

Civil Revision No.5482 of 2013 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R.No.5482 of 2013 (O&M)

Date of Decision: August 10, 2016

Parkash Kaur

...Petitioner

Versus

Chhinder Kaur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

Present: Mr.P.S.Brar, Advocate,
for the petitioner.

Mr.Atul Goyal, Advocate,
for respondent No.1.

Ms.Sukhpreet Kaur, Advocate for
Mr.Sandeep Khunger, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

Petitioner is aggrieved of the impugned order dated 23.8.2013 (Annexure P-1), whereby the Election Tribunal ordered re-counting of votes in an election petition filed at the instance of respondent No.1 challenging the election of the petitioner as Sarpanch vis-a-vis declaration of result on 4.7.2013.

Mr.P.S.Brar, learned counsel for the petitioner submits that

as noticed above, on declaration of the result on 4.7.2013, the respondent filed the election petition on 5.7.2013. While the petition was at initial stage, only the petitioner filed the written statement and the other respondents were yet to file their counter, but the Election Tribunal ordered for re-counting of the votes vide order dated 23.8.2013 and adjourned the matter for 30.8.2013. Delegation of power to the agent appearing in counting would not amount to acquiescence or accepting of the order, much less would not be an estoppel to assail the order. The counting though had been done, but there is already an interim order dated 11.9.2013 of this Court.

He further submits that the respondent-election petitioner had to prove the case in affirmative, but cannot seek re-counting of the votes straightway. The re-counting at this stage is against the settled canon of law and various judgments of the Hon'ble Supreme Court and this Court. He also submits that the re-counting was not started as it was objected to by the petitioner.

Mr.Atul Goyal, learned counsel for respondent No.1-election petitioner submits that once the re-counting had been done on 30.8.2013, listing of the revision and taking cognizance of the matter would pale into insignificance, much less render redundant as the impugned order has already been implemented. The next date before the

Election Tribunal was 14.9.2013.

I have heard the learned counsel for the parties and appraised the paper book.

Without pondering upon the fact whether actually re-counting of votes was done or not, the fact remains that the election petition was at the initial stage. The onus to prove and challenge the grounds of election is upon the election petitioner. Without even leading *prima-facie* evidence, the election petitioner cannot seek re-counting of votes, much less the Election Tribunal cannot, at the drop of hat, pass such order. The law regarding re-counting is no longer *res integra*. In case after leading of the evidence by both the parties and considering merits and de-merits of the matter, the Election Tribunal feels necessary for re-counting of the votes, only then re-counting in special and certain circumstances can be ordered. All these factors have not been taken into consideration by the Election Tribunal.

For the foregoing reasons, I am of the view that the impugned order is not sustainable and is hereby set-aside. The parties would be at liberty to lead evidence as expeditiously as possible. I also intend to dispose of the present revision petition with a direction to the Election Tribunal to expedite the disposal of the election petition preferably within a period of eight months by affording reasonable

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opportunities to the parties to the lis.

Revision petition stands disposed of with the
aforementioned observations.

**August 10, 2016
ramesh**

**(AMIT RAWAL)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable:

Yes/No