

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

**Civil Revision No.6072 of 2015
Date of decision: 16.09.2015**

Anup Singh

...Petitioner

Versus

Daler Singh and others

..Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.Vikas Singh, Advocate for the petitioner
Mr.Hardeep Singh, Advocate for the caveator/respondent
No.1

1. *Whether Reporters of Local Newspapers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

Kuldip Singh, J. (Oral)

Impugned in the present revision is the order dated 26.8.2015, passed by the Election Tribunal-cum-Deputy Commissioner, Patiala, whereby the re-counting of votes has been ordered, which is to take place on 17.9.2015 at 11.00 AM in the Mini Secretariat, Patiala.

The brief controversy is that on 3.7.2015 elections for the post of Sarpanch of village Alipur Wazir Sahib, Tehsil and District Patiala were held. Total 478 votes were polled. 9 votes were cancelled. The winning candidate (petitioner herein) secured 235 votes and defeated candidate (respondent No.1 herein) secured 234 votes. Therefore, the present petitioner was declared winner by a margin of one vote.

The defeated candidate filed Election Petition before the Deputy Commissioner-cum-Election Tribunal, Patiala. There the issues were framed. Both the candidates led evidence and while hearing arguments on merits, the learned Election Tribunal passed the impugned order, operative part of which is reproduced below:-

“I have considered the arguments advanced by the learned counsel for the parties have gone through the record placed on file. In the present petition various issues have been raised which are necessary to verify before giving final findings. Whether the counting of votes was conducted in the presence of the candidates, whether invalid votes have properly decided by the Presiding Officer in accordance with law in the presence of the parties. Whether objections raised by candidate were considered and decided as per law. Furthermore, there is a very little margin of one vote only. These facts are necessary to be verified in the interest of justice. In view of the aforementioned facts of the case. I have arrived at the conclusion that before giving issue-wise finding, the re-counting of votes will be in the interest of justice. However, this finding/ observation of mine will not have any bearing on the merits while giving final decision of the present petition. The Hon’ble Punjab and Haryana High Court has opinioned in CR No.39 of 2000 titled as Gurtej Singh versus Darbara Singh that to do finally complete justice between the parties and to avoid unnecessary prolongation of petition order of recount is an effective and expeditious solution to the election petition.”

I have heard learned counsel for the parties and have also carefully examined the record.

Learned counsel for the petitioner (the winning candidate) has argued that re-counting cannot be ordered mere for satisfaction. He has referred to the authority of Hon'ble Supreme Court in Baldev Singh v. Shinder Pal, 2006(4) RCR (Civil) 891, wherein even when equal number of votes was secured and the winning candidate was declared by draw of lots, it was held that the re-counting cannot be ordered. The Apex Court observed as under:-

"The question came up before this Court in M. Chinnasamy vs. K.C. Palanisamy & Ors. [(2004) 6 SCC 341], wherein this Court opined :

"The question as to what would constitute material facts would, however, depend upon the facts and circumstances of each case. It is trite that an order of recounting of votes can be passed when the following

ingredients are satisfied: (1) if there is a prima facie case; (2) material facts therefore are pleaded; (3) the court shall not direct re-counting by way of roving or fishing inquiry; and (4) such an objection had been taken recourse to.

The necessity of "maintaining the secrecy of ballot papers" should be kept in view before a re-counting is directed to be made. A direction for re-counting shall not be issued only because the margin of votes between the returned candidate and the election petitioner is narrow."

Therefore, the said four principles mentioned in the judgment are to be satisfied before the re-counting could be ordered. In the present case, the re-counting has been ordered in order to verify the issues raised before the Tribunal. The Election Tribunal further held that the re-counting of votes is necessary in the interest of justice.

I am of the view that in the present case none of the above said grounds is present on which re-counting could be ordered. Unless there are serious allegations that the counting was not done properly and evidence in that regard has been led and considered, no re-counting could be ordered. The Tribunal has not recorded any finding to this effect that there was any error in counting of the votes, particularly, when both the parties have led the evidence. The Tribunal did not record any finding on any of the issues and without pronouncing the findings on issue in main election petition, re-counting was ordered.

In the circumstances, the impugned order is not sustainable in the eyes of law and accordingly the same is hereby set aside.

The revision is accordingly allowed.

16.09.2015
gk

(Kuldip Singh)
Judge