

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O. No.470 of 2015 (O&M)

Date of Decision: 19.01.2015

Amarjit Singh

....Appellant

v.

Harbans Singh and another

....Respondents

CORAM: HON'BLE MS. JUSTICE NAVITA SINGH

Present: Mr. I.S. Brar, Advocate for the appellant.

Navita Singh, J.

The order passed by the Election Tribunal is challenged by the appellant whereby the election petition filed by respondent No.1 herein was allowed and the election of Sarpanch which had taken place on 3.7.2013, in which the appellant was declared elected, was set aside.

Counsel for the appellant argued that the petitioner before the Tribunal had not adhered to the provisions of Section 78(2) of the Punjab State Election Commission Act (Act for short) and that the election was set aside on mere technicalities. It was contended that recounting could not have been ordered in a casual manner and the Tribunal should have proceeded to frame issues and take evidence.

So far as sub-Section (2) of Section 78 of the Act is concerned, nothing was shown by the appellant that the annexures, if any, to the petition were not signed and verified by the petitioner, i.e. present respondent No.1. No such objection appears to have been taken at that time.

Regarding applicability of the provisions of Code of Civil Procedure (CPC for short), there is Section 81 of the Act which says that the

Election Tribunal, 'as nearly as may be', should try the petition in accordance with the procedure laid down. There is no mandate under the Act to try the petition strictly in accordance with CPC.

Even otherwise in the present case, the matter was decided on a completely different ground. The Election Tribunal observed that the petitioner before it had mainly prayed for recounting of the votes and the entire stress was laid on that point. Respondent No.1, i.e. now appellant, did not raise any objection and rather gave consent for recounting. The Tribunal also felt that getting the recounting done was the best option in the given facts and circumstances. At the time of recounting, the present appellant filed an application stating that he should be allowed to make a video recording of the process of recounting. His application was allowed, with a direction that after the needful was done, he would deposit the entire material relating to videography in the Court.

The Tribunal, thereafter, called for the record which was earlier duly sealed. The recording was seen and the entire process of recounting was thus before the Tribunal. Each round of recounting was signed by the appellant herein. Accordingly, since more votes were found to be polled in favour of Harbans Singh, respondent No.1 herein, he was declared elected.

Counsel for the appellant lastly submitted that the appellant was required to sign Form 9 after the process was complete but since his signatures were not obtained, the process remained incomplete and this short ground was sufficient for allowing the appeal. This argument is not acceptable because the Tribunal mentioned in its order that each round of recounting was signed by Amarjit Singh (now appellant) but at the time of

signing of Form 9, he went away from the Court for reasons best known to him. However, his advocate had signed the document. If the appellant intentionally went away without signing Form 9, he most certainly cannot be allowed to take benefit of that. His lawyer had signed the document.

Since recounting was done with the express consent of the appellant and his request to record the proceedings through videography was also allowed and further because the entire process was found to be in order, the appellant has no legs to stand on. The appeal is totally devoid of merit and is dismissed.

**(NAVITA SINGH)
JUDGE**

**January 19, 2015
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