

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

CM No.6763-CII of 2015 in/and
FAO No.6976 of 2014 (O&M)
Date of Decision: 31.03.2015

Lakhvir Kaur

.... Appellant

vs.

Kuldeep Singh and others

.... Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH

Present: Mr.J.S.Bhandohal, Advocate
for the appellant.

Mr. Navpreet Singh, Advocate
for respondent No.1.

Mr.R.S.Pathania, DAG, Punjab
for respondents No.3 to 5 alongwith
respondents in person.

Kuldip Singh J.(Oral)

This appeal has been filed challenging the order dated 22.07.2014 passed by the Election Tribunal-cum-Additional Deputy Commissioner (J), Fatehgarh Sahib, whereby the election petition under Section 76 and 78 of the Punjab State Election Commission Act, 1994 filed by the petitioner (appellant herein) was dismissed.

A short controversy involved in this case is that Lakhvir Kaur along with Kuldeep Singh and Sher Singh, contested the election for the post of Sarpanch of village Bharpurgarh, District Fatehgarh Sahib. The election was held on 03.07.2013. Ashok Kumar was the Presiding Officer whereas Sohan Lal was the Returning Officer. Tehsildar Sh. Jaswinder

Singh Tiwana was deputed to supervise the election process in the area. The counting of votes was conducted on the same day. As a result of the counting of votes, both the candidates namely Lakhvir Kaur and Kuldeep Singh secured 381 votes each whereas Sher Singh polled only two votes. Thereafter, the process of draw of lot was not conducted in the presence of the candidates on the spot. Both the candidates were directed to come present to the office of Returning Officer. It is claimed that both the candidates did not come present, therefore, draw of lot was conducted in their absence but in the presence of the Returning Officer and two other witnesses, as a result of which Kuldeep Singh was declared elected as Sarpanch.

Lakhvir Kaur had filed election petition before Election Tribunal. Appellant had taken two grounds before the Election Tribunal. It was stated that draw was not held in their presence. The second was that the invalid votes were declared valid. The Election Tribunal ordered the recounting of 10 rejected votes. After recounting, it was held that votes were rightly rejected. The question which survived for consideration was to whether the lots were rightly drawn or not?

In case of deadlock on account of equal number of votes Section 68 of the Punjab State Election Commission Act, 1994 reproduced as under :-

“68. Equality of votes :- If, after the counting of the votes is completed, and the addition of one vote will entitle any of those candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by lot,

and proceed as if the candidate on whom the lot falls had received an additional vote.”

The Rule 35 of the Punjab Panchayat Election Rules, 1994 is reproduced as under :-

“35. Procedure in case of tie (Section 68) :- If, after the counting of votes is completed, votes polled by two candidates are equal, and the addition of one vote will entitle any of these candidates to be declared elected, the Returning Officer shall forthwith decide between those candidates by draw of lots and proceed as if the candidate in whose favour the lot [falls,] has received an additional vote.”

It comes to show that the draw of lots were not done forthwith.

In this case, the copy of report of Returning officer has been placed on the file, which shows that after counting of the votes, the votes were found equal. The Returning Officer called both the candidates to come present in the office of Returning Officer but they did not come present. Consequently, lot was drawn in the absence of the candidates.

During the course of arguments, the Returning Officer as well as Presiding Officer stated that there was law and order problem. Therefore, the candidates were asked to come present in the office of the Returning officer. However, there is no mention in the report about law and order problem. In the office of Returning officer, draw of lots was not done in the presence of both the candidates. It is rather stated during the course of arguments that both the candidates had not come present. However, it is not claimed that particular time was given at which candidates were asked to come present and the lots were to be drawn. According to the Presiding

Officer, draw of lots were done on 04.07.2013 at 10/10.30 a.m. Whereas petitioner claim that it was done on 05.07.2013 at 2.30 a.m. It goes to show that no candidate was present at the time of draw of lots. The verbal intimation to the candidates cannot be relied upon as in this case none of the candidates had come present at the time of draw of lots. It being so, the draw of lots in the absence of both the candidates suffered from material irregularity and cannot be relied upon.

Consequently, the order of the Returning Officer is set aside and the order passed by the Tribunal is also set aside. It is directed that a fresh draw of lot be conducted before Deputy Commissioner, Fatehgarh Sahib on 22.04.2015 at 11.00 a.m. Both the parties are directed to remain present 15 minutes before the draw of lots, which shall be conducted at 11.00 a.m. and the Deputy Commissioner shall accordingly declared the result.

The appeal is accordingly allowed.

A copy of this order be conveyed to the Deputy Commissioner, Fatehgarh Sahib for compliance of order.

March 31, 2015
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(KULDIP SINGH)
JUDGE