

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No. 8657 of 2014
Date of Decision: 06.07.2015.**

Dalvir Singh

.....Petitioner

Versus

Gurdeep Singh and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. M.K.Singla, Advocate
for the petitioner.

Mr. Harshit Jain, Advocate
for respondent No. 1.

None for respondent No. 2.

SABINA, J.

Petitioner has filed this petition under Article 227 of Constitution of India challenging the order dated 1.12.2014 whereby recounting of the votes has been allowed by the Election Tribunal.

Learned counsel for the petitioner has submitted that the impugned order is a non speaking order. In support of his argument learned counsel has placed reliance on '**Preet Mohinder Singh versus Kirpal Singh, 2001(2) R.C.R. (Civil) 647**' wherein it was held as under:-

“5. A bare reading of the above averments shows that these paragraphs contain nothing but bald allegations. No facts, muchless material facts and particulars have been

furnished. The averments to the effect that the Presiding Officer had illegally rejected 57 votes whereas in fact these were only 37 votes of such nature, is a hopelessly vague and bald allegation. Leaving aside the question whether the figure as mentioned above is true or imaginary, the basis on which this figure had been arrived at, has not been disclosed in the election petition. No particulars at all have been furnished of allegedly wrongfully rejected votes as mentioned in paragraphs 11 and 13. Same is the position with regard to the allegations contained in other paragraphs (supra). The pleadings on this aspect are hopelessly vague. Neither material facts nor material particulars have been furnished. In the absence of material facts and particulars which are sine quo non for letting an election petition proceed to trial, the Tribunal was not justified in ordering a recount in a rather mechanical manner. The Courts have always opined that mere allegations not supported by material facts do not give rise to a triable issue particularly where the allegations are made to seek recounting of votes. Secrecy of ballot cannot be lightly impinged upon.

6. In **V.S. Achuthanandan v. P.J. Francis and another, (1993) 3 SCC 737 : 2001(1) RCR (Civil) 753.**

(SC), this Court reiterated the settled propositions of law in the matter of inspection and recount of ballot papers. Some of the guidelines and conditions reiterated in that

judgment are:

(1) That it is important to maintain the secrecy of the ballot which is sacrosanct and should not be allowed to be violated on frivolous, vague and indefinite allegations;

(2) That before inspection is allowed, the allegations made against the elected candidate must be clear and specific and must be supported by adequate statements of material facts;

(3) The Court must be prima facie satisfied on the materials produced before the Court regarding the truth of the allegations made for a recount;

(4) That the Court must come to the conclusion that in order to grant prayer for inspection, it is necessary and imperative to do full justice between the parties;

(5) That the discretion conferred on the Court should not be exercised in such a way so as to enable the applicant to indulge in a roving inquiry with a view to fish materials for declaring the election to be void; and

(6) That on the special facts of a given case sample inspection may be ordered to land further assurance to the prima facie satisfaction of the Court regarding the truth of the allegations made for a recount, and not for the purpose of fishing out materials.”

7. On the touchstone of those guidelines, the pleadings in the present case being hopelessly deficient the Tribunal fell in error in ordering recount. There was no material

before it on the basis of which it could arrive at a conclusion to order recount. The High Court was, under the circumstances, justified in setting aside the order of the Tribunal. We are not persuaded to take a view contrary to the one taken by the High Court either. This appeal, therefore, fails and is dismissed but with no order as to costs.”

Learned counsel for the petitioner has next placed reliance on '**Pardaman Singh versus State of Punjab, 1996(3) R.C.R. (Civil) 35**', wherein it was held as under:-

“6. It has been repeatedly held by the Supreme Court of India as well as this Court that an order of recount cannot be passed on the mere asking of a party. There have to be proper pleadings making out the case for recount, framing of an issue and contemporaneous evidence to substantiate the plea of recount.”

Learned counsel for respondent No. 1, on the other hand, has submitted that the impugned order has been passed by the Presiding Officer after considering the facts and circumstances of the case.

Respondent No. 1 had contested the election to the post of Sarpanch of village Gajjan Majra against the petitioner. Petitioner was declared as an elected candidate. Respondent No. 1 challenged the same by filing election petition before the Tribunal. The Tribunal passed the following order on 1.12.2014:-

“Today this election petition has been presented. Counsels for the parties have been heard and file

perused. The issues which have been framed, in this case, on 27.01.2014, from that regarding issue No. 3, which is to be proved by the petitioner that recounting of the votes is being done. Counsel for the petitioner is directed to deposit the expenses of the concerned employee, regarding summoning of the record of election from Additional Deputy Commissioner (Development) Sangrur and of returning officer, who has conducted the election, within two days, in the office, so that the recounting of the votes be done. Now file be put up on 22.12.2014.”

A perusal of the impugned order reveals that the Tribunal after framing of the issues immediately ordered for recounting of the votes without giving any reasons in this regard. At this stage, there was no material on record before the Tribunal for ordering recounting of votes. In fact, by passing the impugned order, the Tribunal has virtually allowed the election petition filed by respondent No. 1. At this stage, the averments made by the election petitioner in the election petition are bald allegations which are yet to be proved by him by leading his evidence.

Accordingly, this petition is allowed. Impugned order dated 1.12.2014, whereby the Tribunal had ordered recounting of the votes, is set aside.

**(SABINA)
JUDGE**

July 06, 2015
Gurpreet