (3) RCR (Civil) 235, **Baldev Singh Vs. State of Punjab**, 1994 (1) RRR 123 and **Chanan Singh Vs. Executive Magistrate Ist Class, Ludhiana and others**, 1973 PLJ 711, has vehemently contended that in view of the averments made in the petition and material brought on the record by respondent No.1 election petitioner, no case is made out for recounting and that roving enquiry and fishing out materials in the hope that the re-counting if allowed may probably twist the balance of votes in favour of respondent No.1 is not permissible.

On the other hand, counsel for respondent No.1 has submitted that recounting can be allowed in view of the following judgments:-

- i) **Sadhu Singh Vs. Darshan Singh**, 2006 (4) RCR (Civil) 55 wherein the order of recounting of votes was upheld by the Apex Court laying down that the following factors are necessary for ordering recounting of votes:-
 - i) There should be prima facie case established by the applicant;
 - ii) material facts must be pleaded stating in irregularities in counting of votes;

- iii) a roving and fishing inquiry shall not be directed by way of an order for recounting of votes;
 - iv) an objection to the said effect should be raised; and
 - v) secrecy of ballot papers should be maintained.
- ii) In this context reliance has also been placed by counsel for respondent No.1 on **Radha Kishan Vs. Election Tribunal-cum-Sub Judge, Hissar**, 1999 (4) RCR (Civil) 79, wherein Full Bench of this Court had held that if a prima facie case to the satisfaction of the Court is made out in terms of the provisions of Section 176 (4) (b) of the Haryana Panchayati Raj Act, 1994, nothing prevents the Court from ordering scrutiny and computation of votes without asking the applicant to lead evidence for detailed enquiry.
- iii) Another Division Bench judgment of this Court in **Ram Mehar Vs. Additional Civil Judge (Sr. Division), Bhiwani and others**, 2008 (2) LAR 334 has been relied upon, where it has been held that where the only ground to challenge the

election was that the counting of votes was not properly done, the order of Election Tribunal allowing recounting of the votes was proper.

- (iv) In **Sahbana Ram Vs. Presiding Officer, Election Tribunal-cum-Sub Divisional Magistrate Samana and others**, 2014 (2) RCR (Civil) 672, where both the candidates had secured equal number of votes but one candidate had been declared elected on the basis of toss, the order of Election Tribunal for recounting of votes to decide the real controversy between the parties was upheld.
- v) In **Gurtej Singh Vs. Darbara Singh**, 2000 (2) RCR (Civil) 525, it was held that where there were pleadings and evidence with regard to improper rejection of ballot papers, the order of recounting passed by the Election Tribunal was valid on the ground that to do complete justice between the parties and to avoid unnecessary prolongation of petition order of recount is an effective and expeditious solution to election petition.

I have heard learned counsel for the petitioner as well as counsel for respondent No.1. The claim of the petitioner is that she has been

notified as a Panch after the declaration of the result whereas the claim of respondent No.1 election petitioner is that despite she having secured 77 votes as compared to 59 votes secured by the petitioner and having been declared elected by the Presiding Officer, she is entitled to remain as a Panch whereas both the petitioner as well as respondent No.1 claim that they had taken oath on the basis of the result of counting of the votes and the declaration.

So far as the proposition of law regarding recounting is concerned it has been settled by the Apex Court in a recent judgment in **Arikala Narasa Reddy Vs. Venkata Ram Reddy Reddygari and another**, 2014 (2) Law Herald (SC) 1596 laying down that a Court can permit recounting in case the following conditions are satisfied:-

- “i) the prima facie case in favour of election petitioner is established;
- ii) the material facts and full particulars regarding irregularities in counting of the votes are pleaded;
- iii) a roving and fishing inquiry should not be directed by way of an order for recounting of votes;
- vi) An opportunity should be given to file objections; and
- vii) secrecy of ballot papers be guarded.”

The relevant portion of the judgment is reproduced as under:-

“7. It is a settled legal proposition that the statutory requirements relating to election law have to be strictly adhered to for the reason that an election dispute is a statutory proceeding unknown to the common law and thus, the doctrine of equity, etc. does not apply in such dispute. All the technicalities prescribed/mandated in election law have been provided to safeguard the purity of the election process and courts have a duty to enforce the same with all rigours and not to minimize their operation. A right to be elected is neither a fundamental right nor a common law right, though it may be very fundamental to a democratic set-up of governance. Therefore, answer to every question raised in election dispute is to be solved within the four corners of the statute. The result announced by the Returning Officer leads to formation of a government which requires the stability and continuity as an essential feature in election process and therefore, the counting of ballots is not to be interfered with frequently. More so, secrecy of ballot which is sacrosanct gets exposed if recounting of votes is made easy. The court has to be more careful when the margin between the contesting

candidates is very narrow. “Looking for numerical good fortune or windfall of chance discovery of illegal rejection or reception of ballots must be avoided, as it may tend to a dangerous disorientation which invades the democratic order by providing scope for reopening of declared results”. However, a genuine apprehension of mis-count or illegality and other compulsions of justice may require the recourse to a drastic step.

8. Before the court permits the recounting, the following conditions must be satisfied:

(i) The court must be satisfied that a prima facie case is established;

(ii) The material facts and full particulars have been pleaded stating the irregularities in counting of votes;

(iii) A roving and fishing inquiry should not be directed by way of an order to re-count the votes;

(iv) An opportunity should be given to file objection; and

(v) Secrecy of the ballot should be guarded.”

The Apex Court in **Gursewak Singh Vs. Avtar Singh and others**, 2006 (2) RCR (Civil) 463 while dealing with the election to the post of Sarpanch of Panchayat had upheld the order of recounting passed by the

Tribunal in the exercise of jurisdiction under Rule 33 of the Punjab Panchayat Election Rules, 1994. In that case the High Court had upheld the order of recounting after summoning the original ballot papers. The Apex Court while affirming the order of recounting of votes held that order of recounting can be passed when the following conditions are fulfilled:-

- i) a prima facie case;
- ii) pleading of material facts stating irregularities in counting of votes;
- iii) a roving and fishing inquiry shall not be made while directing recounting of votes; and
- iv) an objection to the said effect has been taken recourse to.”

Whether the conditions for recounting exist have to be seen in the facts and circumstances pleaded in each election petition. When there are specific pleadings stating irregularities in counting of the votes, after giving opportunities to the other party to file objection and maintaining the secrecy of the ballot papers, the Election Tribunal can order recounting of the ballot papers when prima facie case is established in context to the particulars pleaded regarding the irregularities aforesaid.

In the present case the grievance of respondent No.1 is that she had secured 77 votes as compared to 59 votes secured by the petitioner. The election petition has been filed by her as her name had not been notified despite she having taken oath as per the rules and statute. The counting of

votes is not in dispute but the act of State authorities in declaring petitioner as a Panch in view of the above said counting has to be determined by the Tribunal.

Taking into consideration the nature of the controversy and the casual approach adopted by the Election Tribunal, a direction has already been issued in CWP No. 10269 of 2014 vide order dated May 26, 2014 to expeditiously dispose of the election petition. The circumstances of the present case do not warrant recounting at this stage but warrant that in the exercise of supervisory jurisdiction, the Election Tribunal should be directed to seriously adjudicate upon the rights of the parties.

This petition is disposed of at this stage by setting aside the order dated July 15, 2014 regarding recounting. The Election Tribunal is directed to dispose of the election petition within a period of two months after the receipt of certified copy of the order. In case of non-compliance of the order, it will be open to respondent No.1 to approach this Court again. It is further directed that the Election Tribunal will pass an appropriate order for recounting at the time of final decision of the case, if required.

July 27, 2015
sanjay

(M.M.S.BEDI)
JUDGE