

Sr.No.254

IN THE HIGH COURT OF PUNJAB AND HARYANA CHANDIGARH

CWP-9051-2015(O&M)

Decided on: 15.02.2016

Partap Singh and othersPetitioners

vs.

State of Punjab and othersRespondents

Coram: Hon'ble Mr. Justice Mahesh Grover

Present: Mr. I.S.Saggu, Advocate for the petitioners.
Mr.Anant Kataria, DAG, Punjab.
Mr. Ashwani Prashar, Advocate for respondents no. 6 to 11.
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Mahesh Grover, J

The petitioners impugn the order dated 29.04.2015 by which the Deputy Registrar Cooperative Societies (hereinafter known as DRCS), Jalandhar has directed a recount of the votes by assigning the task to Asstt. Registrar Cooperative Societies (hereinafter known as ARCS).

Elections to the Cooperative Societies were held on 11.06.2014 in which all the petitioners along with respondents no.7 to 10 were elected while respondent no.6 was defeated having secured 50 votes. A challenge is made to the election by the defeated candidate i.e respondent no.6 by filing an Election Petition before the DRCS under the Provisions of Section 56 of the Punjab Cooperative Societies Act, 1961 (hereinafter known as the Act).

The petitioners refer to the Election Petition Annexure P3 to contend that there was neither any averment made in the petition nor a prayer made for a recount and without establishing the essentiality for a recount, the Deputy Registrar could not have granted the same.

Learned counsel for the respondents would resist the petition on the ground that remedy of appeal is available to the petitioners under the provisions of Section 68 (1b) of the Act wherein decision or award made under Section 56 is amenable to an appeal. Apart from that he also refers to the cross examination of the petitioners and one another elected candidate who had stated that he has no objection if

the recounting of votes is done. On the basis of this it is pleaded that the impugned order does not warrant any interference.

After hearing learned counsel for the parties, I am of the view that the DRCS before whom the Election Petition under Section 56 of the Act was pending fell in grave error in directing a recount particularly when the entire Election Petition does not even remotely refer to the specifics which could have invited decision of recount. No case has been made out in the entire petition regarding the votes caste and irregularity, if any, in this regard. So much so that even a prayer has also not been made in the entire Election Petition for a recount.

The law in this regard is well settled. A person seeking a recount has to make out a case for the same coupled with the prayer in this regard, Having failed to do so, the prayer could not have been granted by the DRCS because one of the petitioners in his cross examination fell to a stray admission of no objection in this regard. A person who comes to the Court has to stand on his own legs. Therefore, it was imperative upon the respondent no.6 to plead a specific case for a recount.

Even if the contention of the respondents is accepted that in para 5 of the written statement they have made out a case, it is not supported by any material.

The plea of the respondents that an alternate remedy is available, would also be of no consequence as provisions of Section 68 of the Act would refer to a 'decision' or 'award' indicating a final decision and not an interlocutory order passed during the course of the proceedings.

The petition is therefore, allowed and the impugned order 29.04.2015 passed by the DRCS, Jalandhar is set aside. The matter is remanded back to the DRCS, Jalandhar with a direction that he may proceed with the Election Petition and dispose it of as expeditiously as possible preferably within a period of six months.

15.02.2016**mamta****(MAHESH GROVER)****JUDGE**