

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

CR No.5488 of 2016

Date of Decision-23.11.2016

Ved Parkash ... Petitioner

Versus

Naresh Kumar and others ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Chand Ram Olla, Advocate for the petitioner.

Mr. Sunil Saharan, Advocate for respondent No.1.

Mr. Pramjeet Singh, AAG, Haryana
for respondents No.3 to 5.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged order dated 22.07.2016 passed by Civil Judge (Junior Division), Hissar vide which an application for scrutiny and computation of votes and recounting of votes was dismissed.

[2]. Election to the post of Panch in Ward No.13 of Gram Panchayat Nangthala, Tehsil and District Hisar took place on 24.01.2016. Petitioner and respondents No.1 and 2 contested the election for the said post. Petitioner and respondent No.1 secured equal number of votes i.e. 95 votes each. Request for recounting of votes at the instance of the petitioner was not acceded to by the counting staff, rather the counting staff asked the petitioner to agree for draw. Petitioner refused to accept draw of lot, but on the next day came to know that the counting staff declared respondent No.1 as winning candidate in a draw for which the petitioner

neither received any notice, nor consented for the same. The draw was conducted in the absence of the petitioner.

[3]. Petitioner alleged that Returning Officer alleged to have issued a notice No.2023 dated 24.01.2016 to Paramjeet Kaur on booth No.89, Nangthala and Ward No.13 which was signed by Satyawan, Presiding Officer. The said notice was wrong. There were many invalid votes which were having double stamp in favour of respondent No.1. Many votes were polled on behalf of those persons who were on Government duties at other places.

[4]. Election petition was filed along with the application for scrutiny and computation of votes. Respondent No.1 was sought to be declared as disqualified and petitioner claimed himself to be successful candidate to the post of Panch from Ward No.13 of Gram Panchayat Nangthala as he had received largest number of valid votes. The validity of the election was assailed and it was claimed that the recounting was not done by the Returning Officer despite request of the petitioner. Section 176(4) (b) of Haryana Panchayati Raj Act, 1994 was resorted to for scrutiny and computation of the votes.

[5]. Application was contested by the respondents. Factum of receiving equal number of votes was admitted, however draw of lot was claimed to be valid. In draw of lot, respondent No.1 was declared to be successful candidate. Respondents further asserted that a lawful notice No.2023 dated 24.01.2016 was issued to the

petitioner as well as to respondent No.1 and thereafter, result was declared by draw of lot. Under the provisions of Haryana Panchayati Raj Act, 1994, a draw of lot is an appropriate mechanism in the given situation.

[6]. Learned counsel for the petitioner by relying upon **Harbans Kaur Vs. Jasvir Kaur and others, 2015(4) PLR 137** contended that recounting of votes can be ordered when there are specific pleadings in respect of irregularities committed during the process of election. Such a course can be adopted by giving due opportunity to the opposite party for filing objection.

[7]. On the other hand, learned counsel for the respondents vehemently opposed the prayer on the ground that tinkering of ballot is not permissible. Secrecy of ballot has to be preserved so far as possible. In support of his contention, learned counsel relied upon **Bharat Singh Vs. Dalip Singh and others, 1996(1) RRR 120 (P&H)** and **Radha Kishan Vs. Election Tribunal-cum-Sub Judge, Hissar and another, 1999(4) RCR (Civil) 79 (P&H).**

[8]. I have heard learned counsel for the parties and have perused the material on record.

[9]. Apparently both the candidates secured equal number of votes. Learned counsel for the petitioner has leveled allegation of corrupt practice inasmuch as that many invalid votes having double stamp in favour of respondent No.1 were not cancelled by

the election staff and number of votes were polled in respect of those persons who were on Government duties at other places.

[10]. It is a settled principle of law that if the election petitioner makes out specific pleadings with necessary particulars in respect of irregularities committed during election process or counting of votes, recounting can be ordered after giving due opportunities of filing objection to the other side. The allegations made by the petitioner appeared to be only bald allegations as necessary particulars of those persons whose votes were polled in their absence and votes which were allowed to be polled in favour of respondent No.1 having double stamping were not shown. On these vague and bald allegations, recounting of votes cannot be ordered. Factum of receiving or non-receiving of notice No.2023 dated 24.01.2016 is a question of fact which can be gone into by the trial Court at appropriate stage.

[11]. Holding of draw of lot in such type of situation is not uncommon or having no authority in terms of provisions of Haryana Panchayati Raj Act, 1994. According to Section 176(4) (b) of Haryana Panchayati Raj Act, 1994, if, in any case of which Clause (a) or Clause (aa) does not apply, the validity of an election is in dispute between two or more candidates, the Court shall after a scrutiny and computation of the votes recorded in favour of each candidates, declare the candidates who is found to have the largest number of valid votes in his favour, to have been duly

elected: Provided that after such computation, if any, equality of votes is found to exist between any candidate and the addition of one vote entitled any of the candidates to be declared elected, one additional vote shall be added to the total number of valid votes found to have been received in favour of such candidate/candidates, as the case may be, elected by lot drawn in the presence of the Judge in such manner as he may determine. Draw of lot is not alien to the procedure, such a course can be adopted in the situation of present nature where both the parties have secured equal number of votes.

[12]. The entire controversy hinges upon a fact whether proper notice was issued to the petitioner for conducting draw of lot or not? The main thrust of the respondents was that a notice No.2023 dated 24.01.2016 was issued to the petitioner in respect of conducting draw of lot on 25.01.2016. Apparently, petitioner contested the election for the post of Panch from Ward No.13 of Gram Panchayat village Nangthala. The notice No.2023 dated 24.01.2016 was issued by Returning Officer to Naresh Kumar, Ved Parkash and Sher Singh candidates for the post of Panch from Ward No.13, Gram Panchayat Nangthala booth No.89 on the subject that due to equal number of votes, draw of lot will be held. The subject matter of notice revealed that Mamta and Pararmjeet Kaur had received 95 votes each and therefore, draw of lot will be held on 25.01.2016 at 12.00 A.M in Judo Hall, Mahavir Stadium, Hissar. Presence of the addressees was required by way of

aforesaid notice. Perusal of aforesaid notice revealed that addressees were not called upon to attend the draw of lot to be conducted in respect of election of the petitioner viz-a-viz respondent No.1, rather Mamta and Paramjeet Kaur were shown to have secured 95 votes each in the election and therefore, presence of the addressees namely Naresh Kumar, Ved Parkash and Sher Singh was required. The notice appears to be defective in pith and substance and cannot be held to be lawful notice for conducting draw of lot in respect of election of the petitioner as against respondent No.1. Even though tinkering of ballot cannot be permitted and recount cannot be ordered in routine, but in terms of Section 176(4) (b) of Haryana Panchayati Raj Act, 1994, draw of lot can be held in the presence of Judge in a manner which may be determined.

[13]. Issuance of notice dated 24.01.2016 is defective inasmuch as that the same did not relate to election of the petitioner and respondent No.1, rather the same related to the election of Mamta and Paramajeet Kaur.

[14]. In view of aforesaid, impugned order is liable to be set aside. The case is remanded to the trial Court with a direction that even though recount cannot be ordered in routine, but draw of lot can be held afresh in terms of Section 176(4) (b) of Haryana Panchayati Raj Act, 1994.

[15]. In view of findings recorded hereinabove, this revision petition is accepted. Impugned order dated 22.07.2016 passed by Civil Judge (Junior Division), Hissar is set aside. Trial Court is directed to conduct draw of lot afresh in accordance with law.

(RAJ MOHAN SINGH)
JUDGE

23.11.2016
Prince

Whether Reasoned/Speaking	Yes/No
Whether Reportable	Yes/No