

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

**CR No.7896 of 2014 (O&M)
Date of decision: 07.09.2015**

Gurbinder Kaur

...Petitioner

versus

Presiding Officer, Election Tribunal, Mansa and others

...Respondents

CORAM: HON'BLE MS. JUSTICE RITU BAHRI

Present: Mr. V.K. Sandhir, Advocate,
for the petitioner.

Mr. D.C. Mittal, Advocate,
for respondent No. 2.

RITU BAHRI, J.

Challenge in this petition is to the order dated 18.11.2014 passed by the Election Tribunal, Mansa-respondent No.1 in an election petition titled as 'Smt. Simranjit Kaur Vs. Gurbinder Kaur and others,' whereby recounting of votes of the post of Sarpanch, village Rangdial, Tehsil and District Mansa, has been allowed.

Election to the post of Sarpanch in village Rangdial, Tehsil and District Mansa was held on 03.07.2014. Gurbinder Kaur-petitioner, Simranjit Kaur respondent No.2 and Kulvir Kaur-respondent No.3 filed their nomination papers for the said post. Gurbinder Kaur-petitioner was allotted 'Machine', Simranjit Kaur-respondent No.2 was allotted 'fan' and Kulvir Kaur-respondent No.3 was allotted 'table' as their election symbols. After counting of the votes, Gurbinder Kaur-petitioner was declared as elected Sarpanch of the village and her name was notified by the Election

Commission. She took oath of the office and secrecy and started working as Sarpanch of Gram Panchayat, village Rangdial, Tehsil and District Mansa. Simranjit Kaur-respondent No.2 challenged the aforesaid election of the petitioner as Sarpanch on the ground that at the time of counting of votes, the votes polled to the candidates did not tally with the total number of votes in booth No.160-161. It was alleged that in booth No.160, the petitioner was polled 477 votes, respondent No.2 got 409 votes and respondent No.3 got 17 votes and total thereof came to be 903, whereas the total number of polled votes were mentioned as 917. Similarly, in booth No.161, total 832 votes were polled, out of which, petitioner got 365 votes and respondent No.2 got 431 votes, whereas respondent No.3 got 19 votes. The total should have been 815, whereas the total polled votes were shown as 832.

Reply to the said petition was filed by the petitioner explaining that in booth No.160, total 917 votes were polled, out of which she (petitioner) got 477 votes, respondent Nos.2 and 3 got 409 and 17 votes respectively. Apart from that 14 votes were rejected and were not counted by the respondent. Similarly, in booth No.161, total 832 votes were polled, out of which petitioner got 365, respondent No.2 got 431 and respondent No.3 got 19 votes. 17 votes were rejected. Therefore, as per the information given in the forms, the total number including the rejected votes were correct.

This fact was, however, clarified in cross-examination of Dharam Pal (PW-3), which has been annexed as Annexure P-2. Despite the above said fact, the Election Tribunal, vide impugned order dated 18.11.2014, has given direction for recounting of votes concerning the election of Sarpanch, Gram Panchayat, Rangdial, Tehsil and District Mansa.

For the purpose of counting, a committee consisting of Mohinder Singh,

Naib Tehsildar, Budhlada, Amarjit Singh, Senior Assistant, LPA Branch, Makhan Singh Mittal, Senior Assistant, Misc. Branch and Gurmeet Singh, Senior Assistant, Najarat Branch, DC office, Mansa, was constituted. The returning officer was directed to be present at the time of counting. The candidates were instructed to ensure their presence.

Learned counsel for the petitioner, *inter alia*, argued that the Presiding Officer, Election Tribunal, has exceeded his jurisdiction by delegating his powers of recounting to the committee consisting of Mohinder Singh, Naib Tehsildar, Budhlada, Amarjit Singh, Senior Assistant, LPA Branch, Makhan Singh Mittal, Senior Assistant, Misc. Branch and Gurmeet Singh, Senior Assistant, Najarat Branch, DC office, Mansa. He has referred to the judgments passed by this Court in Satnam Singh Vs. Kamaljeet Singh, 2000 (4) RCR (Civil) 525, Darshan Singh Vs. Deputy Commissioner-cum-Presiding Officer, Election Tribunal and others, 2000 (3) RCR (Civil) 271, Jalaur Singh Vs. Balwinder Singh and others, 2010 (2) RCR (Civil) 519 on the proposition that when the power to recount of votes vested in the Tribunal, the Tribunal cannot delegate this power to a third person as recounting of votes was a serious order and it had to be passed and compliance recorded by due application of mind by the concerned Tribunal.

No law to the contrary has been cited by learned counsel appearing for respondent No.2.

The question of recounting had come up in consideration before this Court in Jalaur Singh's case (supra), wherein the Coordinate Bench of this Court referred to the judgment passed in Satnam Singh and Darshan Singh's cases (supra). In those judgments it was observed as under:-

5. In the case of ***Satnam Singh (Supra)***, this Court has held: -

“Counsel for respondent No.1 argued that it was only because of recounting of votes that this difference had arisen. Regarding re-counting, another argument is advanced by learned counsel for the appellant. It is that though the recounting was ordered, the Election Tribunal itself did not carry out the re-counting but it was done by Additional Deputy Commission, Sangrur and that the Election Tribunal had no right to entrust this work of recounting to Additional Deputy Commissioner and the re-counting being not done by the Election Tribunal itself or under its supervision, cannot be said to be legal. So far as the difference is counting of votes is concerned, I express no opinion because the second argument regarding re-counting advanced by the learned counsel for the appellant, seems worth considering. On questioning the counsel for the respondents, he could not show that Additional Deputy Commissioner was a part of the election Tribunal through the Presiding Officer of the Election Tribunal is Duty Commissioner. According to Section 73, the Election Tribunal is constituted by the State Government in consultation with the Election Commissioner, for each district of part thereof. Section 73(2) of the Act provides that the State Government shall, by notification, appoint an IAS or PCS or Class I officer of the State Government having adequate administrative, legal or magisterial experience, as the President Officer of an election Tribunal, therefore, though the Deputy Commissioner was (admittedly) entrusted the powers of Election Tribunal, and the Additional Deputy Commissioner was not entrusted with the same. I find that it was not proper for the Election Tribunal to have entrusted the duty of re-counting to a person outside the Tribunal. For verifying the position, whether the Additional Deputy Commissioner forms part of Election Tribunal, I had called the advocates again for further arguments and counsel for the respondent could not show that the Additional Deputy Commissioner was entrusted the power of Election Tribunal. This being the position, this appeal succeeds on the last ground i.e. recounting was not done by the Election Tribunal.”

6. In the case of ***Darshan Singh (Supra)***, this Court has further held as under:

“It is a settled principle of law that the power vests in the Tribunal cannot be delegated. The power to order re-count is not a power which can be delegated by the Tribunal to a 3rd person. Directing re-count of votes is a serious order and it has to be passed and compliance recorded by due application of mind by the concerned Tribunal. The statutory provisions neither prescribe nor justify implied delegation on the principle of necessity

or otherwise, if the counting of votes is irregular or defective and the order of recounting is passed by the Tribunal it could finally result in setting aside the election to the elected candidates. Thus, re-count has to be done by the Tribunal itself. It places onerous responsibility upon the Tribunal and it must and has to satisfy with regard to valid rejection of votes or otherwise where such a ground is pleaded and due evidence is led in support thereof. Such opinion is that of the authority concerned and none else. For this part of the impugned order has to be set aside. The learned Tribunal has fallen in error of jurisdiction in ordering recount of votes to be taken up by Additional Deputy Commissioner, Bathinda with the help of such other person or officer as he may deem fit and proper and for submission of the report of the Tribunal.”

In view of the law laid down in the aforesaid judgments, the impugned order dated 18.11.2014 passed by the Election Tribunal, Mansa, is set aside and the matter is remanded back to the Presiding Officer, Election Tribunal, Mansa with a direction to recount the votes himself and declare result thereof within one month from the date of appearance of the parties or their counsel. Parties are directed to appear either in person or through counsel before the Election Tribunal, Mansa, on 16.09.2015.

Allowed accordingly.

(RITU BAHRI)
JUDGE

07.09.2015
ajp