

IN THE HIGH COURT OF PUNJAB AND HARYANA

AT CHANDIGARH

Civil Revision No.5935 of 2014 (O&M)

Date of decision: 07.09.2015

Ajaib Singh

.....Petitioner

versus

Presiding Officer, Election Tribunal Mansa and others

.....Respondents

CORAM: Hon'ble Mr.Justice Kuldip Singh

Present: Mr.M.S.Uppal, Advocate for the petitioner
Mr.Pawan Kumar, Senior Advocate with
Mr.Abhumanyu, Advocate for respondent No.2

- 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 25.8.2014, passed by the Election Tribunal-cum-Deputy Commissioner, Mansa, vide which the recounting of votes has been ordered.

The brief facts necessary for the purpose of disposal of the present revision are that on 3.7.2013, elections to the post of Sarpanch of Gram Panchayat village Buraj Hari, District Mansa were held. Nirvair Singh (herein referred to as defeated candidate) as well as Ajaib Singh (hereinafter referred to as elected candidate) contested the election. In the election, total 2466 votes were polled.

The winning candidate got 1220 votes, whereas the defeated

candidate got 1200 votes. 46 votes were rejected. In this way, the winning candidate won the election by a margin of 20 votes. The defeated candidate filed the election petition under the Punjab State Election Commission Act, 1994, challenging the election of respondent No.2- winning candidate. In the said election petition, the Election Tribunal-cum-Deputy Commissioner, Mansa framed the issues. Both the parties led evidence on all the issues. Issue Nos.2 to 5 were decided against the petitioner- defeated candidate. Issue No.1 was regarding the fact as to whether the election is liable to be cancelled on account of the fact that the counting of votes was not proper. While dealing with issue No.1, the Election Tribunal observed as under:-

“So far as issue No.1 is concerned, the difference between the respondent No.1 and petitioner as regard winning and defeating the election is by 20 votes and in order to satisfy the petitioner, there is alternative except to allow the re-counting of the votes which were polled in favour of the petitioner and the respondent No.1, and by doing this the exact public opinion will also be known.”

Dissatisfied with the said order, the elected candidate has filed the present revision.

I have heard learned counsel for the parties and have carefully gone through the file.

Learned counsel for the petitioner has relied upon the authority in M.Chinnasamy v. K.C.Palanisamy and others, 2004(1)

RCR (Civil) 303 and has pressed that recounting of votes cannot be

ordered merely for the satisfaction of the opposing candidate.

The contention has been vehemently opposed by the opposite counsel on the ground that it is not the question of satisfaction but there were specific allegations that a bundle containing 50 votes was counted towards the elected candidate and that 46 votes were improperly rejected. If these facts are taken into consideration it may change the result. The attention has been drawn towards arguments advanced before the Election Tribunal. Therefore, it has been contended that re-counting has been ordered not for the satisfaction of the opposing candidate but to check correctness of the said allegations. It has been further contended that the videography of the re-counting has also been ordered vide the impugned order. It has been further argued that the authorities produced by learned counsel for the petitioner is under the Municipal Act. Learned counsel for the respondent has relied upon the authority in Gurnam Bindra Singh v. Kulwant Singh and others, 2010 (4) RCR (Civil) 367.

After going through the impugned order and the evidence of the witnesses produced along with the petition, I am of the view that in this case, the allegations are that one bundle of 50 votes was wrongly counted in favour of the winning candidate, whereas it belongs to the defeated candidate. There is also dispute that 46 votes were improperly rejected. Therefore, even though the impugned order is not happily worded and it is stated that to satisfy the petitioner-respondent No.2 herein the re-counting is ordered but the fact remains that there are some doubts regarding the counting

of votes which are sought to be got cleared by the Election Tribunal.

Learned counsel for the petitioner has also referred to the authority in Baldev Singh v. Shinder Pal Singh and another, 2006(4) RCR (Civil) 891, to press that fact that serial no. of the ballot paper, regarding which the objection was raised has not been mentioned by the opposite counsel. However, in this case, this Court has already expressed the opinion that there is a dispute regarding the bundle of 50 votes. Therefore, even if serial No. of said 50 votes is not mentioned, order of re-counting cannot be interfered with.

Once, it is found that there are some doubts over the counting of votes, the impugned order, ordering the re-counting cannot be interfered into by this Court.

It being so, the present revision fails and is dismissed. However, it is directed that the re-counting shall be done by the Election Tribunal-cum-Deputy Commissioner, Mansa himself though he may take the assistance of some staff in managing the affairs.

07.09.2015
gk

(Kuldip Singh)
Judge