

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 3294 of 2016
Date of decision : May 9, 2016

Anup Singh

..... Petitioner

Versus

Daler Singh and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. Vikas Singh, Advocate
for the petitioner.

Mr. Saurabh Arora, Advocate
for the caveator- respondent No.1.

1. Whether reporters of 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?

Amit Rawal, J (oral).

The petitioner is aggrieved of the impugned order whereby the election tribunal has ordered for re-counting of the votes in respect of election held for Alipur Wazir Sahib, District Patiala.

Learned counsel for the petitioner submits that election for the office of Sarpanch, Gram Panachyat was held on 3.7.2015. The Election Tribunal passed the order on 26.8.2015 without deciding the main election petition and ordered the recounting of votes which was assailed in this Court vide CR No. 6072 of 2015 and the order of re-counting was set aside and this Court never granted liberty or opportunity to the tribunal to order for

re-counting yet recounting had been ordered.

He further submits that respondents have failed to lead any evidence except bald statement of the witnesses. The election tribunal prima facie formed an opinion for recounting of the votes. There is a difference of one vote between the petitioner-winning candidate and election petitioner. In essence, the respondent-petitioner herein before the Election tribunal has miserably failed to lead any evidence enabling the court to order for re-counting.

Notice of motion.

Mr. Saurabh Arora, Advocate appearing on behalf of the respondent-caveator No.1 accepts notice and submits that witnesses of the petitioner themselves admitted that the Returning officer did not declare the result but on arrival of DSP(Rules), Patiala and Police force the result was declared which has to be proved by direct and cogent evidence. Witnesses of the petitioner has stated that the counting was over by 5.30 which was re-counted many times and the returning officer waited once the election was peacefully over. Moreover agents of both the parties were allowed to participate in the counting and no objection was raised at that time. Signatures on the re-counting were also absent. All these factors would reveal when recounting of votes can be ordered. In support of his contentions he has relied upon judgment of Hon'ble Supreme Court in **Udey Chand Vs. Surat Singh and another 2009 (10)SCC 170,** thus urges this Court for affirming the finding rendered by the election tribunal.

I have heard learned counsel for the parties, appraised the paper book and of the view that there is no substance and force in the submissions of learned counsel for the petitioners. The impugned order reveals that there have been circumstances which gave suspicion in the mind of the tribunal to order for re-counting, particularly when there is difference of only one vote. Petitioner is stated to have got 235 votes whereas respondent 234 votes. 9 votes were cancelled, which according to the petitioner were in his favour. Even the Returning Officer and Presiding Officer have given specific reply with regard to calling of the police when the election was done peacefully. It is a matter of record that Rajinder Singh, Polling Agent of the respondent admitted that counting of votes for Sarpanch ended at 7.30. However the result was not declared immediately and the counting was done 8-9 times. After the counting time and again, the Presiding officer did not tell which candidate had won and by how many votes.

On the other hand, Kuldeep Singh, another witness of respondent stated that the counting of votes for Sarpanch was done at 7 O'clock. Presiding officer did not declare the result. The result was declared after the arrival of Police and Civil officers, thus, there are contradictions in the statement of witnesses, no explanation has come forth of summoning DSP (Rules) Patiala for the purpose of declaration. Even in the judgment of Hon'ble Supreme Court in **Udey Chand's case (supra)** it has held that for the purpose of re-counting there has to be an adequate statement of all the material facts on which the allegations of irregularity or illegality

in counting are founded, and on the basis of evidence adduced in support of the allegations. The tribunal must be prima facie satisfied to order re-counting. The present case is such which has fallen within the parameters of ratio decidendi culled out by the Hon'ble Supreme Court in the aforementioned case.

In my view, the petitioner should not appreciate or be afraid of the outcome of re-counting once he is confident of having polled 235 votes.

I do not find any illegality and perversity in the impugned order and the same cannot be said to have been passed without jurisdiction.

The revision petition is devoid of merits. Accordingly the same is dismissed.

(AMIT RAWAL)
JUDGE

May 9 , 2016
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