

**IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH.**

Civil Revision No.3693 of 2016

Date of decision: December 16, 2016

Paramjit Kaur

...Petitioner

Versus

The Election Tribunal Moga & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJAN GUPTA

Present: Mr. J.S. Brar, Advocate for the petitioner.
Mr. Rajesh Bhateja, Advocate for respondent No.2.

Rajan Gupta, J.

This order will dispose of two revision petitions i.e. Civil Revision No.3693 of 2016 and Civil Revision No.3668 of 2016. In Civil Revision No.3693, petitioner has challenged the impugned order of the Election Tribunal, Moga, directing recounting of votes. In another petition i.e. Civil Revision No.3668 of 2016, she has prayed for dismissal of the election petition as same was not presented in terms of Section 76 of the Punjab State Election Commission Act.

Order has been assailed on the ground that the Tribunal did not appreciate any evidence before directing recount of votes. Counsel for the petitioner has vehemently argued that the Tribunal had to come to a considered decision without recount, on the basis of material/evidence which has come on record. However, impugned order is silent on this issue. Thus, order deserves to be set-aside.

Plea has been opposed by counsel appearing for respondent No.2. According to him, a detailed order has been passed by the Tribunal. There is no infirmity with the same.

I have heard learned counsel for the parties and given careful thought to the facts of the case.

It appears, election to the post of Sarpanch of Village Tharaj was held on 3.7.2013. There was a contest between the petitioner Paramjit Kaur and respondent No.2 Kulwinder Kaur. It is claimed that petitioner got 1188 votes and respondent No.2 got 1186 votes. Paramjit Kaur was, thus, got elected. Her election was challenged by the respondent No.2 before the Election Tribunal at Moga. During the course of proceedings, Election Tribunal passed an order directing recount of votes at the very initial stage. Said order was challenged by the petitioner before this court in Civil Revision No.697 of 2016 on the ground that it was non-speaking in nature. This court set-aside the order and directed the Election Tribunal to consider the matter afresh and to decide the same. The Tribunal was given liberty to direct recount in case it found sufficient grounds to do so. It appears, Kulwinder Kaur respondent No.2, thereafter, deposed before the Tribunal. Another witness namely, Darshan Singh also deposed. These witnesses were cross-examined by counsel for the petitioner. Petitioner Paramjit Kaur also deposed before the Tribunal as RW-1. Three other witnesses namely, Randhir Singh, Jasbir Singh and Jaswinder Singh, Sr. Assistant also deposed as RW-2 to RW-4 respectively. These witnesses were subjected to cross-examination by counsel for Kulwinder Kaur respondent No.2. On consideration of the

evidence, Tribunal ordered recount of votes. Main ground, which weighed with the Tribunal, was that there was difference of only two votes between the elected candidate and the losing candidate. It is evident that one person entered polling station No.128, where counting was being conducted. He destroyed one vote. FIR No.86 dated 4.7.2013 was registered in this regard on the complaint of the Presiding Officer.

I am of the considered view that there is no infirmity with the order passed by the Tribunal. In view of slender margin, with which the petitioner won the election and certain other circumstances, which intervened, I feel that recount of votes is in order. Plea of the petitioner that instant order passed by the Tribunal is non-speaking, is untenable. A perusal thereof shows that there is application of mind by the quasi judicial authority and it has passed a reasoned order.

Plea for dismissal of the election petition is also devoid of merit. Question whether the election petition was presented in person by respondent No.3 Kulwinder Kaur, is a matter of evidence. Needless to observe that in case election petition survives after recount of votes, Tribunal would be at liberty to pass an order on the basis of evidence and as per law.

Under the circumstances, both revision petitions filed by the petitioner are without any merit and same are hereby dismissed.

(RAJAN GUPTA)
JUDGE

December 16, 2016
'Rajpal'

Whether speaking / reasoned	Yes / No
Whether Reportable:	Yes / No