

CWP-12129-2015

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

CWP-12129-2015

Date of Decision: 30.10.2015

Udeek Singh

... Petitioner(s)

Versus

Election Tribunal-cum-Sub Divisional Magistrate, Zira and others

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE PARAMJEET SINGH

- 1) Whether Reporters of the local papers 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 ?

Present: Mr. C.M.Munjal, Advocate,
for the petitioner.

Mr. S.S.Chandumajra, Addl. A. G. Punjab.

Mr. K.S.Dadwal, Advocate,
for respondent No.2.

Mr. A.S.Manaise, Advocate,
for respondent No.3.

Paramjeet Singh, J.

Instant writ petition has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 27.05.2015 (Annexure P-6) passed by respondent No.1-Election Tribunal-cum-Sub Divisional Magistrate, Zira, District Ferozepur whereby respondent No.1 has ordered recounting of votes during hearing of election petition filed against the petitioner being elected Sarpanch of village Sher Mohammad

CWP-12129-2015

Mahigir, Block and Tehsil Gurharshai, District Ferozepur.

The facts, in brief, are that the petitioner was declared as elected Sarpanch of the Gram Panchayat of Village Sher Mohammad Mahigir, Block and Teshil Gurharshai, District Ferozepur, in the election held on 03.07.2013, by the Presiding Officer. The petitioner secured 175 votes in comparison to respondent No.2 who secured only 162 votes. Thereafter, the petitioner was administered oath for the post of Sarpanch and was given the charge. Being aggrieved, respondent No.2 filed election petition against the petitioner and respondent No.1 herein for setting aside the election of the petitioner on various grounds including counting of votes, false preparation of Form IX, signature of candidates obtained on blank papers. During the pendency of election petition, respondent No.2 moved application for recounting of votes which has been dismissed vide order dated 14.10.2014 (Annexure P-5). Thereafter, respondent No.2 again moved application for recounting of votes which has been allowed by respondent No.1 vide impugned order dated 27.05.2015 (Annexure P-6). Hence, this writ petition.

In pursuance of notice of motion, respondent No.2 filed written statement with the averments that the impugned order dated 27.05.2015 (Annexure P-6) has been passed by the Election Tribunal and the same cannot be challenged by way of writ petition. No prejudice will be caused to the petitioner in recounting of votes. There is also allegation that counting of votes was incorrectly made.

CWP-12129-2015

I have heard learned counsel for the parties and perused the record.

Earlier, respondent No.2 moved application for recounting of votes which has been dismissed vide order dated 14.10.2014 (Annexure P-5). The said order has become final. Again, respondent No.2 moved application for recounting of votes. Once respondent No.1 came to conclusion that no case for recounting of votes is made out and the order dated 14.10.2014 (Annexure P-5) was never challenged and same has become final and the same is still subsisting, therefore, second application could not have been moved for the same purpose. Learned counsel for the respondents have failed to satisfy the Court that second application for recounting of votes can be moved, when first application for the same purpose has been dismissed and order has become final.

In view of above, instant petition is allowed and impugned order dated 27.05.2015 (Annexure P-6) is set aside. Respondent No.1 is directed to decide the election petition on merits, in accordance with law, preferably within three months from the date of receipt of copy of this order.

30.10.2015
parveen kumar

(Paramjeet Singh)
Judge